



Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
pb@acton-ma.gov
www.acton-ma.gov

DECISION

06-05

Laurel Hill

Senior Residence Special Permit
August 8, 2006

GRANTED with CONDITIONS

Decision of the Acton Planning Board (hereinafter the "Board") on the application of Woodlands at Laurel Hill, LLC (hereinafter the "Applicant") for property in Acton, Massachusetts, owned by: the Applicant as Recreational Realty Trust, LLC c/o Omni Properties LLC, 676 Elm St., Suite 3, Concord, MA 01742.

The property is located at and known as Lot 4 off Laurel Hill Drive, Off Nagog Park Drive, in Acton and Westford. Laurel Hill Drive was created and Lot 4 was laid out in association with the Comprehensive Permit recorded with the Middlesex South Registry of Deeds at Book 47074, Page 265 (the "Comprehensive Permit"). Lot 4 consists of portions of parcels shown on the Acton Town Atlas as the back portion of Acton Town Atlas parcel B-5/7 and the additional parcels, or portions thereof, in Acton (Town Atlas parcels B-5/9 and B-5/42) and Westford (Map 2 – Parcels 18 and 21) shown on plan sheet E-1 (hereinafter the "Site" or "Lot 4").

This special permit decision (hereinafter, the "Decision") is in response to an application for a Senior Residence special permit, received by the Acton Planning Department on or about June 9, 2006, pursuant to Section 9B of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Rules and Regulations for Senior Residence special permits (hereinafter the Rules).

The Applicant presented the subject matter of the special permit to the Board at a duly noticed public hearing on July 11, 2006. Mr. David Hale and Attorney Louis Levine represented the Applicant. The hearing was continued to August 8, 2006, and then closed. Board members Gregory E. Niemyski (Chairman), Christopher Schaffner (Vice Chairman), William King (Clerk), members Edmund Starzec, Ruth Martin, Michael Densen, and associate Alan Mertz were present throughout the hearing. The Chairman designated Alan Mertz to sit on the Board to act on this application pursuant to section 10.3.9 of the Bylaw. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board’s deliberation were the following exhibits:

1.1 The Applicant submitted to the Board the following plans, prepared by Places Site Consultants, Inc. (“Places”), entitled “The Woodlands at Laurel Hill, Lot 4 Senior Residence Development” with inserted plans from Hawk Design, Inc. (“Hawk”), and The MZO Group (“MZO”) (collectively, the “Plans”):

FIRM	SHEET	TITLE	REVISION
	Title	The Woodlands at Laurel Hill	August 2, 2006
Places	349-Note-1	General Notes, Legend & Abbreviations	August 2, 2006
Places	349-M-1	Master Plan	August 2, 2006
Places	349-E-1	Key to Parcels Affected by Project	August 2, 2006
Places	349-EC1	Existing Conditions and Demolition Plan	August 2, 2006
Places	349-SWP-1	Sequenced Stormwater Pollution Protection Plan	August 2, 2006
Places	349-S-1	Site Plan Sheet S-1	August 2, 2006
Places	349-S-2	Site Plan Sheet S-2	August 2, 2006
Places	349-GD-1	Grading & Drainage Plan GD-1	August 2, 2006
Places	349-GD-2	Grading & Drainage Plan GD-2	August 2, 2006
Places	349-PP-1	Plan & Profile Station 18+62 to 25+00	August 2, 2006
Places	349-PP-2	Plan & Profile 24+00 to END	August 2, 2006
Places	349-U-1	Utility Plan U-1	August 2, 2006
Places	349-U-2	Utility Plan U-2	August 2, 2006
Places	349-D-1	Sewer Details	August 2, 2005
Places	349-D-2	Drainage Details	August 2, 2006
Places	349-D-3	Drainage Details	August 2, 2006
Places	349-D-4	Construction Details & Site Improvements	August 2, 2006
Places	349-D-5	Construction Details & Site Improvements	August 2, 2006
Places	349-D-6	Erosion and Sedimentation Control Plan	August 2, 2006
Hawk	L-1	Townhouse Common Area Planting Plan L-1	July 25, 2006
Hawk	L-2	Townhouse & Entry Planting Plan L-2	May 30, 2006
Hawk	L-3	Townhome Photometric Plan	June 21, 2006
MZO	5311	First and Second Floor Plan	June 1, 2006
MZO	5311	Elevations	June 1, 2006
Places		Unit Number Plan	

1.2 The Applicant submitted to the Board the following additional Application Materials:

- Cover Letter;
- Senior Residence Special Permit Application Form;
- Property Owner’s acknowledgement/consent to make application;

- Project History and Narrative;
- Unit Composition and Development Pro Forma;
- Applicant/Developer Information and References;
- List of Waivers Requested;
- Certified List of Abutters
 - Acton
 - Westford
 - Littleton
- Draft Legal Documents
 - Permission to enter property/complete ways & services
 - Condominium Master Deed
 - Condominium Trust Document
 - Reciprocal Easement Agreement
 - Age & Affordable Restriction/Deed documentation
- Copies of Issued Permits relative to Lot 4:
 - Copy of issued Comprehensive Permit from Acton Zoning Board of Appeals.
 - Orders of Conditions for Lot 4, issued under the Mass. Wetlands Protection Act.
- Drainage Calculations: (4 sets)
 - Executive Summary
 - Pre-Development Calculations
 - Post-Development Calculations
 - Drainage Area Maps.

1.3 The Board received interdepartmental communications from:

- Acton Building Commissioner, dated 6/12/06 (IDC);
- Acton Community Housing Corporation, dated 6/13/06 (copies of 3 emails), 6/15/06 (copy of email), 6/29/06 (IDC);
- Acton Engineering Department, dated 7/6/06 (IDC);
- Acton Fire Chief, dated 7/7/06 (copy of email);
- Acton Health Director, dated 6/19/06 (IDC);
- Acton Municipal Properties Dir. & Tree Warden, dated 6/16/06 (IDC);
- Acton Town Planner, dated 5/19/06 (copy of email regarding review window), 6/12/06 (regarding fee waiver request), 7/5/06 (Memorandum);
- Acton Town Counsel, dated 4/26/06 (copy of email).

1.4 The Board received correspondence received from abutters and nearby residents:

- Email from Bettina Norton to Acton Planning Board, dated 7/11/06.

1.5 The Board received the following additional material:

- Memorandum of Agreement between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board of Selectmen, with respect to payments to the

Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton, dated March 2005, as amended, including a First Amendment to Memorandum of Agreement dated May 9, 2005, a Second Amendment to Memorandum of Agreement dated September 26, 2005, a Third Amendment to Memorandum of Agreement dated December 13, 2005, and a Fourth Amendment to Memorandum of Agreement dated April 24, 2006 (as now or hereafter amended, herein the “Memorandum of Agreement” or “MOA”);

- [Other]_____
- Hearing and decision extension agreement dated 7/11/06.

[CHECK WITH ROLAND FOR ANY ADDITIONAL EXHIBITS]

2 BACKGROUND, FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

The Site, the Development and the Prior Comprehensive Permits

- 2.1 The Site (Lot 4) is located within the Residence 10/8 zoning district, and the Affordable Housing Overlay District A.
- 2.2 A portion of the property is located in Zone 4 of the Town of Acton Groundwater Protection District.
- 2.3 The northeastern-most portion of the property, at the bottom of the slope (land located in the Residence 10/8 Zoning District) is within the Zone 3 Groundwater Protection District for the Town of Acton.
- 2.4 The most easterly sliver is located in a Flood Plain Overlay District.
- 2.5 In the Comprehensive Permit issued by the Acton Board of Appeals referenced above, the Board of Appeals previously approved with conditions the development of Lot 4 as part of a larger 40B project, which includes a 64-unit homeownership project (without age restrictions and with 25% affordable units) on Lot 4, and 296 rental units on adjacent land in Acton.¹
- 2.6 The overall proposed residential development is situated on approximately 36.11 acres located in part within the Office Park Zoning District and in part within the Residence 10/8 Zoning District in Acton.
- 2.7 Lot 4 comprises 16.54± acres located mostly in Acton.
- 2.8 The portion to be developed for senior residences is situated on the westerly side of Lot 4. Areas to the north and east of Lot 4 would remain vacant, which the Applicant has committed to protect from future development by a Conservation Restriction.
- 2.9 Lot 4 is bounded on the southerly side by a property in the Nagog Office Park complex, currently the site of an unoccupied, multi-story office building. That building’s parking lot abuts Lot 4’s southerly border.

¹ An additional 84 apartments, along with common infrastructure for the project in Acton and Westford, are to be located in Westford under a comprehensive permit from the Westford Board of Appeals.

- 2.10 To the west, Lot 4 joins with the Rental Component of the approved 40B apartment development in Acton.
- 2.11 To the north of Lot 4 is vacant land located in both Westford and Acton owned by others.
- 2.12 The land to the east is minimally developed private property with single family residences which are remote from the area proposed for this development.
- 2.13 Neighboring uses in the general vicinity include commercial and professional use (Nagog Mall and the Nagog Office Park), residential uses (single family homes, apartment buildings and condominiums) and recreational uses (a privately-owned horseback riding facility and NARA Park, the town-owned recreation area featuring a variety of water and land-based recreation opportunities).
- 2.14 The overall project site in Acton includes the location of a previously approved subdivision roadway (private) proposed to serve an approved office-park use, which was partially constructed and is known as "Highridge Way." Under the Comprehensive Permit, this road will be discontinued and the new "Laurel Hill Drive" roadway will replace it.
- 2.15 Portions of the overall project site in Acton have been previously disturbed for uncompleted access roads, and other features intended for industrial/office park development. However, the majority of the overall project site is comprised of second growth, hardwood forest and wetlands areas at the bottom of the slopes.

The Proposed Senior Residence Development

- 2.16 The proposed 64-unit Senior Residence development is allowed on the Site by special permit in accordance with the Bylaw section 9B.
- 2.17 The project location will be accessed from Nagog Park Road, an existing private road off Great Road, a state highway (Route 2A/119), and the subdivision way approved by the Comprehensive Permit and known as "Laurel Hill Drive."
- 2.18 Secondary access will be through the Westford portion of the 40B apartment development to a separate interior driveway which connects to Westford Lane (which is a private way in Acton and is known as "Durkee Lane" when it crosses into Westford).
- 2.19 Within Lot 4, the Senior Residence Development will be served by a private, two-way "loop road" with traffic calming measures at its entrance, including a Stop sign at the intersection from Laurel Hill Drive to the loop road and "speed hump" at the intersection from Laurel Hill Drive to the loop road, as shown on the Plans.
- 2.20 Within the green space in the center of the Lot 4 development, the Applicant will install a community garden and walking paths to help connect buildings to the central mail box area(s).
- 2.21 The overall project will be served by its own wastewater treatment plant to be located in Westford as a part of the complementary 40B project approved in that town. The Senior Residential Development on Lot 4 will tie into that private wastewater treatment plant.
- 2.22 The Applicant proposes that the required common land shall remain in private condominium ownership, and that large portions of it will be protected by a conservation restriction. Thus, at the bottom of the slope, and partially within Lot 4 in Westford, is a newly certified vernal pool which has been identified by the applicant and the Mass. Division of Fisheries and Wildlife, Natural Heritage and Endangered Species Program as habitat for

the “Blue-Spotted Salamander,” a species of “Special Concern.” The Applicant has committed to restrict this habitat as part of a Conservation Restriction with that State Agency and in cooperation with both the Westford and Acton Conservation Commissions.

- 2.23 According to the Applicant, no Habitat for endangered or species of special concern has been identified on Lot 4 in Acton. However, the conservation restriction to protect the “Special Concern” species extends onto Lot 4 in Acton.
- 2.24 The common land in Acton and Westford provides open space benefits to the Town, abutters, and the future residents in the proposed development.
- 2.25 The Applicant proposes an increase in density to 4 units per acre (from 3) for the inclusion of 10% affordable units (increased from 5%) in accordance with section 9B.12.3.1 of the Bylaw. The density calculation includes the land in Westford, which in this instance is consistent with the Bylaw’s allowance of area and frontage in adjacent towns for use in meeting minimum building lot requirements in Acton. With that, the proposed density is 3.89 units per acre. The affordability percentage is 10% or 6.4 units. This yields six units when rounded down in accordance with Bylaw section 9B.12.3.3.
- 2.26 These six dwelling units (the “Affordable Units”) are proposed as affordable in accordance with the provisions of the Bylaw, section 9B.12.
- 2.27 The Applicant requested certain waivers from the Rules.
- 2.28 The Board has received comments from various Town departments and other parties, as listed above. The Board considered these comments, and other comments received at the public hearing, in its deliberations, made them available to the Applicant, and incorporated them into this decision as the Board deemed appropriate.
- 2.29 After considering the matters previously approved by the Comprehensive Permit, the alternatives available to the Board, and the unique characteristics and location of this Site and its immediate surroundings (collectively the “Context”), the Board finds that the Plans (as amended herein) and the proposed use (as approved and conditioned herein) are appropriate for the Site; reasonably consistent with the Master Plan; in harmony with the purpose and intent of the Bylaw, specifically Section 9B; comply (with the waivers granted herein) with the applicable requirements of the Bylaw and the Rules, and will not be detrimental or injurious to the neighborhood.
- 2.30 Further, after considering the Context, the Board finds that granting this Decision protects and enhances Acton’s New England character, its environmental and historic resources, and scenic vistas; provides common land that benefits the Town, abutters, and the future residents in the proposed development; provides quality housing for seniors with a range of incomes and physical abilities; and reasonably provides for the safety of vehicular movement, and for the safety and convenience of pedestrians in a manner that is compatible with the Town’s New England character and the needs of seniors.

