

Development Agreement

COMPREHENSIVE DEVELOPMENT AGREEMENT

This Comprehensive Development Agreement (the "Agreement") is made as of the 23rd day of June, 1989, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation having its usual place of business at the Acton Town Hall, Acton, Massachusetts, acting by and through its Board of Selectmen, and Roy C. Smith, as Trustee of High Street PCRC Trust u/d/t dated March 5, 1985, recorded with the Middlesex South Registry of Deeds in Book 18611, Page 409 and the Middlesex South Registry District of the Land Court as Document No. 758061 (the "Trust"). Roy C. Smith individually and as Trustee of the Trust, any corporation, partnership or other entity undertaking a development pursuant to the terms of this Agreement in which Roy C. Smith has an interest and any of their successors or assigns shall hereinafter be referred to collectively as the "Developer".

RECITALS

Reference is made to the following facts:

- A. At a Special Town Meeting held in 1984, the Developer presented a written proposal (the "Development Proposal") with respect to the development of several parcels of land in the Town of Acton containing approximately 71 acres as more particularly described on Exhibit A attached hereto (the "Development Property"), seeking the approval of Town Meeting to designate the Development Property as a Planned Conservation Residential Community (PCRC) District pursuant to Section 9 of the Town Zoning By-Law. The Town Meeting made such a designation as to the Development Property.
- B. By deed dated March 25, 1985, recorded with the Middlesex South Registry of Deeds at Book 16067, Page 278, Roy C. Smith, individually, acquired a portion of the Development Property consisting of an approximately 18 acre parcel of land as more particularly described in the deed thereto. Roy C. Smith, individually, conveyed this 18 acre parcel by deed dated October 8, 1987, recorded with said Deeds in Book 18611, Page 445, to Roy C. Smith, as Trustee of the Trust.
- C. By deed dated October 8, 1987 from Norman R. Veenstra, recorded with said Deeds in Book 18611, Page 437, Roy C. Smith, as Trustee of the Trust acquired another portion of the Development Property consisting of three parcels of land containing approximately 39 acres more or less, as more particularly described in said deed.

- D. By deed October 8, 1987 from Norman R. Veenstra, filed with said Registry District as Document No. 758060, and recorded with said Deeds in Book 1036, Page 179, Roy C. Smith, as Trustee of the Trust, acquired the balance of the Development Property consisting of a parcel of land containing approximately 14 acres more or less, as more particularly described in the deed thereto.
- E. Roy C. Smith, as Trustee of the Trust, is the owner of record as of the date hereof of the Development Property.
- F. The Developer agreed at public meetings held with the Town of August 25, 1987, and September 2, 1987, to develop the Development Property substantially in accordance with the terms and conditions of the Development Proposal as generally illustrated on a plan entitled "Overall Land Use Plan of Land in Acton Mass," dated October 16, 1984, and in accordance with the terms and conditions of a special permit to be issued by the Town acting through its Planning Board under the PCRC District, and in no other manner.
- G. On October 9, 1987, the Developer and the Town entered into a Development Agreement (the "Prior Development Agreement"), a Release Agreement, a First Option Agreement and a Subordinated Option Agreement with respect to the Development Property, all of which are incorporated by reference herein. The Prior Development Agreement required the Developer and the Town enter into a Comprehensive Development Agreement upon the issuance of the special permit described in the preceding paragraph (F).
- H. On March 4, 1989, the Town, acting through its Planning Board, approved, subject to certain terms and conditions, the Developer's application for a Planned Conservation Residential Community special permit filed with a plan entitled "Audubon Hill in Acton, Mass.," dated August 1, 1988 (the "Special Permit"). On March 15, 1989, the Town, acting through its Conservation Commission, issued to the Developer an Order of Conditions with respect to the Development Property.
- I. The Developer and the Town now wish to coordinate the terms of all prior permits, conditions, orders and agreements by this Comprehensive Development Agreement to govern the relationship of the parties with respect to the Development Property.

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

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

ARTICLE I: GENERAL PROVISIONS

1.1 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conservation Restriction: means the conservation restriction substantially in the form of Exhibit D that is to

be placed on the Development Property by the Developer pursuant to the terms of this Agreement.

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

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

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

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

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

First Option Agreement: means the option agreement entered into between Roy C. Smith, as Trustee of the Trust and the Town on October 9, 1987 concerning the Option A Property, recorded with the Registry of Deeds at Book 18611, Page 459, and incorporated herein by reference.

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

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

Improvements: means those buildings, structures and other improvements, including without limitation landscaping and paving, which shall be constructed on the Development

Property in accordance with the Special Permit, the Plan, the Order of Conditions and this Agreement.

Maximum Resale Price: means, as to any Restricted Unit, the price, as of a given date, equal to seventy five percent (75%) of the Appraised Value of such Unit, plus fifty percent (50%) of the cost of any appraisal required hereunder.

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

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

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

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

Option A Property: means that portion of the Development Property shown as "Option A Property" on the Site Plan excluding, however, any and all Units in the Project.

Option B Property: means that portion of the Development Property shown as "Option B Property" on the Site Plan.

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

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

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

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

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

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

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

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

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

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

Senior Citizen: means any natural Person fifty-five years of age or older at the time of the sale, lease, assignment, license, resale, sublease or other transfer or conveyance of a Unit to such Person.

Site Plan: means a plan entitled "The Site Plan of Audubon Hill in Acton, Mass." dated June 30, 1989 for land owned by Roy C. Smith, as Trustee of the Trust,

drawn by Acton Survey & Engineering, Inc., attached hereto as Exhibit A and incorporated herein by reference.

South Phase: means that portion of the Project which includes construction of (i) the improvements to the Conservation Area, (ii) the Senior Center, (iii) the "Southern Phase" (units 1-32 and 34,36,38,40,42,44,46 and 48) and (iv) the landscaping, utilities, access roads and other facilities appurtenant to the Senior Center and the aforesaid Units as contemplated in the Plan.

Special Permit: means the Planned Conservation Residential Community Special Permit granted on March 4, 1989, by the Acton Planning Board to Roy C. Smith, as Trustee of the Trust subject to and with the benefit of certain conditions, modifications, waivers and limitations, received and filed by the Acton Town Clerk on March 6, 1989 and recorded with the Registry of Deeds at Book 19722, Page 511 and the Registry District as Document No. 795847.

Subordinated Option Agreement: means the option agreement entered into between Roy C. Smith, as Trustee of the Trust and the Town on October 9, 1987, concerning the Option B Property, recorded with the Registry of Deeds at Book 18611, Page 480 and with the Registry District as Document No. 758067, incorporated herein by reference.

Subphase: means any portion of any Phase, as described in the Plan.

Town: means the Town of Acton, acting through its Board of Selectmen.

Town Counsel: means Norman P. Cohen, Esquire, Palmer & Dodge, One Beacon Street, Boston, Massachusetts 02108, or such successor counsel, duly admitted to the practice of law in the Commonwealth of Massachusetts, as is designated by the Town.

Town Designee: means any person or entity designated by the Town in accordance with this Agreement to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or any designee of the Developer. The Town hereby designates the Town Manager, or his or her assignee as the initial Town Designee and hereby confirms that the Town Designee shall have authority to give the notices, approvals

and certifications and to take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

Unit: means a condominium unit so designated in the Master Deed of the Condominium.

Unrestricted Unit: means a Unit not subject to the restrictions contained in this Agreement with regard to resale price and purchase eligibility imposed on Restricted Units.

1.2 General Provisions.

(a) this Agreement shall supercede the Prior Development Agreement recorded with the Registry of Deeds at Book 18611, Page 447 and with the Registry District as Document No. 758064. Upon execution of this Agreement and its recording with the Registry of Deeds and the Registry District, the Town and Developer shall execute a document in recordable form releasing the Prior Development Agreement and a Release Agreement between Roy C. Smith, as Trustee of the Trust and the Town, dated October 9, 1987 and recorded with the Registry of Deeds in Book 11684, Page 367 (the "Prior Release Agreement"), which Prior Development Agreement and Prior Release Agreement shall thereupon be void and of no further effect. Promptly following execution of the aforesaid release, the Developer shall record, at its own expense, said release with the Registry of Deeds and the Registry District.

(b) Upon the Completion of Construction of the entire Project in accordance with (i) the terms and conditions of this Agreement, the Special Permit, the Plan, the Order of Conditions and any subsequent agreements or permits between the Town and the Developer concerning the Project, and (ii) all applicable laws, ordinances, bylaws and codes, the Town agrees to execute a release of this Agreement in recordable form, which the Developer may record at its sole expense with the Registry of Deeds and the Registry District. Notwithstanding any provision of the foregoing to the contrary, upon the release of this Agreement, the following independant documents and agreements shall remain in full force and effect according to their terms and the aforesaid release shall not alter or affect any of the following documents and agreements: the Conservation Deed Restriction (Exhibit D), the Lease of the Senior Center (Exhibit H), the Easement to Averitt Land (Exhibit I), the Condominium Documents (Exhibit J) and the Purchase and Sale Agreement (Exhibit K).

ARTICLE II: DEVELOPMENT

2.1. The Development.

The Developer covenants, promises and agrees, for itself, its successors and assigns, to develop the Project as follows:

(a) to undertake and complete the development of the Project in accordance with this Agreement, the Plan and any plans and specifications referred to in the Special Permit;

(b) to comply in all respects with the terms and conditions of the Special Permit, the Order of Conditions and all other agreements between the Town and the Developer; and

(c) to comply with all building, zoning and other applicable laws, ordinances and regulations.

The Project shall be completed to the satisfaction of the Town on or before the date which is three (3) years from the date of this Agreement, provided, however that such date may be extended for up to one (1) year by the Town Planning Board as provided in the Special Permit and as further provided in this Agreement.

2.2. Conservation Land.

(a) The Developer acknowledges and agrees to subject that portion of the Development Property shown as "Conservation Open Space" on the Plan and Site Plan to the Conservation Restriction in the form attached hereto as Exhibit D, which Conservation Restriction shall be recorded against the Development Property prior to the commencement of construction of any Improvements or any portion of the Development Property. The Developer shall record the Conservation Restriction within thirty (30) days after the date of this Agreement. ✓

(b) The Developer shall grant to the Town an easement appurtenant to the Averitt Land, a perpetual easement for ingress and egress over, under and across the location shown generally on the Site Plan as "40 Ft. Wide Access Easement" and in the form of Exhibit C attached hereto (the "Access Easement"). Use of the Access Easement is to be limited strictly to access from High Street to the Averitt land for use of the Averitt Land for passive recreational uses and all maintenance on the Averitt Land for passive recreational uses; provided, however, that no such access shall be granted prior to conveyance of the first Unit.

Town of Averitt

Such easement shall be granted prior to the commencement of construction of any of Units.

- (c) The Developer will construct, in accordance with procedures required by the Town Engineering Administrator, at the Developer's sole expense, (i) a gravel road within the area of the Access Easement for the passage of vehicles from the area shown as "40 Ft. Wide Access Easement" on the Plan, and (ii) a five car gravel parking lot on the aforesaid Averitt Land at a location to be designated by the Town (collectively, the "Gravel Drives"). *the word*
- (d) The Developer will, at its sole expense design and lay out a system of trails (the "Trails") over the existing Averitt Land and clear a burnt area of that land, pursuant to standards, conditions and procedures required by the Conservation Administrator. *long*
- (e) The Developer shall present to the Town no later than sixty (60) days from the date hereof, a survey prepared by a registered land surveyor and approved by the Conservation Administrator, indicating the location of the Access Easement, Gravel Drives, and the Trails. The Developer shall obtain the Conservation Administrator's approval of the location of each of the Access Easement, the Gravel Drives, and the Trails. ✓
- (f) The Developer shall obtain Security running to the Town for the full cost, as determined by the Conservation Administrator, of the Improvements contemplated in this Section 2.2. ✓
- (g) The Developer shall complete the Improvements described in this Section 2.2 to the satisfaction of the Conservation Administrator on or before the completion of the South Phase or December 31, 1990, whichever occurs sooner provided, however, that if completion of such Improvements is delayed due to action or inaction attributable to the Town, such date shall be extended by a period equal to the delay attributable to the Town.
- (h) Within ten (10) days after (i) the Developer has given the Town Designee notice that the Developer has recorded the Conservation Restriction and supplied the Town Designee with a certified copy of the Conservation Restriction containing all appropriate recording information and (ii) the Security is issued, the Town shall execute, in a ✓

form suitable for recording, a release of the First Option Agreement and deliver such release to the Developer. The Developer at its sole expense shall promptly record such release with the Registry of Deeds and the Registry District and provide the Town with a certified copy of such release as recorded.

(i) Upon the completion of the Improvements contemplated under this Section 2.2., the Developer shall give the Conservation Administrator written notice of such completion and within ten (10) days of such notice, the Conservation Administrator shall inspect the Improvements and the Conservation Administrator shall determine whether these Improvements comply with the terms and conditions set out in Section 2.2 of this Agreement. If the Conservation Administrator determines that the Improvements are acceptable to the Town, the Town shall execute a release of the Security provided pursuant to Section 2.2(f), above and deliver such release to the Developer. *Tom*

(j) If the Conservation Administrator disapproves of any of the Improvements described in this Section 2.2, he or she shall so notify the Developer, in writing, specifying the reasons therefor. In the event of such disapproval, the Developer shall promptly correct any defects noted by the Conservation Administrator and the Conservation Administrator shall then reinspect said Improvements as provided in Section 2.2(i) above. Should the Developer fail to correct any such defect within ninety (90) days following the receipt of notice, the Town may, at its option, proceed to cause such defect to be corrected and draw upon the Security provided pursuant to Section 2.2(f) above for payment therefor. *Tom*

ARTICLE III: RESTRICTION ON CONDOMINIUM DEVELOPMENT

3.1. Establishment of Condominium.

(a) Concurrent with the execution of this Agreement, the Developer shall deliver to the Town Designee, with a copy to the Town Counsel, the Condominium Documents which shall be attached hereto as Exhibit F and incorporated herein by reference. The forms of the Condominium Documents, including without limitation, the declaration of trust of the Condominium trust, the by-laws of the Condominium trust and the master deed and Unit deeds shall be

subject to the approval of the Town; provided, however, that following execution of this Agreement and approval by the Town of the Condominium Documents, Town approval shall be required only for any amendment or other revision to the Condominium Documents which may be inconsistent with the provisions of either Section 3.3 or Section 3.4 of this Agreement. The Condominium Documents shall be consistent with the provisions and intent of this Agreement. The Condominium shall be comprised of seventy (70) residential Units, a community recreation building and the Senior Center.

The Condominium Documents shall provide that the Developer shall not exercise its voting rights under the Condominium Documents to amend any of the provisions of the Condominium Documents to be inconsistent with this Agreement without the prior written consent of the Town.

The approval by the Town of each amendment or revision of the Condominium Documents shall be conclusively established by an endorsement thereon signed and acknowledged by the Town Designee or any member of the Board of Selectmen of the Town stating that such document has been approved by the Town, except that only the first Unit deed and not subsequent Unit deeds need contain such endorsement.

- (b) Following execution of this Agreement, the Developer at its sole expense shall record the declaration of the Condominium trust, the by-laws of the Condominium and the Condominium master deed, all as approved by the Town, and take all other actions necessary to lawfully and validly submit the Development Property to the provisions of Chapter 183A of the Massachusetts General Laws, on or before the date thirty (30) days after Completion of Construction and in no event later than July 31, 1992 or as extended pursuant to this Agreement and the Special Permit. The Developer shall promptly deliver to the Town copies of all of the Condominium Documents as recorded, indicating the place of recording of same in the Registry of Deeds and the Registry District.

3.2. Improvements on the Development Property.

- (a) Except as otherwise expressly provided in this Agreement, no building, structure or other improvement shall be constructed or maintained on the Development Property, nor any alteration made

to the exterior of any building located on the Development Property except as contemplated or permitted by the terms of the Special Permit, the Plan, the Order of Conditions and this Agreement.

- (b) The Developer shall commence construction of the Project by constructing the South Phase. Excepting construction of access roads, utilities, preliminary site preparation work and the community center, the Developer shall not commence construction of any subsequent Phase of the Project until the Completion of Construction of twenty seven (27) Units in the South Phase.

3.3. Sale of Condominium Units by Developer.

- (a) Every Unit deed conveying an interest in a Unit shall contain a statement that such Unit is subject to the terms and conditions of Article III hereof, and shall contain a reference to the place of recording of this Agreement with the Registry of Deeds and the Registry District.
- (b) Every sale, assignment, resale or other conveyance of an interest in every Unit whether by the Developer or its successors, heirs or assigns, for a period of forty (40) years from the date of this Agreement, shall be to (i) a Senior Citizen, or (ii) a Senior Citizen and his or her spouse, or (iii) a member of a Senior Citizen's Immediate Family provided that the Unit so purchased shall be the residence of such Senior Citizen, and his or her spouse, if any. Each Senior Citizen or Senior Citizen and spouse acquiring an interest in a Unit shall utilize such Unit as their residence. Each Unit deed shall contain a statement incorporating the provisions of this Section 3.3(b).
- (c) At least thirty-five percent (35%) of the Units constructed on the Development Property, shall be Restricted Units, sold by the Developer subject to the resale restrictions described in this Agreement and the Guidelines attached hereto. These restrictions shall be incorporated into the Condominium's master deed and shall inure to the benefit of and be enforceable by the Town, its successors and assigns.
- (d) Without limitation the Developer will at all times use its best efforts to market and sell all Units.
- (e) Every unit deed conveying a Restricted Unit or an interest therein shall recite the resale

restrictions described in Section 3.4, and contain a statement that such Unit is a Restricted Unit subject to said provisions and of the Special Permit, and shall include such provisions within such deed or a reference to the place of recording of such documents with the Registry of Deeds and the Registry District.

- Handwritten mark: *Handwritten mark*
- (f) The Developer agrees to convey five (5) Units to the Acton Housing Authority (the "AHA") at the election of the AHA for the price of sixty five thousand dollars (\$65,000) for each Unit on the terms and conditions set forth on the purchase and sale agreement attached hereto as Exhibit K, subject to approval by the Executive Office of Community Development. The Developer further agrees that three (3) of the Units referred to in the previous sentence shall be constructed as part of the South Phase of the Project and two (2) of such Units shall be constructed as part of any subsequent Phase of the Project. The Units to be so conveyed have been designated in five (5) Right of First Refusal agreements as executed by the Developer as of March 8, 1989 and attached hereto as Exhibit G. Upon execution of this Agreement, the terms and conditions of this Agreement and the attached Exhibit K shall govern the sale of such Units and the aforesaid five Right of First Refusal Agreements shall thereupon be void and of no further effect. Sixty (60) days prior to the estimated Completion of Construction of each Unit to be conveyed to the AHA, the Developer shall give the Town Designee and the AHA notice of the estimated date of the Completion of Construction of such Unit. The date of conveyance of the deed to each such Unit shall be thirty (30) days following the Completion of Construction of such Unit unless an earlier date is agreed to in writing by the parties. The Developer and the Town agree that time shall be of the essence of this agreement to convey the aforesaid Units. The aforesaid Units shall be Restricted Units for the purposes of this Agreement.
- (g) The Developer may only sell, convey or otherwise transfer a Unit for which the Developer has received a Certificate of Occupancy. Notwithstanding the foregoing sentence, the Developer may execute a Purchase and Sale Agreement for a Unit prior to receiving a Certificate of Occupancy. Until such time as Completion of Construction of the Senior Center has occurred, the Town shall grant Certificates of Occupancy only for

Units constructed in the South Phase in conformity with this Agreement. The Town shall grant no further Certificates of Occupancy with respect to Units in the Project until the Completion of Construction of twenty seven (27) Units in the South Phase and the Senior Center has occurred.

3.4. Conditions for Resale.

- (a) Age. For a period of forty (40) years from the date of this Agreement, no Unit or any interest therein shall be sold, assigned, conveyed or otherwise transferred, and no attempted sale, assignment, conveyance or other transfer shall be valid, unless the Person or Persons acquiring such Unit or interest shall be (i) one or two Senior Citizens, or (ii) a Senior Citizen and his or her spouse, or (iii) a member of a Senior Citizen's Immediate Family and such Senior Citizen or Senior Citizen and his or her spouse shall agree to utilize such Unit as their principal residence.
- (b) Price. For a period of forty (40) years from the date of this Agreement no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit for and in connection with the transfer of such Restricted Unit, is equal to or less than the Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such Unit. In the event that (i) the price restrictions contained herein are not extended as provided in the Condominium Documents or are withdrawn prior to the expiration of such forty (40) year period, or (ii) the Restricted Unit is sold pursuant to the terms and conditions of Section 3.4(h) below, the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town, or such successor entity as is designated by the Town Board of Selectmen, to be held and invested in a trust as directed by the Town Board of Selectmen for the benefit of the Town's Senior Citizens. Upon payment of such excess sum to said trust, the Town Designee shall execute a certificate, in recordable form, acknowledging receipt of such monies. The interest on and corpus of said trust shall be applied only as directed by the Town Board of Selectmen.

- (c) Income. For a period of forty (40) years from the date of this Agreement, no Restricted Unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.
- (d) Rental Prohibition. No Restricted Unit shall be leased, sublet or licensed except to a Senior Citizen or Senior Citizen and spouse who would qualify as an Eligible Purchaser pursuant to the terms and conditions of this Agreement. The aggregate of the annual compensation paid by any tenant or tenants as rental for a Restricted Unit shall not exceed the "net expense" incurred by the owner of such Unit with respect to owning such Unit. "Net expense" shall be defined as the sum of: the owner's annual mortgage payments, including principal and interest; condominium fees and assessments; insurance maintained on the Unit; a return not to exceed ten percent (10%) annual interest on the owner's downpayment; the cost of improvements, repairs and the like made by the owner to the Unit, amortized over their reasonable useful life; and any utility fees incurred by the owner in connection with the Unit.

Prior to the rental of any Restricted Unit, the owner of said Unit shall provide the Town Designee with evidence, reasonably satisfactory to the Town Designee, sufficient to substantiate the preceding requirements of this Section 3.4(d).

- (e) Affidavit of Compliance with Restrictions. Prior to the sale of any Restricted Unit by the Developer, its successors or assigns, or any subsequent owner of such Restricted Unit (a "Seller"), the Seller shall deliver to the Town Designee, as further provided below, an affidavit executed under oath and acknowledged by both the Seller and the Person or Persons contemplating the purchase of the Unit (the "Prospective Purchaser"), identifying the Unit in question, the Seller and the Prospective Purchaser thereof and the names and ages of all persons in the Prospective Purchaser's household, and stating and affirming:

(i) That the Prospective Purchaser is an Eligible Purchaser, including a copy of a Mortgage Lender's Certification thereof; and

(ii) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. In the case of a proposed sale by a Seller other than the Developer, such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of a date not later than the date set for closing of the proposed sale.

