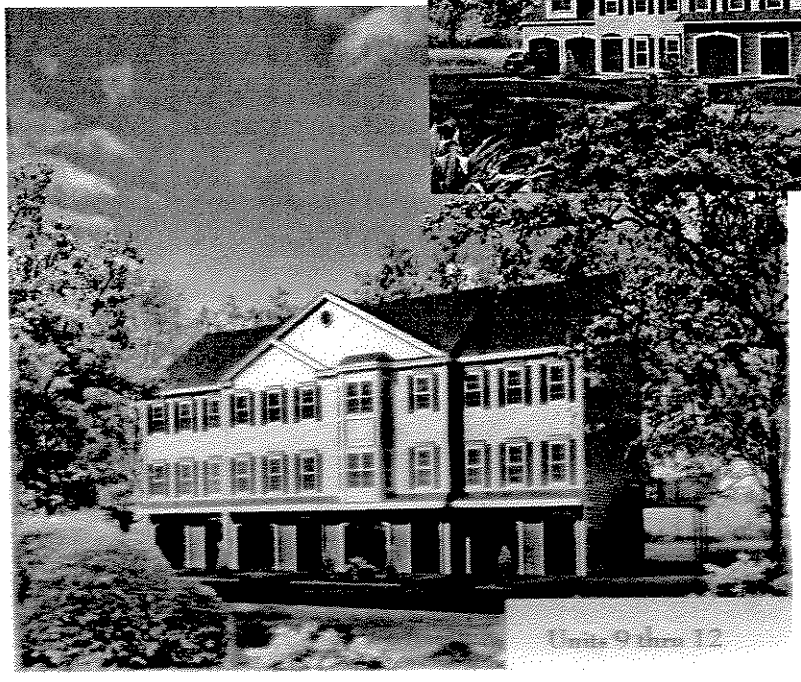
Blanchard Place – A Local Initiative Project
139 Prospect Street, Acton, MA
Comprehensive Permit Application

Units 1 thru 4

Units 5 thru 8



Units 9 thru 12

Filed by:
Blanchard Place LLC
411 Massachusetts Avenue,
Suite 304
Acton, MA 01720

February 2006

Blanchard Place LLC
411 Massachusetts Avenue, Suite 304
Acton, Massachusetts 01720

RECEIVED
FEB 21 2006
TOWN OF ACTON
PLANNING DEPARTMENT

February 15, 2006

Jonathan Wagner, Chairman
Acton Board of Appeals
472 Main Street
Acton, Massachusetts 01720

Re: Blanchard Place Local Initiative Comprehensive Permit Application.

Dear Mr. Wagner:

The enclosed application for a Comprehensive Permit is the culmination of a collaborative effort starting over a year ago. Both the Board of Selectman and the Acton Community Housing Corporation have endorsed the project. Throughout the process we have worked with the community to create, what we hope will be a model LIP project. The location and design of the project are in line with the newly adopted 40B Policy.

In January 2006, Blanchard Place received the site approval letter from DHCD. We have now met the criteria to proceed to the Acton Zoning Board of Appeals and request a Comprehensive Permit for the above-mentioned project. We look forward to presenting this project and working with the Board.

Sincerely,

J. James D'Agostine, III
Manager
Blanchard Place LLC

COMPREHENSIVE PERMIT APPLICATION FORM

Refer to the "Rules and Regulations for Comprehensive Permits" available from the office of the Board of Appeals for detailed permit filing requirements. Contact the Building Department at 264-9632 with any questions. Incomplete applications may be denied.

(Please type or print your application)

1. Street Address of Site 139 Prospect Street

   Name of Proposed Development Blanchard Place

2. Applicant's Name Blanchard Place LLC
   Address 411 Massachusetts Avenue Suite 304, Acton, MA 01720
   Telephone: 978-263-0428 Fax: 978-263-0447 e-mail: Kingst435@msn.com
3. Record Owner Name Mary Elizabeth Spencer

   Address: c/o Anne Spencer Newey

   9 Patti Lane

   Maynard, MA 01754

4. Zoning District(s) of Parcel(s) R-2, Affordable Overlay Sub-District B,

   Groundwater Protection Zone 4

   Town Atlas Map(s) Parcel Number(s) Map F2, Parcel 129

5. a) Total development site area: 2.9 A
   b) Number of dwelling units: 12 units
   c) Number of affordable units: 3 units
   d) Number of units accessible/adaptable for persons w/ disabilities; 12 adaptable units
   e) Total open space area : 1.85 A
   g) Total length of road: public n/a private n/a
   i) Method of wastewater disposal: public sewer

The undersigned hereby apply to the Planning Board for a Comprehensive Permit under M.G.L. c. 40B, ¤~20-23. The undersigned hereby certify that the information on this application and plans submitted herewith are correct, and that, to the best of his/her knowledge, the application complies with all applicable provisions of Law and Regulations.

Signed under the penalties of perjury in accordance with M.G.L. c. 268, ¤ 1A.

Signature of Petitioner(s) Date 2/15/06

Signature of Petitioner(s) Date

RECORD OWNER'S KNOWLEDGE AND CONSENT I hereby assert that I have knowledge of and give my consent to the application presented above.

Signature of Record Owner(s) Date

See attached sheet for signature

COMPREHENSIVE PERMIT
APPLICATION FORM

Refer to the "Rules and Regulations for Comprehensive Permits" available from the office of the Board of Appeals for detailed permit filing requirements. Contact the Building Department at 264-9632 with any questions. Incomplete applications may be denied.

(Please type or print your application)

1. Street Address of Site 139 Prospect St., Acton, MA 01720
   Name of Proposed Development Blanchard Pl.
2. Applicant's Name Blanchard Place LLC
   Address 411 Mass Ave., Acton, MA
   Telephone 978-263-0428 Fax 978-263-0429 e-mail kingst435@comcast.net
3. Record Owner Name Mary Spencer
   Address:
   Telephone
4. Zoning District(s) of Parcel(s) R-2
   Town Atlas Map(s)/ Parcel Number(s) MF2-129
5. a) Total development site area 2.7 a b) Number of dwelling units 12
   c) Number of affordable units 3 d) Number of units accessible/
   e) Total open space area 1.85 a adaptable for persons w/ disabilities 12
   g) Total length of road(s) public N/A ft private N/A ft
   i) Method of wastewater disposal Public Sewer

The undersigned hereby apply to the Planning Board for a Comprehensive Permit under M.G.L. c. 40B, §§ 20-23. The undersigned hereby certify that the information on this application and plans submitted herewith are correct, and that, to the best of his/her knowledge, the application complies with all applicable provisions of Law and Regulations.

Signed under the penalties of perjury in accordance with M.G.L. c. 268, § 1A.

Signature of Petitioner(s) Date

Signature of Petitioner(s) Date

RECORD OWNER'S KNOWLEDGE AND CONSENT

I hereby assert that I have knowledge of and give my consent to the application presented above.

Mary C Spencer

Signature of Record Owner(s) Date 2/4/06

Signature of Record Owner(s) Date

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The Commonwealth of Massachusetts

Secretary of the Commonwealth

State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the
Commonwealth

February 1, 2006

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of organization of a Limited Liability Company was filed in this office by

BLANCHARD PLACE, LLC

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **July 26, 2005.**

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation or withdrawal; and that, said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are: **NONE**

I further certify, the names of all persons authorized to execute documents filed with this office and listed in the most recent filing are: **JULIAN J. D'AGOSTINE, III**

The names of all persons authorized to act with respect to real property listed in the most recent filing are: **JULIAN J. D'AGOSTINE, III**

In testimony of which,
I have hereunto affixed the
Great Seal of the Commonwealth
on the date first above written.

William Francis Galvin

Secretary of the Commonwealth

FILED

FEB 3 2006

SECRETARY OF THE COMMONWEALTH
CORPORATIONS DIVISION

COPY

CERTIFICATE OF AMENDMENT
BLANCHARD PLACE, LLC

The undersigned, being authorized to execute and file this Certificate for the purpose of amending the Certificate of Organization of Blanchard Place, LLC (the "Company"), hereby certifies as follows:

1. The name and principal address of the Company is Blanchard Place, LLC, 475 Burroughs Road, Boxborough, Massachusetts 01719

2. The Certificate of Organization of the Company was filed on July 26, 2005.

3. There are no Managers of the Company.

4. The Resident Agent of the Company is Gary L. Whitaker, 475 Burroughs Road, Boxborough, Massachusetts 01719.

5. The person authorized to execute documents to be filed with the Corporations Division of the Office of the Secretary of the Commonwealth is: Gary L. Whitaker.

6. The person authorized to execute, acknowledge, deliver and record any and all instruments on behalf of the Company purporting to affect an interest in real property including, but not limited to, deeds, notes, mortgages and/or any other documents in any way related to the business of the Company is: Gary L. Whitaker.

The Certificate of Organization of the Company is hereby amended as follows:

A. The principal address of the Company is 411 Massachusetts Avenue, Acton, Massachusetts 01720.

B. The name and business address of the Resident Agent for service of process is:

Julian J. D'Agostine, III
411 Massachusetts Avenue
Acton, Massachusetts 01720

C. The name and business address of each person who is authorized to execute instruments to be filed with the Corporations Division:

Division of the Office of the Secretary of the Commonwealth is as follows:

Julian J. D'Agostine, III
411 Massachusetts Avenue
Acton, Massachusetts 01720

D. The name and business address of each person who is authorized to execute, acknowledge, deliver and record any recordable instrument on behalf of the Company purporting to affect an interest in real property, whether to be recorded with a registry of deeds or a district office of the Land Court is as follows:

Julian J. D'Agostine, III
411 Massachusetts Avenue
Acton, Massachusetts 01720

The foregoing amendment was approved in the manner required by the operating agreement of the Company.

IN WITNESS WHEREOF, I have signed this Certificate of Amendment on behalf of the Company on Jan 31st, 2006.

Julian J. D'Agostine, Authorized Signatory

Transfer of Interest in and
Amendment of Operating Agreement
Blanchard Place, LLC

The undersigned, Gary L. Whitaker ("Transferor"), being the sole Member of Blanchard Place, LLC pursuant to the terms of an Operating Agreement dated July 25, 2005, does hereby transfer all of my right, title and interest in my membership interest in Blanchard Place, LLC to Julian J. D'Agostine, III ("Transferee"), and does hereby acknowledge the satisfaction of all of the provisions set forth in Article 6 of said Operating Agreement.

The undersigned Transferee does hereby accept the transfer of the membership interest in Blanchard Place, LLC and does hereby agree to be bound by and comply with all the terms as set forth in the Operating Agreement.

The Transferor and Transferee do hereby agree to amend the Operating Agreement by substituting wherever it should appear the name Gary L. Whitaker with the Transferee's name, Julian J. D'Agostine, III.

Witness our hands and seals this 31 day of January, 2006.

Gary L. Whitaker

Julian J. D'Agostine, III

8. *Execution of Documents Relating to Real Property.* The name and business address of each person who is authorized to execute, acknowledge, deliver and record any recordable instrument on behalf of the Company purporting to affect an interest in real property, whether to be recorded with a registry of deeds or a district office of the Land Court is as follows:

NAME	*BUSINESS ADDRESS*
Gary L. Whitaker	475 Burroughs Road Boxborough, MA 01719

IN WITNESS WHEREOF, I have signed this Certificate of Organization and acknowledged it to be my act this 25th day of July, 2005.

Gary L. Whitaker, Authorized Agent

FILED

JUL 26 2005

SECRETARY OF THE COMMONWEALTH
CORPORATIONS DIVISION

Certificate of Organization of BLANCHARD PLACE, LLC

The undersigned, being authorized to execute and file this Certificate for the purpose of forming a limited liability company under the laws of the Commonwealth of Massachusetts, hereby certifies as follows:

1. *Name of the Company*. The name of the limited liability company (the "Company") is Blanchard Place, LLC.

2. *Office of the Company*. The address of the office of the Company at which its records will be maintained is 475 Burroughs Road, Boxborough, Massachusetts 01719.

3. *Business of the Company*. The general character of the business of the Company is real estate development and construction, and to otherwise engage in any lawful act or activity for which limited liability companies may be organized under Chapter 156C of the Massachusetts General Laws.

4. *Date of Dissolution*. The limited liability company is to have no specific date of dissolution.

5. *Resident Agent*. The name and business address of the Resident Agent for service of process is:

NAME	*BUSINESS ADDRESS*
Gary L. Whitaker	475 Burroughs Road Boxborough, MA 01719

6. *Managers*. At the time of formation of the Company, there are no Managers.

7. *Execution of Documents*. The name and business address of each person who is authorized to execute documents to be filed with the Corporations Division of the Office of the Secretary of the Commonwealth is as follows:

NAME	*BUSINESS ADDRESS*
Gary L. Whitaker	475 Burroughs Road Boxborough, MA 01719

Operating Agreement
of
Blanchard Place Limited
Liability Company

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Single-Member Limited Liability Company
Operating Agreement

This Operating Agreement (this "Agreement") relating to Blanchard Place, LLC (the "Company"), dated as of July 25 2005, is adopted, executed and agreed to, for good and valuable consideration, by Gary L. Whitaker, a Member as defined herein.