The Memorandum of Agreement

- 2.31 In accordance with the Memorandum of Agreement, the Applicant and the Acton Board of Selectmen have agreed that, in the event that the Acton ZBA were to issue the Comprehensive Permit by a certain date (which in fact occurred), the Applicant would apply to the Acton Planning Board for a special permit pursuant to Section 9B of the Acton Zoning Bylaw for the development and construction of a Senior Residence

development with 10% affordability in lieu of the approved 40B development with 25% affordability on that portion of the Property designated as Lot 4 (the Senior Residence Development on Lot 4 shall be hereinafter referred to as the “Condominium Component of the Revised Project”).

- 2.32 In the Memorandum of Agreement, as amended, the Acton Board of Selectmen agreed to support the Acton Planning Board’s expedited approval with conditions of a special permit for the Senior Residence development in lieu of the approved 40B development on that portion of the Property in Acton designated as Lot 4. Through Town Counsel at the public hearing, the Board of Selectmen has done so.
- 2.33 In the Memorandum of Agreement, as amended, the Applicant agreed to make substantial mitigation payments to the Town of Acton in accordance with G.L. c. 44, § 53A, to be deposited with the Town treasurer and held as a separate account and expended toward police, fire and emergency public safety infrastructure improvements for North Acton.
- 2.34 Specifically, in the event of timely approval of the Comprehensive Permit (which in fact occurred), the Applicant agreed to pay to the Town of Acton the sum of five hundred thousand dollars (\$500,000) prior to issuance of any building permit for the approved 40B Project in Acton; and the additional sum of ten thousand five hundred dollars (\$10,500) per unit upon the closing of the first sale of each market rate condominium unit constructed and sold pursuant to the Comprehensive Permit on that portion of the Property in Acton designated as Lot 4. (With 48 market rate condominium units and 16 affordable condominium units approved on Lot 4, the Applicant has effectively agreed to pay the Town (a) the initial \$500,000, plus (b) \$504,000 (\$10,500 times 48) for an overall total of \$1,004,000.)
- 2.35 In the alternative, in the event of the Planning Board’s timely approval of a special permit for the development and construction of a Senior Residence development in lieu of a 40B development on Lot 4, the Applicant agreed to pay to the Town of Acton the sum of five hundred thousand dollars (\$500,000) prior to issuance of any building permit for the approved Revised Project in Acton, and the additional sum of twenty-four thousand two hundred twenty-eight dollars (\$24,228) per unit for each market rate Senior Residence unit constructed and sold pursuant to the special permit payable upon the closing of the first sale of each such market rate Senior Residence unit on that portion of the Property in Acton designated as Lot 4. (By way of illustration, with 58 market rate condominium units and 6 affordable condominium units to be approved by on Lot 4, the Applicant has agreed to pay the Town (a) the initial \$500,000, plus (b) \$1,405,224 (\$24,228 times 58) for an overall total of \$1,905,224.)
- 2.36 In other words, in the event the Planning Board approves the requested special permit, the Applicant has agreed to pay the Town \$901,224 more upon the development and sale of the Senior Residence townhouses than the Applicant has agreed to pay the Town upon the development and sale of non-age-restricted c. 40B townhouses under the Comprehensive Permit.
- 2.37 The Board finds that this Decision is timely issued under the Memorandum of Agreement, as amended, for purposes of the Applicant’s payment obligations thereunder.

3 BOARD ACTION

For the reasons stated herein, based on the Application, the Plans, and the input at the public hearing, the Board voted on August 8, 2006 – _____ in favor, _____ opposed – to GRANT, subject to the waivers, conditions and limitations set forth below, a Senior Residence Special Permit on the application of Woodlands at Laurel Hill, LLC, for the Condominium Component of the Revised Project consisting of a 64 “for sale” townhouse condominium units of which 6 units shall be affordable as set forth herein.

3.1 WAIVERS FROM ACTON REGULATIONS

The Planning Board grants the following waivers from the following provisions of the Acton Zoning Bylaw (Special Permit Criteria for a Senior Residence Special Permit) and from the Planning Board’s Senior Residence Special Permit Rules and Regulations, to allow the construction of the Condominium Component of the Revised Project as shown on the Final Approved Plans and subject to the conditions set forth in this Decision, or otherwise acts on the waiver request as indicated below:

Acton Zoning Bylaw: Section 9B: Senior Residence

Cite	Subject Matter	Planning Board Action on Waiver Request
9B.2.2	Concurrent submission of a subdivision plan.	The subdivision plan was reviewed and approved, and Lot 4 was created, as part of the Comprehensive Permit process.
9B.5.3	Minimum Setbacks (See Zoning Compliance Table, Sheet Master Plan). <ul style="list-style-type: none"> • Setback from Building to Streets 15’ required, 7’ provided at minimum location. • Setback from Building to Property Line 30’ required, 29’ to property line, 21’ to decks, 9’ Recycling Center 	Under § 9B.12.3.4 the Planning Board can adjust or waive dimensional requirements as reasonable and necessary to facilitate the production of affordable units under a density bonus option. If and to the extent necessary to allow construction of the Condominium Component of the Revised Project as shown on the Final Approved Plans, this waiver is allowed.
9B.5.4	Minimum building separation (20’ for exterior walls with doors; otherwise 10’).	The buildings as proposed appear to comply with the standard minimum separation requirements. Under § 9B.12.3.4 the Planning Board can adjust or waive dimensional requirements as reasonable and necessary to facilitate the production of affordable units under a density bonus option. If and to the extent necessary to allow construction of the Condominium Component of the Revised Project as shown on the Final Approved Plans, this waiver is allowed.
9B.9.1	Common land Standards: Total Land Area	Section 9B.9.1 was amended at the 2006 Annual Town Meeting to read: “In a SENIOR Residence development, except for the conversion to a Senior Residence development of a project approved under MGL Chapter 40B before January 1, 2006, at least fifty percent (50%) of the TRACT OF LAND in Acton shall be set aside as Common Land in Acton for the use of the SENIOR residents or the general public.” Therefore, since the

Cite	Subject Matter	Planning Board Action on Waiver Request
		development of Lot 4 was initially approved under Chapter 40B prior to January 1, 2006, the portions of Lot 4 in Westford can be counted toward the common land area calculations. The total land of Lot 4 (including the portion of the lot in Westford) either complies with or is just shy of the standard minimum requirements (depending on how wetlands and drainage facilities were treated in the common land calculations). Under § 9B.12.3.4 the Planning Board can adjust or waive dimensional requirements as reasonable and necessary to facilitate the production of affordable units under a density bonus option. If and to the extent necessary to allow construction of the Condominium Component of the Revised Project as shown on the Final Approved Plans, this waiver is allowed.
9B.9.1.1	Percentage of Wetlands: According to the Applicant, the percentage provided is within the margin of error of calculation for land area (required: 6.58 vs. provided 6.57).	Under § 9B.12.3.4 the Planning Board can adjust or waive dimensional requirements as reasonable and necessary to facilitate the production of affordable units under a density bonus option. If and to the extent necessary to allow construction of the Condominium Component of the Revised Project as shown on the Final Approved Plans, this waiver is allowed.

Senior Residence Special Permit Rules and Regulations

Cite	Subject Matter	Planning Board Action on Waiver Request
3.2	Development Impact Report	Waiver granted based on the detailed information submitted in the Comprehensive Permit record, the Environmental Impact Report, and/or the plans and information provided to the Board.
3.9	Recorded Plans and Deeds	Same as 3.2.
3.11	List of Mortgage Holders	A list of current mortgage holders, if any, shall be provided
3.13	Earthwork Calculations	Same as 3.2.
3.14	Water Balance Calculations	Same as 3.2. Further, the drainage system was designed in a comprehensive manner for the entire project to meet the Storm Water Quality Guidelines. The drainage design of Lot 4 is integrated with the overall drainage for the project.
3.14	Traffic Study	Same as 3.2.
3.16	Senior Residence Site Plan contents (3.16.1.1 (One mile locus map), 3.16.3 (Recordable Plan)	Same as 3.2.
3.16	3.16.3.10 (Reference to covenants and restrictions applying to land)	References to covenants and restrictions applying to the land shall be provided.
4.2	Special Permit Application Fee	The Board of Selectmen has granted this fee waiver.

Subdivision Regulations

Under Section 9B.13 of the Bylaw, "Generally, all STREETS and ways, drainage facilities, and utilities shall be designed and constructed in compliance with the Acton Subdivision Rules and

Regulations whether or not the SENIOR Residence development is a subdivision, The Planning Board may approve exceptions to the Subdivision Rules and Regulations provided the Board determines such exceptions are consistent with the purposes of this Bylaw.” However, in this case, the subdivision plan was reviewed and approved as part of the Comprehensive Permit process, and waivers from the Planning Board’s Subdivision Regulations were granted by the Board of Appeals pursuant to its authority under G.L. c. 40B. See Comprehensive Permit Exhibit E. Accordingly, the Applicant’s requests to the Planning Board for waivers from the Subdivision Regulations are not properly before the Board and are denied as moot. To the extent that waivers from the Subdivision Regulations are necessary to construct Laurel Hill Drive or the so-called “loop road” as shown on the Plans, the waivers are hereby granted.

3.2 FINAL APPROVED PLANS

No building permit shall be issued before the endorsement of the Final Approved Plans for the Revised Project as defined below.

3.3 CONDITIONS

As approved by this Decision and the Comprehensive Permit, the Lot 4 Senior Residence Development is part of a significant residential development in the Town of Acton and the abutting Town of Westford. Overall, the development consists of hundreds of new residential units and associated infrastructure and improvements. Given the size, complexity and location of the development, the Board finds that a number of specific and material conditions are required to mitigate potentially adverse effects from the development on the Town of Acton, residents of the development, and the public health, safety, welfare and the environment. As conditioned below and in the Comprehensive Permit for the Rental Component of the development, the Board finds that the development’s potential adverse effects will be suitably mitigated.

The following conditions shall be binding on the Applicant and its successors and assigns. The Town of Acton may enforce compliance with this Decision, and its conditions, using any and all powers available to it under the law.

Definitions

As used in these conditions, the term:

- “Rental Component” shall refer to the rental portion of the Revised Project in Acton approved by the Comprehensive Permit and consisting of (a) one main residential building of 86 rental units with a club house, pool, community center and associated amenities, and seven other residential buildings housing a total of 210 rental units, for an overall total of 296 residential rental units, parking, and associated and access and egress drives, infrastructure, landscaping, facilities, amenities, and improvements, all as shown on the Final Approved Plans under the Comprehensive Permit (the “Rental Component”).
- “Condominium Component” shall refer to the Lot 4 Senior Residence Development, being the for sale portion of the Revised Project in Acton, consisting of the a total of 64 residential townhouse units in eighteen townhouse residential buildings housing two, three or four units each, together with parking, access and egress drives, and associated infrastructure,

landscaping, facilities, amenities, and improvements, all as shown on the Final Approved Plans under this Decision.

- “Both Components” shall refer to the Rental Component and the Condominium Component.
- “Final Approved Plans” with reference to the Rental Component shall refer to the final set of Revised Plans, Engineering Drawings, and Architectural Plans showing the Rental Component of the Revised Project, updated in accordance with the Comprehensive Permit, signed and stamped by the Design Engineer, and endorsed by the ZBA in accordance with Condition A.1 of the Comprehensive Permit.
- “Final Approved Plans” with reference to the Condominium Component shall refer to the final set of Revised Plans, Engineering Drawings, and Architectural Plans showing the Condominium Component of the Revised Project, updated in accordance with this Decision, signed and stamped by the Design Engineer, and endorsed by the Board in accordance with Condition A.1 of this Decision.
- “Revised Project” shall refer to the proposed project consisting of the Rental Component and the Condominium Component shown on the respective Final Approved Plans.
- “Design Engineer” shall refer to the registered professional engineer or engineers and the registered land surveyor who stamped the Final Approved Plans, or, in the event any of them cease to serve the Applicant with respect to the Revised Project, their permitted successors as approved by the ZBA or the Board as appropriate.