(f) Certificate from Town: At least twenty (20) days prior to the closing of any sale, conveyance or transfer of any Restricted Unit, the Seller shall deliver the Approval Documents to the Town Designee. The Approval Documents shall be delivered to the Town Designee at its mailing address set forth on the first page of this Agreement or such other address for the Town as shall appear of record, marked to the attention of the Town Designee then appearing of record. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the Prospective Purchaser of the Unit and the Seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate to the satisfaction of the Town Designee that the annual household income of the Prospective Purchaser, and the sale or re-sale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the Seller of the Approval Documents, the Town Designee shall prepare and deliver to the Seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

(i) a certificate in recordable form signed and acknowledged by the Town Designee referring to the Unit in question, the Seller thereof, the Prospective Purchaser thereof, and the purchase price therefor, and stating:

- (a) that the proposed sale or transfer of the Unit to the Prospective Purchaser is in compliance with the restrictions contained in this Agreement; or
 - (b) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or
- (ii) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income and assets of the Prospective Purchaser, and the sale or re-sale price, as the case may be, comply with the restrictions contained herein, and specifying each particular instance in which the Approval Documents are not satisfactory. In such event the Unit may not be sold to such prospective purchaser unless and until the Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (i) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any Restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in subsection (i) above referring to such Unit and such certificate so executed by the Town Designee shall be treated as conclusive evidence of the matters stated therein and may be recorded in connection with conveyance of the Unit, provided that, in the case of a certificate issued pursuant to Section 3.4(f)(i) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided further, that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days from the date of the certificate of the Town Designee as provided above. If the conveyance of such Unit pursuant to such Approval Documents and certificate does not occur within one hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the Seller and Prospective Purchaser may execute and deliver to the Town Designee additional affidavits in the form provided above, or other

revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

Within ten (10) days of the closing of the sale of any Restricted Unit, the purchaser of such Unit shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded, together with information as to the place of recording thereof in the public records. Failure of the purchaser to comply with the preceding sentence shall not affect the validity of such Unit deed.

(g) Covenants to Run With the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Development Property and shall be binding upon the Developer, its successors and assigns, for the benefit of and enforceable by the Town for a period of forty (40) years. Without limiting any other rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.

(h) Lack of Eligible Purchaser.

(i) In the event that the owner of a Restricted Unit places a Restricted Unit for resale on the open market by so notifying the Town Designee and, at such owner's option, by listing such Unit with a real estate brokerage company (including the listing of the Restricted Unit with a Multiple Listing Service) and after utilization of all due diligence, and the expiration of one hundred and eighty (180) days from the date of the original notice to the Town Designee, the owner is unable to secure an Eligible Purchaser to purchase the Restricted Unit for the Maximum Resale Price, then and only in such instance may the Restricted Unit be sold without compliance with the foregoing resale price restrictions, which restrictions shall

then be forever released as to the particular restricted Unit.

- (ii) In the event a Restricted Unit is sold as described in Section 3.4(h)(i), the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town to be held in trust for the benefit of the Town's Senior Citizens as provided in Section 3.4(b) hereof.
- (iii) Prior to the sale of any Restricted Unit pursuant to this Section 3.4(h), the Seller shall deliver to the Town Designee an affidavit executed under oath and acknowledged by both the Seller and the Prospective Purchaser of such Unit identifying the Unit, the Seller and the Prospective Purchaser and the names and ages of all persons in the Prospective Purchaser's household and stating and affirming:
 - (a) The date that the Seller notified the Town Designee that the Unit was listed for sale and the date such Unit was listed with a real estate brokerage company, if any; the name and address of such real estate company; and the specific time periods of such listing, including reference to the multiple listing service wherein the Unit was so listed for sale.
 - (b) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. Such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.
 - (c) That such Unit was offered to each Person listed on the waiting list kept by the Town Designee pursuant to Exhibit E hereto and that none of such Persons listed was either (i) an Eligible Purchaser or (ii) ready, willing and

able to purchase the Unit on customary terms for the Maximum Resale Price.

(iv) Within ten (10) days of delivery of the documents required pursuant to Section 3.4(h)(iii) hereof, the Town Designee shall execute a certificate similar in form and content to the certificate described in Section 3.4(f) herein, except that such certificate shall also state:

(a) That the proposed sale or transfer of the Unit to the Prospective Purchaser is approved although the sale is not in compliance with the intent of the resale price restrictions contained in this Agreement;

(b) That the Town Designee on behalf of the Town waives the right to enforce the resale price restrictions set forth herein or any of them in connection with the proposed sale or transfer; and

(c) That the Town acknowledges receipt of funds required to be paid pursuant to section 3.4(h)(ii) herein and that the Unit in question is no longer a Restricted Unit and is released as a Restricted Unit and from these resale price restrictions in perpetuity.

3.5 Use.

- (a) The use of each Unit shall be restricted to residential housing only. Furthermore, no Unit shall be the residence of more than two (2) Persons who are both Senior Citizens or are a Senior Citizen and spouse, except that a parent or the parents of a Unit owner may reside in such Unit in addition to the aforesaid two (2) Persons, and provided, further, that upon receipt of written permission from the Condominium Association, a member of the Unit owner's Immediate Family (other than spouse) may reside in such Unit upon a showing of good cause. Overnight guests may be allowed as provided in the Condominium Documents.
- (b) No Unit shall be rented, licensed, or sublet except to Senior Citizens or a Senior Citizen and spouse and, furthermore, a Restricted Unit shall be rented, licensed or sublet only as provided in Section 3.4.(d), above.

ARTICLE IV. SECURITY FOR PERFORMANCE OF
DEVELOPER'S OBLIGATIONS

4.1. As security for the performance of Developer's obligations hereunder, under this Agreement, the Special Permit, the Order of Conditions, and any other covenant and agreement with the Town, the Developer has done or shall do the following:

- (a) Post Security with the Planning Board. The purpose of such Security is to ensure that the Developer will construct all Improvements pursuant to Section 2.2 in accordance with the terms and conditions of this Agreement, the Special Permit and the Order of Conditions. The Planning Board shall determine the amount of the Security, the termination date of the Security, and shall administer the Security.
- (b) Pursuant to the First Option Agreement, the Developer has granted the Town Option A which, for a period of forty years, grants the Town the exclusive option to purchase the Option A Property and the improvements thereon, if any, and any rights appurtenant thereto for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 hereof.
- (c) Pursuant to the Subordinated Option Agreement, the Developer has granted the Town the exclusive option for a period of forty years to purchase all or any portion of the Option B Property and the improvements thereon, if any, and any rights appurtenant thereto, for a purchase price to be determined in accordance with the terms and procedures set forth in Section 8.3 of this Agreement.
- (d) The First Option Agreement and the Subordinated Option Agreement shall be merged into and made a part of this Agreement and the Town and Developer agree to execute and record with the Registry of Deeds and the Registry District, at the Developer's sole expense, an instrument releasing such Option Agreements concurrent with the execution and recording of this Agreement, provided that neither the First Option nor the Subordinated Option shall be released, in whole or in part, except in accordance with the provisions of this Agreement.

4.2. Encumbrances/Subordination. Developer agrees that prior to the Completion of Construction of the entire Project, Developer will not voluntarily convey, transfer, or otherwise dispose of the Development Property; and Developer

agrees that it will not mortgage, pledge or refinance the Development Property in such a manner as would prevent, or interfere with performance under this Agreement by Developer. Notwithstanding the foregoing, the Town hereby acknowledges that Option B shall be subject and subordinate to a certain Mortgage Agreement dated October 9, 1987, between Developer and Shawmut Bank, N.A. recorded with the Registry of Deeds at Book 18611, Page 473 and the Registry District as Document No. 758066, and to the interest of any other Construction Mortgage.

ARTICLE V. SENIOR CENTER

5.1 Construction of Senior Center. The Developer shall construct or cause to be constructed as a common area and facility in the Condominium a Senior Center on the Development Property as contemplated in and in conformity with the Plan, the Special Permit, this Agreement and the Order of Conditions. The Senior Center shall be constructed as part of and concurrently with the South Phase and in no event shall Completion of Construction of the Senior Center be later than one hundred eighty (180) days after the first building permit is issued for the North Phase.

5.2 Lease to Town. Upon the Completion of Construction of the Senior Center, the Developer shall execute, deliver to the Town and record with the Registry of Deeds and/or the Registry District, as appropriate, at the Developer's sole expense, a lease between the Town and the Condominium Association for the Senior Center upon the terms and conditions contained in the Lease attached as Exhibit H, incorporated herein by reference (the "Lease"). Such Lease and the Condominium Documents shall provide that in no event shall the Town be required to pay any form of condominium or common fees, special assessments or the like.

5.3 Maintenance of Senior Center. The Developer, or, following its creation, the Condominium Association, shall be responsible for the maintenance and repair of the exterior of the Senior Center (including, without limitation, the roof and load bearing walls) and the grounds surrounding it at its sole expense. The Condominium Documents shall provide for a sufficient budget and reserves for such maintenance. The Town shall be responsible for maintaining the interior of the Senior Center at its own expense. The Town shall establish reasonable standards for all such maintenance. In the event that the Town alters or expands the Senior Center, for example, by expanding the kitchen or the Senior Center's sewage demands, such action shall be contingent upon Town approval and authorization of each such action and shall be at no cost to the Condominium Association.

5.4 Insurance.

(a) Until the Completion of Construction of the Senior Center and execution of the Lease, the Developer or the Condominium Association shall keep the Senior Center insured in accordance with Article VII of this Agreement.

(b) Upon Completion of Construction and execution of the Lease, the Town shall keep the Senior Center insured as provided in the Lease.

ARTICLE VI. TRANSFER AND MORTGAGE OF DEVELOPER'S INTEREST

6.1. No Transfer. The Developer agrees that it will not, prior to conveyance of all Units in the Condominium to unaffiliated third parties, including the conveyance of the Senior Center to the Town or its nominee, make or suffer to be made any assignment or any other transfer of any of its interest in the Property or any portion thereof or in this Agreement, other than sales of Units in accordance with the provision of this Agreement, except with the prior written approval of the Town. In order to receive such approval by the Town, a transferee or transferees shall have expressly assumed, for themselves and their successors and assigns, by written instrument satisfactory to the Town, all obligations of the Developer provided in this Agreement, and all legal documents employed in affecting a transfer pursuant to this Section 6.1 shall have been submitted to and approved by the Town; provided, however, that Developer may grant one or more Construction Mortgages on the Property to secure the payment of any loan or loans obtained by the Developer from a Construction Lender and provided further, that Developer may grant a second mortgage to the Bank of New England which is subordinate to this Agreement, the First Option and the Subordinated Option. The Developer shall deliver a copy of any Construction Mortgage, construction loan agreement and the aforesaid second mortgage to the Bank of New England to the Town Designee upon the execution of each such document.

The fact that any transferee of, or any other successor in interest whatsoever to, the Property or any part thereof, shall, for whatever reason, not have expressly assumed all of the obligations of the Developer hereunder and all conditions and restrictions contained herein, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Town) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the Town of or with respect to any rights, conditions or restrictions with respect to the Development Property or the construction of the Improvements thereon; it being the intent of this section, together with other provisions of this

Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership of the Development Property shall operate, legally or practically, to deprive or limit the Town of or with respect to any such rights, conditions or restrictions provided in or resulting from this Agreement with respect to the Development Property and the construction of the Improvements thereon that the Town would have, had there been no such transfer or change. Therefore, in the absence of a specific written agreement by the Town to the contrary, no such transfer or approval thereof by the Town shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

6.2. Construction Mortgage; Rights and Obligations of Construction Lender:

- (a) No Construction Lender shall be deemed to have assumed or to be bound to perform the obligations of the Developer hereunder by reason of having acquired an interest in the Development Property for security purposes except as provided herein. A Construction Lender shall have the right to perform any action in order to cure or make good any default in the performance of the Developer's obligations under this Agreement, and the Town shall accept such performance by the Construction Lender to the same extent as if the same were performed by the Developer. If the Construction Lender shall acquire or succeed to the Developer's interests in the Development Property by reason of foreclosure or similar remedial action or upon conveyance of the Development Property in lieu of foreclosure, the Construction Lender shall be subject to only the obligations of the Developer accruing hereunder during the period in which the Construction Lender holds possession of the Property or owns the Developer's interest therein. The Town agrees that the Construction Lender may sell, assign or otherwise dispose of the Developer's interest to which it has so succeeded or which it has so acquired. Upon any such sale, assignment or disposition, such Construction Lender shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement after the effective date of such sale.

(b) If a Construction Lender shall by written notice to the Town notify the Town of the execution, delivery and recording of a Construction Mortgage, and of the name and address of the Construction Lender for notice purposes, and of the recording reference of its Construction Mortgage, and with such notice shall furnish to the Town a true copy of its Construction Mortgage, the Town agrees that from the date of such notice until such Construction Mortgage shall be discharged or released of record, the following provisions shall apply:

(i) There shall be no cancellation, surrender, termination or modification of this Agreement by joint action of the Town and the Developer, without in each case first securing the prior written consent of each such Construction Lender;

(ii) The Town shall, upon giving to the Developer any notice of default under this Agreement, simultaneously give a copy of such notice to each such Construction Lender, and no notice of default given to the Developer shall be effective until a copy thereof has been given to each such Construction Lender. Whenever pursuant to this Agreement notice is to be given to a Construction Lender, a notice addressed to such Construction Lender at its address specified in accordance with the foregoing provisions of this section and otherwise complying with the terms of the notice provisions of this Agreement shall conclusively be treated as having been "given" within the meaning of the respective provisions hereof calling for notice to a Construction Lender;

(iii) Each Construction Lender shall have the same period after such notice of default has been given to such Construction Lender, for remedying any default of the Developer in performance of any of its obligations hereunder or causing the same to be remedied, as is given the Developer after the giving of such notice to the Developer, plus an additional period of thirty (30) days, and if such default cannot with due diligence be cured within such additional thirty (30) day period, an additional time thereafter, provided that such cure is initiated during such additional thirty (30) day period and thereafter the curing of the same is

continuously prosecuted with diligence, and the Town shall accept such performance by such Construction Lender as if performed by the Developer.

- (iv) In the case of any such default by the Developer which is not susceptible of being cured by such Construction Lender, the Town agrees that it will take no action to obtain specific performance of this Agreement or to effect a termination of this Agreement by reason of such default without first giving to each such Construction Lender a reasonable period of time after notice under Subsection 6.2(b)(iii) either to obtain possession of the Development Property (including possession by receiver) and to cure such default, in the case of a default which can be cured when such Construction Lender has obtained possession, or to institute foreclosure proceedings and to complete such proceedings or otherwise to acquire the Developer's interest, in the case of a default which cannot be cured by such Construction Lender without first obtaining the interest of Developer in the Development Property; provided, however (1) that such Construction Lender shall not be required to continue such possession or to continue such foreclosure or other proceedings if said default shall be cured, (2) that the period for obtaining possession or acquiring the interest of the Developer by foreclosure or otherwise, as the case may be, shall be extended for any period during which such action is enjoined or stayed by a court of competent jurisdiction, (3) that such Construction Lender shall continue good faith efforts to perform all of the Developer's other obligations under this Agreement which are susceptible of being performed by such Construction Lender during the period of such forbearance, and (4) that nothing herein shall require any such Construction Lender to begin or continue such possession or foreclosure or other proceedings or preclude the Town from exercising (subject to the provisions of this Article VI) any rights or remedies under this Agreement with respect to any other defaults by Developer during the period of such forbearance;

- (v) In the event of the termination of this Agreement for any reason, or in the case of the rejection or disaffirmance of this Agreement pursuant to bankruptcy law or other law affecting creditors' rights, the Town agrees to enter into a new agreement with the Construction Lender effective as at the date of such termination, rejection or disaffirmance, upon all the covenants and agreements, terms, provisions and limitations contained in this Agreement (including, without limitation, this section), provided that such Construction Lender shall, in writing, request the Town to enter into such new agreement within sixty (60) days after the effective date of such termination, rejection or disaffirmance. The provisions of this clause shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this clause were a separate and independent agreement, and during the period ending 60 days after the effective date of the termination, rejection or disaffirmance of this Agreement, any such Construction Lender may quietly enjoy the Property without hindrance by the Town or any person or party claiming by, through or under the Town.
- (vi) Within fifteen (15) days after receiving a written request so to do from any such Construction Lender, the Town Designee shall deliver to such Construction Lender a statement, certified by an authorized official, stating either (1) that this Agreement is in full force and effect and no default hereunder has occurred and is then continuing, or (2) that this Agreement is then in default, specifying the nature and status of such default. If such statement is not delivered by the Town Designee to the Construction Lender so requesting it within fifteen (15) days after such request, such Lender may conclusively assume that this Agreement is in full force and effect and that no default hereunder has occurred and is then continuing.

ARTICLE VII. INSURANCE

7.1. Insurance Coverage:

- (a) The Developer or the Condominium Association shall, until the Completion of Construction of the entire Project and establishment of the Condominium, keep the Development Property, any buildings and improvements now or hereafter situated on the Development Property, and all of the insurable property and equipment in respect of the Development Property insured by fire and extended coverage insurance and builder's risk insurance to the same extent and amount which is normally required by institutional mortgagees for similar property and equipment. Such insurance shall be in amounts sufficient to comply with the co-insurance clause applicable to the location and character of the property or equipment, and, in any event, in amounts not less than the full insurable replacement value of the Development Property (other than land and foundations) and equipment. All such insurance shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts, and loss thereunder shall be payable to the Developer, the Construction Lender, and to the Town as their interests may appear.

The Developer shall also maintain in full force from the date upon which the Developer first enters the Development Property for any reason, and thereafter until the Completion of Construction of the entire Project a policy of comprehensive public liability insurance, including the so-called broadening endorsement (i.e., broad form) written on an occurrence basis, insuring against all claims for injury to or death of persons or damage to property on or about the Development Property or arising out of the use of the Development Property and under which the Town, such other persons as may be set forth in a notice given from time to time by the Town, any Construction Lender and the Developer are named as insureds, as their respective interests appear, each with the same effect as if separately insured. The minimum limits of liability of such insurance shall be: Bodily injury - \$1,000,000 per occurrence and in the aggregate over the term of the policy, and Property Damage - \$500,000 per occurrence. The Construction Lender shall have the right from time to time to increase such minimum limits upon notice to the Developer, provided that any such increase shall

provide for coverage in amounts similar to like coverage being carried on like property in the greater Boston area.

Furthermore, the Developer shall obtain or cause to be obtained appropriate Worker's Compensation insurance.

- (b) Each insurance policy shall be written to become effective at the time the Developer becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as the Developer is subject to such risk or hazard.
- (c) Certificates of such policies and renewals thereof shall be filed with the Town on or about the effective date thereof.

7.2. Town May Procure Insurance if Developer Fails To Do So:

In the event the Developer at any time refuses, neglects or fails to secure and maintain in full force and effect any or all of the insurance required pursuant to this Agreement, the Town at its option may, without limiting any other rights or remedies available to the Town, procure or renew such insurance, and all amounts of money paid therefor by the Town shall be payable by the Developer to the Town with interest thereon at the rate of ten percent (10%) per annum from the date the same were paid by the Town to the date of payment thereof by the Developer. Ten (10) days prior to procuring or renewing any such insurance, the Town shall notify the Developer or the Condominium Association, whichever is the named insured, of its intention to procure or renew such insurance. In the event that the Developer or Condominium Association, as appropriate, has not provided the Town with evidence satisfactory to the Town Designee of such insurance within five (5) days of such notice, the Town may proceed to procure such insurance. The Town shall notify the Developer in writing of the date, purposes, and amounts of any such payments made by the Town. In the event the Town has not received payment from the Developer for the cost of any such insurance procured or renewed by the Town, plus interest accrued within twenty (20) days from the giving notice of notice by the Town to the Developer, the Town shall have a continuing lien against the Development Property for such amounts and shall be entitled to record such lien against the Development Property.

7.3. Developer's Obligations With Respect To Restoration And Reconstruction:

- (a) Whenever any Improvement, or any part thereof, constructed on the Development Property shall be

damaged or destroyed prior to Completion of Construction of the entire Project and establishment of the Condominium for the entire Project, lease of the Senior Center to the Town, and thereafter until all Units have been sold by the Developer to Persons who are not Affiliated Parties of the Developer, the Developer shall (to the extent permitted under the Condominium Documents, if the Condominium shall have been established at such time, and with the consent of the Construction Lender) proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. All proceeds of any such claim and any other monies provided for the reconstruction, restoration or repair of any such Improvement, shall be deposited in a separate account of the Developer or of any Construction Lender.

- (b) The insurance money and any other proceeds so collected, to the extent such proceeds are available to the Developer, shall be used and expended for the purpose of fully repairing or reconstructing the Improvements which have been destroyed or damaged to a condition at least comparable to that existing at the time of such damage or destruction in accordance with the approved plans and specifications referred to in the Special Permit to the extent that such insurance money and other proceeds may permit. Any excess proceeds after such repair or reconstruction has been fully completed shall be retained by the Developer, subject to the rights of any Construction Lender, and subject to the Condominium Documents if the Condominium shall have been established at such time.
- (c) Subject to the provisions of the Condominium Documents if the Condominium shall have been established at such time, the Developer, with the written approval of the Town and any Construction Lender, may determine that all or any part of any such damage to or destruction of such Improvements shall not be reconstructed, restored, or repaired, and, in such event, the proceeds of any claims against insurers or others arising out of such damage or destruction, to the extent not used for such reconstruction, restoration, or repair shall be paid to the Developer, subject to the requirements of Article V with respect to insurance proceeds arising out of damage to or destruction of the Senior Center, and subject to the rights of any

Construction Lender. In such event, the covenants and restrictions contained in the Deed shall terminate as to those Improvements or portions thereof which have been damaged or destroyed and not reconstructed or restored.

- (d) Developer shall commence to reconstruct or repair any Improvements and equipment on the Property, or any portion thereof, which have been so destroyed or damaged within a period not to exceed three (3) months after the insurance or other proceeds with respect to such destroyed or damaged property have been received by the Developer or any Construction Lender (or, if the conditions then prevailing require a longer period, such longer period as the Town may reasonably approve in writing), to the extent such funds are available, and shall well and diligently and with dispatch prosecute such reconstruction or repair to completion, such reconstruction or repair in any event to be completed within eighteen (18) months after the start thereof.

ARTICLE VIII. RIGHTS, REMEDIES AND PROCEDURES
IN THE EVENT OF A BREACH BY DEVELOPER

8.1. Failure by Developer to Complete Construction,
Establish the Condominium or Discharge Encumbrances;
Unauthorized Transfers of Interest:

- (a) If the Developer shall fail to perform its obligations under this Agreement with respect to commencement and completion of construction of Improvements in accordance herewith and with the Special Permit, the Plan and the Order of Conditions; or
- (b) If the Developer shall fail to establish the Condominium as provided in Section 3.1 or shall employ for such purpose any procedure or document not in accordance with this Agreement or approved in writing by the Town; or
- (c) If the Developer shall place or suffer to be placed on the Development Property any encumbrance or lien not expressly permitted by this Agreement or authorized in writing by the Town which is not discharged within fifteen (15) days after the Developer receives notice of such encumbrance or lien, unless such encumbrance or lien cannot be discharged within such fifteen-day period, in which case the Developer shall commence to discharge such encumbrance or lien promptly within such fifteen

(15) day period and thereafter continuously and diligently complete the discharge of the same; or

- (d) If there is any transfer of the Development Property or any part thereof or interest therein in violation of this Agreement, or if the Developer shall fail to perform any other obligation under this Agreement;

Then the Town or Town Designee shall provide Developer with written notice of such noncompliance, which notice may be recorded.