Article 1
DEFINITIONS

The following capitalized terms shall have the meaning specified in this Article 1. Other terms are defined throughout this Agreement and have the meanings respectively ascribed to them.

"Affiliate" means, with respect to a Member, any Person: (i) which owns more than 50% of the voting interests in the Member; or (ii) in which the Member owns more than 50% of the voting interests; or (iii) in which more than 50% of the voting interests is owned by a Person who has a relationship with the Member described in clause (i) or (ii) above.

"Certificate of Organization" means the Certificate of Organization of the Company to be filed with the Secretary of the Commonwealth of Massachusetts in accordance with the Act.

"Code" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

"Interest" means a Member's share of the profits and losses of, and the right to receive distributions from, and voting rights in, the Company.

"Member" means the Person signing this Agreement and any Person who is admitted as an additional, substitute or replacement Member of the Company in accordance with the terms of this Agreement. "Members" shall refer collectively to all such persons.

"Percentage" means the percentage set forth after a Member's name on Exhibit A to this Agreement, as amended from time to time.

"Person" means and includes an individual, corporation, partnership, association, limited liability company, trust, estate or other entity.

"Regulation" means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

Article 2
ORGANIZATION

2.1. *Organization*. The Company has been organized as a single-member Massachusetts limited liability company pursuant to the provisions of the Massachusetts Limited Liability Company Act, as amended, and any successors thereto (the "Act') and the provisions of this Agreement and, for that purpose, have caused a Certificate of Organization to be executed and filed with the Secretary of the Commonwealth of Massachusetts on July 26, 2005.

2.2. *Name of the Company*. The name of the Company shall be "Blanchard Place, LLC." The Company may do business under that name and under any other name or names upon which a majority of the Members agree. If the Company does business under a name other than that set forth in its Certificate of Organization, the Company shall file a trade name or doing business certificate or any other documents as required by applicable law.

2.3. *Purpose*. The Company is organized for the purpose of real estate development and construction and to engage in any lawful activity for which a limited liability company may be formed under the Act.

2.4. *Powers*. The Company shall have all of the powers necessary or convenient to the conduct, promotion or attainment of the business, trade, profession, purposes or activities of the Company, including, without limitation, all of the powers of an individual, partnership, corporation or other entity under Massachusetts law.

2.5. *Term*. The term of the Company began upon the filing of the Certificate of Organization with the Secretary of the Commonwealth of Massachusetts and shall have no specific date of dissolution.

2.6. *Office*. The office of the Company in the Commonwealth of Massachusetts shall be located at 475 Burroughs Road, Boxborough, Massachusetts 01719 or at any other place within the Commonwealth of Massachusetts upon which a majority of the Members agree.

2.7. *Resident Agent*. The name and address of the Company's resident agent in the Commonwealth of Massachusetts shall be Gary L. Whitaker, 475 Burroughs Road, Boxborough, Massachusetts 01719.

2.8. *Members*. The name, present mailing address and Percentage of each Member are set forth on Exhibit A hereto.

Article 3
CAPITAL

[illegible] Member shall contribute cash to the Company as the sole and entire consideration for its membership interest an amount as described on *Exhibit* A, as amended from time to time.

3.2. *No Additional Contributions Required.* No Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company in excess of his, her or its requisite contribution.

3.3. *No Interest on Contributions.* Members shall not be paid interest on their Contributions.

3.4. *Form of Distributions.* If a Member is entitled to receive a distribution, the Member shall have no right to receive such distribution in any form other than cash.

3.5. *Capital Accounts.* A separate Capital Account shall be maintained for each Member.

3.6. *Loans.* Any Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and the Member shall agree.

Article 4
ALLOCATIONS AND DISTRIBUTIONS

4.1. *Certain Definitions.* For purposes of this Article 4, the following terms shall have the meanings indicated.

"Adjusted Capital Account" means, with respect to any Member, the Member's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(i) the Capital Account shall be increased by the amounts which the Member is obligated to restore pursuant to Section 4.5(b) or is deemed obligated to restore pursuant to Regulation § 1.704-1(b)(2)(ii)(c), and the penultimate sentences of Regulation §§ 1.704-2(g)(1) and (i)(5); and

(ii) the Capital Account shall be reduced by the items described in Regulation §§ 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

"Adjusted Capital Balance" means, as of any day, a Member's total Capital Contributions less all amounts actually distributed to the Member pursuant to Sections 4.3(c)(iv)(A) and 4.5 hereof. If any Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Adjusted Capital Balance of the transferor to the extent the Adjusted Capital Balance relates to the Interest transferred.

"Capital Account" means the account to be maintained by the Company for each Member in accordance with the following provisions:

(i) a Member's Capital Account shall be increased by the Member's Capital Contributions, the amount of any Company liabilities assumed by the Member (or which are secured by Company property distributed to the Member), the Member's distributive share of

Profit and any item in the nature of income or gain specially allocated to the Member pursuant to the provisions of Article 4 (other than Section 4.4(c)); and

(ii) a Member's Capital Account shall be reduced by the amount of money and the fair market value of any Company property distributed to the Member, the amount of any liabilities of the Member assumed by the Company (or which are secured by property contributed by the Member to the Company), the Member's distributive share of Loss and any item in the nature of expenses or losses specially allocated to the Member pursuant to the provisions of Article 4 (other than Section 4.4(c)).

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Regulation § 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

"Capital Contribution" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation § 1.704-1(b)(2)(iv)(d)) to the Company by a Member.

"Capital Proceeds" means the gross receipts received by the Company from a Capital Transaction.

"Capital Transaction" means any transaction not in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions, including, without limitation, proceeds of sales or exchanges or other dispositions of property not in the ordinary course of business, financings, refinancings, condemnations, recoveries of damage awards, and insurance proceeds.

"Cash Flow" means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Members. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

"Member Loan Minimum Gain" has the meaning set forth in Regulation § 1.704-2(i)(3).

"Member Loan Nonrecourse Deductions" means any Company deductions that would be Nonrecourse Deductions if they were not attributable to a loan made or guaranteed by a Member within the meaning of Regulation § 1.704-2(i).

"Minimum Gain" has the meaning set forth in Regulation § 1.704-2(d). Minimum Gain shall be computed separately for each Member in a manner consistent with the Regulations under Code § 704(b).

"Negative Capital Account" means a Capital Account with a balance of less than zero.

"Nonrecourse Deductions" has the meaning set forth in Regulation § 1.704-2(b)(1). The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Regulation § 1.704-2(c).

"Nonrecourse Liability" means any liability of the Company with respect to which no Member or related person bears the economic risk of loss, as determined in accordance with Code § 752 and the Regulations promulgated thereunder.

"Positive Capital Account" means a Capital Account with a balance greater than zero.

"Profit" and "Loss" means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code § 703(a), with the following adjustments:

(i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code § 703(a)(1) shall be included in computing taxable income or loss; and

(ii) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and

(iii) any expenditures of the Company described in Code § 705(a)(2)(B) (or treated as such pursuant to Regulation § 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and

(iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(v) in lieu of the depreciation, amortization or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 4.4 hereof shall not be taken into account in computing Profit or Loss.

4.2. *Ordinary Profit, Loss and Cash Flow.*

(a) *Profit or Loss Other Than From a Capital Transaction.* After giving effect to the special allocations set forth in Section 4.4, for any taxable year of the Company, Profit or Loss other than Profit or Loss resulting from a Capital Transaction which Profit or Loss shall

be allocated in accordance with the provisions of Sections 4.3(a) and 4.3(b)) shall be allocated to the Members in proportion to their Percentages.

(b) *Cash Flow.* Cash Flow for each taxable year of the Company shall be distributed to the Members in proportion to their Percentages no later than seventy-five (75) days after the end of the taxable year.

4.3. *Allocation of Profit or Loss from a Capital Transaction.*

(a) *Profit.* After giving effect to the special allocations set forth in Section 4.4., Profit from a Capital Transaction shall be allocated as follows:

(i) If one or more Members has a Negative Capital Account, to those Members, in proportion to their Negative Capital Accounts, until all of those Negative Capital Accounts have been reduced to zero.

(ii) Any Profit not allocated pursuant to Section 4.3(a)(i) shall be allocated to the Members in proportion to, and to the extent of, the amounts distributable to them pursuant to Section 4.3(c)(iv)(A) and 4.3(c)(iv)(C).

(iii) Any Profit in excess of the foregoing allocations shall be allocated to the Members in proportion to their Percentages.

(b) *Loss.* After giving effect to the special allocations set forth in Section 4.4, Loss from a Capital Transaction shall be allocated as follows:

(i) If one or more Members has a Positive Capital Account, to those Members, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero.

(ii) Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to Section 4.3(b)(i) shall be allocated to the Members in proportion to their Percentages.

(c) *Capital Proceeds.* Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

(i) to the payment of all expenses of the Company incident to the Capital Transaction; then

(ii) to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Member); then

(iii) to the establishment of any reserves which the Members deem necessary for liabilities or obligations of the Company; then

(iv) the balance shall be distributed as follows:

(A) to the Members in proportion to their Adjusted Capital Balances, until their remaining Adjusted Capital Balances have been paid in full;

(B) if any Member has a Positive Capital Account after the distributions made pursuant to Section 4.3(c)(iv)(A) and before any further allocation of Profit pursuant to Section 4.3(a)(iii), to those Members in proportion to their Positive Capital Accounts; then

(C) the balance, to the Members in proportion to their Percentages.

4.4. *Special Allocations.*

(a) *Qualified Income Offset.* No Member shall be allocated Losses or deductions if the allocation causes a deficit in the Member's Adjusted Capital Account. If an Member receives (1) an allocation of Loss or deduction (or item thereof) or (2) any distribution, which causes a deficit in the Member's Adjusted Capital Account at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Member, before any other allocation is made of Company items for that taxable year, in the amount and in proportions required to eliminate the excess as quickly as possible. This Section 4.4(a) is intended to comply with, and shall be interpreted consistently with, the "qualified income offset" provisions of the Regulations promulgated under Code § 704(b). In the event that Profit or Losses or items thereof are allocated to one or more Members pursuant to this Section 44(a), subsequent Profit and Losses shall first be allocated (subject to the provisions of this Section 4.4(a1) to the members in a manner designed to result in each Member having a Capital Account equal to what it would have been had the original allocation of Profits or Losses or items thereof pursuant to Section 4.4(a) not recurred.

(b) *Minimum Gain Chargeback.* Except as set forth in Regulation § 1.704-2(f)(2), (3), and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Member, prior to any other allocation pursuant to this Article 4, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Member's share of the net decrease of Minimum Gain, computed in accordance with Regulation § 1.704-2(g). Allocations of gross income and gain pursuant to this Section 4.4(b) shall be made first from gain recognized from the disposition of Company assets subject to non-recourse liabilities (within the meaning of the Regulations promulgated under Code § 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 4.4(b) shall constitute a "minimum gain chargeback" under Regulation § 1.704-2(f). With respect to a net decrease in Member Loan Minimum Gain, items of gross income and gain shall be specially allocated in a manner consistent with the principles of the preceding sentence and Regulation § 1.704-2(i)(4).

(c) *Contributed Property and Book-Ups.* In accordance with Code § 704(c) and the Regulations thereunder, as well as Regulation § 1.704-l(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code § 704(c) and the Regulations thereunder.

(d) *Code § 754 Adjustment.* To the extent an adjustment to the tax basis of any Company asset pursuant to Code § 734(b) or Code § 743(b) is required, pursuant to Regulation § 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

(e) *Nonrecourse Deductions.* Nonrecourse Deductions for a taxable year or other period shall be specially allocated among the Members in proportion to their Percentage Interests.

(f) *Member Loan Nonrecourse Deductions.* Any Member Loan Nonrecourse Deduction for any taxable year or other period shall be specially allocated to the Member who bears the risk of loss with respect to the loan to which the Member Loan Nonrecourse Deduction is attributable in accordance with the intent of Regulation § 1.704-2(i).

(g) *Guaranteed Payments.* To the extent any compensation paid to any Member by the Company, including any fees payable to any Member pursuant to Section 5.3 hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under Code § 707(c) or is not paid to the Member other than in the Person's capacity as a Member within the meaning of Code § 707(a), the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member's Capital Account shall be adjusted to reflect the payment of that compensation.

(h) *Unrealized Receivables.* If a Member's Interest is reduced (provided the reduction does not result in a complete termination of the Member's Interest), the Member's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of Code § 751) shall not be reduced, so that, notwithstanding any other provision of this Agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to Section 4.4 hereof which is taxable as ordinary income (recaptured) for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company [illegible] any Member, be specially allocated among the Members in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture. Any questions as to the aforesaid allocation of ordinary income

(recapture), to the extent such questions cannot be resolved in the manner specified above, shall be resolved by the Members.

(i) *Withholding.* All amounts required to be withheld pursuant to Code §§ 1441, 1445 and 1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the affected Members for all purposes under this Agreement.

4.5. *Liquidation and Dissolution.*

(a) If the Company is liquidated, the assets of the Company shall be distributed to the Members in accordance with the balances in their respective Capital Accounts, after taking into account the allocations of Profit or Loss pursuant to Sections 4.2(a) and 4.3(a) and (b), if any, and distributions, if any, of cash or property pursuant to Sections 4.2(b) and 4.3(c).