A. General Conditions

- A.1 Prior to commencement of any construction concerning any portion of the Condominium Component of the Revised Project (whether pursuant to a building permit or otherwise), unless extended by the Building Commissioner for good cause shown the Applicant shall submit to the Building Commissioner a final set of Engineering Drawings and Architectural Plans showing the Condominium Component of the Revised Project, which shall be identical to the latest revisions of the Plans referenced in this Decision, except that they shall be updated in accordance with the requirements of this Decision and except for such modifications as may be submitted in accordance with the Town By-laws and this Decision. Along with this final set of Engineering Drawings and Architectural Plans, the Applicant shall submit a list, prepared by the Design Engineer, of the specific changes made to the latest revisions of the Plans referenced in this Decision to conform the requirements of this Decision. The final set of Engineering Drawings and the list of changes shall be signed and stamped by the Design Engineer. The Building Commissioner shall review the final set of Engineering Drawings and Architectural Plans and the list of changes to ensure that they are consistent with and in conformity with this Decision. Upon the Building Commissioner so finding, the Board shall endorse the final set of Engineering Drawings and Architectural Plans which shall thereupon constitute the “Final Approved Plans” for the Condominium Component of the Revised Project under this Decision.

- A.2 In the event the Building Commissioner determines that the Applicant's construction drawings submitted with its building permit application(s) materially deviate from the Final Approved Plans in such a manner that, in his professional opinion, they do not conform to the requirements and conditions imposed by this Decision, the Building Commissioner shall so notify the Applicant of the specific deviations, and the Applicant shall either bring the construction drawings into conformity with this Decision or seek modification of this Decision. In the event of a disagreement between the Building Commissioner and the Applicant with respect thereto, they shall notify the Board which shall thereupon determine whether the building permit construction drawings conform to this Decision. Upon finding that the building permit construction drawings (with any necessary revisions) do conform to this Decision, the Board shall endorse those construction drawings if so requested by the Applicant.
- A.3 This Decision shall be (a) recorded by the Applicant at the Middlesex South District Registry of Deeds and filed by the Applicant with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, (b) recorded by the Applicant at the Middlesex North District Registry of Deeds and filed by the Applicant with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. This Decision shall become effective upon such recording and filing, as applicable. Official proof of recording and filing of each of these documents, as applicable, shall be forwarded to the Town Planner and the Building Commissioner prior to issuance of a building permit or to the start of construction hereunder
- A.4 The Applicant shall comply with all local rules and regulations of the Town of Acton and its boards and commissions unless waived herein or as otherwise addressed in these conditions.
- A.5 Except as may be expressly waived or defined herein, the Applicant shall pay to the Town of Acton all fees required by the Town of Acton imposed generally with respect to fees for construction projects including all required fees for building permits and inspections.
- A.6 The Applicant shall copy the Building Commissioner on all correspondence between the Applicant and any federal, state, or Town official, board or commission that concerns the conditions set forth in this Decision, including but not limited to all testing results, official filings, environmental approvals, and other permits issued for the Condominium Component of the Revised Project.
- A.7 The Applicant shall comply with the State Building Code and any local regulations or fees of the Building Commissioner.
- A.8 The Applicant shall maintain a copy of the endorsed Final Approved Plans and this Decision at the Site during construction.

- A.9 If, during the course of construction, it becomes necessary to enter upon abutting land for construction or planting, the Applicant shall obtain temporary easements or other written permission from any abutting property owner.
- A.10 Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and its respective successors and assign with respect to the Condominium Component of the Revised Project and the use thereof; and reference to this Decision shall be incorporated in the Master Deed and in each Unit Deed for the Condominium Component of the Revised Project.
- A.11 This Decision permits the construction, use, and occupancy of (a) 64 townhouse condominium units in the Revised Project each of will have two bedrooms, and (b) associated facilities and improvements as depicted on the Final Approved Plans to be submitted and endorsed in accordance with this Decision. The construction and use of the Site shall be in conformity with this Decision and the Final Approved Plans, and there shall be no further subdivision of Lot 4, or the creation of additional housing units or any other structures or infrastructure on Lot 4 except that which is shown on the Final Approved Plans, without further approval of the Board in the form of an amendment to this Decision.

B. Submission Requirements

B.1 Pre-Construction Submissions for Condominium Component:

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

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

- d. Delivered to the Building Commissioner a registry-stamped copy of the recorded Conservation and Management Permit from the Division of Fisheries and Wildlife under the state Endangered Species Act (G.L. c. 131A).

B.2 As Built Plans: Separate “As Built Plans” shall be submitted to the Building Commissioner for the Condominium Component of the Revised Project, prior to the occupancy or use of the final building constituting a part of the Condominium Component of the Revised Project.

The “As Built Plans” shall show all binder coat pavement, buildings, drainage structures, and other infrastructure and utilities (excluding landscaping) as they exist on the Site, above and below grade, including appropriate grades and elevations as of the time the plans are required to be submitted under this Condition B.2 (and subject to updating upon final completion of the Condominium Component of the Revised Project). The “As Built Plans” shall be signed and stamped by the Design Engineer, certifying that the Condominium Component of the Revised Project in Acton as built conforms and complies with the conditions of this Decision. [The purpose of this provision is to facilitate the Building Inspector’s review of the project for compliance with the Decision before the final occupancy permit is issued.] The as-built utilities sheet(s) shall include both plan and profile views showing actual in-ground installation of all utilities for the Condominium Component of the Revised Project in Acton and Westford, and shall be submitted to the Building Commissioner and the Department of Public Works after completion of construction.

B.3 As Built Plans for Westford Portion of Revised Project: For the Westford portion of the Revised Project, accurate as-built plans shall be submitted to the Acton Building Commissioner for the treatment plant and all utilities and infrastructure serving any portion of the Revised Project in Acton.

C. Site Development Construction Conditions

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

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

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

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

C.5 The Applicant shall forward final architectural plans to the Building Commissioner at the time of applying for building permits. All construction shall be inspected by

the Building Commissioner and shall be in compliance with all Massachusetts State Building Code requirements.

- C.6 The Applicant shall provide temporary central mailbox units (CMU) for any project residents during project construction. These CMU's shall be approved as to style and location by the local Postmaster General of the United States Post Office. Post Office authorization shall be forwarded to the Building Commissioner for the record.
- C.7 The Applicant shall be responsible to ensure that nuisance conditions do not exist in and around the site during the construction operations. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area.
- C.8 Hours - The hours of operation for any construction activities on-site shall be between 7:00 am and 7:00 pm, Monday thru Friday, 8:00 am and 5:00 pm on Saturdays, and no work shall be allowed on-site on Sundays or on Holidays as recognized by the Commonwealth of Massachusetts.
- C.9 Dust - The Applicant shall implement dust control operations as necessary to comply at all times with applicable law, including without limitation DEP's Dust regulations at 310 CMR 7.09, as amended, as directed by the Building Commissioner or the Town Engineer, even though other work on the project may be suspended as a result thereof. Methods of controlling dust shall meet all air pollutant standards as set forth by Federal and State regulatory agencies.
- C.10 Noise - The Applicant shall implement measures to ensure that noise from project construction activities does not exceed acceptable levels, as set forth by Federal and State regulatory agencies, including without limitation DEP's Noise regulations at 310 CMR 7.10, as amended, and DEP's DAQC Noise Policy No. 90-001 (2/1/90), as amended. The Applicant shall cease any excessively loud activities when directed by the Building Commissioner to comply therewith.
- C.11 Vibration - The Applicant shall implement necessary controls to ensure that vibration does not unreasonably extend beyond the subject site and create a nuisance or hazard for property abutters.
- C.12 Traffic - The Applicant shall comply with all construction-related traffic safety conditions set forth in Section E below.
- C.13 Roads – The Applicant is responsible for the sweeping, removal of snow, and sanding of the internal roadways permitting access to residents and emergency vehicles during construction and until the Common Infrastructure Agreements required by this Decision are recorded and/or registered as applicable and the Condominium Association has been legally established for the Condominium Component of the Revised Project.

- C.14 Burial of any stumps or debris onsite is expressly prohibited. Localized burial of stones and/or boulders is prohibited to prevent the creation of voids from soil settlement over time.
- C.15 Soil material used as backfill for pipes, roads, and/or structures (i.e. detention basins) shall be certified by the Design Engineer to the Building Commissioner as meeting design specifications.
- C.16 Utilities, including but not necessarily limited to electric, cable, and telephone shall be located underground.
- C.17 Stabilization Requirements - No building areas shall be left in an open, unstabilized condition longer than sixty (60) days. Temporary stabilization shall be accomplished by hay bales, hay coverings or matting. Final stabilization shall be accomplished by loaming and seeding exposed areas.
- C.18 Construction vehicles shall be parked on the Site, and off Nagog Park and Route 2A-119 at all times.
- C.19 Traffic calming speed “humps” shall be installed on the roadways in the areas as shown on the plans.

D. Police, Fire and Emergency Safety Conditions

- D.1 This Decision is expressly conditioned upon the Applicant and its successors and assigns fully complying with the requirements of the Memorandum of Agreement (as now or hereafter amended) between Woodlands at Laurel Hill, LLC and the Town of Acton acting by and through its Board of Selectmen, with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton. The Memorandum of Agreement with all amendments to date is on file as a public record with the Town Clerk of the Town of Acton. Notice of that Memorandum of Agreement as amended is recorded in the Middlesex South District Registry of Deeds at Book 47814, Page 86, and a copy of the Memorandum of Agreement with the first through third amendments is recorded as an exhibit to the Comprehensive Permit in the Middlesex South District Registry of Deeds at Book 47074, Page 265. The Fourth Amendment to Memorandum of Agreement dated April 24, 2006 is on file as a public record with the Town Clerk of the Town of Acton.
- D.2 In the event that the Applicant transfers any portion of the Condominium Component of the Revised Project, the transferee shall be liable for all of the obligations of the Applicant under the MOA as they pertain to the Condominium Component of the Revised Project (including without limitation the Mitigation payment provisions of Section 4 and the construction obligations under Section 5, all as amended). In the event of such transfer, if the transferee is a different entity than the owner(s) of the remainder of the Revised Project, the transferee and the Applicant shall execute an Amendment to the MOA with the then-owner(s) of the remainder of the Revised Project in substantially the same form as attached hereto as Exhibit 1. The

provisions of this Section D.2 shall not apply to a transfer of a condominium unit after the recording of the Condominium Master Deed, the lien on which has been released by the Town Treasurer upon payment of the mitigation installment for the unit provided for under Section 4(b) of the MOA.

- D.3 Each building in the Condominium Component of the Revised Project that contains four or more units shall be equipped with an approved system of automatic sprinklers in accordance with the provisions of the state building code, 780 CMR 904.7, and G.L. c. 148, s. 26(I), as applicable.
- D.4 The Applicant shall use all reasonable efforts to ensure that all providers of telephone landline service to units in the Condominium Component of the Revised Project shall route all E-911 calls from units in Acton to Acton emergency services.
- D.5 The Applicant shall obtain approvals from the Acton Engineering Department, Police Chief, and Fire Chief on the street addresses for all buildings and units in the Condominium Component of the Revised Project. The Applicant shall use all reasonable efforts to work with Town officials to ensure that all buildings and units in the Condominium Component of the Revised Project are assigned unique and unambiguous addresses to avoid any confusion of addresses with other streets having the same or similar names in Acton.
- D.6 Each building and unit in the Condominium Component of the Revised Project shall be equipped with fire detection systems and shall comply with the applicable state Building Code and Fire Safety Code provisions. The fire detection system for each building and unit in the Condominium Component of the Revised Project in Acton shall be subject to the approval of the Acton Fire Chief consistent with his authority under said Codes
- D.7 Each municipal fire alarm street box for the Condominium Component of the Revised Project in Acton shall be located in an area acceptable to the Acton Fire Chief, where it will be readily accessible but not be susceptible to damage by snow plows in the winter months, and shall be tied to the Acton dispatch system. Each fire alarm master box on the buildings in the Condominium Component of the Revised Project in Acton shall be located in an area reasonably acceptable to the Acton Fire Chief and shall be tied to the Acton dispatch system.
- D.8 As required by the Comprehensive Permit, the Applicant shall construct and maintain a locked and gated emergency access on Lot 18 on Assessor's Map B-5 to connect Nagog Park to Nonset Path for use only in the event of emergencies by Acton and/or Westford police, fire, ambulance or other emergency services. The Applicant shall provide appropriate keys or other means of access to Acton and Westford police, fire, ambulance and other emergency services. The design and construction of the emergency access shall be acceptable to the Acton Fire Chief. The Applicant shall provide in its project documents governing infrastructure improvements for the maintenance of this emergency access over time such that it is appropriately passable in the event of an emergency.

D.9 A licensed blasting professional shall do any necessary blasting on the site after proper pre-blast inspections have been conducted and all required permits have been obtained from the Acton Fire Department. Pursuant to G.L. c. 148, § 19, before the issuance of a permit to use an explosive in the blasting of rock or any other substance at the Site, the applicant for the permit shall file with the Acton Town Clerk a bond running to the Town, with sureties approved by the treasurer of the Town, in the penal sum as the officer granting the permit shall determine in accordance with § 19 to be necessary in order to cover the risk of damage that might ensue from the blasting or its keeping therefor.