Subject to the provisions set out below, and in the event that Developer fails to cure such noncompliance within sixty (60) days after receipt of notice of noncompliance unless such noncompliance cannot be cured within such sixty day period, in which case the Developer shall commence to cure such noncompliance within such sixty (60) day period and thereafter continuously and diligently complete the cure of the same, the Town has the right to exercise either Option A or Option B, or both options, as provided in this Agreement. Notwithstanding the foregoing, no failure of the Town to exercise Option A or Option B or both following a notice of noncompliance as set forth above, shall be construed as a waiver of any rights of the Town to exercise Option A or Option B or both under this Agreement;

The Town shall have the right to exercise Option A or Option B or both by a written notice given by the Town to Developer on or before the earlier to occur of October 9, 2027 or the date of recording of an instrument signed by the Town terminating either such Option. Such written notice shall specify which option the Town is exercising. The Developer shall deliver the deed to the property specified in the written notice to the Town on or before the sixtieth (60th) business day following the determination of the purchase price as set forth in Section 8.3 below, hereinafter referred to as the Closing Date.

After the Town has received written notice from the Developer of the existence of an institutional lender holding a first or second mortgage of record on all or any portion of the Development Property in accordance with the provisions of Article VI hereof, the Town shall send copies of all notices of noncompliance under this Article VIII to such institutional mortgagee of record, and each such institutional mortgagee shall have the right concurrently with Developer to cure any noncompliance. The curing of such noncompliance by any such institutional mortgagee of record shall be treated as performance by the Developer, but nothing herein shall be deemed to impose an obligation on any such

institutional mortgagee of record to cure any noncompliance under this Article VIII.

8.2. Zoning. In the event that the exercise of Option A and the acquisition of the Option A Property by the Town would create a nonconformity as to zoning for the Developer's approved development of the Development Property as set forth in this Agreement, the Town shall have no right to exercise Option A to purchase the Option A Property unless, within one hundred and eighty (180) days of its notice to the Developer of noncompliance with this Development Agreement or other permits, approvals or agreements as set forth in Subsection 8.1(a) above, the Town's Zoning Board of Appeals shall have granted a variance or such other zoning relief as may be necessary to cure the nonconformity created by the exercise of Option A and shall have followed the necessary procedures to grant and implement such variances or other zoning relief (which may, in some instances require taking a vote at a Town meeting).

8.3. Purchase and Sale Agreement. As soon as possible after the exercise of either Option, the Developer and the Town shall enter into a purchase and sale agreement substantially in the form of the attached Exhibit L, which agreement shall govern the consummation of the conveyance of the appropriate Option Property and shall incorporate the terms and conditions of this Agreement, including without limitation the Closing Date and Purchase Price. The Town and Developer agree that time shall be of the essence of this Agreement. The purchase price of the Option A Property, or the Option B Property, as the case may be, shall be the fair market value of such property as of the date of the exercise of the option pertaining to such property. In the event that the Town and the Developer cannot agree in writing on such purchase price within ten days of the exercise of either Option then the purchase price of either the Option A Property or the Option B Property, as the case may be, shall be determined by appraisal of the fair market value of such property as of the date of the exercise of the option as follows. Within twenty days of the Town's exercise of either Option A or Option B, or both, the Town and the Developer shall each designate an impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts, to determine the fair market value of the Option A Property or the Option B Property. The expense of each appraiser shall be the responsibility of the party designating the appraiser. The unanimous written decision of the two appraisers so chosen shall be conclusive and binding upon the Developer and the Town. If the two appraisers shall fail to reach a unanimous written determination as to the purchase price within thirty days, the two appraisers shall designate a third impartial real estate appraiser, duly licensed and qualified in the Commonwealth of Massachusetts. The expense of the third

appraiser so selected shall be divided equally between the Town and the Developer. The written decision of a majority of the three appraisers so selected shall be rendered within thirty days and shall be conclusive and binding on the Town and the Developer as to the purchase price.

8.4. Termination of Option A. Option A may be terminated in advance of its scheduled expiration date solely pursuant to Section 2.2 hereof and in no other manner.

8.5. Termination of Option B. Option B shall be terminated as follows. Upon the issuance of the first building permit for the South Phase, the Town shall execute a release, in recordable form, with respect to all of the property covered by the Subordinated Option, except for that portion of the Development Property on which the North Phase will be constructed. The first building permit for the South Phase shall be issued only after the Developer has constructed the access roads and utilities in accordance with the Plan, the Special Permit and the Order of Conditions and to the satisfaction of the Town Designee. Following the Completion of Construction of twenty seven (27) Units and the Senior Center in the South Phase, the Town shall execute a release, in recordable form, of the balance of the Option B Property, applicable to the North Phase. Following termination of the Town's rights under this Agreement with respect to all Phases of the Project, the Town shall, at the request of Developer, execute an instrument in recordable form, acknowledging termination of all of its rights under Option B, and Option B shall be of no further force and effect between the parties.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1. Waiver. Except as otherwise expressly provided herein, failure on the part of either party of this Agreement to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be deemed to be a waiver by such party of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof, and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval to or of any action by either party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent action by such party.

9.2. Invalidity of Particular Provisions. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall, at any time or to any extent, be invalid or unenforceable, the

remainder of this Agreement, or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

9.3. Provisions Binding. This Agreement may be cancelled, modified or amended only by a written instrument executed by both parties hereto.

9.4. Governing Law. This Agreement and the performance hereof shall be governed exclusively by the laws of Massachusetts, as the same may from time to time exist.

9.5. Recording. The parties hereto agree that a fully executed original of this Agreement shall be recorded with the Registry of Deeds and the Registry District. The entire cost of recording this Agreement shall be borne by the Developer.

9.6. Notices. Except as otherwise expressly provided herein, whenever notices, demands, requests or other communications shall or may be given under this Agreement either to the Town or to the Developer, the same shall be deemed adequately given if in writing and hand delivered or sent by registered or certified mail, postage prepaid, return receipt requested: If intended for the Town, addressed to it at the mailing address set forth on the first page of this Agreement, with copies to the Town Counsel; and, if intended for Developer, addressed to the Developer at the mailing address set forth on the first page of this Agreement, with copies to Richard M. Cotter, Esquire, Wilson, Orcutt, Cotter & Greenberg, P.C., 201 Great Road, Acton, Massachusetts 01720 and Stanley L. Gordon, Esquire, D'Agostine, Levine & Gordon, P.C., 268 Main Street, Acton, Massachusetts 01720; or to such other address or addresses as may from time to time hereafter be designated by either party to the other by like notice; and such notices shall be effective upon receipt if hand delivered or upon deposit in the U.S. mail if subsequently received.

The Town and the Developer each agree to give prompt written notice to the other party of all material notices received by it from third parties relating to the Development Property.

9.7. Interpretation. As used herein, the singular shall include the plural and the plural shall include the singular as the context may require. The article and section headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the

interpretation, construction or meaning of the provisions of this Agreement. References herein to successors and assigns of the Developer are not intended to constitute a consent to assignment or transfer by the Developer but refer only to those instances in which the Town shall have given consent thereto in accordance with the terms of this Agreement.

9.8. No Partnership. It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership, joint venture, or any association between the Town and the Developer, or cause the Town to be responsible in any way for the debts or obligations of the Developer.

9.9. Secondary Mortgage Market. So long as no substantive changes are required, the Town agrees to modify the restrictions contained herein and to be contained in the various documents required hereunder if the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation require such modifications as a condition precedent to its approval or agreement to acquire mortgages on the Units given or to be given in connection with the sale of such Units to persons or entities not a party to this Agreement.

9.10. Certificates of Completion and Release of Conditions. If and when the Developer shall have performed and complied with some or all of the agreements and conditions set forth in this Agreement, the Town shall upon request of the Developer deliver to the Developer one or more certificates of completion and release of such conditions, in recordable form, signed by the Town Designee and stating that the Developer has performed and complied with some or all of the agreements and conditions set forth in this Agreement to the satisfaction of the Town. Such a certificate shall be conclusive evidence of the Developer's performance of such agreements and compliance with such conditions as are stated in such certificate and of the release of the Developer and the Development Property from such conditions by the Town, provided, however, that such certificates shall not discharge or release the Developer, its successors or assigns or the Development Property from the terms, conditions, covenants and restrictions contained in the Condominium's master deed the Order of Conditions and in the Special Permit, or from building, zoning and other applicable laws, ordinances or regulations.

9.11. Authority of Developer. The Developer and any officer or trustee of the Developer executing this Agreement and any other documents required in connection with this Agreement or any conveyance to be made hereunder hereby warrant that they have the requisite power and authority to enter into and carry out this Agreement and all other documents executed and delivered in connection herewith or therewith. The execution

and delivery of this Agreement and all other documents executed and delivered in connection with this Agreement have been duly authorized in accordance with the Developer's Declaration of Trust (including any required action of all beneficiaries of the Trust) or by the Developer's board of directors, as applicable, to the extent required by law or the Developer's articles of organization, by-laws, or declaration of trust, as applicable and no other action of the Developer is required for the execution, delivery and performance of this Agreement, and all other documents executed and delivered in connection herewith or therewith.

9.12. Town's Consent. Where the consent or approval of the Town, the Town Designee or the Conservation Administrator is required under the terms and conditions of this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

9.13. Delay Beyond Developer's Control. In the event that the Developer's performance pursuant to the terms and conditions of this Agreement is delayed due to Town action or inaction, other governmental regulation, unusual scarcity of or inability to obtain labor or materials, strikes, labor difficulties, casualty, market conditions or other causes reasonably beyond the Developer's control, the dates for performance required hereunder shall be extended by a period equal to that of the aforesaid delay; in no event, however, shall the dates for performance required hereunder ever be extended by more than one year. The parties acknowledge, however, that the Town may extend any such date in its sole discretion, which discretion may not be unreasonably exercised for any reason, by granting written permission to extend any such date.

9.14. No Assignment.

(a) Neither The Town nor the AHA shall assign or transfer its rights to purchase any of the five (5) Restricted Units granted hereunder, except that such right may be assigned or transferred to another municipal or quasi-municipal not-for-profit agency or organization.

(b) The Town has entered into this Agreement with the Developer in reliance upon the unique knowledge, experience and expertise of the Developer in the planning and implementation of construction of the Project. The Developer shall not voluntarily assign, transfer or otherwise convey its rights and obligations hereunder, including any transfer, assignment or conveyance to a corporation or other entity owned or controlled by Roy C. Smith or the Developer, without the written permission of the Town Designee.

9.15. Rule Against Perpetuities.

If the Rule Against Perpetuities or any rule of law with respect to restriction on the alienation of the Property shall limit the time within which any event or events hereunder must occur, then such event or events, as the case may be, to which such rule applies shall not occur later than the expiration of 20 years after the death of Roy C. Smith, Nancy E. Tavernier, William Weeks, Donald Gilberti, or any of their issue now living.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal this 23rd day of June, 1989.

TOWN OF ACTON
Acting by a Majority of
its Board of Selectmen

Nancy E. Tavernier

[Signature]

Donald Gilberti

[Signature]

High Street PCRC Trust

By [Signature]
Roy C. Smith, as trustee

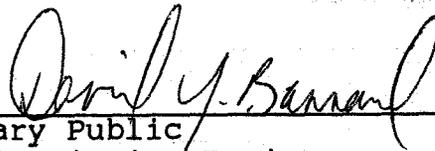
[Signature]
Roy C. Smith, Individually

Commonwealth of Massachusetts

Middlesex, ss.

June 23, 1989

Then personally appeared the above-named Nancy E. Tanvier,
W. Miam F. Weeks, Donald R. Gilbert and Norman D. Lake and
acknowledged the foregoing instrument to be the free act and
deed of the Board of Selectmen of the Town of Acton, before
me



Notary Public
My Commission Expires:
DAVID BANNARD, Notary Public
My Commission Expires
April 5, 1996

Commonwealth of Massachusetts

Middlesex, ss.

June 23, 1989

Then personally appeared the above-named Roy C. Smith,
as trustee of High Street PCRC Trust, and acknowledged the
foregoing instrument to be his free act and deed as trustee
as aforesaid.



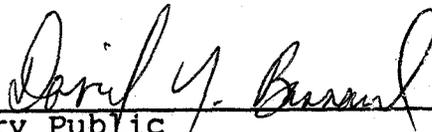
Notary Public
My Commission Expires:
DAVID BANNARD, Notary Public
My Commission Expires
April 5, 1996

Commonwealth of Massachusetts

Middlesex, ss.

June 23, 1989

Then personally appeared the above-named Roy C. Smith,
and acknowledged the foregoing instrument to be his free act
and deed, as an individual, before me.



Notary Public
My Commission Expires:
DAVID BANNARD, Notary Public
My Commission Expires
April 5, 1996

EXHIBITS TO DEVELOPMENT AGREEMENT

<u>EXHIBIT</u>	<u>TITLE</u>
Exhibit A:	Site Plan
Exhibit B:	Description of Averitt Land
Exhibit C:	Easement to Averitt Land
Exhibit D:	Conservation Deed Restriction
Exhibit E:	Guidelines
Exhibit F:	Condominium Documents
Exhibit G:	Right of First Refusal
Exhibit H:	Lease of Senior Center
Exhibit K:	Purchase & Sale Agreement for AHA Units
Exhibit L:	Purchase & Sale Agreement for Option A or B property

SEE THE FOLLOWING PLANS, DEEDS, AND DOCUMENTS RECORDED AT MIDDLESEX SOUTH DISTRICT REGISTRY OF DEEDS.

PLAN REFERENCES:

BOOK 5396 PAGE 544 ~ PLAN BY BOSTON AND MAINE RAILROAD, W.F. CUMMINGS, ASST. CHIEF ENGR., DATED APRIL 1929.
 BOOK 7017 PAGE 5 ~ PLAN BY MERRILL A. BROWN, R.L.S., DATED JUNE 24, 1946.
 BOOK 9485 PAGE END ~ PLAN BY HORACE F. TUTTLE, C.E., DATED OCT. 30, 1952.
 BOOK 9682 PAGE END ~ PLAN BY YALE SHAPIRO & JAMES G. NOONAN, R.P.C.E. & R.L.S., DATED MARCH 5, 1960.
 BOOK 11113 PAGE 438 ~ PLAN BY EVERETT M. BROOKS CO., C.E., DATED SEPT. 7, 1971.
 BOOK 11657 PAGE 242 ~ PLAN BY EVERETT M. BROOKS CO., C.E., DATED DEC. 28, 1966.
 BOOK 10279 PAGE 37 ~ PLAN BY EVERETT M. BROOKS CO., C.E., DATED SEPT. 7, 1971.
 BOOK 12549 PAGE 595 ~ PLAN BY ACTON SURVEY & ENGINEERING, INC., DATED JAN. 10, 1980.
 BOOK 13948 PAGE 187 ~ PLAN BY ACTON SURVEY & ENGINEERING, INC., DATE JAN. 10, 1980.
 BOOK 14785 PAGE 132 ~ PLAN BY JOHN R. SNELLING, R.L.S., DATED SEPT. 24, 1982.
 L.C. BOOK 284 PAGE 41 ~ PLAN BY CHARLES A. PERKINS CO., INC. SURV., DATED APRIL 1970.
 L.C. BOOK 954 PAGE 121 ~ PLAN BY JOHN R. SNELLING ASSOCIATES, SURV., DATED JAN. 30, 1982.
 L.C. BOOK 963 PAGE 183 ~ PLAN BY JOHN R. SNELLING ASSOCIATED, SURV., DATED NOV. 15, 1982.

DEED AND DOCUMENT REFERENCES:

BOOK 18611 PAGE 437 ~ NORMAN R. VEENSTRA TO ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST.
 BOOK 18611 PAGE 445 ~ ROY C. SMITH TO ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST.
 L.C. BOOK 1036 PAGE 179 ~ NORMAN R. VEENSTRA TO ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST.
 BOOK 19722 PAGE 505 ~ ORDER OF CONDITIONS ~ AUDUBON HILL.
 BOOK 19722 PAGE 511 ~ PLANNED CONSERVATION RESIDENTIAL COMMUNITY SPECIAL PREMISE.

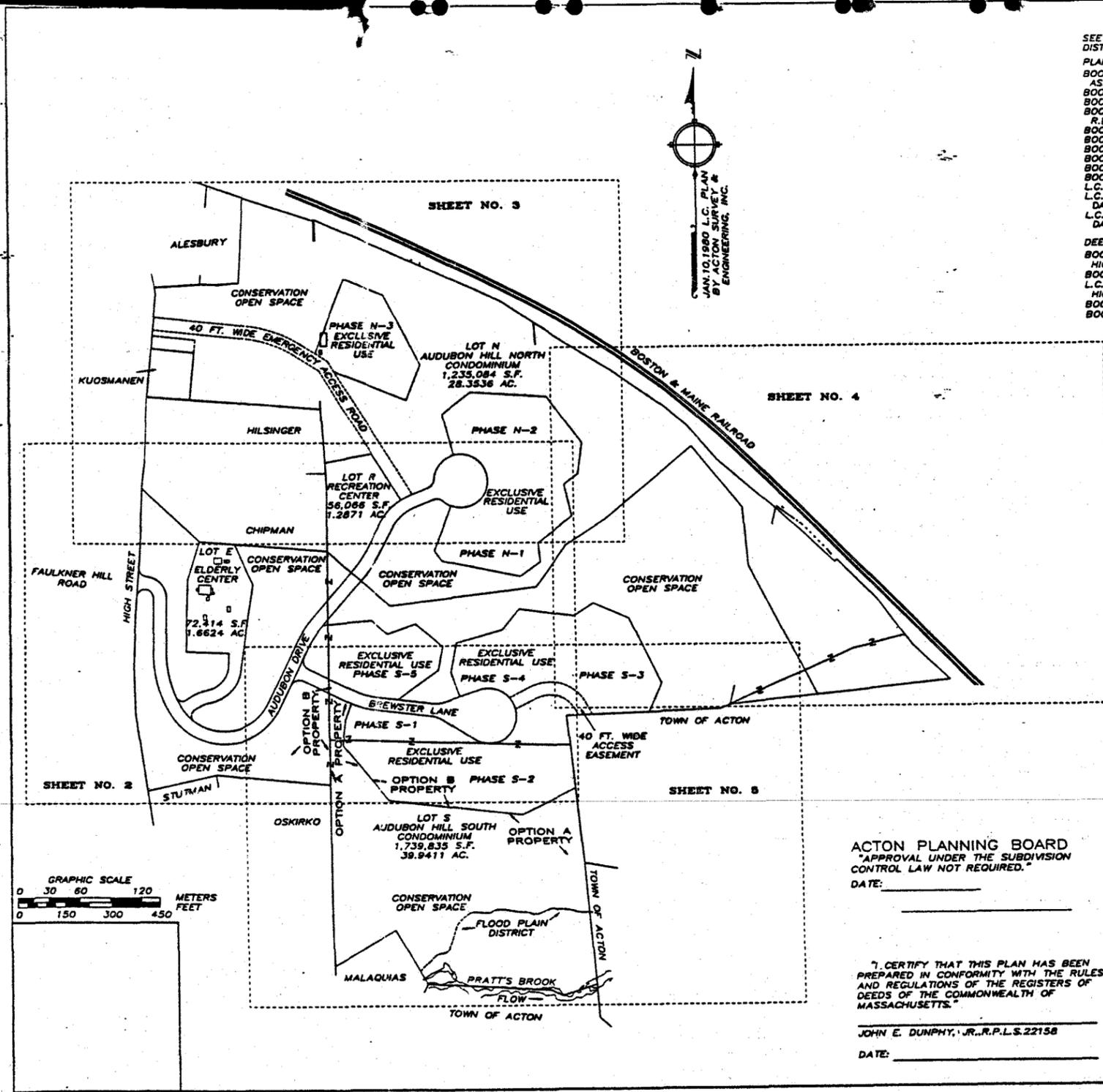
THE LOCUS SITE CONTAINS 71.2442 ACRES AND CONSISTS OF THE FOLLOWING LOTS.

LOT E 1.6624 AC.
 LOT N 28.3536 AC.
 LOT R 1.2871 AC.
 LOT S 39.9411 AC.
 72.2442 ACRES

THE SITE WAS ISSUED A "SPECIAL PERMIT" AS A PLANNED CONSERVATION RESIDENTIAL COMMUNITY BY THE ACTON PLANNING BOARD ON MARCH 4, 1989. (SEE BOOK 19722 PAGE 511)

NOTES:

THE FOLLOWING NOTES REFER TO A COMPREHENSIVE DEVELOPMENT AGREEMENT BETWEEN ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST AND THE TOWN OF ACTON, TO BE RECORDED HEREWITH.
 THE OPTION A PROPERTY REFERRED TO IN THE ABOVE AGREEMENT IS SHOWN ON SHEET NO. 5 OF 5. THE OPTION B PROPERTY IS THE BALANCE OF THE LOCUS SITE.
 THE LAND SUBJECT TO THE CONSERVATION RESTRICTION REFERRED TO IN THE ABOVE AGREEMENT IS LOT N EXCLUDING PHASE N-1, N-2, AND N-3; AND LOT S EXCLUDING PHASE S-1, S-2, S-3, S-4, AND S-5.



ACTON PLANNING BOARD
 "APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."
 DATE: _____

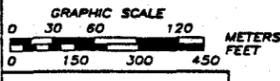
"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."

JOHN E. DUNPHY, JR., R.P.L.S. 22158
 DATE: _____

THE SITE PLAN
 OF
AUDUBON HILL
 IN
ACTON - MASS.
 PREPARED FOR: HIGH STREET PCRC TRUST
 292 GREAT ROAD - ACTON - MASS.

SCALE: 1 INCH = 150 FEET
 JUNE 30, 1989
ACTON SURVEY & ENGINEERING, INC.
 277 CENTRAL ST. - ACTON - MASS.