(b) No Member shall be obligated to restore a Negative Capital Account.

4.6. *General.*

(a) Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Members.

(b) If any assets of the Company are distributed in kind to the Members, those assets shall be valued on the basis of their fair market value, and any Member entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Members so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Members. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in Section 4.3(a) and (b) and shall be properly credited or charged to the Capital Accounts of the Members prior to the distribution of the assets in liquidation pursuant to Section 4.5.

(c) All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Members as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Member and the successor on the basis of the number of days each was a Member during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss or proceeds attributable to a Capital Transaction.

(d) The Members, upon the advice of the Company's tax counsel, may amend this Article 4 to comply with the Code and the Regulations promulgated under Code § 704(b); provided, however, that no amendment shall materially affect distributions to a Member without a unanimous written consent of the Members.

Article 5
MANAGEMENT

5.1. *Management.* The Company shall be managed by the Members. No action may be taken by any Member to bind the Company without the affirmative vote of Members holding a majority of the Percentages then held by Members, unless otherwise provided for herein.

5.2. *Meetings of and Voting by Members.*

(a) A meeting of the Members may be called at any time by those Members holding at least a majority of the Percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place designated by the Person calling the meeting. Not less than ten (10) nor more than ninety (90) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice may waive notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings. Notice is also waived if a Member is present at the meeting in person or by proxy without protesting the adequacy of notice at the outset. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than a majority of the Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney-in-fact.

(b) Except as otherwise provided in this Agreement, the affirmative vote of Members holding a majority of the Percentages then held by Members shall be required to approve any matter coming before the Members.

(c) In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument indicating the consent of Members holding a majority of the Percentages then held by Members.

5.3. *Personal Service.* No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Members, no Member shall be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose thereof, the Members shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

5.4. *Duties of Parties.*

(a) Each Member shall devote such time to the business and affairs of the Company as is necessary to carry out the Member's duties set forth in this Agreement.

(b) Except as otherwise expressly provided in Section 5.4(c), nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate,

of any Member, to conduct any other business or activity whatsoever, and any Member shall not be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

(c) Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with the Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

5.5. *Liability and Indemnification.*

(a) A Member shall not be liable, responsible or accountable, in damages or otherwise, to any other Member or to the Company for any act performed by the Member with respect to Company matters, except with respect to any matter as to which he shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interest of the Company.

(b) The Company shall indemnify each Member for any act performed by the Member with respect to Company matters, except for with respect to any matter as to which he shall have been adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his action was in the best interest of the Company.

5.6. *Arbitration of Deadlock.* If any vote is required on any matter under this Agreement, and there are neither sufficient votes to approve nor disapprove of the matter, then either party may require that the matter be submitted to arbitration in accordance with the rules of the American Arbitration Association.

Article 6
TRANSFERS

6.1. *Certain Definitions.* For purposes of this Article 6, the following terms shall have the meanings indicated.

"Involuntary Withdrawal" means, with respect to any Member, the occurrence of any of the following events:

(i) the Member makes an assignment for the benefit of creditors;

(ii) the Member files a voluntary petition of bankruptcy;

(iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;

(iv) the Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(v) the Member seeks, consents to or acquiesces in the appointment of a trustee or receiver for, or liquidation of, the Member or of all or any substantial part of the Member's properties;

(vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in Subsections (i) through (v);

(vii) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver or liquidator for the Member or all or any substantial part of the Member's properties, without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(viii) if the Member is an individual, the Member's death or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(x) if the Member is a partnership or limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;

(xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(xii) if the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

"Transfer" means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment or other transfer, and, when used as a verb, means voluntarily to sell hypothecate, pledge, assign or otherwise transfer.

"Voluntary Withdrawal" means a Member's disassociation with the Company by means other than a Transfer or an Involuntary Withdrawal.

6.2. *Transfers.*

(a) No Person may Transfer all or any portion of its Interest unless the following conditions ("Conditions of Transfer") are satisfied:

(i) the Transfer will not require registration of the interests under any federal or state securities laws;

(ii) The transferee delivers to the Company a written agreement to be bound by the terms of Article 6 of this Agreement;

(iii) the Transfer will not result in the termination of the Company pursuant to Code § 708;

(iv) the Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

(v) the transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number; and (ii) the transferee's initial tax basis in the Transferred Interest;

(vi) the transferor complies with the provisions set forth in Section 6.3; and

(vii) the transfer will not result in the Company having more than 100 Members.

(b) If the Conditions of Transfer are satisfied, then a Member may Transfer all or any portion of that Person's Interest. The Transfer of an Interest pursuant to this Section 6.2 shall not result, however, in the Transfer of any of the following rights of the transferor, if any, and the transferee of the Interest shall have no right to: (i) become a Member; (ii) exercise any rights other than those specifically pertaining to the ownership of an economic interest; or (iii) act as an agent of the Company.

(c) Each Member hereby acknowledges the reasonableness of the prohibition contained in this Section 6.2 in view of the purposes of the Company and the relationship of the Members. The Transfer of any interest in the Company in violation of the prohibition contained in this Section 6.2 shall be deemed invalid, null and void, and of no force or effect. Any Person to whom an interest in the Company is attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company, or have any other rights in or with respect to the Company.

6.3. *Right of First Refusal.*

(a) If a Member (individually, a "Transferor") receives a bona fide written offer which the Member desires to accept (the "Transferee Offer") from any other Person (a "Transferee") to purchase all or any portion of the Transferor's Interest (the "Transferor Interest") for a purchase price denominated and payable in United States dollars, then, prior to any Transfer of the Transferor Interest, the Transferor shall give the Company written notice (the "Transfer Notice") containing each of the following:

(i) the Transferee's identify;

(ii) a true and complete copy of the Transferee Offer; and

(iii) the Transferor's offer (the "Offer") to sell the Transferor Interest to the Company for a price equal to that contained in the Transferee Offer (the "Transfer Purchase Price").

(b) The Offer shall be and remain irrevocable for a period (the "Offer Period") ending at 11:59 P.M., local time at the Company's principal office, on the thirtieth (30th) day following the date the Transfer Notice is given to the Company. At any time during the Offer Period, the Company may accept the Offer by giving written notice to the Transferor of its acceptance (the "Offeree Notice"). The Transferor shall not be deemed a Member for the purpose of the vote on whether the Company shall accept the Offer. If the Company accepts the Offer, the Offeree Notice shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than ten (10) or more than ninety (90) days after the expiration of the Offer Period.

(c) If the Company accepts the Offer, the Transfer Purchase Price shall be paid in immediately available funds on the Transfer Closing Date unless the Company elects prior to or on the Transfer Closing Date to pay the Transfer Purchase Price in installments pursuant to the provisions of Section 6.9 of this Agreement.

(d) If the Company rejects the Offer or fails to accept the Offer (within the time and in the manner specified in this Section), then the Transferor shall be free for a period (the "Free Transfer Period") of thirty (30) days after the expiration of the Offer Period to Transfer the Transferor Interest to the Transferee, for the same or greater price and on the same terms and conditions as set forth in the Transfer Notice. The Transfer shall be subject to the Conditions of Transfer (other than 6.2(a)(vi)). If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this Section shall cease and terminate.

(e) Any Transfer by the Transferor after the last day of the Free Transfer Period or without strict compliance with the terms, provisions and conditions of this Section and the other terms, provisions and conditions of this Agreement shall be null and void and of no force or effect.

6.4. *Admission of Transferee as Member.* If the Conditions of Transfer are satisfied, then the transferee shall be admitted as a Member and shall be entitled to exercise the rights of a Member after the consent of Members whose Interests represent more than one-half (1/2) of the aggregate of all of the Interests, other than the Interest of the Member whose Interest is being transferred has been obtained.

6.5. *Voluntary Withdrawal.* No Member shall have the right or power to Voluntarily Withdraw from the Company, except as otherwise provided by this Agreement.

6.6. *Withdrawal.* Upon the Voluntary or Involuntary Withdrawal of a Member where the Company is continued as provided in Section 7.1(c), the withdrawing Member shall not be entitled to receive in liquidation of the interest in the Company, pursuant to § 32 of the Act, the fair market value of the Member's Interest as of the date the Member withdrew from the Company.

6.7. *Optional Buy-out in Event of Involuntary Withdrawal.*

(a) If the Members elect to continue the Company after an Involuntary Withdrawal, the withdrawn Member shall be deemed to offer for sale (the "Withdrawal Offer") to the Company the Interest owned of record and beneficially by the withdrawn Member (the "Withdrawal Interest). The buy-out provisions of this Section 6.7 shall be in lieu of any buy-out rights the withdrawn Member may have from the Company pursuant to the Act or otherwise.

(b) The Withdrawal Offer shall be and remain irrevocable for a period (the "Withdrawal Offer Period") ending at 11:59 P.M., local time at the Company's principal office on the sixtieth (60th) day following the date the Members elect to continue the Company. At any time during the Withdrawal Offer Period, the Company may accept the Withdrawal Offer by notifying the withdrawn Member (the "Withdrawal Notice") of its acceptance. The withdrawn Member shall not be deemed a Member for the purpose of the vote on whether the Company shall accept the Withdrawal Offer.

(c) If the Company accepts the Withdrawal Offer, the Withdrawal Notice shall fix a closing date (the "Withdrawal Closing Date") for the purchase which shall be not earlier than ten (10) or later than ninety (90) days after the expiration of the Withdrawal Period.

(d) If the Company accepts the Withdrawal Offer, the Company shall purchase the Withdrawal Interest for a price equal to the amount the withdrawn Member would receive if the Company were liquidated and an amount equal to the Appraised Value were available for distribution to the Members pursuant to Section 4.5 (the "Withdrawal Purchase Price"). The Withdrawal Purchase Price shall be paid in cash on the Withdrawal Closing Date.

(e) If the Company fails to accept the Withdrawal Offer, then the withdrawn Member or the withdrawn Member's successor, as the case may be, upon the expiration of the Withdrawal Offer Period, thereafter shall be treated as the unadmitted assignee of a Member.

6.8. *Appraised Value.*

(a) The term "Appraised Value" means the appraised value of the equity of the Company's assets as hereinafter provided. Within fifteen (15) days after demand by either one to the other, the Company and the withdrawn Member shall each appoint an appraiser to determine the value of the equity of the Company's assets. If the two appraisers agree upon the equity value of the Company's assets, they shall jointly render a single written report stating that value. If the two appraisers cannot agree upon the equity value of Company's assets, they shall each render a separate written report and shall appoint a third appraiser, who shall appraise the Company's assets and determine the value of the equity therein, and shall render a written report of his opinion thereon. Each party shall pay the fees and other costs of the appraiser appointed by that party, and the fees and other costs of the third appraiser shall be shared equally by both parties.

(b) The equity value contained in the aforesaid joint written report or written report of the third appraiser, as the case may be, shall be the Appraised Value; provided, however, that if the value of the equity contained in the appraisal report of the third appraiser is more than the higher of the first two appraisals, the higher of the first two appraisals shall govern; and provided, further, that if the value of the equity contained in the appraisal report of the third appraiser is less than the lower of the first two appraisals, the lower of the first two appraisals shall govern.

6.9. *Purchase Price.* Notwithstanding anything set forth elsewhere herein to the contrary, if the Company elects to purchase a withdrawing Member's interest in the Company, the price to be paid for a withdrawing Member's interest (whether by Voluntary or Involuntary Withdrawal or a Transfer) shall be seventy-five (75%) percent of the Appraised Value of the Member's interest in the Company, as determined in accordance with the provisions of Section 6.8.

6.10. *Installment Purchase.* If the Company elects to pay the Purchase Price on an installment basis (the "Indebtedness"), the Company shall evidence the obligation to pay the Indebtedness by executing and delivering under seal its or their promissory note, in the form attached hereto as Exhibit B, to the withdrawn Member or the Transferor (the "Payee").

6.11. *Insolvency.*

(a) If the Company is not lawfully permitted to purchase all of the interest of a Member as required pursuant to this Agreement or to pay, from time to time, any amount owed with respect to the deferred Purchase Price (the "Indebtedness"): (i) the entire amount which may lawfully be paid shall be paid immediately on such account; and (ii) the surviving or remaining Members shall promptly take those steps that are appropriate or necessary to enable the Company to pay the balance which is then due, including, by way of illustration and not by way of limitation, the obtaining of an up-to-date appraisal of the assets of the Company or including in the note given to evidence the Indebtedness that language which is required (under § 35 of the Act to allow the Company to issue the note and the payee hereto consents to the inclusion of that language in the note), provided that the foregoing shall not require any Member to make any capital contribution.

(b) If the Company is unable to pay lawfully for the Interest of a Member purchased under the applicable provisions of this Agreement after taking all of the actions specified in clause (ii) of Section 6.10(a), then no surviving or remaining Members shall be liable for or shall be required to assume the Company's obligation to purchase the balance of the interest of the Member.