E. Traffic Safety Conditions

E.1 Traffic signage shall be consistent with the requirements of the current edition of the Manual for Uniform Traffic Control Devices (MUTCD).

E.2 Appropriate walkways, driveways, and curbing, along with traffic calming measures at the entrance to the Site as shown on the Final Approved Plans, shall be provided to allow safe vehicular and pedestrian access and movement within the Site and between all units.

E.3 The Applicant shall install and maintain stop sign(s) and stop bar control(s) at the intersection of Laurel Hill Drive and the entrance to the loop road on the Site to calm traffic as it enters the Site.

E.4 All such improvements shall be completed in accordance with the standards set forth in the most recent edition of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD), and shall be in place prior to project occupancy.

E.5 During construction of the Condominium Component of the Revised Project, the Applicant shall implement necessary traffic safety controls to ensure a safe and convenient vehicular access in and around the Site. Any traffic problems that occur as a result of site operations and construction shall be mitigated as soon as possible, at the expense of the Applicant. Additional construction-related traffic mitigation measures may be required as necessary, or as directed by the Building Commissioner.

F. Common Infrastructure Agreements

F.1 Because (a) the Revised Project is located in two Towns, Acton and Westford, (b) the Revised Project includes both a Condominium Component (containing condominium units that will be sold to individual owners and common areas and facilities that will be governed and controlled by the provisions of a Master Deed and By-Laws of the Condominium Association representing the unit owners) and a Rental Component (containing apartment units that will be rented to individual

owners and common areas and facilities that will be governed and controlled by the legal entity owning and managing the rental), and (c) certain infrastructure and facilities are common to the development of Both Components of the Revised Project and to the development in both Towns, the Applicant shall establish a Reciprocal Easement Agreement and a Treatment Plant Operating Agreement (hereinafter collectively referred to as the "Common Infrastructure Agreements" or "CIA"). The Board recognizes that the Common Infrastructure Agreements may govern separate aspects of the Revised Project (such as the Operating Agreement for the treatment plant); provided, however, that the Common Infrastructure Agreements shall, in the aggregate, govern all common infrastructure and facilities for the entire Revised Project in both Acton and Westford.

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

- a. wastewater treatment and disposal facilities (including, without limitation, the treatment plant, piping, leaching fields and other facilities and appurtenances),
- b. public water supply facilities,
- c. storm water management and drainage facilities (including, without limitation, any detention or retention basins, discharge outfalls or inlets, and storm water control structures and pipes),
- d. utilities of all types and kinds including, without limitation, electric, gas, telephone and cable,
- e. common landscaping and landscape irrigation facilities,
- f. roadways, driveways, sidewalks parking and emergency access facilities (including, without limitation, repaving and repair, snow and ice removal, and removal of any obstructions),
- g. solid waste management, collection, recycling, removal and disposal,
- h. community garden, and
- i. any and all other functions and/or facilities, including recreational facilities, that may be necessary or desirable in order to operate the development as a whole.

- F.3 The CIA shall be (a) recorded at the Middlesex South District Registry of Deeds and filed with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, (b) recorded at the Middlesex North District Registry of Deeds and filed with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. Proof of recording and filing, as applicable, shall be forwarded to the Building Commissioner prior to issuance of any occupancy permit for any building or unit within the Revised Project.
- F.4 The CIA shall run with the land which is the subject of the development, and shall be binding on the owners of the land, and their successors and assigns, in perpetuity.
- F.5 The CIA shall promulgate rules and regulations to govern all aspects of establishing, approving, funding, designing, constructing, reconstructing, locating, relocating, installing, operating, managing, maintaining, inspecting, repairing, replacing, altering, extending, and removing the Common Facilities.
- F.6 The CIA shall promulgate rules and regulations to govern assessing and collecting funds and establishing reasonable reserves sufficient for its purposes from the Condominium Association and the owner of the Rental Component of the Revised Project, including the right to enforce these collections by prescribed legal methods.
- F.7 The CIA shall be fully consistent with both the conditions imposed by this Decision, by the Comprehensive Permit, and by the Westford Zoning Board of Appeals' comprehensive permit for the Westford portion of the Revised Project.
- F.8 The CIA shall irrevocably grant to the Town of Acton and its employees, agents, boards, commissions, and consultants the right to:
- a. enter onto the Site in both Acton and Westford,
 - b. inspect all aspects of the Common Facilities in both Acton and Westford,
 - c. enforce all provisions of applicable law, rules, regulations, and conditions of governmental permits and approvals applicable to the Common Facilities in both Acton and Westford, regardless of where such facilities are located, if the failure to effectuate such enforcement could reasonably affect the Town of Acton, and
 - d. ensure that the Trust or other legal entity or entities established by the CIA is/are fully and effectively performing all of its/their obligations with respect to the Common Facilities in both Acton and Westford.
- F.9 Without limitation, the CIA shall irrevocably grant to the Town of Acton Board of Health and its employees, agents and consultants the right to inspect and to obtain samples from the sewage treatment plant and all facilities, equipment, discharge

points, and any monitoring wells associated therewith, and shall irrevocably consent to the Acton Board of Health's right to enforce all applicable environmental and health laws, rules, regulations, and conditions of governmental permits and approvals applicable to the sewage treatment plant serving the residential units in Acton. With respect to a matter under the jurisdiction of the Massachusetts Department of Environmental Protection ("DEP"), in the event of a conflict between or among DEP, the Acton Board of Health and the Westford Board of Health as to appropriate enforcement under this paragraph, the determination of DEP shall control.

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

G. Condominium Association

- G.1 For the Condominium Component of the Revised Project, the Applicant shall establish a condominium owners' association (the "Condominium Association") for the 64 condominium units, common areas and facilities that will be governed and controlled by the provisions of a condominium Master Deed and By-Laws.
- G.2 The Master Deed and Bylaws of the Condominium Association shall reference and be subject to the CIA and this Decision.
- G.3 In setting the percentages of beneficial interest in the condominium common areas in the Condominium Master Deed, the Applicant shall ensure that the percentages assigned to the Affordable Units reflect the fair market value of the Affordable Units, taking into account the affordable housing restrictions that encumber said Units.
- G.4 The Master Deed for the Condominium Component shall be recorded at the Middlesex South District Registry of Deeds and filed with the Middlesex South District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Acton, and (b) to the extent any portion of the Condominium Component of the Revised Project is situated in Westford, recorded at the Middlesex North District Registry of Deeds and filed with the Middlesex North District Land Court Registration Office, as applicable, and referenced in the owner's chain of title for all portions of the Site in Westford. Proof of recording and filing, as applicable, shall be forwarded to the Building Commissioner prior to issuance of any occupancy permit for any Condominium Unit within the Condominium Component of the Revised Project.
- G.5 Review of Condominium Documents: Prior to execution and recording of the Master Deed for the Condominium Component and the related documents establishing the condominium, the Applicant shall furnish drafts to Town Counsel for his review as to their consistency with this Decision.

H. Surety & Covenants – Common Facilities

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

H.2 Without limitation, as security for the ongoing completion of the Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans, no occupancy permit shall be issued for any building or unit in the Condominium Component of the Revised Project, and no sale or rental of any unit in the Condominium Component of the Revised Project shall be permitted until:

- a. All wastewater treatment and disposal facilities serving such building and units as shown on the Final Approved Plans have been completed and approved;
- b. All public water supply facilities serving such building and units as shown on the Final Approved Plans have been completed and approved;
- c. The base and binder course for the roadways, driveways, sidewalks and parking areas serving such building and units as shown on the Final Approved Plans have been installed;
- d. All storm water management and drainage facilities serving such building and units as shown on the Final Approved Plans have been installed;
- e. All electric utilities serving such building and units as shown on the Final Approved Plans have been installed;
- f. All emergency access facilities serving such building and units as shown on the Final Approved Plans have been installed; and
- g. For an occupancy permit for any building or unit in the Condominium Component of the Revised Project, the Applicant shall have provided to the Board a performance guaranty to secure the complete construction of the remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans. Said performance guaranty shall be of a type, in a form, and in an amount as are consistent with the Performance Guaranty Requirements of the Acton Planning Board's Subdivision Rules and Regulations, §§ 6.1-6.2 and shall be

released in part or in full in a manner consistent with §§ 6.3-6.4 thereof; provided, however, that no reduction in the amount of the performance guarantee shall reduce the performance guarantee to a value below the estimated cost of completing the unfinished portions of the remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans.

- H.3 Except as otherwise specifically set forth herein (and in Section J.2, below), as security for the final completion of the Common Facilities and infrastructure for the Condominium Component of the Revised Project as shown on the Final Approved Plans, no occupancy permit shall be issued for the final residential building in the Condominium Component of the Revised Project, and no sale of any unit therein shall be permitted until:
- a. All wastewater treatment and disposal facilities for the Condominium Component of the Revised Project have been completed and approved;
 - b. All public water supply facilities for the Condominium Component of the Revised Project have been completed and approved;
 - c. The final coat of pavement for all roadways, driveways, sidewalks and parking areas for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;
 - d. All storm water management and drainage facilities for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;
 - e. All electric utilities for the Condominium Component of the Revised Project as shown on the Final Approved Plans have been installed;
 - f. All emergency access facilities for the Condominium Component of the Revised Project shown on the Final Approved Plans have been installed;
 - g. All remaining Common Facilities and infrastructure for the Condominium Component of the Revised Project shown on the Final Approved Plans has been constructed and or installed;
 - h. All conditions of the Decision for the Condominium Component of the Revised Project that require action or resolution by the Applicant prior to the issuance of occupancy permits have been completed to the satisfaction of the Building Commissioner.

I. Legal Requirements

The Applicant and subsequent Owner(s) of all or any portion of the Site shall be bound by all conditions and requirements set forth in this Decision. Any sale or transfer of rights or interest in all or any part of the Site shall include a condition that

the grantee and its successors and assigns shall agree to be bound by the terms and conditions of this Decision and the MOA.

J. Landscaping Conditions

- J.1 Prior to the issuance of the final occupancy permit for the last building in the Condominium Component of the Revised Project, the Applicant shall have fully completed the improvements and plantings shown on the Final Approved Plans for the Condominium Component of the Revised Project.
- J.2 In the event seasonal weather considerations delay the completion of the final “top coat” paving, landscaping improvements and/or plantings shown on the Final Approved Plans, the Building Commissioner may issue the final occupancy permit in question under Condition J.1; provided that the Applicant shall complete the final paving and landscaping improvements and plantings as soon as seasonal weather conditions permit, and the Applicant shall post sufficient cash surety with the Town Treasurer for the completion of those improvements should the Applicant fail to do so.
- J.3 The Applicant shall maintain all landscaped areas of the Site as shown on the Final Approved Plans until such time as the Applicant either (1) sells the Site to a new owner subject to these responsibilities or (2) assigns or otherwise transfers these responsibilities pursuant to the CIA to an entity or entities capable of such maintenance. Dead or diseased plantings shall be replaced as soon as possible in accordance with growing and weather conditions.

K. Drainage Conditions

- K.1 Storm water shall be managed in accordance with the Massachusetts Stormwater Policy Manual dated March, 1997, as amended from time to time, as prepared by the Massachusetts Department of Environmental Protection and Massachusetts Office of Coastal Zone Management.
- K.2 All storm water drainage basins shall be located as to facilitate the maintenance and operation of the basins or drainage utilities.
- K.3 The Applicant shall prepare a plan for and shall maintain and repair the drainage structures and storm water management system on the Site as shown on the Final Approved Plans until such time as the Applicant either (1) sells the Site to a new owner subject to these responsibilities or (2) assigns or otherwise transfers these responsibilities pursuant to the CIA to an entity or entities capable of such maintenance.

L. Parking and Garages

- L.1 The Applicant shall provide for on-site parking as shown on the Final Approved Plans, and each Affordable Unit and each comparable Market Rate Unit shall have the same reasonable access to on-site garage and open air parking. Garages on the

Final Approved Plans shall not be rented or sold separately. Each unit shall have a garage.

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

M. Outdoor Lighting

The Applicant shall comply with the Outdoor Lighting standards set forth under Sections 10.6.2.1, 10.6.2.2, 10.6.2.4, and 10.6.3 of the Acton Zoning Bylaw. Prior to the issuance of any occupancy permits for the Condominium Component of the Revised Project, the Applicant shall provide a designer's stamp on the Photometrics Plan Sheet L-3, certifying that the plan is in compliance with the aforesaid Zoning Bylaw standards.