INDEX SHEET
 SHEET NO. 1 OF 5
 FILE NO. 1903



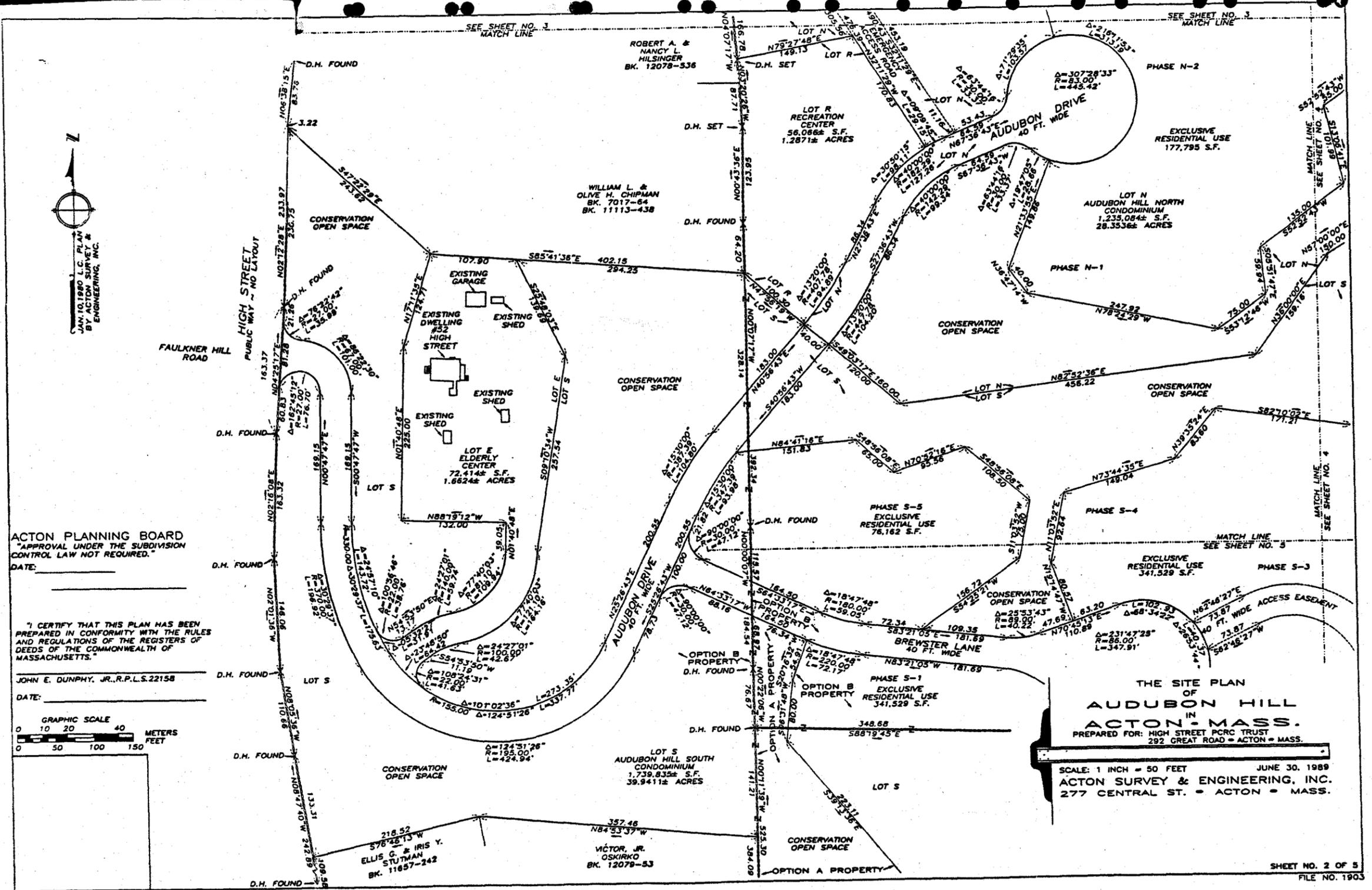
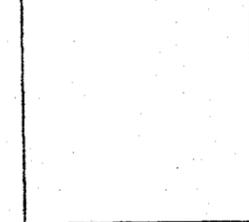
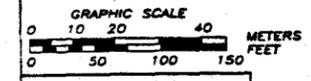


JAN. 10, 1989 L.C. PLAN
BY ACTON SURVEY &
ENGINEERING, INC.

ACTON PLANNING BOARD
"APPROVAL UNDER THE SUBDIVISION
CONTROL LAW NOT REQUIRED."
DATE: _____

"I CERTIFY THAT THIS PLAN HAS BEEN
PREPARED IN CONFORMITY WITH THE RULES
AND REGULATIONS OF THE REGISTERS OF
DEEDS OF THE COMMONWEALTH OF
MASSACHUSETTS."
DATE: _____

JOHN E. DUNPHY, JR., R.P.L.S. 22158
DATE: _____

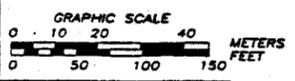
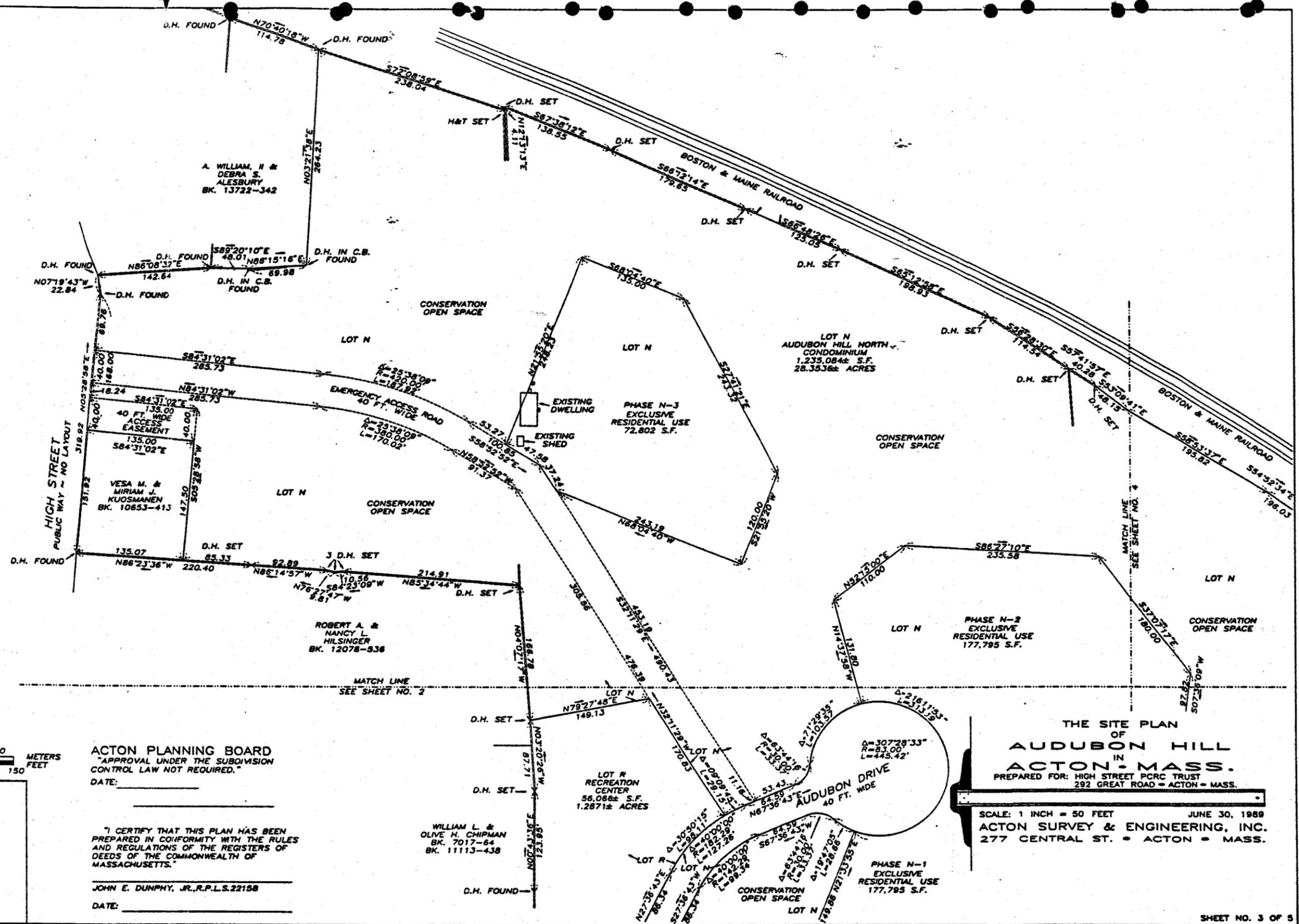


THE SITE PLAN
OF
AUDUBON HILL
IN
ACTON - MASS.
PREPARED FOR: HIGH STREET PCRC TRUST
292 GREAT ROAD - ACTON - MASS.

SCALE: 1 INCH = 50 FEET
JUNE 30, 1989
ACTON SURVEY & ENGINEERING, INC.
277 CENTRAL ST. - ACTON - MASS.



BY ACTON SURVEY & ENGINEERING, INC.



ACTON PLANNING BOARD
"APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."
DATE: _____

"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."
JOHN E. DUNPHY, JR., R.P.L.S. 22158
DATE: _____

WILLIAM L. & OLIVE H. CHIPMAN
BK. 7017-64
BK. 11113-438

THE SITE PLAN OF
AUDUBON HILL
IN
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PREPARED FOR: HIGH STREET PCRC TRUST
292 GREAT ROAD - ACTON - MASS.

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JUNE 30, 1989
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277 CENTRAL ST. - ACTON - MASS.



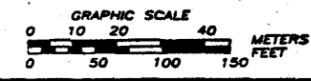
JAN. 10, 1980 L.C. PLAN
 BY ACTON SURVEY &
 ENGINEERING, INC.

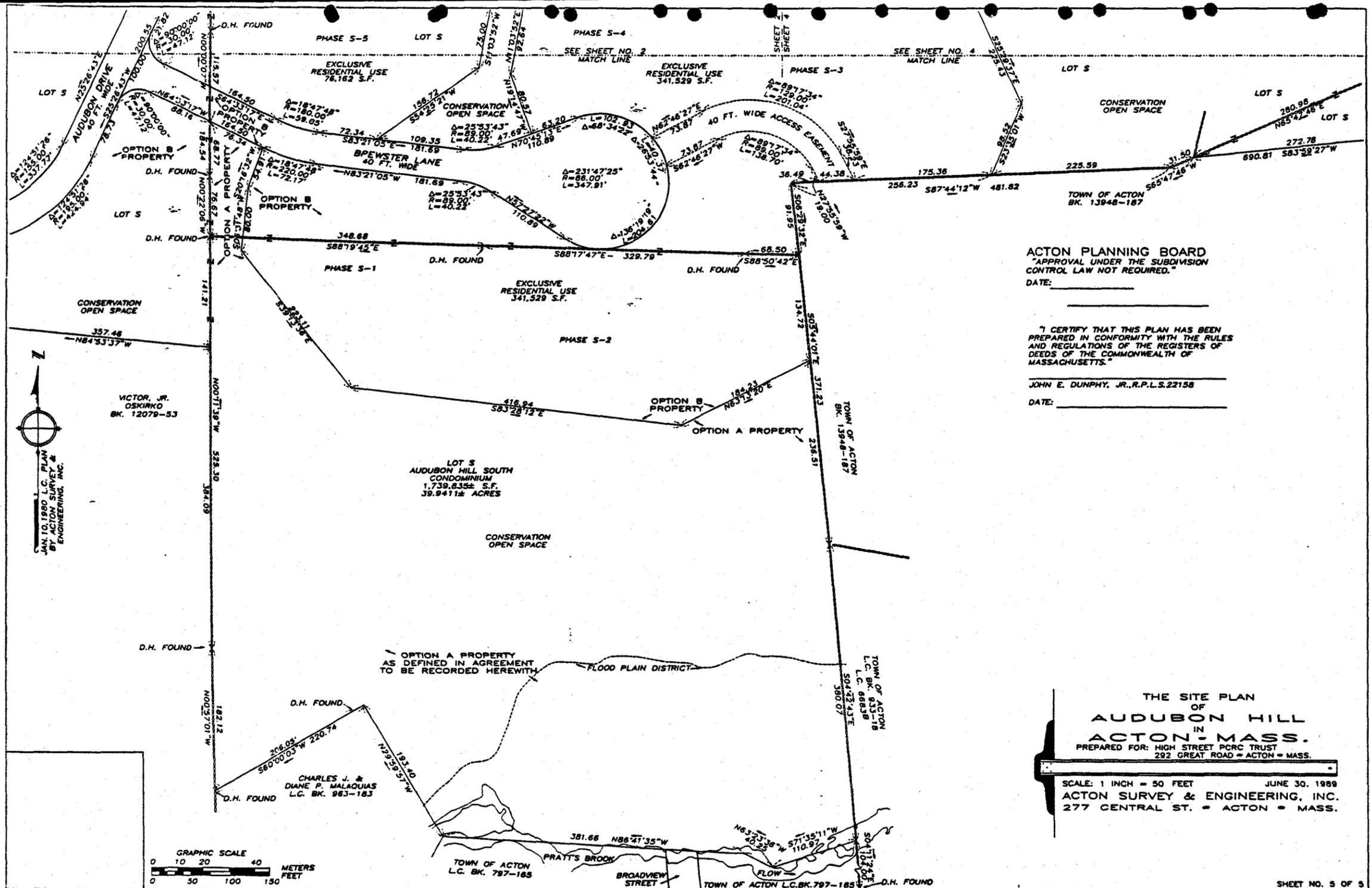
ACTON PLANNING BOARD
 "APPROVAL UNDER THE SUBDIVISION
 CONTROL LAW NOT REQUIRED."
 DATE: _____

"I CERTIFY THAT THIS PLAN HAS BEEN
 PREPARED IN CONFORMITY WITH THE RULES
 AND REGULATIONS OF THE REGISTERS OF
 DEEDS OF THE COMMONWEALTH OF
 MASSACHUSETTS."
 JOHN E. DUNPHY, JR., R.P.L.S. 22158
 DATE: _____

THE SITE PLAN
 OF
AUDUBON HILL
 IN
ACTON - MASS.
 PREPARED FOR: HIGH STREET PORC TRUST
 292 GREAT ROAD - ACTON - MASS.

SCALE: 1 INCH = 50 FEET JUNE 30, 1989
 ACTON SURVEY & ENGINEERING, INC.
 277 CENTRAL ST. - ACTON - MASS.





ACTON PLANNING BOARD
 "APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED."
 DATE: _____

"I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS."

JOHN E. DUNPHY, JR., R.P.L.S. 22158
 DATE: _____

THE SITE PLAN OF
AUDUBON HILL
 IN
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 PREPARED FOR: HIGH STREET PCRC TRUST
 292 GREAT ROAD - ACTON - MASS.

SCALE: 1 INCH = 50 FEET
 JUNE 30, 1989
 ACTON SURVEY & ENGINEERING, INC.
 277 CENTRAL ST. - ACTON - MASS.

EXHIBIT B

Description of Averitt Land

Two parcels of land situated in the Town of Acton, Middlesex County, Massachusetts, the first parcel being shown as an area containing 26.5 acres of land, more or less, as shown on a plan entitled "Plan of Land in Acton, Mass. for Acton Conservation Commission" dated January 10, 1980, prepared by Acton Survey & Engineering, Inc., recorded with the Middlesex South Registry District of the Land Court at Book 13948, Page 187, as Plan No. 421 of 1980; the second parcel being shown as Lot C₁ as shown on a plan entitled "Subdivision of Lot C shown¹ on a plan filed with Cert. of Title No. 8637 South Registry District of Middlesex County Land in Acton", dated May, 1918, prepared by Welsh & Parker, Civil Engineers, recorded with said Registry District as Certificate No. 8941, in Book 60, Page 433, and to which plans reference may be had for a more particular description.

EXHIBIT C

EASEMENT

ROY C. SMITH, TRUSTEE, HIGH STREET PCRC TRUST, under Declaration of Trust, dated March 5, 1985, recorded in the Middlesex South District Registry of Deeds, Book 18611, Page 409 and Document 758061 in the Registered Land Section of said Deeds, in consideration of One (\$1.00) Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, grants to the Inhabitants of the Town of Acton, an easement for the right to pass on foot or by motor vehicle in common with others so entitled, from High Street over Audubon Lane and Brewster Lane and over the roadway to be constructed within the 40 Ft. Wide Access Easement for purpose of access from and to High Street to the gravel parking lot in the land of the Town of Acton, all as shown on a plan entitled, "Open Space Plan of Audubon Hill in Acton, Mass.", Scale: 1 Inch = 40 Feet, August 1, 1988, Acton Survey & Engineering, Inc., to be recorded herewith in said Deeds, reference to which plan may be had for a more particular description of said Easement.

The easement is to be limited strictly to access from High Street to the land of the Town of Acton for use of the Town of Acton land for passive recreational uses and all maintenance on the land for passive recreational purposes.

For the Grantor's title see deed of Norman R. Veenstra to the Grantor, dated October 8, 1987, recorded in said Deeds, Book 18611, Page 437 and as Document 758060 in the Registered Land Section of said Deeds.

Executed under seal this ____ day of June, 1989.

HIGH STREET PCRC TRUST

By: _____
Roy C. Smith, Trustee

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this ____ day of June, 1989 personally appeared before me the above named ROY C. SMITH, Trustee aforesaid, and acknowledged the foregoing instrument to be his free act and deed.

Notary Public
My commission expires: _____

EXHIBIT D

**AUDUBON HILL CONDOMINIUMS
CONSERVATION RESTRICTION**

Roy C. Smith, Trustee, High Street PCRC Trust, under Declaration of Trust, dated March 5, 1985, recorded in Middlesex South District Registry of Deeds, Book 18611, Page 409, ("TRUST"), hereby grants to The Inhabitants of The Town of Acton, a municipal corporation, a Conservation Restriction in perpetuity on a parcel of land situated in Acton, Massachusetts.

The following conservation restrictions are intended to retain the aforesaid area predominantly in its natural, scenic and open condition in order to protect the natural and watershed resources of the town of Acton and to preserve the area for outdoor recreational and scenic enjoyment.

The terms of the conservation restriction are as follows: That neither TRUST nor its successors or assigns will perform the following acts nor permit others to perform them on any portion of the land described as "Conservation Open Space" as shown as

"The land on the easterly side of High Street, in Acton, Middlesex County, Massachusetts, being shown as Lots E, N, R and S on a plan entitled, "Open Space Plan of Audubon Hill, in Acton, Mass.", Scale: 1 Inch = 40 Feet, August 1, 1988, revised to June 1, 1989, Acton Survey & Engineering, Inc., 277 Central Street, Acton, Mass., being sheets 39 through 42 of 46 sheets, to be recorded herewith in the Middlesex South District Registry of Deeds, reference to which plan may be had for a more particular description of said Lots. (E)

"Lot E containing 72,414+ square feet, 1.6624+ acres; Lot N containing 1,235,084+ square feet, 28.3536+ acres; Lot R containing 56,066+ square feet, 1.287+ acres; and Lot S containing 1,739,835+ square feet, 39.9411+ acres, and being Lots E, N, R and S, as shown on said plan, however otherwise bounded, measured or described.

"There is excluded from the foregoing description the following named areas: A) Audubon Drive, Brewster Lane, and access drives and B) "Exclusive Residential Use" areas: Phase N-1 and N-2 containing 177,795 square feet, Phase N-3 containing 72,802 square feet, Phase S-1, S-2, S-3 and S-4 containing 341,529 square feet, Phase S-5 containing 76,162 square feet, and being Phases N-1, N-2, N-3, S-1, S-2, S-3, S-4 and S-5, however otherwise bounded, measured and described on the foregoing described plan."

hereby granting restrictions against all persons:

1. No building, sign, fence, utilities or other permanent structure will be constructed or permitted to remain on the area, without written approval from the Conservation Commission.
2. No soil, loam, peat, gravel, sand, rock or other mineral substance, refuse, trash, vehicles or vehicles parts, rubbish, debris, junk, waste or unsightly or offensive material will be placed, stored or dumped on the area.
3. No loam, peat, gravel, sand, rock or other mineral resource or natural deposit shall be excavated or removed from said parcel in such a manner as to affect the surface of the area permanently.
4. No trees or other vegetation shall be cut or otherwise destroyed, except that the grantor reserves for itself, its successors and assigns, the right to conduct or permit the following activities on the area:
 - a. The planting and cultivation of trees, shrubs, flowers and other vegetation.
 - b. The cutting or pruning of trees, brush, grass or other vegetation to improve the scenic view and to implement disease prevention measures, including the cultivation and harvesting of forest products in accordance with recognized forestry conservation practices.
 - c. The installation, use, maintenance, repair and replacement, of roads, paths and any underground utility lines and underground sewage disposal systems.
5. No poultry or livestock of any kind shall be raised or kept in said area.
6. This conservation restriction does not grant either the Town of Acton or the public any right to enter or use said parcel. However, there is granted to the Conservation Commission a permanent easement of access to enter said parcel for the purpose of inspecting the premises and enforcing the foregoing restrictions.
7. Nothing in the above shall prohibit or restrain reasonable recreational use of the premises by the owner(s) thereof. Examples of reasonable recreational use would be walking, hiking, bicycling, sailing, skating and related quiet sports. Motorized recreational vehicles are excluded in this area.

8. Nothing in this instrument shall be interpreted to prevent the Conservation Commission (upon the petition of the TRUST) from designating additional recreational areas upon which non-structural amenities such as jogging trails may be built for recreational use.
9. Nothing in this instrument shall be interpreted to prevent the TRUST from performing excavation and regrading activities reasonably necessary for the maintenance of existing trails, ponds, and drainage courses.
10. Notwithstanding the provisions of this Conservation Restriction, the Grantor, his successors or assigns may place a sign or signs, each of a size not to exceed three (3) feet by two (2) feet, on or about the granted premises for the purpose of indicating the ownership, and permitted or restricted use, of the premises. Such signs shall not be deemed in violation of this Conservation Restriction.
11. Notwithstanding the provisions of this Conservation Restriction, the Grantor shall not be prohibited from conducting such activities on the granted premises as are necessary or required in connection with the construction of the Residential Development under a Special Permit granted by the Town of Acton Planning Board under the PCRC By-Law, or any amendments to that By-Law, provided that such activities do not interfere with the permanent condition of the land for the purpose of this Conservation Restriction.

Signed and sealed this 12th day of June, 1989.

HIGH STREET PCRC TRUST

By: Roy C. Smith
Roy C. Smith, Trustee

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

June 12, 1989

Then personally appeared the above named Roy C. Smith, Trustee aforesaid and acknowledged the foregoing instrument to be the free act and deed of DGR Investment Realty Limited Partnership, before me:

Elizabeth M. Gringeri
Notary Public
Commission expires: Dec 16, 1994

Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994

APPROVAL BY SELECTMEN

We, the undersigned Board of Selectmen of the Town of Acton, hereby certify that we approve the foregoing Conservation Restriction.

Nancy E. Tavernier
[Signature]
Donald R. Gilbert
[Signature]
[Signature]

Date 6/23/89
Date 6/23/89
Date 6/23/89
Date 6/23/89
Date _____

APPROVAL BY THE PLANNING BOARD

We, the undersigned Planning Board of the Town of Acton, hereby certify that we approve the foregoing Conservation Restriction.

[Signature]
[Signature]
Amy S. Mearns
[Signature]
Douglas Carnahan
Mary J. Seizis

Date 6/22/89
Date 12 June 89
Date 12/JUNE 89
Date 12 June 89
Date 12 June 89
Date 12 June 89
Date _____

APPROVAL BY THE CONSERVATION COMMISSION

We the undersigned Conservation Commission of the Town of Acton hereby certify that we approve the foregoing Conservation Restriction.

[Signature]
Carol M. Place
[Signature]
[Signature]
James P. Resor

Date 6-21-89
Date 6-21-89
Date 6-21-89
Date 6-21-89
Date 6-21-89
Date _____
Date _____

HIGH STREET PCRC
AUDUBON HILL

LEGAL DESCRIPTION OF OPEN SPACE

The land on the easterly side of High Street, in Acton, Middlesex County, Massachusetts, being shown as Lots E, N, R and S on a plan entitled, "Open Space Plan of Audubon Hill, in Acton, Mass.", Scale: 1 Inch = 40 Feet, August 1, 1988* Acton Survey & Engineering, Inc., 277 Central Street, Acton, Mass., being sheets 39 through 42 of 46 sheets, to be recorded herewith in the Middlesex South District Registry of Deeds, reference to which plan may be had for a more particular description of said Lots.