6.12. *Admission of Additional Members.* Members may also admit to the Company additional Members, from time to time, subject to the following:

(a) all Members shall consent to such admission and to all of the terms and conditions relating thereto;

(b) additional Members shall make a Capital Contribution is such amount and on such terms as all the Members shall determine to be appropriate based upon the needs of the Company, a net value of the Company's assets, the Company's financial condition and the benefits anticipated to be realized by the additional Members;

(c) no additional Member shall be admitted if the effect of such admission would be determined with the Company to cause the Company to be treated as a Corporation within the meaning of Code Section 708(b);

(d) this Agreement shall be amended as necessary and appropriate to reflect the terms under which the additional Member may be admitted; and

(e) the additional Member shall agree to be bound by the terms of this Agreement, as amended.

Article 7
DISSOLUTION

7.1. *Events of Dissolution.* The Company shall be dissolved upon the happening of any of the following events:

(a) when the period fixed for its duration in Section 2.5 has expired;

(b) upon the unanimous written agreement of the Members; or

(c) upon the death, insanity, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued membership of a Member in the Company, unless a majority of the remaining Members (owning a majority of the remaining Percentages, within ninety (90) days after the event or occurrence, elect to continue the business of the Company.

7.2. *Procedure for Winding up.* In the Company is dissolved, the remaining Members shall wind up its affairs. On winding up of the Company, the assets of the Company shall be

distributed, first, to creditors of the Company, including Members and former Members who are creditors (other than as the result of unpaid distributions); second, to Members who are creditors as the result of unpaid distributions to which they are entitled; third, to Members in accordance with Section 4.5.

7.3. *Filing of a Certificate of Cancellation.* If the Company is dissolved and its winding up has been completed, the Members shall promptly file a Certificate of Cancellation with the Office of the Secretary of the Commonwealth.

Article 8
BOOKS AND RECORDS

8.1. *Bank Accounts.* All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Members shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

8.2. *Books and Records.*

(a) The Members shall keep or cause to be kept at the Company's office in the Commonwealth complete and accurate books and records of the Company. These records shall include, but not be limited to: (i) a current list of the name and address of each Member; (ii) a copy of the Certificate of Organization and all Certificates of Amendment thereto (including powers of attorney executed in connection with these certificates); (iii) copies of the Company's federal, state, and local income tax returns and reports for the three most recent years; (iv) copies of this Operating Agreement and any documents incorporated by reference into this Operating Agreement; and (v) copies of any financial statements of the Company for the three most recent years. In addition, the Company will keep supporting documentation of transactions with respect to the conduct of its business.

(b) The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's office in the Commonwealth for inspection and copying by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

(c) Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

8.3. *Annual Accounting Period.* The annual accounting period of the Company shall be the calendar year, subject to the requirements and limitations of the Code.

8.4. *Reports.* Within seventy-five (75) days after the end of each taxable year of the Company, the Members shall cause to be sent to each Person who was a Member at any time during the taxable year then ended a complete accounting of the affairs of the Company for the taxable year then ended. In addition, within seventy-five (75) days after the end of each taxable

year of the Company, the Members shall cause to be sent to each Person who was a Member at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Member's income tax returns for that year. At the request of more than 50% of the Members, and at the requesting Members' expense, the Members shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

8.5. *Tax Matters Partner.* Gary L. Whitaker shall be the "tax matters partner" of the Company for the purposes of Code § 6231. The Tax Matters Partner shall have all powers and responsibilities provided in Code § 6221, et seq. The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third party costs and expenses incurred by the Tax Matters Partner in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Partner shall not compromise any dispute with the Internal Revenue Service without the approval of the Members.

8.6. *Code § 754 Election.* At the request of an assignee of a Member's Interest, the Members shall cause the Company to file an election under Code § 754.

8.7. *Title to Company Property.*

(a) Except as provided in Section 8.7(b), all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

(b) The Members may direct that legal title to all or any portion of the Company's property be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Members may cause title to be acquired and held in their name or in the names of trustees, nominees or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's property (or any part thereof) is solely for the convenience of the Company and all property held in the name or names of trustees, nominees or straw parties shall nevertheless be treated as Company property.

Article 9
GENERAL

9.1. *Amendments.* This Agreement may be amended or modified from time to time by unanimous written consent of all of the Members.

9.2. *Assurances.* Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing and other acts as the Members deem appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules and regulations relating to the acquisition, operation or holding of the property, in the Member.

9.3. *Notifications*. Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents required or permitted to be given under this Agreement must be in writing and shall be deemed to have been given (i) three (3) days after the date mailed by registered or certified mail, addressed to the recipient, with return receipt requested, (ii) upon delivery to the recipient in person or by courier, or (iii) upon receipt of a facsimile transmission by the recipient. Such notices, requests and consents shall be given to members at the Members' last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office specified in Section 2.6. Whenever any notice is required to be given by law, the Certificate of Organization or this Agreement, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

9.4. *Specific Performance*. The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

9.5. *Complete Agreement*. This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended or modified from time to time without the unanimous written consent of all of the Members.

9.6. *Applicable Law*. All questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the Commonwealth of Massachusetts.

9.7. *Section Titles*. The headings herein are inserted as a matter of convenience only and do not define, limit or describe the scope of this Agreement or the intent of the provisions hereof.

9.8. *Binding Provisions*. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns.

9.9. *Jurisdiction and Venue*. Any suit involving any dispute or matter arising under this Agreement may only be brought in the United States District Court for the District of Massachusetts or any court of the Commonwealth of Massachusetts having jurisdiction over the subject matter of the dispute or matter. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

9.10. *Terms*. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the Person may in the context require.

9.11. *Separability of Provisions*. Each provision of this Agreement shall be considered separable and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

9.12. *Counterparts*. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

9.13. *Estoppel Certificate*. Each Member shall, within ten (10) days after written request by any Member, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (i) this Agreement is in full force and effect; (ii) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (iii) there is no default hereunder by the requesting Person, or if there is a default, the nature and extent thereof.

IN WITNESS WHEREOF, this Operating Agreement is executed the 25th day of July, 2005.

MEMBER:

Gary L. Whitaker

Exhibit A
List of Members, Capital and Percentages

Name, Address and Taxpayer I.D. Number	Initial Capital Contribution	Percentages
Gary L. Whitaker 475 Burroughs Road Boxborough, MA 01719 SS# 015-54-4518	$1,000.00	100%

LOCAL INITIATIVE PROGRAM

REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS
FOR
OWNERSHIP PROJECT

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this ___ day of _____ 200__ by and among the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development ("DHCD"), pursuant to Chapter 204 of the Acts of 1996, the City/Town of _____ ("the Municipality"), and _____, a Massachusetts corporation/limited partnership, having an address at _____, and its successors and assigns ("Project Sponsor").

WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at 760 CMR 45.00 (the "Regulations") which establish the Local Initiative Program ("LIP");

WHEREAS, the Project Sponsor intends to construct a housing development known as _____ at a ____ acre site on _____ Street/Road in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, such Project is to consist of a total number of ____ condominium units/detached dwellings (the "Units") and _____ of the Units will be sold at prices specified in this Agreement to persons or households with incomes at or below eighty percent (80%) of the regional median household income (the "Low and Moderate Income Units");

WHEREAS, the Chief Elected Official of the Municipality (as that term is defined in the Regulations) and the Project Sponsor have made application to DHCD to certify that the Project is a valid Comprehensive Permit Project (as that term is defined in the Regulations) within the LIP Program and therefore that the Project Sponsor is qualified to apply to the Municipality's Board of Appeals (as that term is defined in the Regulations) for a comprehensive permit pursuant to the Act (the "Comprehensive Permit"), or have made application to DHCD to certify that the units in the Project are Local Initiative Units (as that term is defined in the Regulations) with the LIP Program; and

WHEREAS, in partial consideration of the execution of this Agreement, DHCD has issued or will issue its final approval of the Project within the LIP Program and has given and will give technical and other assistance to the Project;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, DHCD, the Municipality, and the Project Sponsor hereby agree and covenant as follows (the provisions in brackets apply only to Comprehensive Permit Projects):

1. The Project Sponsor agrees to construct the Project in accordance with plans and specifications approved by the Municipality and DHCD (the "Plans and Specifications") [and in accordance with all terms and conditions of the Comprehensive Permit]. In addition, all Low and Moderate Income Units to be constructed as part of the Project must be indistinguishable from other Units in the Project from the exterior (unless the Project has an approved "Alternative Development Plan" as set forth in the LIP [illegible] including but in

limited to a stove, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, all as more fully shown in the Plans and Specifications.

_____ of the Low and Moderate Income Units shall be one bedroom units;
_____ of the Low and Moderate Income Units shall be two bedroom units;
_____ of the Low and Moderate Income Units shall be three bedroom units; and,
_____ of the Low and Moderate Income Units shall be four bedroom units.

All Low and Moderate Income Units to be occupied by families must contain two or more bedrooms. Low and Moderate Income Units must have the following minimum areas:

one bedroom units - 700 square feet
two bedroom units - 900 square feet
three bedroom units - 1200 square feet
four bedroom units - 1400 square feet

The Project must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. [Except to the extent that the Project is exempted from such compliance by the Comprehensive Permit,] the Project must also comply with all applicable local codes, ordinances and by-laws.

Each Low and Moderate Income Unit will be sold for no more than the price set forth in Exhibit B attached hereto and made a part hereof to an Eligible Purchaser. An Eligible Purchaser is a Family whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U. S. Department of Housing and Urban Development. A "Family" shall mean two or more persons who will live regularly in the Low or Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The "Area" is defined as the _____MSA/PMSA/Non-Metropolitan County.

3. Upon issuance of a building permit for the project, the Project will be included in the Subsidized Housing Inventory as that term is described in 760 CMR 31.04(1). Only Low and Moderate Income Units will be counted as Subsidized Housing Units for the purposes of the Act.

4. (a) At the time of sale of each Low and Moderate Income Unit by the Project Sponsor, the Project Sponsor shall execute and shall as a condition of the sale cause the purchaser of the Low and Moderate Income Unit to execute a Deed Rider in the form of Exhibit C attached hereto and made a part hereof (the "Deed Rider"). Such Deed Rider shall be attached to and made a part of the deed from the Project Sponsor to the Unit Purchaser. Each such Deed Rider shall require the Unit Purchaser at the time he desires to sell the Low and Moderate Income Unit to offer the Low and Moderate Income Unit to the Municipality and to DHCD at a discounted purchase price more particularly described therein. The Municipality and DHCD shall have the option upon terms more particularly described in the Deed Rider to either purchase the Low and Moderate Income Unit or to find an Eligible Purchaser. The Deed Rider shall require the Unit Purchaser and the Eligible Purchaser to execute at the time of resale a similar Deed Rider which will be attached and made a part of the deed from the Unit Purchaser to the Eligible Purchaser, so that the affordability of the Low and Moderate Income unit will be preserved each time that subsequent resales of the Low and Moderate Income unit occur. (The various requirements and restrictions regarding resale of a Low and Moderate Income Unit contained in the Deed Rider are hereinafter referred to as the ("Resale Restrictions"). If upon the initial resale or any subsequent resale of a Low and Moderate Income Unit, the Municipality and DHCD are unable to find an Eligible Purchaser for the Low and Moderate Income Unit, and the Municipality and DHCD each elect not to exercise its right to purchase the Low and

Moderate Income Unit, then the then current owner of the Low and Moderate Income Unit shall have the right to sell the Low and Moderate Income Unit to any person, regardless of his income and at fair market value, free of any future Resale Restrictions, provided that the difference between the actual resale price and the discounted purchase price for which the Municipality, DHCD or an Eligible Purchaser could have purchased the Low and Moderate Income Unit (the "Windfall Amount") shall be paid by the then current owner of the Low and Moderate Income Unit to the municipality. The Municipality agrees that all sums constituting Windfall Amounts from the sale of Low and Moderate Income Units shall be deposited in the Municipality's Low and Moderate Income Housing Fund (as that term is hereinafter defined). The Municipality agrees that in the event that it purchases a Low and Moderate Income Unit pursuant to its right to do so contained in the Deed Rider then in effect with respect to such Low and Moderate Income Unit, that the Municipality shall within six (6) months of its acceptance of a deed of such Low and Moderate Income Unit, either (i) sell the Low and Moderate Income Unit to an Eligible Purchaser at the same price for which it purchased the Low and Moderate Income Unit plus any expenses incurred by the Municipality during its period of ownership, such expenses to be approved by DHCD, subject to a Deed Rider satisfactory in form and substance to DHCD and the recording of an Eligible Purchaser Certificate satisfactory in form and substance to DHCD, the method for selecting such Eligible Purchaser to be approved by DHCD or (ii) rent the Low and Moderate Income Unit to a person who meets the income guidelines of the LIP Program, upon terms and conditions satisfactory to DHCD and otherwise in conformity with the requirements of the LIP Program. If the Municipality fails to sell or rent the Low and Moderate income unit as provided herein within said six (6) month period, or if at any time after the initial rental of the Low and Moderate Income Unit by the Municipality as provided herein the Low and Moderate Income Unit becomes vacant and remains vacant for more than ninety (90) days, then such Low and Moderate Income Unit shall cease to be counted as a Subsidized Housing Unit, and shall no longer be included in the Subsidized Housing Inventory.