N. Sewage Treatment System and Irrigation Well System

- N.1 Consistent with the Comprehensive Permit, the sewage treatment plant serving the 296 rental units and the 64 condominium units in Acton shall be designed and constructed as shown on the Final Approved Plans and as approved by the Department of Environmental Protection.
- N.2 Prior to the issuance of an occupancy permit for any residential unit in the Condominium Component of the Revised Project, the sewage treatment plant shall be fully operational and shall have received an approval for such operation from the Department of Environmental Protection.
- N.3 The Applicant shall provide to the Acton Building Commissioner and the Acton Board of Health a copy of the final approval of the sewage treatment plant and associated groundwater discharge permit by the Department of Environmental Protection and the Westford Board of Health.
- N.4 Consistent with the Comprehensive Permit, prior to issuance of the first occupancy permit for any residential building in the Acton portion of the Condominium Component of the Revised Project, the Applicant shall deposit eighteen thousand dollars (\$18,000) into a fund to be available to and administered by the Acton Health Department to inspect and monitor the construction of the sewage treatment plant and the connection of the buildings to the collection system, and this shall be the only fee payable to the Board of Health for these purposes. (Only one such \$18,000 deposit shall be payable under the Comprehensive Permit and this Decision.) Pending the recording and/or registration of the Common Infrastructure Agreements under Condition F.3 of this Decision, the Applicant shall irrevocably grant to the Town of Acton Board of Health and its employees, agents, and consultants the right to:
 - a. enter onto the Site in both Acton and Westford,
 - b. inspect all aspects of the construction of the sewage treatment plant and related facilities in both Acton and Westford,

- c. enforce all provisions of applicable law, rules, regulations, and conditions of governmental permits and approvals applicable to the Common Facilities in both Acton and Westford, regardless of where such facilities are located, if the failure to effectuate such enforcement could reasonably affect the Town of Acton, and
 - d. ensure that the Applicant is fully and effectively performing all of its obligations with respect to the construction of the sewage treatment plant and related facilities in both Acton and Westford.
- N.5 Of the 64 condominium units in the Condominium Component of the Revised Project, each unit shall contain two and only two bedrooms as “bedroom” is defined by Title V, 310 CMR 15.00. The CIA and the Master Deed for the Condominium Component of the Revised Project shall contain a provision specifying the bedroom count consistent with this provision and prohibiting any unit from containing more than two bedrooms.
- N.6 The Applicant shall contemporaneously provide to the Acton Board of Health copies of all written communications, reports, submissions, and other documents sent by the Applicant to or received by the Applicant from the Department of Environmental Protection concerning the waste water treatment plant and/or the related groundwater discharge permit (unless the Town was also in receipt of such documentation directly from DEP).
- N.7 Without limitation, the Applicant shall contemporaneously provide to the Acton Board of Health any financial reports submitted or required to be submitted to DEP regarding the operation and maintenance of the waste water treatment facility, any financial security which serves as a source of funding for immediate replacement or repair of the treatment plant and/or associated facilities, any capital reserve account for the waste water treatment facility, and any expenditures from and replenishment to that security and that capital reserve account.
- N.8 Irrigation wells for the Condominium Component of the Revised Project are subject to the following conditions:
 - a. Each irrigation well shall be a bedrock well;
 - b. Each irrigation well shall be metered and an annual report of the well's usage shall be provided to the Acton Board of Health;
 - c. Each irrigation well located in Acton and associated facilities located in Acton shall at a minimum conform to Acton Board of Health’s Regulations 9-2, 9-3, 9-4, 9-5 and 9-6.1 through 9-6.3.1;
 - d. Each irrigation well located in Westford, the water from which shall be used to irrigate land in Acton, and all facilities associated therewith, shall at a minimum conform to Acton Board of Health’s Regulations 9-2.2 to 9-2.11, 9-3, 9-4, 9-5 and 9-6.1 through 9-6.3.1; and

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

O. Use Requirements and Age-Related Restrictions

- O.1 As this Decision grants permission to build and occupy a Senior Residential Development on Lot 4 of the Site, and as the Applicant has obtained the benefits of this Decision and the waivers granted hereunder, no use shall be made of the Site or of any building or unit on the Site erected pursuant to this Decision except for (a) residential use consistent with this Decision, and (b) accessory uses customarily incidental to such residential use in Acton.
- O.2 Notwithstanding the Zoning District in which the Site is located, as long as this Decision is in force and effect, no business or commercial use shall occur or be conducted on the Site or in any building or unit on the Site except for (a) necessary unit sales, rental and management activities with respect to the Condominium Component of the Revised Project and (b) accessory concierge services for residents of the Condominium Component of the Revised Project including such services as an automatic teller machine, a dry cleaning pick-up and drop off location, one or more express mail pick-up and drop off boxes, a photocopy or fax machine, and similar accessory concierge services for the convenience of the residents of the Condominium Component of the Revised Project.
- O.3 Without limitation, no building, housing unit, or any other portion of the Site shall be used for temporary or transient housing, including but not limited to any type of hotel, motel, casino, or extended stay hotel or motel, any housing or shelter that would be subject to the licensing provisions of General Laws Chapter 140, Sections 1 through 40, as amended from time to time.
- O.4 To the maximum extent permitted by law, each Condominium Unit is hereby restricted to residential use and occupancy by senior citizens, 55 years of age or older (“Qualifying Persons”), their spouses (including the surviving spouse of a deceased Qualifying Person), and/or a relative by blood or marriage of a Qualifying Person or of the spouse of a Qualifying Person, provided that such relative must be 55 years of age or older (“Qualified Relative”), except during a six (6) month period following the death or departure from the household of such Qualifying Person, his or her spouse, or Qualified Relative.
- O.5 Every sale, resale or other conveyance of every Condominium Unit, whether by the Applicant or its joint venture partners and their respective successors and assign, shall be to: (i) at least one Qualifying Person; (ii) the spouse or blood relative of a Qualifying Person, so long as the Qualifying Person occupies and intends to occupy the Condominium Unit as his or her residence; or (iii) a trust or other estate-planning vehicle under which the Qualifying Person holds a beneficial interest, so long as the Qualifying Person (or after the death of the Qualifying Person, his or her spouse or

Qualified Relative) occupies or intends to occupy the Condominium Unit as his or her residence.

- O.6 Each Condominium Unit shall be occupied by no more than two persons as a single-family residence. A third occupant may be allowed for the express purpose of providing health care to the occupants, or as provided under O.7 below.
- O.7 Overnight guests (including children of a Qualifying Person) who are younger than fifty-five (55) years of age shall be allowed for reasonable visitation periods not to exceed two weeks in duration and not to exceed two weeks per year, provided that: (i) a child of a Qualifying Person who is a full-time student residing other than in the Condominium Unit during the school year may reside in the Condominium Unit during the summer months and school breaks, not to exceed three (3) months per year; and (ii) up to two children per Condominium Unit, under the age of eighteen, whose parents are deceased or otherwise legally or physically incapacitated and unable to perform their parental functions, shall be allowed to reside with their grandparents without limitation as to time.
- O.8 Any lease or rental agreement for any Condominium Unit shall be to a Qualifying Person, the spouse of a Qualifying Person (including the surviving spouse of a deceased Qualifying Person), and/or a Qualified Relative, provided that the tenant(s) all meet the occupancy requirements of Section a. above.
- O.9 It shall be a condition precedent to any conveyance of a Condominium Unit that the seller verify the ages of the prospective occupants and purchasers by delivery to the trustees of the Condominium Trust at least ten (10) days prior to any proposed conveyance of an affidavit executed before a notary public under the pains and penalties of perjury that the Condominium Unit is to be occupied in compliance with the terms of subsections O.4 and O.6 (and, in the event of a lease, subsection O.8) and is to be owned in compliance with the terms of subsection O.5, which affidavit shall be accompanied by a copy of the birth certificate(s), passports(s), drivers licenses(s) or other documentation reasonably evidencing same ("Age Documentation").
- O.10 The Applicant and subsequent Owner(s) of all or any portion of the Site shall ensure that the Condominium Component qualifies as "housing for older persons" under the provisions of the federal Fair Housing Act, 42 U.S.C. §3601, et seq..

P. Affordability Requirements - Condominium Component

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

- P.2 Local Initiative Program: The Applicant shall cooperate with the Town’s submission of an application for inclusion of the Affordable Condominium Units within the Town’s Subsidized Housing Inventory under Chapter 40B under the Department of Housing and Community Development’s Local Initiative Program (“LIP”). See Section V below.
- P.3 Sale Prices: The Affordable Condominium Units shall be sold to income-qualified households at prices deemed affordable to a three-person household earning 70% of the area median income, utilizing cost assumptions under the LIP. The maximum sale prices for the Affordable Condominium Units shall be reviewed and approved by the Monitoring Agent for the Condominium Component (which shall be the Acton Community Housing Corporation or another entity agreed to by the Town and the Developer (“ACHC” or the “Condominium Monitoring Agent”), at the time of lottery for the selection of buyers of the Affordable Condominium Units. Any modification or deviation from the designation of affordable units as designated herein shall be subject to approval by the Condominium Monitoring Agent.
- P.4 Selection of Buyers for Affordable Condominium Units: The Applicant shall obtain the approval of the Condominium Monitoring Agent of a Buyer Selection Plan for the sale of the Affordable Condominium Units prior to putting the Affordable Condominium Units on the market. Buyers shall be selected through a fair lottery process (the “Lottery”).

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

- (a) at least one member of the household is currently a legal resident of the Town of Acton. For purposes of the Lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, § 4 and would be considered a resident under the United States Census Bureau’s residency guidelines.
- (b) at least one member of the household is either a parent, son or daughter of an Acton resident.
- (c) at least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the Affordable Condominium Unit lottery application deadline.
- (d) at least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the Affordable Condominium Unit lottery application deadline.

The selection of purchasers for the Affordable Condominium Units, including the Lottery, shall be administered by a consultant retained by the Applicant, subject to the approval of the Condominium Monitoring Agent. The Lottery shall be implemented pursuant to a Lottery Plan developed by the lottery consultant and approved by the Condominium Monitoring Agent. The Condominium Monitoring Agent shall oversee the lottery. In the event the Condominium Monitoring Agent is the ACHC or other board or official of the Town of Acton, the Applicant shall deposit the sum of \$1,000 into a municipal account established pursuant to G.L. c. 44, §53G, to cover the Condominium Monitoring Agent's expenses in overseeing the Lottery.

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

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

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

The Acton Connection Preference provisions of this section P.4 are intended to complement and not to override or supersede any applicable income eligibility rules and regulations of the LIP, or any other applicable fair marketing regulations of any authority with jurisdiction and like purpose, to provide low and/or moderate income housing.

- P.5 Phasing-in of Affordable Condominium Units: The Affordable Condominium Units shall be built and sold contemporaneous with the market-rate units in the Condominium Component of the Revised Project. No more than nine certificates of occupancy shall be issued by the Building Commissioner for units designated for sale at fair market prices (the "Market Rate Condominium Units") until at least one certificate of occupancy is issued for an Affordable Condominium Unit.
- P.6 Perpetual Affordability Restriction: 6 units in the Condominium Component of the Revised Project will be sold and resold subject to a Deed Rider, substantially in the form attached hereto as Exhibit 2 and containing such changes as may be required by LIP, and as may be necessary for consistency with this Decision. The Deed Rider shall be attached to and recorded with the Deed for each and every Affordable

Condominium Unit in the Condominium Component of the Revised Project at the time of each sale and resale. Each Deed Rider shall be recorded ahead of any mortgage encumbering the Affordable Unit unless subordinations are obtained and recorded contemporaneous with the Deed Rider. The purpose of the Deed Rider is to restrict each such Affordable Condominium Unit pursuant to this Decision in perpetuity in accordance with the requirements of M.G.L. c. 184, §§ 31-33.⁶ The Applicant shall use its best efforts to obtain any necessary governmental approvals for such a deed restriction to last in perpetuity, including without limitation the approval of the Department of Housing and Community Development (formerly the Executive Office of Communities and Development) (“DHCD”), if required pursuant to M.G.L. c. 184, § 32, or other law. The Applicant shall submit to the Board written evidence of the Applicant’s efforts to secure approval of the perpetual restriction and all responses thereto.

In any event, it is the express intention of the Decision that the period of affordability shall be the longest period allowed by law. In no event shall the period of affordability be less than ninety-nine years.

P.7 Monitoring Services Agreement: Prior to commencement of any construction on the Site, the Applicant shall enter into a Monitoring Services Agreement with the Condominium Monitoring Agent, in a form substantially the same as the form as attached as Exhibit 3.

P.8 Style and Distribution of Affordable Condominium Units: All Affordable Condominium Units shall be constructed to be similar in exterior appearance to the Market Rate Units in the Condominium Component of the Revised Project. To satisfy the requirement that the Affordable Condominium Units shall be evenly distributed throughout the Condominium Component of the Revised Project, the Affordable Condominium Units shall be those units designated as units 1-A, 4-C, 5-B, 6-C, 10A, and 25-C, on the Unit Number Plan Sheet. In addition, all Affordable Condominium Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, washer/dryer hookup, operational HVAC, and other amenities all as more fully shown in the Final Approved Plans.