Lot E containing 72,414+ square feet, 1.6624+ acres; Lot N containing 1,235,084+ square feet, 28.3536+ acres; Lot R containing 56,066+ square feet, 1.287+ acres; and Lot S containing 1,739,831+ square feet, 39.9411+ acres, and being Lots E, N, R and S, as shown on said plan, however otherwise bounded, measured or described.

There is excluded from the foregoing description the following named areas: A) Audubon Drive, Brewster Lane, and access drives and B) "Exclusive Residential Use" areas: Phase N-1 and N-2 containing 177,795 square feet, Phase N-3 containing 72,802 square feet, Phase S-1, S-2, S-3 and S-4 containing 341,529 square feet, Phase S-5 containing 76,162 square feet, and being Phases N-1, N-2, N-3, S-1, S-2, S-3, S-4 and S-5, however otherwise bounded, measured and described on the foregoing described plan.

Lot R is to be used exclusively for recreational purposes by the residents of the exclusive residential-use areas, Phase N-1, N-2, N-3, S-1, S-2, S-3, S-4 and S-5 as shown on the above described plan.

Lot E is to be used exclusively by the Town of Acton, through its Council on Aging or other similarly constituted organization, as a recreation center for the elderly.

Lot N and S, exclusive of the "Exclusive Residential Use" areas as defined above, are subject to a Conservation Restriction from Audubon Hill North Condominium and Audubon Hill South Condominium to the Town of Acton, dated June 12, 1989, to be recorded herewith in said Deeds.

The premises are subject to an easement granted by Roy C. Smith Trustee, High Street PCRC Trust to the Inhabitants of the Town of Acton, Massachusetts, for access from and to High Street over Audubon Drive, Brewster Lane and a 40 foot wide access East to and from land of the Town of Acton southerly and easterly of Lot S.

EXHIBIT E

GUIDELINES

- A. An Eligible Purchaser shall be defined as:
1. A Senior Citizen or Senior Citizen and spouse (the "Prospective Purchaser");
 2. Who, based on the Prospective Purchaser's income and assets, does not qualify with respect to the income and asset underwriting criteria established by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") for a mortgage loan for 80% of the fair market value of an Unrestricted Unit;
 3. Who does qualify under the FHLMC or FNMA income and asset underwriting criteria for a mortgage loan for 80% of the maximum Resale Price of a Restricted Unit.
- B. The Town Designee shall maintain a waiting list of Persons interested in purchasing Restricted Units as they become available. Although Persons listed on the wait list may not be presumed to be Eligible Purchasers, the ACHC may preliminarily screen such Persons to determine whether they may qualify as Eligible Purchasers.
- C. The procedure for determining whether a Prospective Purchaser shall qualify as an Eligible Purchaser shall be as follows:
1. A Prospective Purchaser shall submit a mortgage loan application to a bank, savings and loan association, trust company, or other institutional lender (a "Bank") for purchase money financing to buy a Restricted Unit.
 2. The Bank shall certify that (a) the Prospective Purchaser cannot qualify under FHLMC or FNMA income and asset underwriting criteria, based on the Prospective Purchaser's income and assets, for purchased money financing for at least 80% of the Restricted Unit's Appraised Value but that (b) the Prospective Purchaser does qualify under such standards for such financing for a loan of at least 80% of the Maximum Resale Price of the aforesaid Unit.
 3. The Seller shall then submit to the Town Designee the following documents:

- (a) a determination of the Appraised Value and Maximum Resale Price of the Unit to be sold, determined as provided in the Agreement, the cost of such determination to be divided equally between the Seller and the Prospective Purchaser;
 - (b) the Mortgage Lender's Certificate regarding the Prospective Purchaser's eligibility for a mortgage loan determined in accordance with paragraph C.2. above;
 - (c) a purchase and sale agreement executed by both the Prospective Purchaser and the Seller, containing a clause stating that such agreement may be rescinded should the Town disapprove of the proposed transaction; and
 - (d) an Affidavit of Compliance executed by both the Seller and the Prospected Purchaser pursuant to Section 3.4(e) of the Agreement.
4. The Town Designee shall review the documents submitted according to paragraph C.3. above, and within 10 days of such submission shall determine whether the Prospective Purchaser is an Eligible Purchaser pursuant the terms and conditions of the Agreement.

AUDUBON HILL SOUTH CONDOMINIUM

MASTER DEED

PHASE I

This Master Deed of the Audubon Hill South Condominium made this day of _____, 1989.

WITNESSETH that I, Roy C. Smith, Trustee of High Street PCRC Trust, under Declaration of Trust dated March 5, 1985, recorded on October 13, 1987 in Book _____, Page _____, Middlesex South District Registry of Deeds, of Acton, Middlesex County, Massachusetts, (hereinafter referred to as the "Declarant"), being the owner of certain premises in Acton, Middlesex County, Massachusetts, hereinafter described on Schedule A, by duly executing and recording this Master Deed, does hereby submit said premises to the provisions of Chapter 183A of the General Laws of Massachusetts and by this Master Deed does create a Condominium, to be governed by and subject to the provisions of said Chapter 183A (including any amendments thereto hereafter enacted) and to that end, said Declarant does hereby declare and provide as follows:

1. NAME OF CONDOMINIUM AND DESCRIPTION OF PREMISES

The name of the Condominium shall be the Audubon Hill South Condominium. The premises which constitute the condominium comprise the land (the "Land") situated at High Street, Acton, Middlesex

(res phased 03/30/89;

County, Massachusetts together with the improvements and building now existing and to be hereinafter constructed thereon (collectively, the "Condominium"), as shown on a plan entitled, "Audubon Hill South Condominium" dated _____, 1988, to be recorded herewith, said plan being the Condominium Plans hereinafter referred to, all which are recorded herewith, said premises being bounded and described as set forth on the attached Schedule A. Said Audubon Hill South Condominium Phase I consists of eight (8) units and is the first phase of a five (5) phase condominium. Said Declarant reserves the right, but not the obligation, to create additional phases, including any part thereof as shown on the plans hereinbefore mentioned. When and if all Phases are completed, the Condominium will contain forty (40) units. Said Phase I consists of two (2) buildings each containing four (4) units and has access through a private road named Audubon Drive and Brewster Lane to High Street, Acton, Massachusetts, all as shown on the Condominium Plans which shows the layout, location, unit numbers and dimensions of the units as built. Said premises are submitted to the provisions of Chapter 183A and are subject to the right and easement hereby reserved by the Declarant to construct the buildings, parking areas and roadways designated as Phases II through V, as shown on the Condominium Plans hereinabove referred to. The Declarant also reserves the right to have as an appurtenance to the construction of Phases II through V an

easement to pass and repass over the said land, including the right to store equipment and supplies, so far as the same are necessary and convenient for the construction of the said Phases II through V. The Declarant, its successors and assigns, shall have such right and easement to use driveways and walkways affording access to the said premises including the right and easement to construct additional driveways and walkways to serve the said buildings in Phases II through V provided that such easement for access and construction shall not interfere with the access of the owners of the units in Phase I to their units.

The Declarant further reserves the right in the construction and creation of subsequent phases (including the right to create sub phases within one or more phases), to change the order of such phases provided that in all instances the percentage of interest attributable to each such unit then existing shall be determined in a manner in conformity with the provisions of Chapter 183A, as amended.

The Declarant reserves the right to grant easements over, under, through and across the common areas of the Condominium Land and Building for the purpose of installing cable television lines serving the Units in the Condominium and such other equipment as may be necessary for the installation and operation of the same.

2. DEFINITIONS

All terms and expressions herein used which are defined in

Chapter 183A of the General Laws of Massachusetts, as amended, shall have the same meanings unless the context otherwise requires.

3. LEGAL ORGANIZATION

The Audubon Hill South Condominium Rules and Regulations shall refer to those Rules and Regulations as shall be adopted by the board of governors of the Association from time to time.

The Audubon Hill South Condominium Association, Inc. hereinafter referred to as the "Association", shall be the organization of Unit Owners organized pursuant to Chapter 180 of the General Laws of Massachusetts, which corporation will manage and regulate the aforesaid Condominium, pursuant to the By-Laws of the Association, this instrument, and Chapter 183A of the General Laws of Massachusetts.

Membership in the Association is appurtenant to Unit Ownership in the aforesaid Condominium and shall not be severable in any manner therefrom and this provision may not be amended by the Declarant, its successors or assigns.

The Board of Governors of the Association shall consist of at least three and not more than five persons. Initially, there shall be three governors appointed by the Declarant (including successors in the event of vacancy) who shall serve until the second annual meeting of the Unit Owners. Thereafter, the governors shall be elected by and from the members of the Association.

Officers of the Association shall consist of a President, a

Treasurer and a Clerk. The initial officers shall be appointed by the Declarant. Subsequent officers shall be elected by the Board of Governors to serve as such officers and Unit Owners. In the event of a Corporate Unit Owner, the officer may be a director or officer thereof. In the event of a Trust Unit Owner, the officer may be a Trustee or beneficiary thereof.

The By-Laws of the Association shall refer to those By-Laws of the Association which have been duly adopted in accordance with the provisions of Chapter 183A of the General Laws of Massachusetts by the Board of Governors and are incorporated herein by reference and such amendments thereto as may from time to time be enacted.

4. DESCRIPTION OF BUILDING

Phase I of the Condominium consists of two (2) buildings each containing four (4) units, for a total of eight (8) units, and having access through a walkway, driveway and Audubon Drive and Brewster Lane to High Street, all as shown on the Condominium plans above described and having such characteristics as are set forth in Schedule B and shown on the aforesaid Condominium Plans. The building has a masonry foundation, wood frame, wood siding with asphalt shingle roof.

5. DESIGNATION OF UNITS

Unit Designation, Number of Rooms, Approximate Area, Location and other descriptive information are as shown on the attached Schedule B, in the Condominium plans, all of which are incorporated

herein and made a part hereof.

6. INTEREST OF UNIT OWNER

The Owners of each Unit shall be entitled to an undivided interest in the common areas and facilities of the Condominium in the percentages set forth in the attached Schedule C, which percentages also reflect anticipated future development of a given order and mix of Units. The Declarant reserves the right to change such order and mix, and the corresponding percentage interest appertaining to the Units, including Units existing before as well as after such change, provided that such percentage interests as modified are in compliance with Chapter 183A, as amended.

7. BOUNDARIES OF UNITS

The boundaries of the Units are as follows:

- a. Floor: The upper surface of the concrete basement floor or concrete first floor, for units without basements.
- b. Ceiling: The plane of the lower surface of attic roof rafters.
- c. Interior Building Walls Between the Units:
The plane of the interior surface of the wall studs facing each Unit.
- d. Exterior Building Walls, Doors and Windows:
The planes of the interior surface of the wall studs or in case of a concrete wall, the interior surface of said

concrete wall; as to doors, the exterior surface thereof; as to windows, the exterior surface of the glass and window frames.

8. MODIFICATION OF UNITS

The owner of any Unit may not, at any time, make any changes or modifications of the exterior of said Unit or any interior changes which affect, or in any way modify, the structural or supportive characteristics or integrity of the building or its services; however, such Owner may modify the interior construction of such Unit in any manner not inconsistent herewith, and further may at any time and from time to time, change the use and designation of any room or space within such Unit, subject always to provisions of this Master Deed and the provisions of the By-Laws of the Association, including the Rules and Regulations promulgated thereunder. Any and all work with respect to the foregoing shall be done in a good and workmanlike manner pursuant to a building permit duly issued by the local building permit authority, if required, and pursuant to the plans and specifications which have been submitted to and approved by the Board of Governors of the Association. Such approval shall not be unreasonably withheld or delayed.

9.1 RESTRICTIONS ON THE USE OF ALL UNITS

(a) Each Unit is hereby restricted to residential use and occupancy by senior citizens or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any natural person of age 55 or older at the time of the sale, lease, assignment, license, resale, sublease or other transfer or conveyance of a unit to such person.

(b) Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen resides in the Unit owned by his or her son or daughter.

(c) Each Residential Unit shall be occupied by no more than two persons as a single-family residence, who are both Senior Citizens or are a Senior Citizen and spouse, except that a parent or the parents of a Unit owner may reside in such Unit in addition to the aforesaid two (2) Persons, and provided, further, that upon receipt of written permission from the Board of Governor's, a member of the Unit owner's Immediate Family (other than spouse) may reside in such unit upon a showing of good cause.

(d) Overnight guests who are not senior citizens shall be allowed for reasonable visitation periods not to exceed one (1) week in duration, but children or grandchildren may visit for a period not

to exceed one (1) month per year, without the written permission of the Board of Governors.

(e) Any lease or rental agreement for any Unit shall be to a senior citizen, or to a senior citizen and his or her spouse, in writing and specifically subject to the Master Deed, the By-Laws of the Association and the Rules and Regulations of the Condominium, including the restrictions with respect to occupancy, and shall have a minimum initial term of six (6) months. No Restricted Unit shall be leased, sublet or licensed except to a Senior Citizen or Senior Citizen and spouse who would qualify as an Eligible Purchaser pursuant to the terms and conditions of this Master Deed. The aggregate of the annual compensation paid by any tenant or tenants as rental for a Restricted Unit shall not exceed the "net expense" incurred by owner of such Unit with respect to owning such Unit. "Net expense" shall be defined as the sum of owner's annual mortgage payments, including principal and interest; condominium fees and assessments; insurance maintained on the Unit; a return not to exceed ten percent (10%) annual interest on the owner's downpayment; the cost of improvements, repairs and the like made by the owner to the unit, amortization over the reasonable use and life; and any utility fees incurred by the owner in connection with the Unit.

Upon the rental of any Restricted Unit, the owner of said Unit shall provide the Board of Governors with documentation sufficient to substantiate the preceding requirements. The provisions of this last

Paragraph shall not apply to non-restricted units. A copy of all leases or rental agreements, together with proof of age of all occupants, as executed shall promptly be furnished to the Board of Governors who shall keep and maintain the same as part of its records. The Board of Governors shall also be furnished at the same time with written acknowledgment of the lessee that the lessee has received copies of and will comply with the provisions of such Master Deed, By-Laws and Rules and Regulations. Notwithstanding the foregoing, the said Declarant, its successors, assigns or affiliated entities (but not including a purchaser of an individual unit) shall have the further right to let or lease to a senior citizen as defined in Section 9.1 herein, any Units (Restricted or Non-Restricted) which have not been sold by it, including any such Unit later acquired or later leased by it upon such terms and for such periods, but not less than thirty (30) days, as it, in its sole discretion, shall determine.

(f) The occupants of each unit shall be entitled to keep one (1) pet, either a cat or a dog per unit and the keeping of any such pet shall be subject to the Rules and Regulations adopted by the Board of Governors and in the event that any such pet, in the sole discretion of the Board of Governors, causes or creates a nuisance, said pet shall be permanently removed from the property upon three (3) days' notice.

The use of Units by all persons authorized to use same shall be at all times subject to the provisions contained in this instrument, the By-Laws of the Association and such Rules and Regulations as may be prescribed and established to govern such use or which may hereafter be prescribed and established by the Board of Governors of the Association. Any Unit Owner found by the Massachusetts Superior Court to be in violation of the provisions of this Master Deed, By-Laws and Rules and Regulations of the Association shall be liable for the reasonable counsel fees incurred by the association in enforcing same.

The Association also reserve the right and easement to enter onto the premises, from time to time, at reasonable hours, for the purpose of reconstructing and repairing adjoining Units, common areas and facilities and to perform any obligations of the Association required or permitted to be performed under this Master Deed and/or the By-Laws of the Association.

Every Unit Deed conveying an interest in a Unit shall contain a Statement that such Unit is subject to the foregoing restrictions on the use of the units and the foregoing restrictions on use shall be attached to and made a part of each Unit Deed and shall be enforceable for a period of forty (40) years from the recording of this Master Deed.

9.2 RESTRICTIONS ON THE FIRST SALE OF THE RESTRICTED UNITS

(a) Unit Nos. 1, 6, 8, 10, 13, 14, 17, 18, 23, 27, 31, 38, 48, 2, 4, and 25 shall be known as the "Restricted Units". These restrictions shall not apply to all other units in the Condominium, which Units shall be known as the "Non-Restricted Units".

(b) The first sale of Unit Nos. 1, 6, 8, 10, 13, 14, 17, 18, 23, 27, 31, 38 and 48, Brewster Lane, (hereinafter called "Restricted Units") by the Declarant shall be restricted to a maximum gross sales price not to exceed seventy-five (75%) percent of the Fair Market Value of the price of the Non-Restricted Units (the "Discounted Price") (for example, if the price of the Non-Restricted Unit is Two Hundred Twenty Thousand (\$220,000.00) Dollars, the maximum gross sales price of a Restricted Unit would be One Hundred and Sixty-Five Thousand (\$165,000.00) Dollars; and the first sale of Unit Nos. 2, 4, and 25, Brewster Lane, (hereinafter called "Restricted Units") by the Declarant shall be restricted to a gross sales price of Sixty-Five Thousand and 00/100 (\$65,000.00) Dollars and have been presold to the Acton Housing Authority. The first sale of the Restricted Units, except for the sale of Unit Nos. 2, 4, and 25 which are subject to a First Option to Purchase in favor of the Acton Housing Authority shall be to an Eligible Purchaser. An Eligible Purchaser shall be defined as (1) a Senior Citizen or Senior Citizen and spouse (the "Prospective Purchaser"); (2) who, based on the Prospective Purchaser's income and assets, does not qualify with respect to the

income and asset underwriting criteria established by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") for a mortgage loan for 80% of the Fair Market Value of an Unrestricted Unit; and (3) who does qualify under the FHLMC or FNMA income and asset underwriting criteria for a mortgage loan for 80% of the Maximum Resale Price of a Restricted Unit. The Declarant shall be required to obtain and record a certificate executed by the Town Designee as defined in Section 9.3 herein verifying that the Prospective Purchaser on the first sale of a Restricted Unit is an Eligible Purchaser. The Declarant further reserves the right to amend this restriction by substituting a different unit for any of the above-described "restricted units", so long as the total number of units so restricted herein is not reduced in number.

9.3 RESTRICTIONS ON THE RESALE OF THE RESTRICTED UNITS

(a) The Maximum Resale Price of the Restricted Units is the price, as of a given date, equal to seventy five (75%) percent of the Appraised Value of such Unit (For example, if at the time of the resale of a Restricted Unit, the Appraised Value of the Unit is Three Hundred Thousand (\$300,000.00) Dollars; the maximum resale price of the unit is Two Hundred and Twenty Five Thousand (\$225,000.00) Dollars. Appraised Value as set forth herein, shall mean as to a Restricted Unit, the Fair Market Value of the Restricted Unit as

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

(b) Price. For a period of forty (40) years from the date of this Master Deed no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit of and in connection with the transfer of such Restricted Unit, is equal to or less than Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such unit. In the event that the price restrictions contained herein are

not extended as provided herein or are withdrawn prior to the expiration of such forty (40) years period, the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town to be held in trust for the benefit of the Town's Senior Citizens.

(c) Income. For a period of forty (40) years from the date of this Agreement, no Restricted unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.

(d) Town Designee. Means any person or entity designated by the Town in accordance with this Master Deed to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or designee of the Developer or his or hers successors and assigns. The Town hereby designates the Town Manager, or his or her assigns as the initial Town Designee and hereby confirms that the Town Designee shall have authority to give the notices, approvals and

certifications and to take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

(e) Affidavit of Compliance with Restrictions. Prior to the sale of any Restricted Unit either Declarant, its successor or assigns or any subsequent owner of such Restricted Unit (a "Seller"), the Seller shall deliver to the Town Designee, as further provided below, an affidavit executed under oath and acknowledged by both the Seller and the Prospective Purchaser of the Unit, identifying the Unit in question, the then-current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the Prospective Purchaser's household, and stating and affirming:

(i) That the Prospective Purchaser is an Eligible Purchaser, including a copy of a Mortgage Lender's Certificate thereof; and

(ii) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. Such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(f) Certificate from Town. At least twenty (20) days prior to the closing of any sale, conveyance or transfer of any Restricted Unit, the Seller shall deliver the Approval Documents to the Town Designee. The Approval Documents shall be delivered to the Town Designee at the Acton Town Hall, Acton, Massachusetts or such other address for the Town as the Town designates by written notice to the Audubon Hill South Condominium Association. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the Prospective Purchaser of the Unit and the Seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate to the satisfaction of the Town Designee that the annual household income of the Prospective Purchaser, and the sale or resale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the Seller of the Approval Documents, the Town Designee shall prepare and deliver to the Seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

- (i) a Certificate in recordable form signed and acknowledged by the Town Designee referring to the Unit in question, the Seller thereof, the Prospective Purchaser thereof, and the purchase price therefor, and stating:

(a) that the proposed sale or transfer of the Unit to the Prospective Purchaser is in compliance with the restrictions contained in this Deed; or

(b) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(ii) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income and assets of the Prospective Purchaser, and the sale or resale price, as the case may be, comply with the restrictions contained herein, and specifying each particular instance in which the Approval Documents are not satisfactory. In such event the Unit may not be sold to such prospective purchaser unless and until the Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (i) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in (i) above referring to such Unit and such Certificate so executed by the Town Designee shall be treated as conclusive evidence of the matters stated therein and may be recorded in connection with conveyance of the Unit, provided that, in the case of a certificate issued pursuant to Section 9.3 (i) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided further, that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days

from the date of the certificate of the Town Designee as provided above. If the conveyance of such Units pursuant to such Approval Documents and certificate does not occur within one hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the Seller and Prospective Purchaser may execute and deliver to the Town Designee additional affidavits in the form provided above, or other revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

Within ten (10) days of the closing of the sale of any Restricted Unit, the purchaser of such Unit shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded, together with information as to the place of recording thereof in the public records. Failure of the purchaser to comply with the preceding sentence shall not affect the validity of such Unit deed.

(g) Lack of Eligible Purchaser

- (i) If the owner of a Restricted Unit places a Restricted Unit for resale on the open market by written notice to the Town Designee indicating the availability of the Unit for resale and purchase or by listing the Unit for sale, with a real estate brokerage company (including the listing of the Restricted Unit with a Multiple Listing Service) and after utilization of all due diligence, and the expiration of one hundred and eighty (180) days from the date of the original listing agreement, with the Real Estate Brokerage Company the owner is unable to secure an Eligible Purchaser to purchase the Restricted Unit for the Maximum Resale Price, then and only in such instance

may the Restricted Unit be sold without compliance with the foregoing resale restrictions which restrictions shall then be forever released as to the particular restricted unit.

(ii) In the event a Restricted Unit is sold as described in Paragraph 9.3 (G)(i), the sum equal to the excess of the amount received by the Seller of the Unit and over the Unit's Maximum Resale Price shall be paid to the Town in trust for the benefit of the Town's Senior Citizens.

(iii) Prior to the sale of any Restricted Unit pursuant to Paragraph 9.3(g), the Seller shall deliver to the Town Designee, an affidavit executed under oath and acknowledged by both the Seller and the prospective purchaser of the unit in question, the then current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the prospective purchaser household and stating and affirming:

(a) That the Unit was listed for sale with a real estate brokerage company, the name and address of the real estate company, and the specific time periods of the listing, including reference to the multiple listing service wherein the Unit was so listed for sale.