(b) Each Low and Moderate Income Unit will remain a Subsidized Housing Unit and continue to be included in the Subsidized Housing Inventory for as long as the following three conditions are met: (1) this Agreement remains in full force and effect and neither the Municipality nor the Project Sponsor are in default hereunder; (2) the Project and Low and Moderate Income Unit each continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) either (i) a Deed Rider binding the then current owner of the Low and Moderate Income Unit to comply with the Resale Restrictions is in full force and effect and the then current owner of the Low and Moderate Income Unit is either in compliance with the terms of the Deed Rider, or the Municipality is in the process of taking such steps as may be required by DHCD to enforce the then current owner's compliance with the terms of the Deed Rider or (ii) the Low and Moderate Income Unit is owned by the Municipality and the Municipality is in compliance with the terms and conditions of the last preceding paragraph, or (iii) the Low and Moderate Income Unit is owned by DHCD.

5. [Project Sponsor agrees that the aggregate profit from the Project which shall be payable to Project Sponsor or to the partners, shareholders or other owners of Project Sponsor or the Project shall not exceed twenty percent (20%) of total development costs of the project, which development costs have been approved by the Municipality and by DHCD (the "Allowable Profit"). Upon issuance of a final Certificate of Occupancy for the Project or upon the issuance of final Certificates of Occupancy for all of the Units, the Project Sponsor shall deliver to the Municipality and to DHCD an itemized statement of total development costs together with a statement of gross income from the Project received by the Project Sponsor to date in form satisfactory to the Municipality and DHCD (the "Certified Cost and Income Statement") prepared and certified by a certified public accountant satisfactory to the Municipality and to DHCD. If all units at the Project have not been sold as of the date the Certified Cost and Income Statement is delivered to the Municipality and to DHCD, the Project sponsor shall at least once every ninety (90) days thereafter until such time as all of the Units are sold, deliver to the Municipality and to DHCD an updated Certified Cost and Income Statement. All profits from the Project in excess of the Allowable Profit (the "Excess Profit") shall be paid by the Project Sponsor to the Municipality. The Municipality agrees that all amounts constituting Excess profit shall be deposited in the Affordable Housing Fund (as hereinafter defined). For so long as the Project Sponsor complies with the requirements of this Section 5, the Project Sponsor shall be deemed to be a limited dividend organization within the meaning of the Act.]

6. The Municipality agrees that upon the receipt by the Municipality of any Windfall Amount, [Excess Profit,] or any amount paid to the Municipality pursuant to the provisions of Section 1, Section 3, or Section 4 of the Deed Rider (the "Additional Windfall Amounts"), the Municipality shall deposit any and all such Windfall Amounts, [Excess Profit,] or Additional Windfall Amounts into an interest bearing account established with an institutional lender approved by DHCD (the "Affordable Housing Fund"). Sums from the Affordable Housing Fund shall be expended from time to time by the Municipality for the purpose of reducing the cost of Low and Moderate Income Units to Eligible purchasers upon resale or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for persons and families of low and moderate income elsewhere in the Municipality. The expenditure of funds from the Affordable Housing Fund shall be made only with the approval of DHCD, such approval not to be unreasonably withheld.

7. Prior to marketing or otherwise making available for sale any of the Units, the Project Sponsor must obtain DHCD's approval of a marketing plan (the "Marketing Plan") for the Low and Moderate Income Units. Such Marketing Plan must describe the buyer selection process for the Low and Moderate Income Units and must set forth a plan for affirmative marketing of Low and Moderate Income Units to minority households as more particularly described in the Regulations and Guidelines. At the option of the Municipality, the Marketing Plan may also include a preference for local residents for up to seventy percent (70%) of the Low and Moderate Income Units, subject to all provisions of the Regulations and Guidelines. When submitted to DHCD for approval, the Marketing Plan should be accompanied by a letter from the Chief Elected Official of the Municipality (as that term is defined in the Regulations) which states that the buyer selection and local preference (if any) aspects of the Marketing Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Marketing Plan which are set forth as responsibilities of the Municipality in the Marketing Plan. The Marketing Plan must comply with the Regulations and Guidelines and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of *NAACP, Boston Chapter v. Kemp*. **If the Project is located in the Boston Standard Metropolitan Statistical Area, the Project Sponsor must list all Low and Moderate Income Units with the City of Boston's MetroList (Metropolitan Housing Opportunity Clearing Center), at Boston City Hall, P.O. Box 5996, Boston, MA 02114-5996 (617-635-3321).** All costs of carrying out the Marketing Plan shall be paid by the Project Sponsor. A failure to comply with the Marketing Plan by the Project Sponsor or by the Municipality shall be deemed to be a default of this Agreement. The Project Sponsor agrees to maintain for at least five years following the sale of the last Low and Moderate Income Unit, a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Project Sponsor or the Municipality. The Project Sponsor and the Municipality agree that if at any time prior to or during the process of marketing the Low and Moderate Income Units, DHCD determines that the Project Sponsor, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Project Sponsor or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

8. Neither the Project Sponsor nor the Municipality shall 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 buyers for the Units; and the Project Sponsor shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

9. (a) The Project Sponsor agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Elected official of the municipality shall have access during normal business hours to all books and records of the Project Sponsor and the Project in order to monitor the Project Sponsor's compliance with the terms of this Agreement.

(b) [If the Comprehensive Permit is granted by the Housing Appeals Committee (as defined in the Act) the Chief Elected Official shall reconfirm his support for the Project in a manner satisfactory to DHCD at the time the Comprehensive Permit is granted.]

(c) Throughout the term of this Agreement, the Chief Elected Official shall annually certify in writing to DHCD that each of the Low and Moderate Income Units continues to be occupied by a person who was an Eligible Purchaser at the time of purchase; that any Low and Moderate Income Units which have been resold during the year have been resold in compliance with all of the terms and provisions of the Deed Rider than in effect with respect to each such Low and Moderate Income Unit, and in compliance with the Regulations and Guidelines and this Agreement; and that the Project and the Low and Moderate Income Units have otherwise been maintained in a manner consistent with the Regulations and Guidelines, this Agreement, and the Deed Rider then in effect with respect to each Low and Moderate Income Unit.

10. Upon execution, the Project Sponsor shall immediately cause this Agreement and any amendments hereto to be recorded with the Registry of Deeds for the County where the Project is located or, if the Project consists in whole or in part of registered land, file this Agreement and any amendments hereto with the Registry District of the Land Court for the County where the Project is located (collectively hereinafter the "Registry of Deeds"), and the Project Sponsor shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Project Sponsor shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

11. The Project Sponsor hereby represents, covenants and warrants as follows:

(a) The Project Sponsor (i) is a _____ 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 its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

(b) The execution and performance of this Agreement by the Project Sponsor (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 Project Sponsor 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 Project Sponsor will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project the terms of which are approved by DHCD, or other permitted encumbrances, including mortgages referred in paragraph 19, below).

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Sponsor, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

12. Except for sales of Units to home buyers as permitted by the terms of this Agreement, Project Sponsor will not sell, transfer, lease, exchange or mortgage the Project without the prior written consent of DHCD and the Municipality.

13. Until such time as decisions regarding repair of damage due to fire or other casualty, or restoration after taking by eminent domain, shall be made by a condominium association or trust not controlled by the Project Sponsor, (or if the Project consists of detached dwellings, by homebuyers) Project Sponsor agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Sponsor will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement, subject to the approval of the Project's lenders, which lenders have been approved by DHCD and the Municipality.

14. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. 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.

15. 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:

DHCD: Department of Housing and Community Development
Attention: Local Initiative Program Director
100 Cambridge St., 3rd Floor
Boston, MA 02114

Municipality:

Project Sponsor:

16. (a) This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. This Agreement is made for the benefit of DHCD, and DHCD shall be deemed to be the holder of the affordable housing restriction created by this Agreement. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement shall be perpetual, provided however, that this Agreement shall terminate if (a) at any time hereafter there is no Low and Moderate Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions, and there is no Low and Moderate Income Unit at the Project which is owned by the Municipality or DHCD as provided in Section 4 hereof, or (b) the Project is acquired by foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives DHCD and the Municipality not less then sixty (60) days prior written notice of the mortgagee's intention to foreclose upon the Project or to accept an instrument in lieu of foreclosure, or (c) [if a Comprehensive Permit is not granted to the Project Sponsor for the Project by either the Municipality's Board of Appeals (as that term is defined in the Regulations) or by the housing Appeals Committee (as that term is used in the Act) within a period of eighteen months from the date of execution of this Agreement, or] (d) [if at any time the Comprehensive Permit is revoked and all applicable appeal periods with respect

to such revocation have expired]. If this Agreement terminates because of a foreclosure or the acceptance of an instrument in lieu of foreclosure as set forth in clause (b) of this paragraph, the Municipality agrees that if at the time of such termination there is one or more Low and Moderate Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions or there is one or more Low and Moderate Income Unit at the Project which is owned by the Municipality or DHCD as provided in Section 4 hereof, the Municipality shall enter into a new Regulatory Agreement with DHCD with respect to such Low and Moderate Income Units which shall be satisfactory in form and substance to DHCD.

(b) The Project Sponsor 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 Project Sponsor's successors in title, (ii) are not merely personal covenants of the Project Sponsor, and (iii) shall bind the Project Sponsor, its successors and assigns and enure to the benefit of DHCD and its successors and assigns for the term of the Agreement. Project Sponsor 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.

(c) The Resale Restrictions contained in each of the Deed Riders which are to encumber each of the Low and Moderate Income Units at the Project pursuant to the requirements of this Agreement shall also constitute an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§ 26, 31, 32, and 33. Such Resale Restrictions shall be for the benefit of both DHCD and the Municipality and both DHCD and the Municipality shall be deemed to be the holder of the affordable housing restriction created by the Resale Restrictions in each of the Deed Riders. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. To the extent that the Municipality is the holder of the Resale Restrictions to be contained in each of the Deed Riders, the Director of DHCD by the execution of this Agreement hereby approves such Resale Restrictions in each of the Deed Riders for the Low and Moderate Income Units of the Project as required by the provisions of G.L. c. 184, § 32.

17. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement.

18. (a) The Project Sponsor and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Project Sponsor or the Municipality hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Project Sponsor or the Municipality hereunder without receiving a Default Notice from Project Sponsor or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD within thirty (30) days after the giving of the Default notice by the Project Sponsor or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement.

(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 18, then the Low and Moderate Income Units and any other Units at the Project which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed Low and Moderate Income Housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory.

19. The Project Sponsor represents and warrants that it has obtained the consent 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 the Consent to Regulatory Agreement attached hereto and made a part hereof.

Executed as a sealed instrument as of the date first above written.

Project Sponsor

By: _____

its _____

Department of Housing and
Community Development

By: _____
its Director

Municipality

By: _____

its _____
(Chief Elected Official)

LSM\l-ra

Attachments: Exhibit A - Legal Property Description
Exhibit B - Prices & Location of Low & Moderate Income Units
Exhibit C - Form of Deed Rider

Consent forms signed by any and all mortgagees whose mortgages are recorded prior to this Regulatory Agreement must be attached to this Regulatory Agreement.

© DHCD When used in the Local Initiative Program, this form may not be modified without the written approval of the Department of Housing and Community Development.

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 200__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ of the _____ [Project Sponsor], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

_____
Notary Public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK, ss. _____, 200__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

_____
Notary public
Print Name:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____,ss. _____, 200__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ for the City/Town of _____, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

_____
Notary Public
Print Name:
My Commission Expires:

Re: _____
(Project name)

_____
(City/Town)

_____
(Project Sponsor)

The Undersigned being the holder of a mortgage on the above described Project recorded with the Registry of Deeds in Book _____, Page _____, hereby consents to the execution and recording of this Agreement and to the terms and conditions hereof.

_____
(name of lender)

By: _____

its _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____, ss. _____, 200__

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, as _____ of _____ Bank, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

_____
Notary Public
Print Name:
My Commission Expires:

(If the Project has more than one mortgagee, add additional consent forms. Execution of the consent form by a mortgagee is only necessary if the mortgage has been recorded prior to the Regulatory Agreement.)

EXHIBIT A

Re: _____
(Project Name)

_____
(City/Town)

_____
(Project Sponsor)

Property Description

EXHIBIT B

Re: _____
(Project Name)

_____
(City/Town)

_____
(Project Sponsor)

Maximum Selling Prices for Low and Moderate Income Units

One bedroom units	$_____
Two bedroom units	$_____
Three bedroom units	$_____
Four bedroom units	$_____

If the Maximum Selling Prices provided in chapter five of the Local Initiative Program Guidelines for Communities are increased, the Maximum Selling Prices provided herein may be increased proportionately, but only with the prior approval of the municipality and DHCD.

Location of Low and Moderate Income Units

The housing units which are Low and Moderate Income Units are those designated as lot/unit numbers __ on:

☐ a plan of land entitled _____
recorded with the _____ Registry of Deeds in Book ____, Page ____.

☐ floor plans recorded with the Master Deed of the _____ Condominium recorded with the _____ Registry of Deeds in Book ____, Page ____.