Q. Material Changes

6 Pursuant to G.L. c. 184, § 31, an affordable housing restriction means “a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition in any deed, mortgage, will, agreement, or other instrument executed by or on behalf of the owner of the land appropriate to (a) limiting the use of all or part of the land to occupancy by persons, or families of low or moderate income in either rental housing or other housing or (b) restricting the resale price of all or part of the property in order to assure its affordability by future low and moderate income purchasers or (c) in any way limiting or restricting the use or enjoyment of all or any portion of the land for the purpose of encouraging or assuring creation or retention of rental and other housing for occupancy by low and moderate income persons and families” (emphasis added).

Q.1 If, between the date the Decision is filed in the office of the Acton Town Clerk and the completion of the Revised Project, the Applicant desires to change in a material way and/or to a significant degree the Condominium Component of the Revised Project as reflected in and approved by the Decision, the Applicant shall promptly notify the Board in writing, describing such change. If the change is determined to be substantial the Board shall hold a public hearing and issue a decision within the time frames set forth in G.L. c. 40A, § 9, and Section 10.3 of the Acton Zoning Bylaw. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in such hearing. A decision of the Board granting or denying the change may be appealed to the superior court pursuant to M.G.L. c. 40A, § 17. Without limitation, in the event any subsequent permitting process (such as the environmental review of the Revised Project by the Secretary of Environmental Affairs, the state wetlands review of the Revised Project by the Conservation Commission or DEP, the groundwater discharge permit review of the Revised Project by DEP, or other state or federal governmental approvals) results in a change to the Final Approved Plans which triggers the need for further waivers from local bylaws, rules or regulations, any such matter shall be treated as a project change and the procedures of this section shall be followed.

Q.2 In no case shall the Applicant be allowed to implement a change that increases the number of units or changes the mix of affordable and market rate units without submitting a new application and undergoing a new public hearing and decision process.

R. Lapse Date

Pursuant to Section 10.3.7 of the Acton Zoning Bylaw, this Decision shall lapse if a substantial use thereof has not commenced except for good cause or, in the case of a permit for construction, if construction has not commenced except for good cause, within two years from the date of grant hereof.

The Board may grant an extension of the two year lapse date for good cause shown, which may include for example delay (notwithstanding the Applicant's diligent efforts) in the issuance of a governmental permit or approval or delay occasioned by a third party appeal of a governmental permit or approval required for the Revised Project.

S. Notice to Abutters

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

T. Dispute Resolution

T.1 The evolution of the Revised Project and the provisions of this Decision represent a collaborative effort by the Applicant and the Town of Acton to expedite the construction of a substantial development of new rental and condominium affordable

housing in the Town of Acton. Consistent with this intent, the Board encourages all interested parties to use their respective best efforts, through voluntary, timely, expedited dispute resolution, to resolve any material disputes that may arise as a result of this Decision, prior to litigation, time deadlines permitting.

U. Self-Correcting Provision

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

V. Planned Production Plan

- V.1 The Applicant has committed to use – and this Decision requires the Applicant to use its best efforts to ensure that the affordable units created hereunder shall qualify, under LIP as now in force or hereafter amended, so as to be included in the Town’s Subsidized Housing Inventory compiled by the Department of Housing and Community Development (“DHCD”) for use by the Housing Appeals Committee as provided in 760 CMR 31.04(1).
- V.2 Without limitation, in the event that the Age Related Restrictions set forth in this Decision (including without limitation Conditions O.4 through O.9) are inconsistent with the Local Initiative Program pursuant to 760 CMR 45.00 as now in force or hereafter amended, or would otherwise cause DHCD to disapprove the affordable units as Local Initiative Units which shall be included in the Town’s Subsidized Housing Inventory, then the Applicant shall cooperate with the Board and shall use best efforts to assist the Board to modify or amend such restrictions in a way that ensures that the affordable units will be counted as Local Initiative Units which shall be included in the Town’s Subsidized Housing Inventory, provided such changes occur to prior to the conveyance of the first Condominium Unit out from the Developer to a bona fide third party purchaser, and provided further that the Applicant shall not be required to make any changes that will have a material adverse impact on the development of the project, its financing or its economic return..
- V.3 In order for the units authorized under the Decision to continue to be credited toward the Town of Acton’s low and moderate income housing for the duration of the use restriction, nothing in this Decision shall prevent the issuance by the Building Commissioner of conditional building permits pursuant to 780 CMR 111.13, conditioned by the Building Commissioner upon conformance with the requirements of this Decision, the provisions of the State Building Code, and other applicable state and federal governmental requirements.

3.4 LIMITATIONS

The scope of this Decision is limited as follows:

- 3.4.1 This Decision applies only to the Site identified in this decision and to the proposed improvements, use, and activity as shown on the Plan.
- 3.4.2 Other approvals or permits required by the Bylaw, other governmental boards, agencies, or bodies having jurisdiction shall not be assumed or implied by this decision.

4 **APPEALS**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, § 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Acton Planning Board

Roland Bartl, AICP, Town Planner
for the Town of Acton Planning Board

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

Eva Taylor, Town Clerk

Date

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Engineering Administrator	Municipal Properties Director
Town Clerk	Conservation Administrator	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Historical Commission	Assistant Assessor
Town Counsel		

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EXHIBIT 1
AMENDMENT TO MOA

AMENDMENT TO MEMORANDUM OF AGREEMENT

This ____ Amendment to Memorandum of Agreement (“____ Amendment”) is made this ____ day of _____, 2006 by, between and among **Woodlands at Laurel Hill, LLC**, a Massachusetts limited liability company with a principal place of business at 676 Elm Street, Suite 300, Concord, MA 01742 (“Woodlands”); _____, a _____ with a principal place of business at (“Rental Entity”); _____ a _____ qualified to do business in Massachusetts, with a principal place of business at _____ (“Condo Entity”); and the **Town of Acton** (“Town”), acting by and through its Board of Selectmen, with an address of 472 Main Street, Acton, Massachusetts 01720 (“Board of Selectmen”).

WHEREAS, the Acton Zoning Board of Appeals (the “ZBA”) issued a Comprehensive Permit dated December 19, 2005, filed with the Acton Town Clerk on December 20, 2005, and recorded with the Middlesex South Registry of Deeds (“MSRD”) at Book 47074, Page 265, to Woodlands for a residential development project under G.L. c. 40B consisting of a Rental Component and a Condominium Component together called the Revised Project all as defined in the decision (the “Comprehensive Permit”).

WHEREAS, in connection with the Revised Project, Woodlands entered into a Memorandum of Agreement dated March 2005 with the Town of Acton acting by and through its Board of Selectmen with respect to payments to the Town of Acton in accordance with G.L. c. 44, § 53A, toward police, fire and emergency public safety infrastructure improvements for North Acton (the “Mitigation”), including a First Amendment to Memorandum of Agreement dated May 9, 2005, a Second Amendment to Memorandum of Agreement dated September 26,

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

WHEREAS, the Acton Planning Board has granted Woodlands a special permit for the construction of the Condominium Component of the Revised Project as contemplated by the Memorandum of Agreement, which is recorded with the Middlesex South District Registry of Deeds in Book _____, Page _____, and the Middlesex North District Registry of Deeds in Book _____, Page _____, which Woodlands seeks to transfer to the Condo Entity (the "Special Permit").

WHEREAS, as a condition to the Special Permit, any transferee of the Special Permit must execute a Transfer Agreement and an Amendment to the Memorandum of Agreement, agreeing to be bound, jointly and severally with the Rental Entity, to perform the obligations of the Memorandum of Agreement, in particular, the mitigation payment and construction obligations under Sections 4 and 5, as if one entity were developing the entire Revised Project as originally contemplated.

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

1. Assignment and Assumption of Memorandum of Agreement

In conjunction with the transfer of the Condominium Component of the Revised Project to the Condo Entity, the Rental Entity and the Condo Entity hereby reaffirm and (a) assume all of Woodlands' liabilities and obligations under the Memorandum of Agreement, (b) agree that the

Rental Entity and the Condo Entity shall each be jointly and severally liable for all of the obligations of Woodlands under the Memorandum of Agreement (including without limitation the Mitigation payment provisions of Section 4 and the construction obligations under Section 5, all as amended) as if one entity were developing the entire Revised Project as originally contemplated.

2. Authority

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

3. Counterparts

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

4. Successors and Assigns

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

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

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

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

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

_____ (official signature and seal of notary)

My commission expires _____

By: _____
Name: _____
Its Duly Authorized: _____

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, SS.

On this ____ day of _____, 2006, before me, the undersigned Notary Public, personally appeared _____ as aforesaid, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as a duly authorized _____ of _____.

_____ (official signature and seal of notary)

My commission expires _____

By: _____
Name: _____
Its Duly Authorized: _____

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
_____, SS.

On this ____ day of _____, 2006, before me, the undersigned Notary Public,
personally appeared _____, as aforesaid, and proved to me
through satisfactory evidence of identification, which was _____, to
be the person whose name is signed on the preceding or attached document and acknowledged to
me that he signed it voluntarily for its stated purpose as the duly authorized
_____ of _____.

_____(official signature and seal of notary)

My commission expires _____

WOODLANDS AT LAUREL HILL, LLC

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

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this ____ day of _____, 2006, before me, the undersigned Notary Public, personally appeared David E. Hale, Manager as aforesaid, and proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as a duly authorized member of Woodlands at Laurel Hill, LLC.

_____ (official signature and seal of notary)

My commission expires _____

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EXHIBIT 2
AFFORDABLE HOUSING DEED RIDER

LOCAL INITIATIVE PROGRAM
AFFORDABLE HOUSING DEED RIDER

*For Projects in Which
Affordability Restrictions Survive Foreclosure*

made part of that certain deed (the "Deed") of certain property (the "Property") from _____ ("Grantor") to _____ ("Owner") dated _____, 200__. The Property is located in the City/Town of _____ (the "Municipality").

RECITALS

WHEREAS, the Grantor is conveying that certain real property more particularly described in the Deed to the Owner at a consideration which is less than the fair market value of the Property; and

WHEREAS, the Property is part of a project which was: [check all that are applicable]

- (i) granted a Comprehensive Permit under Massachusetts General Laws Chapter 40B, Sections 20-23, from the Board of Appeals of the Municipality or the Housing Appeals Committee and recorded/filed with the _____ County Registry of Deeds/Registry District of Land Court (the "Registry") in Book _____, Page _____/Document No. _____ (the "Comprehensive Permit");
- (ii) subject to a Regulatory Agreement among _____ (the "Developer"), [] Massachusetts Housing Finance Agency ("MassHousing"), [] the Massachusetts Department of Housing and Community Development ("DHCD") [] the Municipality; and [] _____, dated _____ and recorded/filed with the Registry in Book _____, Page _____/as Document No. _____ (the "Regulatory Agreement"); and
- (iii) subsidized by the federal or state government under _____, a program to assist construction of low or moderate income housing the "Program"; and

WHEREAS, pursuant to the Program, eligible purchasers such as the Owner are given the opportunity to purchase residential property at less than its fair market value if the purchaser agrees to certain use and transfer restrictions, including an agreement to occupy the property as a principal residence and to convey the property for an amount not greater than a maximum resale price, all as more fully provided herein; and

WHEREAS, _____ (singly, or if more than one entity is listed, collectively, the “Monitoring Agent”) is obligated by the Program or has been retained to monitor compliance with and to enforce the terms of this Deed Rider, and eligible purchasers such as the Owner may be required to pay to the Monitoring Agent, or its successor, a small percentage of the resale price upon the Owner’s conveyance of the Property, as set out in the Regulatory Agreement and as more fully provided herein; and

WHEREAS, the rights and restrictions granted herein to the Monitoring Agent and the Municipality serve the public’s interest in the creation and retention of affordable housing for persons and households of low and moderate income and in the restricting of the resale price of property in order to assure its affordability by future low and moderate income purchasers.

NOW, THEREFORE, as further consideration for the conveyance of the Property at less than fair market value, the Grantor and the Owner, including his/her/their heirs, successors and assigns, hereby agree that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by, the Municipality and the Monitoring Agent, and, if DHCD is a party to the Regulatory Agreement and is not the Monitoring Agent, by DHCD.

1. Definitions. In this Deed Rider, in addition to the terms defined above, the following words and phrases shall have the following meanings:

Affordable Housing Fund means a fund established by the Municipality for the purpose of reducing the cost of housing for Eligible Purchasers or for the purpose of encouraging, creating, or subsidizing the construction or rehabilitation of housing for Eligible Purchasers or, if no such fund exists, a fund established by the Municipality pursuant to Massachusetts General Laws Chapter 44 Section 53A, et seq.

Applicable Foreclosure Price shall have the meaning set forth in Section 7(b) hereof.

Appropriate Size Household means a household containing a number of members equal to the number of bedrooms in the Property plus one.