(b) The agreed purchaser price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. In the case of a proposed sale by a Seller other than the Developer, such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(c) That the Seller has contacted each person on the waiting list of persons maintained by the Town Designee, the names of such persons and that such persons either did not qualify as Eligible Purchasers or were unable to perform within the one hundred eighty (180) day period set forth in Section 9.3(G)(1) herein.

(d) A certificate from the Town similar in form and content to the Certificate described in Section 9.3(f) herein shall be required, except that such Certificate shall also state:

(i) That the proposed sale or transfer of the Unit to the Prospective Purchaser is approved although the sale is not in compliance with the intent of the Resale Price Restrictions contained in this deed.

(ii) That the Town designee on behalf of the Town waives the right to enforce the Resale Price Restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(iii) That the Town acknowledges receipt of funds required to be paid pursuant to section 9.3(G)(2) herein and that the unit in question is no longer a "Restricted Unit and is released as a Restricted Unit and from these restrictions in perpetuity.

(h) Rights of Mortgages. Notwithstanding anything herein to the contrary, if the Holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns shall acquire the Property by reason of foreclosure, the restrictions and covenants herein contained shall not apply to such holder upon such acquisition of the Property or to any purchaser (other than the Mortgagor) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Mortgagor) of the Property from such holder.

(i) Covenants to Run with the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Condominium and shall be binding upon the Declarant, its successors and assigns, for the benefit of and

enforceable by the Town for a period of forty (40) years. Without limiting any other rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.

(j) Extension of Restrictions. The period of enforceability of the Restrictions as set forth in Sections 9.1, 9.2 and 9.3 herein may be extended if a Notice is executed by any one of the following: a Unit Owner, Unit Mortgagee, Condominium Association, Town of Acton or Acton Housing Authority and said Notice is recorded with the Middlesex South District Registry of Deeds.

9.4 Amendment to Restrictions. Notwithstanding anything in this Master Deed or in the Condominium Association or its Bylaws to the contrary, no Amendment of Sections 9.1, 9.2, and 9.3 of this Master Deed, except for the Declarant's reservation as set forth in the last sentence in Section 9.2(B), shall be effective without the written consent of the Town Designee, which consent shall not be unreasonably withheld. The balance of the provisions, terms and

conditions of this Master Deed may be amended without the consent of the Town's Designee, as allowed in Section 14 herein, so long as said Amendment does not modify Sections 9.1, 9.2 and 9.3 herein.

10. UNIT APPURTENANCES

Appurtenant to each Unit is the following:

- a. Membership in the Association which shall be in the same percentage as an individual Unit Owner common interest. Such membership is not assignable or severable from the ownership of such Unit.
- b. The exclusive easement to use the decks or porches adjacent to each Unit, if any there be, as shown on the said condominium plans recorded with the Master Deed which is incorporated herein by reference.
- c. The exclusive easement to use the garage and one parking space, each bearing the respective unit number, as shown on the said condominium plans recorded with the Master Deed which are incorporated herein by reference.

All of the Units shall have appurtenant thereto, in common with each other, the right and easement to use the common areas, including the exclusive easement, if any, as may be granted in the Master Deed and as shown on said Condominium plans, subject to and in accordance with the restrictions, limitations, provisions and

conditions as hereinbefore and hereinafter set forth in this Master Deed and the provisions of the By-Laws of the Association and the Rules and Regulations promulgated under the By-Laws.

11. COMMON AREAS AND FACILITIES

The common areas and facilities of the aforesaid Condominium comprise and consist of (a) the land described in the attached Schedule A as may from time to time be amended, together with the benefit of and subject to the rights and easements referred to in this Master Deed and on the Audubon Hill South Condominium plans annexed hereto; The said Common Areas are further subject to the right and easement of the Declarant to construct, mortgage and lease the structures constituting Phases II through V, and thereafter to submit the same as phases by Amendment to the Master Deed, as provided herein, provided, however, that until amendments are recorded by the Declarant, the structures will remain the property of the Declarant and shall not constitute part of the Condominium; (b) the foundations, structural columns, girders, beams, supports, exterior walls, interior floor joists and ceiling joists, including all studding and the common walls between the said Units of the building and between Units and the common areas; (c) roof of buildings, all sewer, water and electric lines, flue lines, conduits, ducts, pipes, plumbing, wiring, flues and other facilities for the furnishing of utility services which are contained in portions of the

building contributing to the service and/or support of the Unit, other Units or common areas and facilities, but not including the lighting, heating, plumbing and other fixtures and kitchen and bathroom cabinets located solely within said Unit service the same exclusively; (d) all such facilities contained within any Unit which serves part of the Condominium other than the Unit within which such facilities are contained; (e) the yards, lawns, gardens, driveways, walkways, and the improvements thereon and thereof, including walls, railings, steps, lighting fixtures and plants; (f) in the master television antenna systems and other facilities thereof, if any there be; (g) the parking lot and driveway subject to the exclusive easement of the unit owners; (h) the Senior Center (which shall be leased to the Town of Acton); (i) the Community Building and Recreation Lot; and (j) all other elements and features of the Condominium however designated or described excepting only the Units themselves as herein defined and described.

Notwithstanding anything to the contrary herein contained, the said common areas and facilities are subject to such exclusive rights, easements and limitations on use contained in other portions of this Master Deed or as may hereafter be established pursuant to the provisions of this Master Deed.

12. EASEMENTS AND ENCROACHMENTS: UNITS AND COMMON AREAS

If any Unit, now or hereafter, encroaches upon any other Unit or upon a portion of the common areas and facilities, or if any

portion of the common areas or facilities, now or hereafter, encroaches upon any Unit as a result of the construction, reconstruction, repairing, shifting, settling or movement of any portion of the improvements, a valid easement of the encroachment and for the maintenance for the same, shall exist so long as the building stands.

13. COMMON ELEMENTS: DETERMINATION OF PERCENTAGE

The determination of the percentage of interest of the respective Units in the common areas and facilities has been made upon the basis of the approximate relative fair market value of each Unit to the aggregate fair market value of all the Units in the Condominium, in accordance with the provisions of Chapter 183A of the General Laws of Massachusetts. Any such amendments in subsequent phases to the Units then existing in the condominium as hereinbefore and hereinafter provided shall also be made on the foregoing basis.

14. AMENDMENT OF MASTER DEED

While the Declarant owns at least fifty (50%) percent of the percentage interest of the Units in the Condominium, this Master Deed may be amended by a majority vote of Unit Owners which shall constitute written consent of the Unit Owners and, by the written consent of the majority of the holders of the first mortgages on mortgaged Units, provided that any such amendment shall not substantially reduce the enjoyment or substantially increase the burdens of any Unit Owner.

Thereafter, this Master Deed may be amended subject to the restrictions of Chapter 183A of the General Laws of Massachusetts and, except as provided otherwise in this instrument or the By-Laws of the Association, by a vote of sixty-seven (67%) percent in interest of the Unit Owners and written consent of at least fifty-one (51%) percent of the holders of the first mortgages on mortgaged Units. Notwithstanding the foregoing, no such amendment shall restrict or interfere with the right of the Declarant to sell, mortgage or otherwise dispose of any Condominium Unit owned by it.

Any amendment involving a change in percentage interest shall, subject to the provisions of Section 16 below, require the assent of all unit owners whose percentage interest is affected by such change. No amendment shall be effective until recorded with the said Registry of Deeds.

Notwithstanding any of the provisions herein or of Chapter 183A, the Declarant, its successors and assigns, reserves the right to construct on the premises such additional Units (or any lesser part thereof) as described in Paragraph 1 and Paragraph 11, and after such construction is substantially completed to amend this Master Deed creating Phases II through V (including any sub phases), as hereinbefore described, and each Unit Owner, his successors, assigns and mortgagees shall, by the acceptance and recording of his Unit Deed under this Master Deed and Amendments thereto, irrevocably

appoints the Declarant, its successors, assigns and mortgagees as his attorney to execute, acknowledge and deliver any and all instruments necessary to accomplish the provisions of this Master Deed. The right to amend this Master Deed to add such additional phase or phases shall expire seven (7) years from the date of recording this Master Deed. All future improvements with respect to the phases to be added shall be consistent with the initial improvements in terms of quality of construction.

15. TERMINATION

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

Upon such removal, the Unit Owners shall be deemed to own the Condominium property as tenants in common, each Unit Owner having an undivided interest therein in the same percentage of undivided interest as previously owned by him in the common areas and facilities.

The removal provided for in this paragraph and in the By-Law of the Association shall not bar the subsequent re-submission of the premises to the provisions of Chapter 183A of the General Laws of Massachusetts.

16. MORTGAGEE STATUS

Notwithstanding anything in this Master Deed or the Condominium Association or its By-Laws to the contrary, the following provisions shall apply for the protection of the holders, insurers or guarantors of the first mortgages (hereinafter "First Mortgagees") of record with respect to the Units and shall be enforceable by any First Mortgagee:

- a. In the event that the Unit Owners shall amend this Master Deed or the Condominium Association or its By-Laws to including therein any right of first refusal in connection with the sale of a unit, such right of first refusal shall not impair the rights of a First Mortgagee to:
 - (i) foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or
 - (ii) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or
 - (iii) sell or lease a Unit acquired by the First Mortgagee.
- b. Any party who takes title to a Unit by foreclosure sale duly conducted by a First Mortgagee shall be exempt from any such right of first refusal adopted by the Unit Owners and incorporated in this Master Deed or the Condominium Association or its By-Laws;

- c. Any first Mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in its mortgage or by-law shall not be liable for such Unit's unpaid common expenses or dues which accrued prior to the acquisition of title to such Unit by such First Mortgagee;
- d. Except as provided by statute in case of condemnation or substantial loss to the Units and/or common elements of the Condominium, the prior written consent of the Owners of the Units (other than the Declarant) to which at least sixty-seven (67%) percent of the votes in the Association are allocated and the approval of the First Mortgagees which have at least fifty-one (51%) percent of the votes subject to such first mortgages, shall be required to:
- (i) by any act or omission, seek to abandon or terminate the Condominium; or
 - (ii) change the pro rata interest or obligations of any individual Unit for the purpose of:
 - (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
 - (b) Determining the pro rata share of ownership of each Unit in the common areas and facilities.
 - (iii) partition or subdivide any Unit; or

- (iv) by an act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities, provided that the granting of easements for public facilities or for other public purposes consistent with the intended use of the common areas and facilities shall not be deemed an action for which prior consent of the First Mortgagees shall be required pursuant to this clause; or
- (v) use hazard insurance proceed on account of losses to either the Units or the common areas and facilities for other than repair, replacement or reconstruction thereof; or
- (vi) add or amend any material provisions of the Condominium documents of the Condominium which establish, provide for, govern or regulate any of the following:
 - (a) voting;
 - (b) assessments, assessment liens or subordination of any such liens;
 - (c) reserves for maintenance, repair and replacement of the common areas (or Units, if applicable);
 - (d) insurance or fidelity bonds;

- (e) rights to use common areas;
- (f) responsibility for maintenance and repair of several portions of the Condominium;
- (g) expansion or contraction of the Condominium or addition, annexation or withdrawal of property to or from the project, except as in this Master Deed reserved;
- (h) boundaries of any Unit;
- (i) the interest in the common areas;
- (j) convertibility of Units into common areas or of common areas into Units;
- (k) leasing of Units;
- (l) imposition of any restrictions on a Unit Owner's right to sell or transfer his unit, including any right of first refusal or similar restriction;
- (m) a decision by the Association to establish self management when professional management had been required previously by a First Mortgagee;
- (n) restoration or repair of the Condominium after a hazard damage or partial condemnation in a manner other than specified in this Master Deed or By-Laws;
- (o) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or

(p) any provisions which are for the express benefit of mortgage holders First Mortgagees or eligible insurers or guarantors of first mortgages on Unit.

In addition, prior written consent of the First Mortgagees representing at least 67% of the votes of the mortgaged units shall be required to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium property.

If an addition or amendment does not constitute a material change, such as the correction of a technical error or the clarification of a statement, consent shall be assumed when a First Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the proposal is made. An affidavit by the Clerk of the Board of Governors appended to the amendment naming reference to this provision stating that notice was given as above provided and no response had been received from the First Mortgagee within 30 days shall be conclusive evidence of such facts and may be relied upon by third parties with respect thereto.

e. Consistent with the provisions of Chapter 183A, all taxes, assessments and charges which may become liens prior to a first mortgage under the laws of The Commonwealth of Massachusetts shall relate only to the individual Units and not to the Condominium as a whole;

- f. In no event shall any provision of this Master Deed of the Condominium Association or its By-Laws give a Unit Owner or any other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or taking of such Unit and/or the common areas and facilities.
- g. A First Mortgagee, upon request made to the Board of Governors of the Condominium Association, shall be entitled to written notice of:
- (i) any condemnation loss or any casualty loss which affects a Material portion of the Condominium or any Unit on which there is a first mortgage owned or held by a First Mortgagee;
 - (ii) any delinquency in the payment of assessment or charges owed by an Owner of a Unit subject to a first mortgage owned or held by a First Mortgagee which remains uncured for a period of sixty (60) days;
 - (iii) any lapse, cancellation or Material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (iv) any proposed action which would require the consent of a specified percentage of First Mortgagees.

17. CONDOMINIUM CONTRACTS

Any agreement for professional management of the Condominium, or any other contract or lease with the Condominium Association entered into by the Declarant prior to the time the Declarant shall have relinquished control of the Association, may not exceed three (3) years, and further must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

18. BOOKS, RECORDS AND FINANCIAL STATEMENTS

a. The Association shall make available to the Unit Owners and lenders and to holders, insurers or guarantors of any first mortgage current copies of the Master Deed, By-Laws, other rules concerning the Condominium and books, records and financial statements of the Association. "Available" means available for inspection upon request, during the normal business hours or under other reasonable circumstances.

b. Any holder, insurer or guarantor of a first mortgage of a Unit shall be entitled upon written request to an audited financial statement for the immediately preceding fiscal year free of charge. Any financial statement so requested shall be furnished within a reasonable time following such request.

19. CONSTRUCTION OF DOCUMENTS

a. The Master Deed and the By-Laws of the Association shall not be altered, amended or otherwise changed if such alteration or amendment will in any manner disqualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA).

All provisions of the Master Deed and of the said By-Laws shall be construed so as to qualify any such mortgages for sale to FHLMC and FNMA.

b. In the event of a conflict between any numerical voting requirements for action set forth in the Master Deed, in the By-Laws of the Association or between the Master Deed and the By-Laws of the Association, the provisions requiring the greater percentage or fraction for action to be taken or avoided shall control.

20. MISCELLANEOUS

a. Captions. The captions herein inserted are only as a matter of convenience and for reference and in no way define, limit or described the scope of this Master Deed nor the intent of any provision hereof.

b. Gender. The use of the masculine gender in this Master Deed shall be deemed to refer to the feminine and neuter genders and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

c. Waiver. No provisions contained in this Master Deed shall be deemed to have been waived or abrogated by reason of any failure to enforce same, irrespective of the number of violations or breaches which occur.

d. Invalidity. The invalidity of any provision of this Master Deed shall not be deemed to impair or affect in any manner the validity, enforcement or effect of the other provisions of this Master Deed and, in such event all of the other provisions of this Master Deed shall continue in full force and effect as though such invalid provision had never been included herein.

e. Conflicts. This Master Deed is set forth to comply with the requirements of Massachusetts General Laws Chapter 183A and the mandatory provisions of such statute shall prevail.

f. Covenants and Restrictions. The covenants and restrictions contained in this Master Deed shall run with the land and shall inure to the benefit of and be enforceable by the Declarant, the Association and the Unit Owners acting through the Association or their respective legal representatives, heirs, successors and assigns. The property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, charges and liens subject to such rights of amendment and termination herein

set forth. A Unit Owner shall, in the event any action be instituted to enforce these restrictions or to collect common or Unit charges, in addition to the court order enforcing said restriction or ordering said payment of common or Unit charges, be liable for the legal expenses incurred by the Association and shall be collected as any other common charge from said Unit Owner.

g. Duration of Restrictions. The restrictions upon the use of the property imposed by this Master Deed shall last for a period of ninety-nine (99) years.

WITNESS my hand and seal this _____ day of June,
1989.

Roy C. Smith, Trustee of
High Street PCRC Trust

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

June , 1989

Then personally appeared the above-named Roy C. Smith, Trustee of High Street PCRC Trust as aforesaid and acknowledged the foregoing instrument to be his free act and deed, before me

Notary Public
My Commission Expires:

The Town of Acton hereby assents to the foregoing Master Deed and certifies that this document complies with the Terms, Conditions and Restrictions as delineated in the Comprehensive Development Agreement dated June , 1989, recorded in Book , Page with the Middlesex South District Registry of Deeds.

TOWN OF ACTON
Acting by a Majority of
its Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

June , 1989

Then personally appeared the above named
and acknowledged the foregoing to be the free act
and deed of the Board of Selectmen of the Town of Acton, before me,

Notary Public
My Commission Expires:

k/audusouthmasterdeed

AUDUBON HILL SOUTH CONDOMINIUM

SCHEDULE A

A certain parcel of land with the buildings thereon, situated on the Easterly side of High Street in Acton, Middlesex County, Massachusetts, being shown as an area containing acres of land, more or less, as shown on a plan entitled, "Site Plan for Audubon Hill South Condominium, Acton, Mass., to be recorded herewith, and to which plan reference may be had for a more particular description.

AUDUBON HILL SOUTH CONDOMINIUM

SCHEDULE B

<u>UNIT NO.</u>	<u>BUILDING NO.</u>	<u>SQUARE FOOTAGE</u>
1		
3		
5		
7		
9		
11		
13		
15		

The Unit Designation of each unit, and a statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification, are shown on the Condominium Plans hereinbefore mentioned and recorded herewith, which is incorporated herein and made a part hereof.

AUDUBON HILL SOUTH CONDOMINIUM

SCHEDULE C

<u>UNIT NO.</u>	<u>BUILDING NO.</u>	<u>PERCENTAGE OF INTEREST</u>
1		
3		
5		
7		
9		
11		
13		
15		

As of the date of recording of the Master Deed, as amended, the Declarant in setting the percentages as set forth in this Schedule C, has complied with the provisions of Chapter 183(a) and pursuant to the provisions of the Master Deed, including but not limited to Paragraphs 1, 11 and 14 of the same, the Declarant reserves the right to add additional Phases, in an order so desired, including the right to include Sub-phases within any such Phase, as well as the right to eliminate any Phases and modify the percentage of interest so as at all times to be in compliance with the aforesaid provisions of Chapter 183(a). The Declarant will modify the percentage of interest of all subsequent Phases in compliance with the aforesaid provisions of Chapter 183(a) at the time of creation of such additional Phases or Sub-phases, as the same may be required depending on the type and mix of the units in the said future Phases.

audubso/masterdeed

AUDUBON HILL NORTH CONDOMINIUM

MASTER DEED

PHASE I

This Master Deed of the Audubon Hill North Condominium made this day of _____, 1989.

WITNESSETH that I, Roy C. Smith, Trustee of High Street PCRC Trust, under Declaration of Trust dated March 5, 1985, recorded on October 13, 1987 in Book _____, Page _____, Middlesex South District Registry of Deeds, of Acton, Middlesex County, Massachusetts, (hereinafter referred to as the "Declarant"), being the owner of certain premises in Acton, Middlesex County, Massachusetts, hereinafter described on Schedule A, by duly executing and recording this Master Deed, does hereby submit said premises to the provisions of Chapter 183A of the General Laws of Massachusetts and by this Master Deed does create a Condominium, to be governed by and subject to the provisions of said Chapter 183A (including any amendments thereto hereafter enacted) and to that end, said Declarant does hereby declare and provide as follows:

1. NAME OF CONDOMINIUM AND DESCRIPTION OF PREMISES

The name of the Condominium shall be the Audubon Hill North Condominium. The premises which constitute the condominium comprise the land (the "Land") situated at High Street, Acton, Middlesex

(res phased 06/22/89)

County, Massachusetts together with the improvements and building now existing and to be hereinafter constructed thereon (collectively, the "Condominium"), as shown on a plan entitled, "Audubon Hill North Condominium" dated _____, 1988, to be recorded herewith, said plan being the Condominium Plans hereinafter referred to, all which are recorded herewith, said premises being bounded and described as set forth on the attached Schedule A. Said Audubon Hill North Condominium Phase I consists of six (6) units and is the first phase of a three (3) phase condominium. Said Declarant reserves the right, but not the obligation, to create additional phases, including any part thereof as shown on the plans hereinbefore mentioned. When and if all Phases are completed, the Condominium will contain thirty (30) units. Said Phase I consists of two (2) buildings each containing three (3) units and has access through a private road named Audubon Drive to High Street, Acton, Massachusetts, all as shown on the Condominium Plans which shows the layout, location, unit numbers and dimensions of the units as built. Said premises are submitted to the provisions of Chapter 183A and are subject to the right and easement hereby reserved by the Declarant to construct the buildings, parking areas and roadways designated as Phases II and III, as shown on the Condominium Plans hereinabove referred to. The Declarant also reserves the right to have as an appurtenance to the construction of Phases II and III an easement to pass and repass over the said land, including the right to store equipment and supplies,

so far as the same are necessary and convenient for the construction of the said Phases II and III. The Declarant, its successors and assigns, shall have such right and easement to use driveways and walkways affording access to the said premises including the right and easement to construct additional driveways and walkways to serve the said buildings in Phases II and III provided that such easement for access and construction shall not interfere with the access of the owners of the units in Phase I to their units.

The Declarant further reserves the right in the construction and creation of subsequent phases (including the right to create sub phases within one or more phases), to change the order of such phases provided that in all instances the percentage of interest attributable to each such unit then existing shall be determined in a manner in conformity with the provisions of Chapter 183A, as amended.

The Declarant reserves the right to grant easements over, under, through and across the common areas of the Condominium Land and Building for the purpose of installing cable television lines serving the Units in the Condominium and such other equipment as may be necessary for the installation and operation of the same.

2. DEFINITIONS

All terms and expressions herein used which are defined in Chapter 183A of the General Laws of Massachusetts, as amended, shall have the same meanings unless the context otherwise requires.

3. LEGAL ORGANIZATION

The Audubon Hill North Condominium Rules and Regulations shall refer to those Rules and Regulations as shall be adopted by the board of governors of the Association from time to time.

The Audubon Hill North Condominium Association, Inc. hereinafter referred to as the "Association", shall be the organization of Unit Owners organized pursuant to Chapter 180 of the General Laws of Massachusetts, which corporation will manage and regulate the aforesaid Condominium, pursuant to the By-Laws of the Association, this instrument, and Chapter 183A of the General Laws of Massachusetts.

Membership in the Association is appurtenant to Unit Ownership in the aforesaid Condominium and shall not be severable in any manner therefrom and this provision may not be amended by the Declarant, its successors or assigns.

The Board of Governors of the Association shall consist of at least three and not more than five persons. Initially, there shall be three governors appointed by the Declarant (including successors in the event of vacancy) who shall serve until the second annual meeting of the Unit Owners. Thereafter, the governors shall be elected by and from the members of the Association.