EXHIBIT C

[TO BE REPLACED BY BLANK DEED RIDER]

Commonwealth of Massachusetts

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

Mitt Romney, Governor ◆ Kerry Healey, Lt. Governor ◆ Jane Wallis Gumble, Director

December 30, 2005

Mr. Peter Ashton
Chair, Board of Selectmen
Town Hall - 472 Main Street
Acton, MA 01720

Mr. Stephen Marsh
Blanchard Place LLC
411 Massachusetts Avenue Suite 304
Acton, MA 01720

RE: Blanchard Place - 139 Prospect Street, Acton, MA - Determination of site eligibility and preliminary approval under Local Initiative Program (LIP)

Dear Mr. Ashton and Mr. Marsh:

I am pleased to inform you that your application for Local Initiative Program (LIP) designation for the proposed Blanchard Place Local Initiative Program project in Acton, Massachusetts, has been approved subject to the fulfillment of the conditions listed below. This approval is based on your application that sets forth a plan for twelve (12) units of home ownership mixed income housing, of which three (3) will be LIP units. The price proposed is consistent with the standards for affordable housing to be included in a community's Chapter 40B affordable housing stock. The project sponsor, Blanchard Place LLC, has an option to purchase the 2.9 acres of the project's proposed site. As part of the review process, the Department of Housing and Community Development (DHCD) conducted a site visit with the project sponsors and representatives of the town on November 1, 2005, and has made the following findings:

1. The proposed project appears generally eligible under the requirements of the Local Initiative Program, subject to final program review and approval.
2. DHCD has performed an on-site inspection of the proposed project site.
3. The proposed housing design is appropriate for the site.
4. The proposed project appears financially feasible in the context of the Acton housing market.
5. The initial pro forma for the project appears financially feasible on the basis of estimated development costs.
6. Blanchard Place LLC meets the general eligibility standards of the Local Initiative Program.

The proposed project will be required to comply with all state codes and with local codes not specifically exempted by a comprehensive permit. In applying for a comprehensive permit, the project sponsor should identify all aspects of the proposal that will not comply with local requirements.

The endorsement of the Blanchard Place project by the Acton Board of Selectmen fulfills the requirement of local action under 760 CMR 45.00.

The specifics of this project must be formalized in a regulatory agreement signed by the municipality, the project sponsor, and the DHCD after the comprehensive permit has been issued, but prior to starting construction. Information concerning both the regulatory agreement and the procedures that must be followed for the sale of individual affordable units will be forwarded to you by DHCD. In preparation for signing of the regulatory agreement, the DHCD legal office will review the comprehensive permit and other project documentation. Additional information may be requested as is deemed necessary. Your cooperation in providing such materials will help the project move toward construction as quickly as possible.

As stated in the application, the Blanchard Place project will consist of 12 units, three (3) of which will be LIP units eligible for inclusion in the town's subsidized housing inventory. These affordable homes will be marketed and sold to homebuyers whose annual income may not exceed 80% of area median income, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development. The initial purchase prices for the affordable units will not exceed $171,800 for the 2-bedroom unit, and $191,000 for the 3-bedroom units.

The conditions that must be met prior to final DHCD approval include:

1. Submission to DHCD of the finalized details of the comprehensive permit, a marketing plan and the lottery to be held for the LIP units. An announcement of the lottery shall be mailed to the Metrolist Clearinghouse in Boston City Hall, and the Citizens Housing and Planning Association (CHAPA) website, www.chapa.org/housing_lotteries.htm.

2. Lottery Administration: Preference for the two LIP units will be allocated as follows:

Acton Local Preference	2	Open Pool	1

Town residents and town/school employees are both applicants in the local preference pool. Acton may choose to have the resident pool include parents and/or children of current Acton residents and/or other applicants with ties to Acton. Any local preference definition must be approved by DHCD. Definitions containing durational residency criteria will not be accepted.

The local preference pool must reflect the minority representation of the Greater Boston PMSA as defined by HUD. The lottery process must ensure that creating local preference [illegible] potential minority applicants. For details, please refer to "Buyer Tenant Selection" in the March 2004 "Local Initiative Program Guidelines"

3. DHCD must approve any changes to the application it has just reviewed and approved, including, but not limited to, alterations in unit mix, sales price, development team, unit design, or site plan. As the Blanchard Place project nears completion of construction, DHCD staff will visit the site to ensure that the development meets program guidelines.

4. All LIP units in a development phase shall have an executed purchase and sale agreement prior to commencement of construction of subsequent phases.

5. DHCD must approve the terms of the end loan financing for the LIP units. It is the agency's expectation that mortgages for the LIP unit buyers will be 30-year fixed-rate loans at or below current fair market interest rates at the time of closing. A 5% downpayment is required.

6. Evidence shall be submitted to DHCD that affordable homes in this development are covered by a third-party extended warranty of at least five years in duration recognized as acceptable by a federal agency such as the Federal Housing Administration (FHA).

Please note: prior to the sale of any units in the project, DHCD must review and approve the Schedule of Beneficial Interest included in the condominium master deed. The percentage interests assigned to the Low and Moderate Income Units must conform to the condominium fees DHCD approves for the Low and Moderate Income Units in this project, which may require a lower percentage interest being assigned to such units as compared with comparable market-rate units.

Also, within three months of occupancy of the units, the Project Sponsor must submit to both DHCD and the Chairperson of the Board of Selectmen a ***project cost accounting*** prepared by a certified public accountant. DHCD will send additional information on this requirement as the project nears completion.

The Blanchard Place project must be organized and operated so as not to violate the state anti-discrimination statute (M.G.L. c151B) or the Federal Fair Housing statute (42U.S.C.s.3601 et seq.. No restriction on occupancy may be imposed on the affordable units (other than those created by state or local health and safety laws regulating the number of occupants in dwelling units).

This letter shall expire two years from this date, or on December 30, 2007, unless a comprehensive permit has been issued and construction has begun.

We congratulate the town of Acton and the project sponsor on their efforts to work together to increase the town's supply of affordable housing. If you have any questions as you proceed with the project, please call Marilyn Contreas, telephone: (617) 573-1359.

Sincerely,

Jane Wharton
Director

cc: Nancy Tavernier, Chair, Acton Local Housing Partnership
Roland Bartl, Acton Town Planner
Jonathan Wagner, Chair, Acton Zoning Board of Appeals
Don Johnson, Acton Town Manager
Policy Ofice, DHCD
Legal Office, DHCD

Blanchard Place - Acton, Massachusetts

LOCAL INITIATIVE PROGRAM – COMPREHENSIVE PERMIT PROJECT

Sponsor:
Blanchard Place LLC
411 Massachusetts Avenue Suite 304
Acton, Massachusetts 01720

Project Address:
139 Prospect Street
Acton, Massachusetts 01720

This project will provide ownership opportunities as indicated in the chart below:

Type of Unit	# Units	# Bdrms	# Baths	Gross SF	Sales Price	Homeowner Assoc./Condo Fee
L.I.P. Units	3	2 – 3BR 1 – 2BR	2.5	2,610 sq. ft. 1,672 sq. ft.	$191,000 $171,800	$TBD*
Market Units	9	8 – 3BR 1 – 2BR	2.5	1,672 – 2,610 sq. ft.	$370,000 - 490,000	$TBD*
Total Units	12					

**Pursuant to MGL, c. 184, the association fee for units must reflect unit value, and thus, the affordable units are subject to a lower association fee than the fee to be charged to market units. DHCD must approve the fee for the affordable units.

DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT
100 Cambridge Street, Suite 300
Boston, Massachusetts 02114

BOSTON MA
MAILED AT 02203

PRESORTED FIRST CLASS

JAN 12 '06
MA
PB PITNEY BOWES
7048239 U.S. POSTAGE
$0.37 3

Mr. Stephen Marsh
Blanchard Place LLC
411 Massachusetts Avenue, suite 304
Acton, MA 01720

L-BFTMP 01720

SETTLEMENT AGREEMENT

WHEREAS, Westchester Company, Inc. (hereinafter "Westchester") has an option to purchase realty of Charles W. Spencer, Jr. and Mary E. Spencer (hereinafter "Spencer") both of Acton, Massachusetts, said realty being located at 139 Prospect Street, Acton, Middlesex County, Massachusetts and consisting of a residential dwelling and approximately 2.915 acres of land and more particularly described in a Deed recorded with Middlesex South District Registry of Deeds in Book 14217, Page 332 (hereinafter "the land"), said option and supporting documents are dated December 28, 2001 (hereinafter "option"); and

WHEREAS, differences have arisen between the parties regarding interpretation of the option and the performance thereunder; and

WHEREAS, an action is pending in Middlesex Superior Court, Docket No. 03-2260 to litigate the respective rights and obligations of said option; and

WHEREAS, the Parties are desirous of resolving their differences without further court litigation;

NOW THEREFORE, in consideration of $1.00 and other good and valuable consideration, the Parties agree that the option and supplement are amended as follows:

1. Westchester shall continue to have rights under the option for such reasonable period of time as is required to diligently pursue all state and local approvals for construction of a multi-unit housing development on the land;

2. Westchester agrees to diligently pursue such approvals adhering to the following time line which shall be extended only for acts of God or other intervention by third parties, not the fault of Westchester:

B. ~~a.~~ Application to State for site approval within thirty (30) days of the ~~date of~~ Town ~~this Agreement~~. Approval.

A. ~~b.~~ Application to the town for LIP approval within thirty (30) days from this Agreement. ~~obtaining State site approval~~;

c. Application to State for 40B approval within thirty (30) days of obtaining LIP approval from town;

d. Diligent prosecution of all engineering and modification changes required by the Town in the process of approving an LIP for the land.

3. Within 45 days after receipt of all approvals for an LIP and all applicable appeals periods expiring, Westchester shall take title to the property by good and sufficient quitclaim deed, free of all liens and encumbrances.

4. Upon execution of this Agreement, Spencer will cause title to be transferred to a nominee Trust to insure that death or disability will not delay or postpone the transfer of land when approved.

5. At closing, Westchester will pay $530,000.00 for the land and $7,500.00 in legal fees for Spencer as the purchase price for the land.

6. In the event Westchester is denied LIP approval, Westchester shall have the option of taking title to the land or terminating the option and upon such termination there shall be no further recourse between the parties.

7. Upon the execution of this Agreement ~~transfer of the title~~, the Parties shall execute a Stipulation of Dismissal with Prejudice, releasing the Lis Pendens and a Dissolution of any attachments;

8. Until such date of the closing, each party shall be responsible for their own costs and expenses.

9. Spencer authorizes Westchester to file any and all applications in Spencer's name or on their behalf.

10. From and after the date of execution hereof, Westchester may market, list and take reservations for the sale of the property;

11. Westchester may enter upon the land to perform all testing, engineering and site inspections and assessment as may be necessary to the approval process, Westchester's lender or a prospective purchaser.

12. Westchester will carry general contractor's liability insurance and builder's all-risk insurance, for Westchester and for all subcontractors performing work on the land, such policies to name Spencer as additional insured.

13. Westchester agrees to indemnify and save harmless Spencer from all liability and damage for any and all accidents, injuries or losses to persons or property as a result of any actions of Westchester its agents, servants or employees while in or upon the property under this Agreement.

14. Westchester agrees that all disturbed areas will be restored to their condition prior to disturbance to the extent reasonable.

15. Simultaneously upon the execution of this Agreement, Spencer shall execute and deliver to Westchester's attorney a discharge of the mortgage given by Westchester to Spencer dated December 28, 2001 in the amount of $50,000.00 and recorded in the Middlesex South Registry of Deeds at Book 34653, Page 346.

16. Simultaneously upon the execution of this Agreement, Westchester shall deposit with their attorney Sherrill R. Gould, Esq. the amount of $25,000.00. From this $25,000.00, Attorney Gould shall pay to Spencer the amount of $5,000.00 per month to be used to assist in the care of Mr. and Mrs. Spencer. The first payment of $5,000.00 shall be made simultaneously upon the execution of this Agreement and a payment of $5,000.00 shall then be made to the Spencers on the first of each month until the closing.

17. The parties agree that the $25,000.00 being deposited with Attorney Sherrill Gould shall come from the agreed upon sales price as set forth in Paragraph 5 of this Agreement, with the monthly payments in the amount of $5,000.00 being deducted from the total.

18. In the event that this Agreement is terminated by Westchester as a result of its inability to obtain the necessary approvals, Spencer agrees that all money received shall be refundable and paid back to Westchester within sixty (60) days of notice of termination of this Agreement.

Executed as a sealed instrument this 21st day of March, 2005.

Westchester Company, Inc.

Charles W. Spencer, Jr. by Anne L. Newey
Charles W. Spencer, Jr. by his POA
Anne L. Newey

By: _____
Gary L. Whitaker, its President

Mary E. Spencer by Anne L. Newey
Mary E. Spencer by her POA
Anne Newey

GOULD LAW OFFICES

311 GREAT ROAD
P.O. Box 752
LITTLETON, MASSACHUSETTS 01460-2752
TELEPHONE: 978-486-9566 TELECOPIER: 978-486-9498
Sherrill R. Gould
Attorney At Law

February 2, 2006

To: Town of Acton Zoning Board of Appeals

RE: 139 Prospect Street, Acton, Massachusetts
PROPERTY IN ACTON, MASSACHUSETTS, ON PROSPECT STREET, BEING DESCRIBED IN DEED RECORDED WITH MIDDLESEX SOUTH DISTRICT REGISTRY OF DEEDS IN BOOK 42372, PAGE 245

We have examined the record title as per indices at the Middlesex South District Registry of Deeds, to the premises above from May 15, 1942, through February 2, 2006. I find record title to be in:

MARY ELIZABETH SPENCER
by Deed recorded in Book 42372, Page 245

ENCUMBRANCES

1. Subject to Taking by the Commonwealth of Massachusetts Department of Public Works for the construction of Route 111 recorded in Book 10817, Page 315;

2. Subject to Decision on Variance regarding lot frontage dated January 9, 1981 and recorded in Book 14189, Page 576;

3. Subject to Mortgage to BankBoston, N.A. dated November 10, 1997 in the original principal amount of $25,000.00 and recorded in Book 27860, Page 310.