Approved Capital Improvements means the documented commercially reasonable cost of extraordinary capital improvements made to the Property by the Owner; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and that the original cost of such improvements shall be discounted over the course of their useful life.

Area means the Primary Metropolitan Statistical Area or non-metropolitan area that includes the Municipality, as determined by HUD, which in this case is _____.

Area Median Income means the most recently published median income for the Area adjusted for household size as determined by HUD. If HUD discontinues publication of Area Median

Income, the income statistics used by MassHousing for its low and moderate income housing programs shall apply.

Base Income Number means the Area Median Income for a four (4)-person household.

Chief Executive Officer shall mean the Mayor in a city or the Board of Selectmen in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.

Closing shall have the meaning set forth in Section 5(b) hereof.

Compliance Certificate shall have the meaning set forth in Section 6(a) hereof.

Conveyance Notice shall have the meaning set forth in Section 4(a) hereof.

Eligible Purchaser means an individual or household earning no more than eighty percent (80%) of Area Median Income (or, if checked [] _____ percent (___%) of Area Median Income, as required by the Program) and owning assets not in excess of the limit set forth in the Program Guidelines. To be considered an Eligible Purchaser, the individual or household must intend to occupy and thereafter must occupy the Property as his, her or their principal residence and must provide to the Monitoring Agent such certifications as to income, assets and residency as the Monitoring Agent may require to determine eligibility as an Eligible Purchaser. An Eligible Purchaser shall be a First-Time Homebuyer if required by the Program and as specified in the Regulatory Agreement.

First-Time Homebuyer means an individual or household, of which no household member has had an ownership interest in a principal residence at any time during the three (3)-year period prior to the date of qualification as an Eligible Purchaser, except that (i) any individual who is a displaced homemaker (as may be defined by DHCD) (ii) and any individual age 55 or over (applying for age 55 or over housing) shall not be excluded from consideration as a First-Time Homebuyer under this definition on the basis that the individual, owned a home or had an ownership interest in a principal residence at any time during the three (3)-year period.

Foreclosure Notice shall have the meaning set forth in Section 7(a) hereof.

HUD means the United States Department of Housing and Urban Development.

Ineligible Purchaser means an individual or household not meeting the requirements to be eligible as an Eligible Purchaser.

Maximum Resale Price means the sum of (i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus (ii) the Resale Fee and any necessary marketing expenses (including broker's fees) as may have been approved by the Monitoring Agent, plus (iii) Approved Capital Improvements, if any (the original cost of which shall have been discounted over time, as calculated by the Monitoring Agent); provided that in no event shall the

Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser earning seventy percent (70%) of the Area Median Income (or, if checked [] _____ percent (___%) of Area Median Income, as required by the Program) for an Appropriate Size Household could obtain mortgage financing (as such purchase price is determined by the Monitoring Agent using the same methodology then used by DHCD for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not be less than the purchase price paid for the Property by the Owner unless the Owner agrees to accept a lesser price.

Monitoring Services Agreement means any Monitoring Services Agreement for monitoring and enforcement of this Deed Rider among some or all of the Developer, the Monitoring Agent, the Municipality, MassHousing and DHCD.

Mortgage Satisfaction Amount shall have the meaning set forth in Section 7(b) hereof.

Mortgagee shall have the meaning set forth in Section 7(a) hereof.

Program Guidelines means the regulations and/or guidelines issued for the applicable Program and controlling its operations, as amended from time to time.

Resale Fee means a fee of _____% [no more than two and one-half percent (2.5%)] of the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, to be paid to the Monitoring Agent as compensation for monitoring and enforcing compliance with the terms of this Deed Rider, including the supervision of the resale process.

Resale Price Certificate means the certificate issued as may be specified in the Regulatory Agreement and recorded with the first deed of the Property from the Developer, or the subsequent certificate (if any) issued as may be specified in the Regulatory Agreement, which sets forth the Resale Price Multiplier to be applied on the Owner's sale of the Property, as provided herein, for so long as the restrictions set forth herein continue. In the absence of contrary specification in the Regulatory Agreement the Monitoring Agent shall issue the certificate.

Resale Price Multiplier means the number calculated by dividing the Property's initial sale price by the Base Income Number at the time of the initial sale from the Developer to the first Eligible Purchaser. The Resale Price Multiplier will be multiplied by the Base Income Number at the time of the Owner's resale of the Property to determine the Maximum Resale Price on such conveyance subject to adjustment for the Resale Fee, marketing expenses and Approved Capital Improvements. In the event that the purchase price paid for the Property by the Owner includes such an adjustment a new Resale Price Multiplier will be recalculated by the Monitoring Agent by dividing the purchase price so paid by the Base Income Number at the time of such purchase, and a new Resale Price Certificate will be issued and recorded reflecting the new Resale Price Multiplier. A Resale Price Multiplier of _____ is hereby assigned to the Property.

Term means in perpetuity, unless earlier terminated by (i) the termination of the term of affordability set forth in the Regulatory Agreement or Comprehensive Permit, whichever is longer; or (ii) the recording of a Compliance Certificate and a new Deed Rider executed by the purchaser in form and substance substantially identical to this Deed Rider establishing a new term.

2. Owner-Occupancy/Principal Residence. The Property shall be occupied and used by the Owner's household exclusively as his, her or their principal residence. Any use of the Property or activity thereon which is inconsistent with such exclusive residential use is expressly prohibited.

3. Restrictions Against Leasing, Refinancing and Junior Encumbrances. The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent; provided that this provision shall not apply to a first mortgage granted on the date hereof in connection with this conveyance from Grantor to Owner securing indebtedness not greater than one hundred percent (100%) of the purchase price. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not received the requisite written consent of the Monitoring Agent shall be paid upon demand by Owner to the Municipality for deposit to its Affordable Housing Fund. The Monitoring Agent or Municipality may institute proceedings to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees. Upon recovery, after payment of costs, the balance shall be paid to the Municipality for deposit to its Affordable Housing Fund. In the event that the Monitoring Agent consents for good cause to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceed the actual carrying costs of the Property as determined by the Monitoring Agent, shall be paid to the Municipality for deposit to its Affordable Housing Fund.

4. Options to Purchase. (a) When the Owner or any successor in title to the Owner shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Owner shall notify the Monitoring Agent and the Municipality in writing of the Owner's intention to so convey the Property (the "Conveyance Notice"). Upon receipt of the Conveyance Notice, the Monitoring Agent shall (i) calculate the Maximum Resale Price which the Owner may receive on the sale of the Property based upon the Base Income Number in effect as of the date of the Conveyance Notice and the Resale Price Multiplier set forth in the most recently recorded Resale Price Certificate together with permissible adjustments for the Resale Fee, marketing expenses and Approved Capital Improvements (as discounted), and (ii) promptly begin marketing efforts. The Owner shall fully cooperate with the Monitoring Agent's efforts to locate an Eligible Purchaser and, if so requested by the Monitoring Agent, shall hire a broker selected by the Monitoring Agent to assist in locating an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price after entering a purchase and sale agreement. Pursuant to such agreement, sale to the Eligible Purchaser at the Maximum Resale Price shall occur within ninety (90) days after the Monitoring Agent receives the Conveyance Notice or such further time as reasonably requested to arrange for details of closing. If the

Owner fails to cooperate in such resale efforts, including a failure to agree to reasonable terms in the purchase and sale agreement, the Monitoring Agent may extend the 90-day period for a period commensurate with the time the lack of cooperation continues, as determined by the Monitoring Agent in its reasonable discretion. In such event, the Monitoring Agent shall give Owner written notice of the lack of cooperation and the length of the extension added to the 90-day period.

(b) The Monitoring Agent shall ensure that diligent marketing efforts are made to locate an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price within the time period provided in subsection (a) above and to enter the requisite purchase and sale agreement. If more than one Eligible Purchaser is located, the Monitoring Agent shall conduct a lottery or other like procedure to determine which Eligible Purchaser shall be entitled to enter a purchase and sale agreement with Owner and to purchase the Property. Preference shall be given to Appropriate Size Households. The procedure for marketing and selecting an Eligible Purchaser shall be approved as provided in the Regulatory Agreement and any applicable Program Guidelines. If an Eligible Purchaser is located within ninety (90) days after receipt of the Conveyance Notice, but such Eligible Purchaser proves unable to secure mortgage financing so as to be able to complete the purchase of the Property pursuant to the purchase and sale agreement, following written notice to Owner within the 90-day period the Monitoring Agent shall have an additional sixty (60) days to locate another Eligible Purchaser who will enter a purchase and sale agreement and purchase the Property by the end of such sixty (60)-day period or such further time as reasonably requested to carry out the purchase and sale agreement.

(c) In lieu of sale to an Eligible Purchaser, the Monitoring Agent or the Municipality or designee shall also have the right to purchase the Property at the Maximum Resale Price, in which event the purchase and sale agreement shall be entered, and the purchase shall occur within ninety (90) days after receipt of the Conveyance Notice or, within the additional sixty (60)-day period specified in subsection (b) above, or such further time as reasonably requested to carry out the purchase and sale agreement. Any lack of cooperation by Owner in measures reasonably necessary to effect the sale shall extend the 90-day period by the length of the delay caused by such lack of cooperation. The Monitoring Agent shall promptly give Owner written notice of the lack of cooperation and the length of the extension added to the 90-day period. In the event of such a sale to the Monitoring Agent or Municipality or designee, the Property shall remain subject to this Deed Rider and shall thereafter be sold or rented to an Eligible Purchaser as may be more particularly set forth in the Regulatory Agreement.

(d) If an Eligible Purchaser fails to purchase the Property within the 90-day period (or such further time determined as provided herein) after receipt of the Conveyance Notice, and the Monitoring Agent or Municipality or designee does not purchase the Property during said period, then the Owner may convey the Property to an Ineligible Purchaser no earlier than thirty (30) days after the end of said period at the Maximum Resale Price, but subject to all rights and restrictions contained herein; provided that the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider which the Owner agrees to execute, to secure execution by the Ineligible Purchaser and to record with the Deed; and further provided that, if more than one Ineligible Purchaser is ready, willing and able to purchase the Property the

Owner will give preference and enter a purchase and sale agreement with any individuals or households identified by the Monitoring Agent as an Appropriate Size Household earning more than eighty percent (80%) but less than one hundred twenty percent (120%) of the Area Median Income.

(e) The priority for exercising the options to purchase contained in this Section 4 shall be as follows: (i) an Eligible Purchaser located and selected by the Monitoring Agent, as provided in subsection (b) above, (ii) the Municipality or its designee, as provided in subsection (c) above, and (iii) an Ineligible Purchaser, as provided in subsection (d) above.

(f) Nothing in this Deed Rider or the Regulatory Agreement constitutes a promise, commitment or guarantee by DHCD, MassHousing, the Municipality or the Monitoring Agent that upon resale the Owner shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

(g) The holder of a mortgage on the Property is not obligated to forbear from exercising the rights and remedies under its mortgage, at law or in equity, after delivery of the Conveyance Notice.

5. Delivery of Deed. (a) In connection with any conveyance pursuant to an option to purchase as set forth in Section 4 above, the Property shall be conveyed by the Owner to the selected purchaser by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Conveyance Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the deed from the Owner to the selected purchaser, (v) such additional easements, restrictions, covenants and agreements of record as the selected purchaser consents to, such consent not to be unreasonably withheld or delayed, (vi) the Regulatory Agreement, and (vii), except as otherwise provided in the Compliance Certificate, a Deed Rider identical in form and substance to this Deed Rider which the Owner hereby agrees to execute, to secure execution by the selected purchaser, and to record with the deed. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the selected purchaser or the enforceability of the restrictions herein.

(b) Said deed, including the approved Deed Rider, shall be delivered and the purchase price paid (the "Closing") at the Registry, or at the option of the selected purchaser, exercised by written notice to the Owner at least five (5) days prior to the delivery of the deed, at such other place as the selected purchaser may designate in said notice. The Closing shall occur at such time and on such date as shall be specified in a written notice from the selected purchaser to the Owner, which date shall be at least five (5) days after the date on which such notice is given, and no later than the end of the time period specified in Section 4(a) above.

(c) To enable Owner to make conveyance as herein provided, Owner may, if Owner so desires at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, all instruments with respect thereto to be recorded simultaneously with the delivery of said deed. Nothing contained herein as to the Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the Property in accordance with the terms hereof, as to use of proceeds to clear title or as to the election of the selected purchaser to take title, nor anything else in this Deed Rider shall be deemed to waive, impair or otherwise affect the priority of the rights herein over matters appearing of record, or occurring, at any time after the recording of this Deed Rider, all such matters so appearing or occurring being subject and subordinate in all events to the rights herein.

(d) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value shall be adjusted as of the date of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the selected purchaser.

(e) Full possession of the Property free from all occupants is to be delivered at the time of the Closing, the Property to be then in the same condition as it is in on the date of the execution of the purchase and sale agreement, reasonable wear and tear only excepted.