Officers of the Association shall consist of a President, a Treasurer and a Clerk. The initial officers shall be appointed by the Declarant. Subsequent officers shall be elected by the Board of

Governors to serve as such officers and Unit Owners. In the event of a Corporate Unit Owner, the officer may be a director or officer thereof. In the event of a Trust Unit Owner, the officer may be a Trustee or beneficiary thereof.

The By-Laws of the Association shall refer to those By-Laws of the Association which have been duly adopted in accordance with the provisions of Chapter 183A of the General Laws of Massachusetts by the Board of Governors and are incorporated herein by reference and such amendments thereto as may from time to time be enacted.

4. DESCRIPTION OF BUILDING

Phase I of the Condominium consists of two (2) buildings each containing three (3) units, for a total of six (6) units), and having access through a walkway, driveway and Audubon Drive to High Street, all as shown on the Condominium plans above described and having such characteristics as are set forth in Schedule B and shown on the aforesaid Condominium Plans. The building has a masonry foundation, wood frame, wood siding with asphalt shingle roof.

5. DESIGNATION OF UNITS

Unit Designation, Number of Rooms, Approximate Area, Location and other descriptive information are as shown on the attached Schedule B, in the Condominium plans, all of which are incorporated herein and made a part hereof.

6. INTEREST OF UNIT OWNER

The Owners of each Unit shall be entitled to an undivided

interest in the common areas and facilities of the Condominium in the percentages set forth in the attached Schedule C, which percentages also reflect anticipated future development of a given order and mix of Units. The Declarant reserves the right to change such order and mix, and the corresponding percentage interest appertaining to the Units, including Units existing before as well as after such change, provided that such percentage interests as modified are in compliance with Chapter 183A, as amended.

7. BOUNDARIES OF UNITS

The boundaries of the Units are as follows:

a. Floor: The upper surface of the concrete basement floor or concrete first floor for units without basements;

b. Ceiling: The plane of the lower surface of attic roof rafters.

c. Interior Building Walls Between the Units:

The plane of the interior surface of the wall studs facing each Unit.

d. Exterior Building Walls, Doors and Windows:

The planes of the interior surface of the wall studs or in case of a concrete wall, the interior surface of said concrete wall; as to doors, the exterior surface thereof; as to windows, the exterior surface of the glass and window frames.

8. MODIFICATION OF UNITS

The owner of any Unit may not, at any time, make any changes or modifications of the exterior of said Unit or any interior changes which affect, or in any way modify, the structural or supportive characteristics or integrity of the building or its services; however, such Owner may modify the interior construction of such Unit in any manner not inconsistent herewith, and further may at any time and from time to time, change the use and designation of any room or space within such Unit, subject always to provisions of this Master Deed and the provisions of the By-Laws of the Association, including the Rules and Regulations promulgated thereunder. Any and all work with respect to the foregoing shall be done in a good and workmanlike manner pursuant to a building permit duly issued by the local building permit authority, if required, and pursuant to the plans and specifications which have been submitted to and approved by the Board of Governors of the Association. Such approval shall not be unreasonably withheld or delayed.

9.1 RESTRICTIONS ON THE USE OF ALL UNITS

(a) Each Unit is hereby restricted to residential use and occupancy by senior citizens or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any natural person of age 55 or older at the time of the sale, lease, assignment, license, resale, sublease or other transfer or conveyance of a unit to such person.

(b) Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen resides in the Unit owned by his or her son or daughter.

(c) Each Residential Unit shall be occupied by no more than two persons as a single-family residence, who are both Senior Citizens or are a Senior Citizen and spouse, except that a parent or the parents of a Unit owner may reside in such Unit in addition to the aforesaid two (2) Persons, and provided, further, that upon receipt of written permission from the Board of Governor's, a member of the Unit owner's Immediate Family (other than spouse) may reside in such unit upon a showing of good cause.

(d) Overnight guests who are not senior citizens shall be allowed for reasonable visitation periods not to exceed one (1) week in duration, but children or grandchildren may visit for a period not to exceed one (1) month per year, without the written permission of the Board of Governors.

(e) Any lease or rental agreement for any Unit shall be to a senior citizen, or to a senior citizen and his or her spouse, in writing and specifically subject to the Master Deed, the By-Laws of the Association and the Rules and Regulations of the Condominium, including the restrictions with respect to occupancy, and shall have a minimum initial term of six (6) months. No Restricted Unit shall

be leased, sublet or licensed except to a Senior Citizen or Senior Citizen and spouse who would qualify as an Eligible Purchaser pursuant to the terms and conditions of this Master Deed. The aggregate of the annual compensation paid by any tenant or tenants as rental for a Restricted Unit shall not exceed the "net expense" incurred by owner of such Unit with respect to owning such Unit. "Net expense" shall be defined as the sum of owner's annual mortgage payments, including principal and interest; condominium fees and assessments; insurance maintained on the Unit; a return not to exceed ten percent (10%) annual interest on the owner's downpayment; the cost of improvements, repairs and the like made by the owner to the unit, amortization over the reasonable use and life; and any utility fees incurred by the owner in connection with the Unit.

Upon the rental of any Restricted Unit, the owner of said Unit shall provide the Board of Governors with documentation sufficient to substantiate the preceding requirements. The provisions of this last Paragraph shall not apply to non-restricted units. A copy of all leases or rental agreements, together with proof of age of all occupants, as executed shall promptly be furnished to the Board of Governors who shall keep and maintain the same as part of its records. The Board of Governors shall also be furnished at the same time with written acknowledgment of the lessee that the lessee has received copies of and will comply with the provisions of such Master Deed, By-Laws and Rules and Regulations. Notwithstanding the

foregoing, the said Declarant, its successors, assigns or affiliated entities (but not including a purchaser of an individual unit) shall have the further right to let or lease to a senior citizen as defined in Section 9.1 herein, any Units (Restricted or Non-Restricted) which have not been sold by it, including any such Unit later acquired or later leased by it upon such terms and for such periods, but not less than thirty (30) days, as it, in its sole discretion, shall determine.

(f) The occupants of each unit shall be entitled to keep one (1) pet, either a cat or a dog per unit and the keeping of any such pet shall be subject to the Rules and Regulations adopted by the Board of Governors and in the event that any such pet, in the sole discretion of the Board of Governors, causes or creates a nuisance, said pet shall be permanently removed from the property upon three (3) days' notice.

The use of Units by all persons authorized to use same shall be at all times subject to the provisions contained in this instrument, the By-Laws of the Association and such Rules and Regulations as may be prescribed and established to govern such use or which may hereafter be prescribed and established by the Board of Governors of the Association. Any Unit Owner found by the Massachusetts Superior Court to be in violation of the provisions of this Master Deed, By-Laws and Rules and Regulations of the Association shall be liable for the reasonable counsel fees incurred by the association in enforcing same.

The Association also reserve the right and easement to enter onto the premises, from time to time, at reasonable hours, for the purpose of reconstructing and repairing adjoining Units, common areas and facilities and to perform any obligations of the Association required or permitted to be performed under this Master Deed and/or the By-Laws of the Association.

Every Unit Deed conveying an interest in a Unit shall contain a Statement that such Unit is subject to the foregoing restrictions on the use of the units and the foregoing restrictions on use shall be attached to and made a part of each Unit Deed and shall be enforceable for a period of forty (40) years from the recording of this Master Deed.

9.2 RESTRICTIONS ON THE FIRST SALE OF THE RESTRICTED UNITS

(a) Unit Nos. 102, 106, 110, 113, 117, 121, 122, 126, and 128 shall be known as the "Restricted Units". These restrictions shall not apply to all other units in the Condominium, which Units shall be known as the "Non-Restricted Units".

(b) The first sale of Unit Nos. 102, 106, 110, 113, 117, 121 and 122, Audubon Lane, (hereinafter called "Restricted Units") by the Declarant shall be restricted to a maximum gross sales price not to exceed seventy-five (75%) percent of the Fair Market Value of the price of the Non-Restricted Units (the "Discounted Price") (for example, if the price of the Non-Restricted Unit is Two Hundred

Twenty Thousand (\$220,000.00) Dollars, the maximum gross sales price of a Restricted Unit would be One Hundred and Sixty-Five Thousand (\$165,000.00) Dollars; and the first sale of Unit Nos. 126 and 128, Audubon Lane, (hereinafter called "Restricted Units") by the Declarant shall be restricted to a gross sales price of Sixty-Five Thousand and 00/100 (\$65,000.00) Dollars and have been presold to the Acton Housing Authority. The first sale of the Restricted Units, except for the sale of Unit Nos. 126 and 128 which are subject to a First Option to Purchase in favor of the Acton Housing Authority shall be to an Eligible Purchaser. An Eligible Purchaser shall be defined as (1) a Senior Citizen or Senior Citizen and spouse (the "Prospective Purchaser"); (2) who, based on the Prospective Purchaser's income and assets, does not qualify with respect to the income and asset underwriting criteria established by the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") for a mortgage loan for 80% of the Fair Market Value of an Unrestricted Unit; and (3) who does qualify under the FHLMC or FNMA income and asset underwriting criteria for a mortgage loan for 80% of the Maximum Resale Price of a Restricted Unit. The Declarant shall be required to obtain and record a certificate executed by the Town Designee as defined in Section 9.3 herein verifying that the Prospective Purchaser on the first sale of a Restricted Unit is an Eligible Purchaser. The Declarant further

reserves the right to amend this restriction by substituting a different unit for any of the above-described "restricted units", so long as the total number of units so restricted herein is not reduced in number.

9.3 RESTRICTIONS ON THE RESALE OF THE RESTRICTED UNITS

(a) The Maximum Resale Price of the Restricted Units is the price, as of a given date, equal to seventy five (75%) percent of the Appraised Value of such Unit (For example, if at the time of the resale of a Restricted Unit, the Appraised Value of the Unit is Three Hundred Thousand (\$300,000.00) Dollars; the maximum resale price of the unit is Two Hundred and Twenty Five Thousand (\$225,000.00) Dollars. Appraised Value as set forth herein, shall mean as to a Restricted Unit, the Fair Market Value of the Restricted Unit as determined by real estate appraiser duly licensed and qualified in the Commonwealth of Massachusetts chosen from a list of such appraisers selected by the Town; provided, however, that the fair market value determination shall be made as though the Unit were not a Restricted Unit, but shall take into account that the Unit is located within a condominium development restricted to Senior Citizens containing both Unrestricted and Restricted Units; and provided further that the initial Appraised Value of any Unit shall be the market price reasonably established by the Developer. Such

appraisal shall generally satisfy the appraisal standards established from time to time by the Federal National Mortgage Association or another nationally recognized secondary mortgage market investor selected by the Town.

(b) Price. For a period of forty (40) years from the date of this Master Deed no Restricted Unit or any interest therein shall be sold, conveyed, or otherwise transferred, and no attempted sale, conveyance or transfer thereof shall be valid unless the aggregate value of all consideration and payments of every kind given or paid by the purchaser to the owner of such Restricted Unit of and in connection with the transfer of such Restricted Unit, is equal to or less than Maximum Resale Price for such Unit determined as of a date not later than the date of transfer or conveyance of title to such unit. In the event that the price restrictions contained herein are not extended as provided herein or are withdrawn prior to the expiration of such forty (40) years period, the sum equal to the excess of the amount received by the Seller of the Unit over the Unit's Maximum Resale Price shall be paid to the Town to be held in trust for the benefit of the Town's Senior Citizens.

(c) Income. For a period of forty (40) years from the date of this Agreement, no Restricted unit or any interest therein shall be sold, conveyed or otherwise transferred and no attempted sale, conveyance or transfer thereof shall be valid, unless the purchaser of such Restricted Unit is an Eligible Purchaser.

(d) Town Designee. Means any person or entity designated by the Town in accordance with this Master Deed to act for the Town with respect to this Agreement or to administer any provisions hereof, or any assignee or other transferee of the Town's rights to enforce the provisions of this Agreement and to hold the benefit of and enforce the restrictions and conditions contained in this Agreement, provided that the Town shall prepare and record a certificate with the Registry of Deeds and the Registry District setting forth such facts and shall deliver a copy of such certificate to the Developer and/or designee of the Developer or his or hers successors and assigns. The Town hereby designates the Town Manager, or his or her assigns as the initial Town Designee and hereby confirms that the Town Designee shall have authority to give the notices, approvals and certifications and to take such other actions as are provided to be given, taken or performed by the Town Designee under this Agreement, and the Developer and any Unit purchaser or Lender may rely conclusively on any such notice, approval, certification or action taken by the Town Designee.

(e) Affidavit of Compliance with Restrictions. Prior to the sale of any Restricted Unit either Declarant, its successor or assigns or any subsequent owner of such Restricted Unit (a "Seller"), the Seller shall deliver to the Town Designee, as further provided below, an affidavit executed under oath and acknowledged by both the Seller and the Prospective Purchaser of the Unit, identifying the

Unit in question, the then-current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the Prospective Purchaser's household, and stating and affirming:

(i) That the Prospective Purchaser is an Eligible Purchaser, including a copy of a Mortgage Lender's Certificate thereof; and

(ii) The agreed purchase price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. Such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(f) Certificate from Town. At least twenty (20) days prior to the closing of any sale, conveyance or transfer of any Restricted Unit, the Seller shall deliver the Approval Documents to the Town Designee. The Approval Documents shall be delivered to the Town Designee at the Acton Town Hall, Acton, Massachusetts or such other address for the Town as the Town designates by written notice to the Audubon Hill North Condominium Association. In each case the Approval Documents so delivered shall be accompanied by a notice stating that a response to the matters referred to therein is required, and specifying the addresses for notice purposes of the Prospective Purchaser of the Unit and the Seller. If the Approval Documents delivered to the Town Designee are acceptable and indicate

to the satisfaction of the Town Designee that the annual household income of the Prospective Purchaser, and the sale or resale price of the Unit, comply with the restrictions set forth herein, and that the proposed sale is otherwise in compliance with such restrictions, then, within ten (10) business days of receipt by the Town Designee from the Seller of the Approval Documents, the Town Designee shall prepare and deliver to the Seller, at the current address for notice purposes of such party contained in the records of the Town Designee, or at the Unit in question, the documents described below, as may be appropriate:

- (i) a Certificate in recordable form signed and acknowledged by the Town Designee referring to the Unit in question, the Seller thereof, the Prospective Purchaser thereof, and the purchase price therefor, and stating:
 - (a) that the proposed sale or transfer of the Unit to the Prospective Purchaser is in compliance with the restrictions contained in this Deed; or
 - (b) that the Town Designee on behalf of the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed sale or transfer; or
- (ii) written notice stating that the Approval Documents delivered to the Town Designee are not satisfactory to the Town or do not indicate that the annual household income and assets of the Prospective Purchaser, and the sale or resale price, as the case may be, comply with the restrictions contained herein, and specifying each particular instance in which the Approval Documents are not satisfactory. In such event the Unit may not be sold to such prospective purchaser unless and until the Town Designee subsequently approves revised Approval Documents.

All certificates of the type described in (i) above issued by the Town Designee shall bear the date of execution thereof. Any good faith purchaser of any restricted Unit and any lender or other party taking a security interest in such Unit may rely upon a certificate of the type referred to in (i) above referring to such Unit and such Certificate so executed by the Town Designee shall be treated as conclusive evidence of the matters stated therein and may be recorded in connection with conveyance of the Unit, provided that, in the case of a certificate issued pursuant to Section 9.3 (i) above, the consideration recited in the deed or other instrument conveying such Unit is not greater than the consideration stated in the certificate, and provided further, that conveyance of such Unit in accordance with the restrictions takes place within one hundred and twenty (120) days from the date of the certificate of the Town Designee as provided above. If the conveyance of such Units pursuant to such Approval Documents and certificate does not occur within one hundred and twenty (120) days of the date of execution by the Town Designee of such certificate, the Seller and Prospective Purchaser may execute and deliver to the Town Designee additional affidavits in the form provided above, or other revised Approval Documents, all in accordance herewith, and the provisions of this section with respect to issuance of a certificate or notice by the Town Designee and conveyance in accordance therewith shall be applicable to any such additional affidavits and other Approval Documents.

Within ten (10) days of the closing of the sale of any Restricted Unit, the purchaser of such Unit shall deliver to the Town Designee a true copy of the Unit deed of such Unit as recorded, together with information as to the place of recording thereof in the public records. Failure of the purchaser to comply with the preceding sentence shall not affect the validity of such Unit deed.

(g) Lack of Eligible Purchaser

- (i) If the owner of a Restricted Unit places a Restricted Unit for resale on the open market by written notice to the Town Designee indicating the availability of the Unit for resale and purchase or by listing the Unit for sale, with a real estate brokerage company (including the listing of the Restricted Unit with a Multiple Listing Service) and after utilization of all due diligence, and the expiration of one hundred and eighty (180) days from the date of the original listing agreement, with the Real Estate Brokerage Company, the owner is unable to secure an Eligible Purchaser to purchase the Restricted Unit for the Maximum Resale Price, then and only in such instance may the Restricted Unit be sold without compliance with the foregoing resale restrictions which restrictions shall then be forever released as to the particular restricted unit.
- (ii) In the event a Restricted Unit is sold as described in Paragraph 9.3 (G)(i), the sum equal to the excess of the amount received by the Seller of the Unit and over the Unit's Maximum Resale Price shall be paid to the Town in trust for the benefit of the Town's Senior Citizens.
- (iii) Prior to the sale of any Restricted Unit pursuant to Paragraph 9.3(g), the Seller shall deliver to the Town Designee, an affidavit executed under oath and acknowledged by both the Seller and the prospective purchaser of the unit in question, the then current owner thereof and the prospective purchaser thereof and the names and ages of all persons in the prospective purchaser household and stating and affirming:
 - (a) That the Unit was listed for sale with a real estate brokerage company, the name and address of the real estate company, and the specific time periods of the listing, including reference to the multiple listing service wherein the Unit was so listed for sale.

(b) The agreed purchaser price, including the aggregate value of all payments, all mortgages or other liabilities assumed and all other consideration of every kind, previously given or paid or subsequently to be given or paid by such Prospective Purchaser to the Seller for or in connection with the transfer of the Unit or any interest therein. In the case of a proposed sale by a Seller other than the Developer, such affidavit shall also contain the price paid for such Unit by such Seller and calculation of the Maximum Resale Price of such Unit as of the date not later than the date set for closing of the proposed sale.

(c) That the Seller has contacted each person on the waiting list of persons maintained by the Town Designee, the names of such persons and that such persons either did not qualify as Eligible Purchasers or were unable to perform within the one hundred eighty (180) day period set forth in Section 9.3(G)(1) herein.

(d) A certificate from the Town similar in form and content to the Certificate described in Section 9.3(f) herein shall be required, except that such Certificate shall also state:

(i) That the proposed sale or transfer of the Unit to the Prospective Purchaser is approved although the sale is not in compliance with the intent of the Resale Price Restrictions contained in this deed.

(ii) That the Town designee on behalf of the Town waives the right to enforce the Resale Price Restrictions set forth herein or any of them in connection with the proposed sale or transfer; or

(iii) That the Town acknowledges receipt of funds required to be paid pursuant to section 9.3(G)(2) herein and that the unit in question is no longer a "Restricted Unit and is released as a Restricted Unit and from these restrictions in perpetuity.

(h) Rights of Mortgages. Notwithstanding anything herein to the contrary, if the Holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan

association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns shall acquire the Property by reason of foreclosure, the restrictions and covenants herein contained shall not apply to such holder upon such acquisition of the Property or to any purchaser (other than the Mortgagor) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Mortgagor) of the Property from such holder.

(i) Covenants to Run with the Land. It is intended and agreed that the agreements, covenants and restrictions set forth above shall run with the Condominium and shall be binding upon the Declarant, its successors and assigns, for the benefit of and enforceable by the Town for a period of forty (40) years. Without limiting any other rights or remedies of the Town, its successors or assigns, any sale or other transfer or conveyance of any Restricted Unit in violation of the provisions of this Agreement in the absence of a certificate from the Town approving such sale, transfer or conveyance as provided hereinabove, shall, to the maximum extent permitted by law, be voidable by the Town, its successors or assigns by suit in equity to enforce such restrictions.

(j) Extension of Restrictions. The period of enforceability of the Restrictions as set forth in Sections 9.1, 9.2 and 9.3 herein may be extended if a Notice is executed by any one of the

following: a Unit Owner, Unit Mortgagee, Condominium Association, Town of Acton or Acton Housing Authority and said Notice is recorded with the Middlesex South District Registry of Deeds.

9.4 Amendment to Restrictions. Notwithstanding anything in this Master Deed or in the Condominium Association or its Bylaws to the contrary, no Amendment of Sections 9.1, 9.2, and 9.3 of this Master Deed, except for the Declarant's reservation as set forth in the last sentence in Section 9.2(B), shall be effective without the written consent of the Town Designee, which consent shall not be unreasonably withheld. The balance of the provisions, terms and conditions of this Master Deed may be amended without the consent of the Town's Designee, as allowed in Section 14 herein, so long as said Amendment does not modify Sections 9.1, 9.2 and 9.3 herein.

10. UNIT APPURTENANCES

Appurtenant to each Unit is the following:

- a. Membership in the Association which shall be in the same percentage as an individual Unit Owner common interest. Such membership is not assignable or severable from the ownership of such Unit.
- b. The exclusive easement to use the decks or porches adjacent to each Unit, if any there be, as shown on the said condominium plans recorded with the Master Deed which is incorporated herein by reference.

- c. The exclusive easement to use the garage and one parking space, each bearing the respective unit number, as shown on the said condominium plans recorded with the Master Deed, which are incorporated hereby by reference.

All of the Units shall have appurtenant thereto, in common with each other, the right and easement to use the common areas, including the exclusive easement, if any, as may be granted in the Master Deed and as shown on said Condominium plans, subject to and in accordance with the restrictions, limitations, provisions and conditions as hereinbefore and hereinafter set forth in this Master Deed and the provisions of the By-Laws of the Association and the Rules and Regulations promulgated under the By-Laws.

11. COMMON AREAS AND FACILITIES

The common areas and facilities of the aforesaid Condominium comprise and consist of (a) the land described in the attached Schedule A as may from time to time be amended, together with the benefit of and subject to the rights and easements referred to in this Master Deed and on the Audubon Hill North Condominium plans annexed hereto; The said Common Areas are further subject to the right and easement of the Declarant to construct, mortgage and lease the structures constituting Phases II through III, and thereafter to submit the same as phases by Amendment to the Master Deed, as provided herein, provided, however, that until amendments are recorded by the Declarant, the structures will remain the property of

the Declarant and shall not constitute part of the Condominium; (b) the foundations, structural columns, girders, beams, supports, exterior walls, interior floor joists and ceiling joists, including all studding and the common walls between the said Units of the building and between Units and the common areas; (c) roof of buildings, all sewer, water and electric lines, flue lines, conduits, ducts, pipes, plumbing, wiring, flues and other facilities for the furnishing of utility services which are contained in portions of the building contributing to the service and/or support of the Unit, other Units or common areas and facilities, but not including the lighting, heating, plumbing and other fixtures and kitchen and bathroom cabinets located solely within said Unit service the same exclusively; (d) all such facilities contained within any Unit which serves part of the Condominium other than the Unit within which such facilities are contained; (e) the yards, lawns, gardens, driveways, walkways, and the improvements thereon and thereof, including walls, railings, steps, lighting fixtures and plants; (f) in the master television antenna systems and other facilities thereof, if any there be; (g) the parking lot and driveway subject to the exclusive easement of the unit owners; and (h) all other elements and features of the Condominium however designated or described excepting only the Units themselves as herein defined and described.