4. Subject to Option to Purchase of Westchester Company, Inc., dated December 28, 2001 and recorded in Book 34653, Page 344;

5. Subject to Tax Deferral and Recovery Agreement dated November 20, 2001 and recorded in Book 35264, Page 80;

6. Subject to Lis Pendens in re: Westchester Company, Inc. v. Charles W. Spencer, Jr. and Mary E. Spencer dated December 29, 2003 and recorded in Book 41700, Page 321.

7. Subject to rights of others, if any may exist, in and over "Abandoned Road" as shown on plan recorded in Book 8949, Page 587.

8. Subject to Order of Conditions recorded in Book 46272, Page 131.

9. Subject to Superseding Order of Conditions recorded in Book 46664, Page 567.

10. Subject to Town of Acton Sewer Betterment Area recorded in Book 45383, Page 382.

This title has been examined through February 1, 2006.

Sherrill R. Gould, Esquire

Blanchard Place LLC

Action By Consent of Members

February 15, 2006

The undersigned, being all of the members of Blanchard Place LLC, a Massachusetts Limited Liability Company, pursuant to the provisions of Chapter 156C of the General Laws, and the operating agreement of the company, hereby consent to the following actions without the necessity of a formal meeting or notice thereof, and adopt the following votes as of this 15th day of February, 2006;

Voted: That the company apply to the Town of Acton for a Comprehensive Permit for the property known and numbered as 139 Prospect Street, Acton, Masschusetts, and in connection therewith authorize and direct the member to act on behalf of the company in connection with said Permit.

This action, signed by all of the members shall be entered in the regular minute book of the corporation.

J. James D'Agostine, III
Member

COMPREHENSIVE PERMIT
DEVELOPMENT IMPACT REPORT

(Please type or print information in blanks below)

1. Name of Proposed Subdivision Blanchard Place
2. Location 139 Prospect Street
3. Name of Applicant(s) Blanchard Place LLC
4. Brief Description of the Proposed Project Affordable housing project of 12 units total (3 buildings) on site of 2.9 acres.
5. Name of individual preparing this DIR Scott Hayes, P.E.

   Address 16 Gleasondale Road, Suite 1-1, Stow MA

   Business Phone 978-461-2350 Fax 978-461-2352 E-mail scott@foresite1.com

   Professional Credentials Professional Engineer

A. Site Description

7. Present permitted and actual land uses by percentage of the site.

Uses	*Percentage*
Industrial	
Commercial	
Residential	100%
Forest	
Agricultural	
Other (specify)	

8. Total acreage on the site: 2.9 acres.

Approximate Acreage	At Present	After Completion
Meadow or Brushland (non-agriculture)	60%	40%
Forested	0	0
Agricultural (includes orchards, cropland, pasture)	0	0
Wetland	37%	37%
Water Surface Area	15%	15%
Flood Plain	0	0
Unvegetated (rock, earth, or fill)	1.5%	0.8%
Roads, buildings and other impervious surfaces	3%	23%
Other (indicate type)		

9. List the zoning districts in which the site is located and indicate the percentage of the site in each district. *Note: include overlay zoning districts.*

District	*Percentage*
R-2	*100%*
Affordable Housing Overlay Sub-District B	*100%*
Groundwater Protection District Zone 4	*100%*

6. Predominant soil type(s) on the site: Charlton-Hollis Rock Outcrop

Soil drainage (Use the US Soil Conservation Service's definition)

Soil Type% of the Site	
Well drained	***65%***
Moderately well drained	
Poorly drained	***35%***

7. Are there bedrock outcroppings on the site? **yes**

8. Approximate percentage of proposed site with slopes between:

Slope	***% of the Site***
0 — 10%	84%
10 15%	16%
Greater than*15%*	0

9. In which of the Groundwater Protection Districts is the site located? How close is the site to a public well? Zone(s) **4** Proximity to a public well: **7,500 feet**

10. Does the project site contain any species of plant or animal life that is identified as rare or endangered? (Consult with the Massachusetts National Heritage Program and the Acton Natural Resources Director). **no**

If yes, specify

11. Are there any unusual or unique features on the site such as trees larger than 30 inches D.B.H., bogs, kettle ponds, eskers, drumlins, quarries, distinctive rock formation or granite bridges? **yes**

If yes, specify: vernal pool

16. Are there any established footpaths running through the site or railroad right of ways? no If yes, specify _____

17. Is the site presently used by the community or neighborhood as an open space or recreation area? **no**

Is the site adjacent to conservation land or a recreation area? **no**

If yes, specify:

18. Does the site include scenic views or will the proposed development cause any scenic vistas to be obstructed from view? **no**

If yes, specify:

19. Are there wetlands, lakes, ponds, streams, or rivers within or contiguous to the site? **yes**

If yes, specify: vernal pool and bordering vegetated wetland

20. Is there any farmland or forestland on the site protected under Chapter 61A or 61 B of the Massachusetts General Laws? **no**

If yes, specify:

21. Has the site ever been used for the disposal of hazardous waste? **no**

Has a 21 E Study been conducted for the site? **no**

If yes, specify results:

22. Will the proposed activity require use and/or storage of hazardous materials, or generation of hazardous waste? **no**

If yes, specify

23. Does the project contain any buildings or sites of historic or archaeological significance? (Consult with the Acton Historic Commission or the Acton Historical Society.) **no**
If yes, please describe_____

24. Is the project contiguous to or does it contain a building in a local historic district or national register district? **no**

25. Is the project contiguous to any section of the Isaac Davis Trail? **no**
If yes, please describe_____

B. Circulation System

26. What is the average weekday traffic and peak hour traffic volumes generated by the proposed development?

Average weekday traffic	88
Average peak hour volumes weekda y morning	7
Average peak hour volumes weekday evening	9
Average peak hour volumes Saturday	9

27. Existing street(s) providing access to proposed subdivision:

Name Prospect Street Town Classification Collector Street

28. Existing intersection(s): list intersections located within 1000 feet of any access to the proposed development.
Prospect Street with Massachusetts Avenue, with Spencer Road, and with Torrington Drive

29. Location of existing sidewalks within 1000 feet of the proposed site.
Existing sidewalk on west side of Prospect Street from Massachusetts Avenue to Main Street, and on south side of Massachusetts Avenue.

30. Location of proposed sidewalks and their connection to existing sidewalks:
No sidewalk is proposed however a wood chip pedestrian trail is proposed from the project site to an exisiting sidewalk at Mass. Avenue by the ABRJHS campus *(see plan)*

31. Are there parcels of undeveloped land adjacent to the proposed site? **no**

Will access to these undeveloped parcels been provided within the proposed site?

If yes, please describe_____

If no, please explain why _____

C. Utilities and Municipal Services

32. What is the total number of bedrooms proposed? **34**

33. If the development has a nonresidential component, what will be its use and size (s.f.)?
n/a

34. Storm Drainage

a. Describe type, location, and surface water body receiving current surface water of the site: Runoff feeds existing wetlands and vernal pool on site

b. Describe the proposed drainage system and how it will alter existing drainage patterns: Proposed runoff discharges to the same wetlands and vernal pool of a slightly lesser volume and peak due to infiltration increase.

c. Will a NPDS Permit be required? **yes**

35. Estimate the fire department response time to the site (consult with Fire Dept.) 2 min

36. Schools (if residential)
    a. Projected number of new school age children: 12
    b. Distance to nearest school: 2000 ft

E. Measures to Mitigate Impacts

Attach brief descriptions of the measures that will be taken to:

37. Prevent surface water contamination.

38. Prevent groundwater contamination.

39. Maximize groundwater recharge.

40. Prevent erosion and sedimentation.

41. Maintain slope stability.

42. Design the project to conserve energy.

43. Preserve wildlife habitat.

44. Preserve wetlands.

45. Ensure compatibility with the surrounding land uses.

46. Control peak runoff from the site so that the post-development rate of runoff will be no greater than the predevelopment rate of runoff for the 10-year storm event.

47. Preserve historically significant structure sand features on the site.

48. To mitigate the impact of the traffic generated by the development.

Please use layman's terms where possible while still being accurate and comprehensive. Where appropriate, graphics shall be used. List sources of data, reference materials, and methodology used to determine all conclusions. Use additional sheets as necessary.

BLANCHARD PLACE

Measures to Mitigate Impacts
Addendum to Development Impact Report (Addressing No.'s 37 – 48)

37. To prevent surface water contamination, all stormwater runoff from impervious cover will be collected in deep sump hooded catch basins, and further treated for suspended solids using Vortechs units.

38. To prevent groundwater water contamination, all storm water runoff from impervious cover will be collected in deep sump hooded catch basins, and further treated for oil/water separation using Vortechs units.

39. Proposed infiltration beds will recharge most of the generated runoff from impervious roof, road and parking surfaces, maximizing the site's recharge capabilities.

40. Erosion and sedimentation occur primarily during construction. Adequate precautions will be taken in the form of siltation barriers, velocity check dams, rip-rap, minimizing slope of disturbed soils, and timely stabilization of disturbed slopes as addressed on the Erosion and Sediment Control Plan (sheets 10 and 11 of the plan set).

41. Slope stability will be maintained by attending to disturbed slopes in a timely manner (spreading loam and seeding, mulching and/or hydroseeding within a short time period after establishing final grades; refer to Erosion & Sediment Control Plan for more detail on this item).

42. Due to the relatively small magnitude of the proposed residential development, the project will have negligible impact on local energy consumption.

43. The proposed activities lie outside resource areas. A buffer strip along the existing wetland area will preserve the habitat for wildlife inside the wetland and vernal pool areas.

44. No wetlands will be disturbed by this project. No work is proposed within a wetland resource area.

45. The site is surrounded by residential (R-2) and business (Kelley's Corner) zones. The site lies within the Affordable Housing Overlay District. The proposed use is allowed by current zoning and compatible with the existing neighborhood. The location of the site within the Affordable Housing Overlay District (Sub-district E) makes it ideal for a Comprehensive Permit project having an affordable dwelling unit component.

46. The peak runoff from the site will be controlled by collection of storm water with catch basin, treated for sediment removal, total suspended solids (TSS) removal and hydrocarbon removal prior to infiltration in subsurface recharge beds. These structures have been designed to reduce runoff rates and volumes generated by proposed site improvements.

47. The Blanchard Monument abuts the site to the west and is located on the east side of Prospect Street between the site and Prospect Street (see plan). There are no other known historically significant features on or within close proximity to the site.

48. Due to the small scale of the development, and the low current peak hour traffic volumes on Prospect Street (a Collector Street), no traffic mitigation is warranted and therefore none has been proposed (refer to Traffic Study by MS Transportation Systems, Inc. contained herein).

Town of Acton
472 Main Street
Acton, MA 01720
Telephone (978) 264-9622
Fax (978) 264-9630

Rose M. Mullen
Assistant Assessor

Locus: 139 Prospect St
Parcel: F2-129

Location	Parcel ID	Owner	Co-Owner	Mailing Address	City	ST	Zip
465 MASS AV	F2-115	MT CALVARY EVANGELIC LUTHERAN	CHURCH	PO BOX 986	ACTON	MA	01720
159 PROSPECT ST	F2-116	DAVIS RUSSELL M		159 PROSPECT ST	ACTON	MA	01720
456 MASS AV	F2-117	FINNEGAN JOSEPH P	FINNEGAN KATHLEEN T	456 MASS. AVE	ACTON	MA	01720
448 MASS AV	F2-118	TANG YANHUA	LIU QING	448 MASS AV	ACTON	MA	01720
442 MASS AV	F2-119	BUNKER ELIZABETH	C/O JEREMY W NIMMER	51 UNDERWOOD RD	HUBBARDS	MA	01452
442 MASS AV	F2-120	GRALLERT MARGOT		442 MASS AVE	ACTON	MA	01720
146 PROSPECT ST	F2-123	PHALEN HELEN		P.O. BOX 885	ACTON	MA	01720
96 PROSPECT ST	F2-124	DAVIS DOROTHY	C/O CAMPBELL THOMAS E IV	96 LANGDON AVE	WATERTOW	MA	02472
146 PROSPECT ST	F2-125	OI ALLEN W		146 PROSPECT ST	ACTON	MA	01720
146 PROSPECT ST	F2-125-1	PHALEN HELEN		P.O. BOX 885	ACTON	MA	01720
143 PROSPECT ST	F2-126	TOWEY SEAN T	TOWEY MARCIA A	143 PROSPECT ST	ACTON	MA	01720
138 PROSPECT ST	F2-127	KULA LARS E	MILES JULIA S	138 PROSPECT ST	ACTON	MA	01720
132 PROSPECT ST	F2-127-1	PROTASOWICKI DANIEL	PROTASOWICKI ROCIO	132 PROSPECT ST	ACTON	MA	01720
295 MAIN ST REAR	F2-129-1	STOP & SHOP SUPERMARKET CO	1385 HANCOCK STREET	REAL ESTATE TAX DEPARTMEN	QUINCY	MA	02169
139 PROSPECT ST	F2-129-2	TOWN OF ACTON		472 MAIN STREET	ACTON	MA	01720
139 PROSPECT ST	F2-129-3	CONGREGATION BETH ELOHIM		PO BOX 142	ACTON	MA	01720
5 SPENCER RD	F2-135	SHAFFERY ANNEMARIE G		5 SPENCER RD	ACTON	MA	01720
3 SPENCER RD	F2-136	CURTIS ALAN RD	CURTIS MAIREAD C	3 SPENCER RD	ACTON	MA	01720
128 PROSPECT ST	F2-137	GALLETTA JOSEPH	GALLETTA VIRGINIA M	128 PROSPECT ST	ACTON	MA	01720
10 SHEFFERSFEY DR	F2-138	CONGREGATION BETH ELOHIM		PO BOX 142	ACTON	MA	01720

Abutters and owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list.