(f) If Owner shall be unable to give title or to make conveyance as above required, or if any change of condition in the Property not included in the above exception shall occur, then Owner shall be given a reasonable time not to exceed thirty (30) days after the date on which the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition herein required. The Owner shall use best efforts to remove any such defects in the title, whether voluntary or involuntary, and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Owner that such defect has been cured or that the Property has been so restored. The selected purchaser shall have the election, at either the original or any extended time for performance, to accept such title as the Owner can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which case the Owner shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Owner shall, unless the Owner has previously restored the Property to its former condition, either:

(A) pay over or assign to the selected purchaser, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonably expended by the Owner for any partial restoration, or

(B) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the selected purchaser a credit against the purchase price, on delivery of the deed,

equal to said amounts so retained by the holder of the said mortgage less any amounts reasonably expended by the Owner for any partial restoration.

6. Resale and Transfer Restrictions. (a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold by the Owner, or the Owner's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the selected purchaser of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and unless a certificate (the "Compliance Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent which Compliance Certificate refers to the Property, the Owner, the selected purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the selected purchaser, which new Deed Rider is identical in form and substance to this Deed Rider.

(b) The Owner, any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate as conclusive evidence that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and may record such Compliance Certificate in connection with the conveyance of the Property.

(c) Within ten (10) days of the closing of the conveyance of the Property from the Owner to the selected purchaser, the Owner shall deliver to the Monitoring Agent a copy of the Deed of the Property, including the deed rider, together with recording information. Failure of the Owner, or Owner's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

7. Survival of Restrictions Upon Exercise of Remedies by Mortgagees. (a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Monitoring Agent, the Municipality and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Monitoring Agent and the Municipality as set forth in this Deed Rider, and to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Deed Rider.

(b) The Owner grants to the Municipality or its designee the right and option to purchase the Property upon receipt by the Municipality of the Foreclosure Notice. In the event that the Municipality intends to exercise its option, the Municipality or its designee shall purchase the Property within one hundred twenty (120) days of receipt of such notice, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured

by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Property by the Owner)(the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over such foreclosing Mortgagee's mortgage, and further subject to a Deed Rider identical in form and substance to this Deed Rider which the Owner hereby agrees to execute, to secure execution by the Municipality or its designee, and to record with the deed, except that (i) during the term of ownership of the Property by the Municipality or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible Purchaser), and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by the Municipality or its designee, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the Municipality or its designee or the enforceability of the restrictions herein.

(c) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure ~~(except that if any Mortgagee whose mortgage is senior in priority to the foreclosing Mortgagee's mortgage, within thirty (30) days of its receipt of the Foreclosure Notice, delivers its own Foreclosure Notice with respect to such senior mortgage, the junior Mortgagee shall not conduct a foreclosure sale or accept a deed in lieu of foreclosure with respect to its mortgage without the prior written consent of such senior mortgagee).~~ The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over the foreclosing Mortgagee's mortgage, and further subject to a Deed Rider, as set forth below.

(d) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the Municipality for its Affordable Housing Fund after (i) a final judicial

determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the Municipality is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the Municipality. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the Municipality.

(e) If any Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider, which the Mortgagee that has so acquired the Property agrees to annex to the deed and to record with the deed, except that (i) during the term of ownership of the Property by such Mortgagee the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or the enforceability of the restrictions herein.

(f) If any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to a Deed Rider identical in form and substance to this Deed Rider, which the foreclosing Mortgagee agrees to annex to the deed and to record with the deed, except that (i) if the purchaser at such foreclosure sale or assignee of a deed in lieu of foreclosure is an Ineligible Purchaser, then during the term of ownership of the Property by such Ineligible Purchaser, the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such third party purchaser at the foreclosure sale, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Deed Rider which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance to such third party purchaser or the enforceability of the restrictions herein.

(g) Upon satisfaction of the requirements contained in this Section 7, the Monitoring Agent shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as provided in Section 6(b) hereof as conclusive evidence that the conveyance of the Property pursuant to this Section 7 is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider.

(h) The Owner understands and agrees that nothing in this Deed Rider or the Regulatory Agreement (i) in any way constitutes a promise or guarantee by MassHousing, DHCD, the Municipality or the Monitoring Agent that the Mortgagee shall actually receive the Mortgage

Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

(i) If a Foreclosure Notice is delivered after the delivery of a Conveyance Notice as provided in Section 4(a) hereof, the procedures set forth in this Section 7 shall supersede the provisions of Section 4 hereof.

8. Covenants to Run With the Property. (a) This Deed Rider, including all restrictions, rights and covenants contained herein, is an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws, having the benefit of Section 32 of such Chapter 184, and is enforceable as such. This Deed Rider has been approved by the Director of DHCD.

(b) In confirmation thereof the Grantor and the Owner intend, declare and covenant (i) that this Deed Rider, including all restrictions, rights and covenants contained herein, shall be and are covenants running with the land, encumbering the Property for the Term, and are binding upon the Owner and the Owner's successors in title and assigns, (ii) are not merely personal covenants of the Owner, and (iii) shall enure to the benefit of and be enforceable by the Municipality, the Monitoring Agent and DHCD and their successors and assigns, for the Term. Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts have been satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land and that any requirements of privity of estate have been satisfied in full.

9. Notice. Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the following entities and parties in interest at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Municipality:

Grantor:

Owner:

Monitoring Agent[s]

(1)

(2)

Others:

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

10. Further Assurances. The Owner agrees from time to time, as may be reasonably required by the Monitoring Agent, to furnish the Monitoring Agent upon its request with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and other material information pertaining to the Property and the Owner's conformance with the requirements of the Comprehensive Permit, Program and Program Guidelines, as applicable.

11. Enforcement. (a) The rights hereby granted shall include the right of the Municipality and the Monitoring Agent to enforce this Deed Rider independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality and the Monitoring Agent.

(b) Without limitation of any other rights or remedies of the Municipality and the Monitoring Agent, or their successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Deed Rider, the Municipality and Monitoring Agent shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Deed Rider;
- (ii) money damages for charges in excess of the Maximum Resale Price, if applicable;
- (iii) if the violation is a sale of the Property to an Ineligible Purchaser except as permitted herein, the Monitoring Agent and the Municipality shall have the option to locate an Eligible Purchaser to purchase or itself purchase the Property from the Ineligible Purchaser on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Deed

Rider; specific performance of the requirement that an Ineligible Purchaser shall sell, as herein provided, may be judicially ordered.

(iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Deed Rider in the absence of a Compliance Certificate, by an action in equity to enforce this Deed Rider; and

(v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchaser.

(c) In addition to the foregoing, the Owner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Monitoring Agent and/or the Municipality in the event successful enforcement action is taken against the Owner or Owner's successors or assigns. The Owner hereby grants to the Monitoring Agent and the Municipality a lien on the Property, junior to the lien of any institutional holder of a first mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. The Monitoring Agent and the Municipality shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Deed Rider against the Owner and to assert such a lien on the Property to secure payment by the Owner of such fees and expenses. Notwithstanding anything herein to the contrary, in the event that the Monitoring Agent and/or Municipality fails to enforce this Deed Rider as provided in this Section, DHCD, if it is not named as Monitoring Agent, shall have the same rights and standing to enforce this Deed Rider as the Municipality and Monitoring Agent.

(d) The Owner for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Monitoring Agent and the Municipality the right to take all actions with respect to the Property which the Monitoring Agent or Municipality may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Owner to prevent, remedy or abate any violation of this Deed Rider.

12. Monitoring Agent Services; Fees. The Monitoring Agent shall monitor compliance of the Project and enforce the requirements of this Deed Rider. As partial compensation for providing these services, a Resale Fee [] shall [] shall not be payable to the Monitoring Agent on the sale of the Property to an Eligible Purchaser or any other purchaser in accordance with the terms of this Deed Rider. This fee, if imposed, shall be paid by the Owner herein as a closing cost at the time of Closing, and payment of the fee to the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser, his, her or their successors or assigns, for which the Monitoring Agent may bring an action and may seek an attachment against the Property.

13. Actions by Municipality. Any action required or allowed to be taken by the Municipality hereunder shall be taken by the Municipality's Chief Executive Officer or designee.

14. Severability. If any provisions hereof or the application thereof to any person or circumstance are judicially determined, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

15. Independent Counsel. THE OWNER ACKNOWLEDGES THAT HE, SHE, OR THEY HAVE READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF HIS, HER OR THEIR CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

16. Binding Agreement. This Deed Rider shall bind and inure to the benefit of the persons, entities and parties named herein and their successors or assigns as are permitted by this Deed Rider.

17. Amendment. This Deed Rider may not be rescinded, modified or amended, in whole or in part, without the written consent of the Monitoring Agent, the Municipality and the holder of any mortgage or other security instrument encumbering all or any portion of the Property, which written consent shall be recorded with the Registry.

Executed as a sealed instrument this _____ day of _____, 200_.

Grantor:

Owner:

By _____

By _____

EXHIBIT 3
MONITORING SERVICES AGREEMENT

MONITORING SERVICES AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2006 by and between _____ a Massachusetts limited liability company, having an address at _____ ("Developer"), and the Acton Community Housing Corporation with an address at Acton Town Hall, 472 Main Street, Acton, MA 01720 ("Monitoring Agent").

Background

A. The Town of Acton Planning Board ("Planning Board"), has granted a Senior Residence Special Permit ("Special Permit"), for a project containing 64 condominium units off of _____ in Acton, Massachusetts ("Project") and the Project.

B. Pursuant to the Special Permit, six (6) units in the Project will be affordable units (the "Affordable Units"). The Affordable Units are required to be sold to households whose incomes do not exceed 80% of the median income in the Boston Primary Metropolitan Statistical Area; (the "Base Income") as published from time to time by the Department of Housing and Community Development or its successor agency ("DHCD"). In addition, the Affordable Units will be subject to deed riders governing resale (the "Affordability Requirement").

C. Pursuant to Special Permit, the Developer must retain the Monitoring Agent to perform monitoring and enforcement services regarding compliance of the Project with the Affordability Requirement.

Agreement

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

1. Monitoring Services. Monitoring Agent shall monitor the compliance of the Project with the Affordability Requirements, including:
 - (i) Review of the substantive compliance of the Project with the Affordability Requirement.
 - (ii) Review of income certifications, deeds and deed riders with respect to initial sales of Affordable Units.
 - (iii) Certification to the owners of Affordable Units as to the maximum sales price that a household having the Base Income can pay for an Affordable Unit.
 - (iv) Monitoring of resales of Affordable Units for compliance with the terms of the applicable deed riders and issuance of certifications, as appropriate, approving resales and the payment of recapture amounts.

- (v) Monitoring of local preference criteria for the sale and resale of the Affordable Units, in accordance with the Special Permit and Section 9B.12.7 of the Town of Acton Zoning Bylaw, or as the Acton Community Housing Corporation may further define, from time to time.

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

2. Monitoring Services Fee. The Monitoring Agent shall receive a fee of One Thousand (\$1,000.00) Dollars from the Developer at the time of execution of this Agreement. Such fee shall constitute payment for the services of the Monitoring Agent with respect to the initial sales of the Affordable Units. Thereafter, as provided in the deed rider attached to the deed of each Affordable Unit, the Monitoring Agent shall receive a fee of three (3.00%) percent of the Maximum Resale Price, to be paid by each Seller of the Affordable Unit at each closing as a condition precedent to closing, for the services with respect to monitoring the sales transaction as provided in this Agreement. Such fee shall be payable for all transfers of Affordable Units, including those to an Eligible Purchaser or any other purchaser. If the Monitoring Agent's fee is not paid at the time of closing, the Monitoring Agent shall be entitled to payment from the purchaser of the Affordable Unit and to bring an action and seek an attachment of the interest of the purchaser in the Affordable Unit.

3. Enforcement Services. In the event of serious or repeated violations of the substantive or reporting requirements of the Affordability Requirements with respect to the marketing and sale of the Affordable Units by the Developer,, the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Developer, including, without limitation, notice to the Planning Board or legal action to compel the Developer to comply with the requirements of the said Affordability Requirements.

In the event of a violation of the provisions of a deed rider, the Monitoring Agent shall have the right, at its discretion, to take appropriate enforcement action against the Unit owner or the Unit owner's successors in title, including, without limitation, notice to the Planning Board or legal action to compel the Unit owner to comply with the requirements of the relevant deed rider. The form of deed rider will provide for payment by the Unit owner of fees and expenses (including legal fees) of the Monitoring Agent in the event enforcement action is taken against the Unit owner thereunder. The Monitoring Agent shall be entitled to seek recovery of its fees and expenses incurred in enforcing a deed rider against the Unit owner and in any action to seek an attachment of the relevant Unit to secure payment of such fees and expenses.

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

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

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

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

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

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

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

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

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

DEVELOPER:

By: _____

MONITORING AGENT

Approved:

ACTON BOARD OF SELECTMEN

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