HEARING NOTICES FOR ALL SPECIAL PERMITS MUST BE SENT TO THE PLANNING BOARD, TOWN HALL IN THE FOLLOWING TOWNS:

Boxborough, MA 01719	Maynard, MA 01754	Concord, MA 01742	Littleton, MA 01460
Carlisle, MA 01741	Stow, MA 01775	Westford, MA 01886	Sudbury, MA 01776

Kimberly Hoyt
Assessing Clerk

30-Jan-06

Use Description

The current use of the property is a vacant single family dwelling with a two-car detached garage. The existing buildings will be razed. The proposed use is a residential multi-family condominium. Three four-unit buildings proposed. There will be one affordable ownership unit in each of the buildings. Of the twelve ownership units, two will be two-bedroom units and ten will be three bedroom units. The affordable units are priced at $159,900 for the three-bedroom units and $145,000 for the two-bedroom unit. The market-rate units will range from an average of $370,000 for the two-bedroom units to $620,000 for the three-bedroom units. All units will have adequate parking and garage space.

A small play area is provided to the rear of the property. Native plantings are proposed to replace non-native invasive species around the perimeter of the development.

Existing Site Conditions

BLANCHARD PLACE

139 Prospect Street
Acton, Massachusetts

Date: February 7, 2006

Prepared for:
Blanchard Place, LLC
411 Massachusetts Avenue, Suite 304
Acton, Massachusetts 01720

Prepared by:
FORESITE Engineering Associates, Inc.
[illegible] Hollis Road, Suite [illegible]
Stow, Massachusetts 01775

Existing Site Characteristics

The site to be developed is a 2.9-acre parcel of land located at 139 Prospect Street in Acton, Massachusetts that currently supports a single family dwelling, accessory garage, driveway and yard areas associated with residential uses. Approximately 0.5 acres of the site are currently utilized for principal and accessory residential uses, the balance of the site is undeveloped rolling brushy upland, with wetlands to the south and east, and a pond (vernal pool) contained within the wetlands on the east side of the property. A small parcel of land owned by the Town of Acton contains the Blanchard Monument (a Revolutionary War memorial monument); this parcel divides the site's frontage along Prospect Street to the west. Adjacent land uses include a retail store (K-Mart, owned by Stop & Shop Supermarkets) to the east, Congregation Beth Olohim (a synagogue) to the south and single family residences within the R-2 Zoning District to the west and north.

The site lies within the Town of Acton Residence 2 (R-2) zoning district, Affordable Housing Overlay District (Sub-district B) and Groundwater Protection Overlay District Zone 4 and abuts the Kelley's Corner Zoning District to the east along it's boundary with the Stop & Shop Supermarkets (K-Mart) property.

There is an existing sidewalk along the west side of Prospect Street (across the street from the site frontage) from Massachusetts Avenue (Rt. 111) to Main Street (Rt. 27). No sidewalks are proposed as part of the project, however, there is an old right of way to the site from Massachusetts Avenue that is proposed to be improved as a woodchip path to connect the project to the Massachusetts Avenue sidewalk adjacent to the Acton-Boxborough Regional Junior High School campus; please see the Master Plan (Sheet 2 of 11) for a plan view of this feature.

The current, low intensity, single family dwelling use, with only about 0.5 acres of the 2.9-acre site under actual principal or accessory use, has a nominal impact on municipal facilities such as: water (currently utilizes a single 1" residential water service), public safety, sewage treatment (site is currently served by an on-site sewage disposal system), wetlands, and wildlife habitat.

Bk: 42372 Pg: 245

2004 00075222
Bk: 42372 Pg: 245 Doc: DEED
Page: 1 of 1 04/01/2004 09:56 AM

QUITCLAIM DEED

I, Anne Spencer Newey, Individually, of Nine Patti Lane, Maynard, Middlesex County, Massachusetts,

for consideration paid of less than one hundred dollars ($100.00),

grant to Mary Elizabeth Spencer, Individually, of 139 Prospect Street, Acton, Middlesex County, Massachusetts,

with ***Quitclaim*** Covenants

A certain parcel of land with the buildings thereon, on the easterly side of Prospect Street in Acton, Middlesex County, Massachusetts, being shown as Lot 1 on a plan of land in Acton, Massachusetts entitled "Plan of Land in Acton Owned by Francis K. and Charles W. Spencer, Jr." dated September 14, 1979, modified January 20, 1981, prepared by Acton Survey and Engineering, Inc., recorded in Book 14217, Page 332, as Plan No. 164 of 1981.

For title reference see deed of Anne Spencer Newey, as Trustee of the Spencer Family Irrevocable Trust to Anne Spencer Newey, Individually, dated March 26, 2004, and recorded in Middlesex South District Registry of Deeds immediately prior hereto.

Witness my hand and seal this 26th day of March, 2004.

139 Prospect Street, Acton, MA 01720

Anne Spencer Newey
Anne Spencer Newey

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss March 26, 2004

Then personally appeared the above named Anne Spencer Newey and acknowledged the foregoing instrument to be her free act and deed, before me.

Kathleen M. O'Connor
Notary Public
My Commission Expires:

Kathleen M. O'Connor
Notary Public
My Commission Expires
June 29, 2007

Return to:
Dekel & Morgan
201 Great Road, Suite 303
Acton, MA 01720

Middlesex S. Registry

2004 00075221
Bk: 42372 Pg: 244 Doc: DEED
Page: 1 of 1 04/01/2004 09:58 AM

QUITCLAIM DEED

I, Anne Spencer Newey, as Trustee of the Spencer Family Irrevocable Trust dated May 21, 2002, and recorded at the Middlesex South District Registry of Deeds in Book 35625, Page 576, of Nine Patti Lane, Maynard, Middlesex County, Massachusetts,

for consideration paid of less than one hundred dollars ($100.00)

grant to Anne Spencer Newey, of Nine Patti Lane, Maynard, Middlesex County, Massachusetts, individually,

with ***Quitclaim*** Covenants

139 Prospect Street, Acton, MA 01720

A certain parcel of land with the buildings thereon, on the easterly side of Prospect Street in Acton, Middlesex County, Massachusetts, being shown as Lot 1 on a plan of land in Acton, Massachusetts entitled "Plan of Land in Acton Owned by Francis K. and Charles W. Spencer, Jr." dated September 14, 1979, modified January 20, 1981, prepared by Acton Survey and Engineering, Inc., recorded in Book 14217, Page 332, as Plan No. 164 of 1981.

For title reference see deed of Charles W. Spencer, Jr. and Mary Elizabeth Spencer to Anne Spencer Newey, Trustee, dated May 31, 2002 and recorded in Middlesex South District Registry of Deeds in Book 35626, page 001.

Witness my hand and seal this 26th day of March, 2004.

Anne Spencer Newey
Anne Spencer Newey, Trustee
as aforesaid

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss March 26, 2004

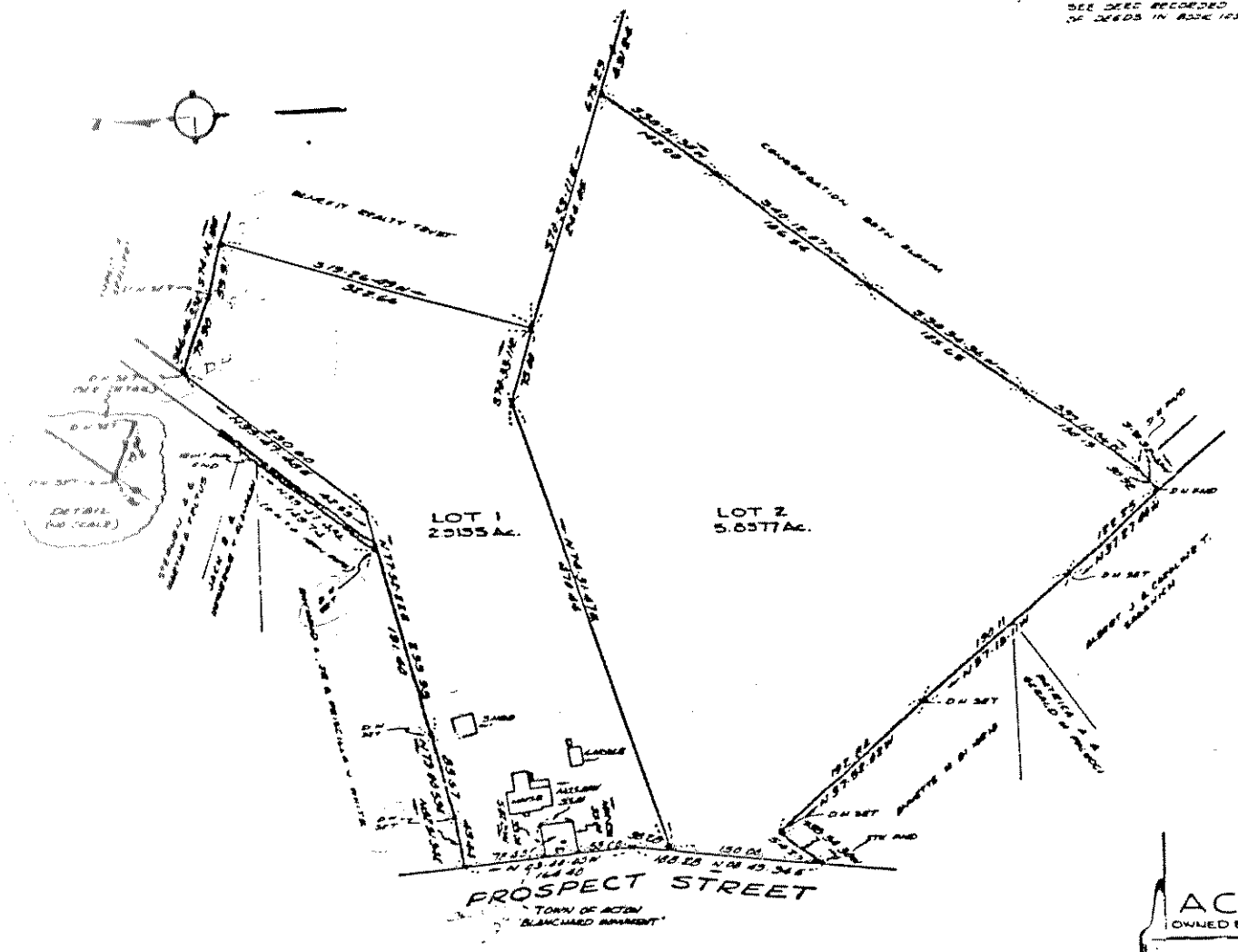
Then personally appeared the above named Anne Spencer Newey, Trustee as aforesaid, and acknowledged the foregoing instrument to be her free act and deed, before me.

Kathleen M. O'Connor
Notary Public
My Commission Expires:
Kathleen M. O'Connor
Notary Public
My Commission Expires

Return to:
Elder & Morgan
201 Great Road, Suite 303
Acton, MA 01720

Acton Municipal Lien Certificate

SEE DEED RECORDED N. MIDDLESEX SOUTH DISTRICT REGISTRY OF DEEDS IN BOOK 10388, PAGE 348.



PLAN OF LAND
IN
ACTON - MASS.
OWNED BY FRANCES K. & CHARLES W. SPENCER, JR.

SCALE 1 INCH = 50 FEET SEPTEMBER 14, 1978
ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST - ACTON - MASS.
MODIFIED
JANUARY 20, 1981

GRAPHIC SCALE
0 50 100 150

FILE 127 1982

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.
[illegible] DUNCAN JR. - R.L.S. 22158
DATE JAN 26, 1981

ACTON PLANNING BOARD
"APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED"
DATE 1-26-81

SEE VARIANCE RE FRONTAGE REQUIREMENTS FOR LOT 1 GRANTED BY THE BOARD OF APPEALS OF THE TOWN OF ACTON AND FILED WITH THE CLERK OF THE TOWN OF ACTON AS FOLLOWS NO. 89-90.