Notwithstanding anything to the contrary herein contained, the said common areas and facilities are subject to such exclusive rights, easements and limitations on use contained in other portions of this Master Deed or as may hereafter be established pursuant to the provisions of this Master Deed.

12. EASEMENTS AND ENCROACHMENTS: UNITS AND COMMON AREAS

If any Unit, now or hereafter, encroaches upon any other Unit or upon a portion of the common areas and facilities, or if any portion of the common areas or facilities, now or hereafter, encroaches upon any Unit as a result of the construction, reconstruction, repairing, shifting, settling or movement of any portion of the improvements, a valid easement of the encroachment and for the maintenance for the same, shall exist so long as the building stands.

13. COMMON ELEMENTS: DETERMINATION OF PERCENTAGE

The determination of the percentage of interest of the respective Units in the common areas and facilities has been made upon the basis of the approximate relative fair market value of each Unit to the aggregate fair market value of all the Units in the Condominium, in accordance with the provisions of Chapter 183A of the General Laws of Massachusetts. Any such amendments in subsequent phases to the Units then existing in the condominium as hereinbefore and hereinafter provided shall also be made on the foregoing basis.

14. AMENDMENT OF MASTER DEED

While the Declarant owns at least fifty (50%) percent of the percentage interest of the Units in the Condominium, this Master Deed may be amended by a majority vote of Unit Owners which shall constitute written consent of the Unit Owners and, by the written consent of the majority of the holders of the first mortgages on mortgaged Units, provided that any such amendment shall not substantially reduce the enjoyment or substantially increase the burdens of any Unit Owner.

Thereafter, this Master Deed may be amended subject to the restrictions of Chapter 183A of the General Laws of Massachusetts and, except as provided otherwise in this instrument or the By-Laws of the Association, by a vote of sixty-seven (67%) percent in interest of the Unit Owners and written consent of at least fifty-one (51%) percent of the holders of the first mortgages on mortgaged Units. Notwithstanding the foregoing, no such amendment shall restrict or interfere with the right of the Declarant to sell, mortgage or otherwise dispose of any Condominium Unit owned by it.

Any amendment involving a change in percentage interest shall, subject to the provisions of Section 16 below, require the assent of all unit owners whose percentage interest is affected by such change. No amendment shall be effective until recorded with the said Registry of Deeds.

Notwithstanding any of the provisions herein or of Chapter 183A, the Declarant, its successors and assigns, reserves the right to construct on the premises such additional Units (or any lesser part thereof) as described in Paragraph 1 and Paragraph 11, and after such construction is substantially completed to amend this Master Deed creating Phases II and III (including any sub phases), as hereinbefore described, and each Unit Owner, his successors, assigns and mortgagees shall, by the acceptance and recording of his Unit Deed under this Master Deed and Amendments thereto, irrevocably appoints the Declarant, its successors, assigns and mortgagees as his attorney to execute, acknowledge and deliver any and all instruments necessary to accomplish the provisions of this Master Deed. The right to amend this Master Deed to add such additional phase or phases shall expire seven (7) years from the date of recording this Master Deed. All future improvements with respect to the phases to be added shall be consistent with the initial improvements in terms of quality of construction.

15. TERMINATION

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

Upon such removal, the Unit Owners shall be deemed to own the Condominium property as tenants in common, each Unit Owner having an undivided interest therein in the same percentage of undivided interest as previously owned by him in the common areas and facilities.

The removal provided for in this paragraph and in the By-Law of the Association shall not bar the subsequent re-submission of the premises to the provisions of Chapter 183A of the General Laws of Massachusetts.

16. MORTGAGEE STATUS

Notwithstanding anything in this Master Deed or the Condominium Association or its By-Laws to the contrary, the following provisions shall apply for the protection of the holders, insurers or guarantors of the first mortgages (hereinafter "First Mortgagees") of record with respect to the Units and shall be enforceable by any First Mortgagee:

- a. In the event that the Unit Owners shall amend this Master Deed or the Condominium Association or its By-Laws to including therein any right of first refusal in connection with the sale of a unit, such right of first refusal shall not impair the rights of a First Mortgagee to:
 - (i) foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or

- (ii) accept a deed (or assignment) in lieu of foreclosure in the even of default by a mortgagor; or
 - (iii) sell or lease a Unit acquired by the First Mortgagee.
- b. Any party who takes title to a Unit by foreclosure sale duly conducted by a First Mortgagee shall be exempt from any such right of first refusal adopted by the Unit Owners and incorporated in this Master Deed or the Condominium Association or its By-Laws;
- c. Any first Mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in its mortgage or by-law shall not be liable for such Unit's unpaid common expenses or dues which accrued prior to the acquisition of title to such Unit by such First Mortgagee;
- d. Except as provided by statute in case of condemnation or substantial loss to the Units and/or common elements of the Condominium, the prior written consent of the Owners of the Units (other than the Declarant) to which at least sixty-seven (67%) percent of the votes in the Association are allocated and the approval of the First Mortgagees which have at least fifty-one (51%) percent of the votes subject to such first mortgages, shall be required to:
- (i) by any act or omission, seek to abandon or terminate the Condominium; or

- (ii) change the pro rata interest or obligations of any individual Unit for the purpose of:
 - (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or
 - (b) Determining the pro rata share of ownership of each Unit in the common areas and facilities.
- (iii) partition or subdivide any Unit; or
- (iv) by an act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities, provided that the granting of easements for public facilities or for other public purposes consistent with the intended use of the common areas and facilities shall not be deemed an action for which prior consent of the First Mortgagees shall be required pursuant to this clause; or
- (v) use hazard insurance proceed on account of losses to either the Units or the common areas and facilities for other than repair, replacement or reconstruction thereof; or
- (vi) add or amend any material provisions of the Condominium documents of the Condominium which establish, provide for, govern or regulate any of the following:

- (a) voting;
- (b) assessments, assessment liens or subordination of any such liens;
- (c) reserves for maintenance, repair and replacement of the common areas (or Units, if applicable);
- (d) insurance or fidelity bonds;
- (e) rights to use common areas;
- (f) responsibility for maintenance and repair of several portions of the Condominium;
- (g) expansion or contraction of the Condominium or addition, annexation or withdrawal of property to or from the project, except as in this Master Deed reserved;
- (h) boundaries of any Unit;
- (i) the interest in the common areas;
- (j) convertibility of Units into common areas or of common areas into Units;
- (k) leasing of Units;
- (l) imposition of any restrictions on a Unit Owner's right to sell or transfer his unit, including any right of first refusal or similar restriction;
- (m) a decision by the Association to establish self management when professional management had been required previously by a First Mortgagee;

- (n) restoration or repair of the Condominium after a hazard damage or partial condemnation in a manner other than specified in this Master Deed or By-Laws;
- (o) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (p) any provisions which are for the express benefit of mortgage holders First Mortgagees or eligible insurers or guarantors of first mortgages on Unit.

In addition, prior written consent of the First Mortgagees representing at least 67% of the votes of the mortgaged units shall be required to terminate the legal status of the Condominium for reasons other than substantial destruction or condemnation of the Condominium property.

If an addition or amendment does not constitute a material change, such as the correction of a technical error or the clarification of a statement, consent shall be assumed when a First Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the proposal is made. An affidavit by the Clerk of the Board of Governors appended to the amendment naming reference to this provision stating that notice was given as above provided and no response had been received from the First Mortgagee within 30 days shall be conclusive evidence of such facts and may be relied upon by third parties with respect thereto.

- e. Consistent with the provisions of Chapter 183A, all taxes, assessments and charges which may become liens prior to a first mortgage under the laws of The Commonwealth of Massachusetts shall relate only to the individual Units and not to the Condominium as a whole;
- f. In no event shall any provision of this Master Deed of the Condominium Association or its By-Laws give a Unit Owner or any other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or taking of such Unit and/or the common areas and facilities.
- g. A First Mortgagee, upon request made to the Board of Governors of the Condominium Association, shall be entitled to written notice of:
 - (i) any condemnation loss or any casualty loss which affects a Material portion of the Condominium or any Unit on which there is a first mortgage owned or held by a First Mortgagee;
 - (ii) any delinquency in the payment of assessment or charges owed by an Owner of a Unit subject to a first mortgage owned or held by a First Mortgagee which remains uncured for a period of sixty (60) days;

(iii) any lapse, cancellation or Material modification of any insurance policy or fidelity bond maintained by the Association; and

(iv) any proposed action which would require the consent of a specified percentage of First Mortgagees.

17. CONDOMINIUM CONTRACTS

Any agreement for professional management of the Condominium, or any other contract or lease with the Condominium Association entered into by the Declarant prior to the time the Declarant shall have relinquished control of the Association, may not exceed three (3) years, and further must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

18. BOOKS, RECORDS AND FINANCIAL STATEMENTS

a. The Association shall make available to the Unit Owners and lenders and to holders, insurers or guarantors of any first mortgage current copies of the Master Deed, By-Laws, other rules concerning the Condominium and books, records and financial statements of the Association. "Available" means available for inspection upon request, during the normal business hours or under other reasonable circumstances.

b. Any holder, insurer or guarantor of a first mortgage of a Unit shall be entitled upon written request to an audited financial statement for the immediately preceding fiscal year free of charge. Any financial statement so requested shall be furnished within a reasonable time following such request.

19. CONSTRUCTION OF DOCUMENTS

a. The Master Deed and the By-Laws of the Association shall not be altered, amended or otherwise changed if such alteration or amendment will in any manner disqualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA).

All provisions of the Master Deed and of the said By-Laws shall be construed so as to qualify any such mortgages for sale to FHLMC and FNMA.

b. In the event of a conflict between any numerical voting requirements for action set forth in the Master Deed, in the By-Laws of the Association or between the Master Deed and the By-Laws of the Association, the provisions requiring the greater percentage or fraction for action to be taken or avoided shall control.

20. MISCELLANEOUS

a. Captions. The captions herein inserted are only as a matter of convenience and for reference and in no way define, limit or described the scope of this Master Deed nor the intent of any provision hereof.

b. Gender. The use of the masculine gender in this Master Deed shall be deemed to refer to the feminine and neuter genders and the use of the singular shall be deemed to refer to the plural and vice versa, whenever the context so requires.

c. Waiver. No provisions contained in this Master Deed shall be deemed to have been waived or abrogated by reason of any failure to enforce same, irrespective of the number of violations or breaches which occur.

d. Invalidity. The invalidity of any provision of this Master Deed shall not be deemed to impair or affect in any manner the validity, enforcement or effect of the other provisions of this Master Deed and, in such event all of the other provisions of this Master Deed shall continue in full force and effect as though such invalid provision had never been included herein.

e. Conflicts. This Master Deed is set forth to comply with the requirements of Massachusetts General Laws Chapter 183A and the mandatory provisions of such statute shall prevail.

f. Covenants and Restrictions. The covenants and restrictions contained in this Master Deed shall run with the land and shall inure to the benefit of and be enforceable by the Declarant, the Association and the Unit Owners acting through the Association or their respective legal representatives, heirs, successors and assigns. The property is and shall be held, transferred, sold,

conveyed and occupied subject to the covenants, restrictions, charges and liens subject to such rights of amendment and termination herein set forth. A Unit Owner shall, in the event any action be instituted to enforce these restrictions or to collect common or Unit charges, in addition to the court order enforcing said restriction or ordering said payment of common or Unit charges, be liable for the legal expenses incurred by the Association and shall be collected as any other common charge from said Unit Owner.

g. Duration of Restrictions. The restrictions upon the use of the property imposed by this Master Deed shall last for a period of ninety-nine (99) years.

WITNESS my hand and seal this _____ day of _____,
1989.

Roy C. Smith, Trustee of
High Street PCRC Trust

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

, 1989

Then personally appeared the above-named Roy C. Smith, Trustee of High Street PCRC Trust as aforesaid and acknowledged the foregoing instrument to be his free act and deed, before me

Notary Public
My Commission Expires:

The Town of Acton hereby assents to the foregoing Master Deed and certifies that this document complies with the Terms, Conditions and Restrictions as delineated in the Comprehensive Development Agreement dated June , 1989, recorded in Book , Page with the Middlesex South District Registry of Deeds.

TOWN OF ACTON
Acting by a Majority of
its Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

June , 1989

Then personally appeared the above named
and acknowledged the foregoing to be the free act
and deed of the Board of Selectmen of the Town of Acton, before me,

Notary Public
My Commission Expires:

k/audubonhilldeed

AUDUBON HILL NORTH CONDOMINIUM

SCHEDULE A

A certain parcel of land with the buildings thereon, situated on the Easterly side of High Street in Acton, Middlesex County, Massachusetts, being shown as an area containing acres of land, more or less, as shown on a plan entitled, "Site Plan for Audubon Hill North Condominium, Acton, Mass., to be recorded herewith, and to which plan reference may be had for a more particular description.

AUDUBON HILL NORTH CONDOMINIUM

SCHEDULE B

<u>UNIT NO.</u>	<u>BUILDING NO.</u>	<u>SQUARE FOOTAGE</u>
101		
103		
105		
107		
109		
111		

The Unit Designation of each unit, and a statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification, are shown on the Condominium Plans hereinbefore mentioned and recorded herewith, which is incorporated herein and made a part hereof.

AUDUBON HILL NORTH CONDOMINIUM

SCHEDULE C

<u>UNIT NO.</u>	<u>BUILDING NO.</u>	<u>PERCENTAGE OF INTEREST</u>
101		
103		
105		
107		
109		
111		

As of the date of recording of the Master Deed, as amended, the Declarant in setting the percentages as set forth in this Schedule C, has complied with the provisions of Chapter 183(a) and pursuant to the provisions of the Master Deed, including but not limited to Paragraphs 1, 11 and 14 of the same, the Declarant reserves the right to add additional Phases, in an order so desired, including the right to include Sub-phases within any such Phase, as well as the right to eliminate any Phases and modify the percentage of interest so as at all times to be in compliance with the aforesaid provisions of Chapter 183(a). The Declarant will modify the percentage of interest of all subsequent Phases in compliance with the aforesaid provisions of Chapter 183(a) at the time of creation of such additional Phases or Sub-phases, as the same may be required depending on the type and mix of the units in the said future Phases.

k/audnomd

BYLAWS OF

AUDUBON HILL SOUTH CONDOMINIUM ASSOCIATION, INC.

ARTICLE I - DEFINITIONS

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

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

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

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

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

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

Condominium shall mean Audubon Hill South Condominium.

Audubon Hill South Condominium Master Deed - See Master Deed.

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

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

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

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

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

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

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

Organization of Unit Owners - See Association.

Owner - See Unit Owner.

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

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

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

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

Unit Owner shall mean the owner of said unit.

ARTICLE II - GENERAL

Section 1 - The Condominium

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

said plans being the Condominium Plans hereafter referred to.

Section 2 - The Association

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

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

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

Section 3 - Provisions of By-Laws Applicable

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

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

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

Section 5 - Office of the Association

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

Section 6 - Certificates of Membership

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

Section 7 - Documents Available for Review

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

Section 8 - Termination

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

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

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

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1 - Membership

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

Section 2 - Voting

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

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

ARTICLE IV - BOARD OF GOVERNORS

Section 1 - Constitution

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

Section 2 - Election

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

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

Section 3 - Resignation

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

Section 4 - Powers and Duties of the Board of Governors

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

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

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

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

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

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

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

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

h. Making repairs, additions, improvements to or

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

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

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

k. Promulgating and collecting fines for violation of

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

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

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

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

Section 5 - The First Board of Governors and Subsequent Boards

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

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

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

- a. Four (4) months after seventy-five (75%) percent of the Units in the Condominium have been conveyed to Unit purchasers; or
- b. Five (5) years after conveyance of the first Unit.

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

Section 6 - Resignation and Removal

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

Section 7 - Vacancies in the Board of Governors

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

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

Section 8 - Board of Governors Meeting Following First Annual Meeting

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

Section 9 - Regular Meetings

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

Section 10 - Special Meetings

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

Section 11 - Waiver of Notice of Meetings

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

Section 12 - Quorum

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

Section 13 - Fidelity Bonds

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

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

Section 14 - Compensation of the Board of Governors

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

Section 15 - Governors Not Liable

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

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

Section 16 - Records

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

Section 17 - Annual Report

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

ARTICLE V - MEETINGS OF MEMBERS OF THE ASSOCIATION

Section 1 - Annual Meetings; Election of Governors

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

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

Section 2 - Location of Annual Meetings

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

Section 3 - Special Meetings

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

Section 4 - Notice of Meetings

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

Section 5 - Quorum

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

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

Section 6 - Voting

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

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

Section 7 - Majority Defined

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

ARTICLE VI - OFFICERS

Section 1 - Principal Officers of the Association

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

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

Section 2 - Selection and Removal of Officers

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

Section 3 - President

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

Section 4 - Clerk

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

Section 5 - Treasurer

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

Section 6 - Execution of Documents for the Board of Governors

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

Section 7 - Compensation of Officers

No officer shall receive any compensation from the

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

Section 8 - Resignation

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

ARTICLE VII - NOTICES

Section 1 - Notice Procedure

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

Section 2 - Waiver of Notice

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

ARTICLE VIII - OPERATION OF THE CONDOMINIUM

Section 1 - Budget

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

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

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

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

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

Section 2 - Payment of Common Charges

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

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

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

Master Deed with respect to first mortgages.

Section 3 - Default

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

Section 4 - Power to Suspend Rights of Membership

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

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

Section 5 - Foreclosure of Liens

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

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

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

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

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

Section 7 - Maintenance

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

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

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

Section 8 - Restrictions

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

b. No immoral, improper, offensive or unlawful use

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

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

Section 9 - Improvement Restriction

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

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

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

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

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

Section 10 - Cost Allotment of Improvements

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

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

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

Section 11 - Right of Access

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

Section 12 - Rules and Regulations of the Association

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

Section 13 - Right of Action

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

Governors.

Section 14 - Ingress and Egress of Unit Owners

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

ARTICLE IX - INSURANCE

Section 1 - Minimum Coverage - Association

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

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

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

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

(ii) all other perils which are customarily covered

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

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

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

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

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

- (i) recognition of any insurance Trust Agreement (if

any there be);

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The premium shall be a common expense.

ARTICLE X - DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 1 - Duty to Repair or Restore

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

Section 2 - Estimate of Cost

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

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

Section 3 - Collection of Construction Funds

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

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

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

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

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

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

Section 4 - Plans and Specifications

Any repair or restoration must be either

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

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

Section 5 - Units

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

a. Construction Funds

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

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

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

b. Performance of Work and Payment

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

Section 6 - Disbursements of Construction Funds

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

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

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

b. Payment for Repair and Restoration

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

c. Contribution by Owners

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

d. Surplus Funds

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

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

e. Determination Not to Repair or Restore

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

Section 7 - Certificates

The insurance trustee may rely on the following certifications:

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

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

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

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

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

Section 8 - Insurance Trustee to Administer Insurance

Proceeds in the Event of Loss

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

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

ARTICLE XI - MORTGAGES

Section 1 - Notice to Board of Governors

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

Section 2 - Listed Mortgagee

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

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

Section 3 - Unpaid Common Charges

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

Section 4 - Notice of Default

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

Section 5 - Examination of Books

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

Section 6 - Notice of Loss

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

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

ARTICLE XII - SALE OF UNITS

Section 1 - Appurtenant Interest

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

- a. such Unit Owner's undivided interest in the common areas and facilities and the rights in areas concerning which easements have been conveyed to the Association;
- b. membership in the Association;
- c. the interest of such Unit Owner in any other assets of the Association.

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

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

Section 2 - Waiver of Rights of Partition

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

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

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

ARTICLE XIV - CONFLICTS

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

ARTICLE XV - MISCELLANEOUS

Section 1 - Invalidity

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

Section 2 - Captions

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

Section 3 - Waiver

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

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

k/audsobylaws

BYLAWS OF
AUDUBON HILL NORTH CONDOMINIUM ASSOCIATION, INC.

ARTICLE I - DEFINITIONS

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

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

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

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

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

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

Condominium shall mean Audubon Hill North Condominium.

Audubon Hill North Condominium Master Deed - See Master Deed.

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

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

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

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

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

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

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

Organization of Unit Owners - See Association.

Owner - See Unit Owner.

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

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

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

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

Unit Owner shall mean the owner of said unit.

ARTICLE II - GENERAL

Section 1 - The Condominium

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

said plans being the Condominium Plans hereafter referred to.

Section 2 - The Association

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

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

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

Section 3 - Provisions of By-Laws Applicable

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

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

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

Section 5 - Office of the Association

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

Section 6 - Certificates of Membership

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

Section 7 - Documents Available for Review

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

Section 8 - Termination

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

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

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

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1 - Membership

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

Section 2 - Voting

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

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

ARTICLE IV - BOARD OF GOVERNORS

Section 1 - Constitution

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

Section 2 - Election

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

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

Section 3 - Resignation

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

Section 4 - Powers and Duties of the Board of Governors

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

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

b. Determining the common expenses of the Condominium,

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

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

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

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

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

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

h. Making repairs, additions, improvements to or

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

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

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

k. Promulgating and collecting fines for violation of

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

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

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

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

Section 5 - The First Board of Governors and Subsequent Boards

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

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

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

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

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

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

Section 6 - Resignation and Removal

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

Section 7 - Vacancies in the Board of Governors

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

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

Section 8 - Board of Governors Meeting Following First Annual Meeting

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

Section 9 - Regular Meetings

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

Section 10 - Special Meetings

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

Section 11 - Waiver of Notice of Meetings

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

Section 12 - Quorum

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

Section 13 - Fidelity Bonds

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

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

Section 14 - Compensation of the Board of Governors

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

Section 15 - Governors Not Liable

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

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

Section 16 - Records

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

Section 17 - Annual Report

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

ARTICLE V - MEETINGS OF MEMBERS OF THE ASSOCIATION

Section 1 - Annual Meetings; Election of Governors

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

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

Section 2 - Location of Annual Meetings

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

Section 3 - Special Meetings

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

Section 4 - Notice of Meetings

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

Section 5 - Quorum

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

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

Section 6 - Voting

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

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

Section 7 - Majority Defined

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

ARTICLE VI - OFFICERS

Section 1 - Principal Officers of the Association

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

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

Section 2 - Selection and Removal of Officers

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

Section 3 - President

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

Section 4 - Clerk

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

Section 5 - Treasurer

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

Section 6 - Execution of Documents for the Board of Governors

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

Section 7 - Compensation of Officers

No officer shall receive any compensation from the

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

Section 8 - Resignation

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

ARTICLE VII - NOTICES

Section 1 - Notice Procedure

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

Section 2 - Waiver of Notice

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

ARTICLE VIII - OPERATION OF THE CONDOMINIUM

Section 1 - Budget

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

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

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

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

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

Section 2 - Payment of Common Charges

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

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

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

Master Deed with respect to first mortgages.

Section 3 - Default

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

Section 4 - Power to Suspend Rights of Membership

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

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

Section 5 - Foreclosure of Liens

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

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

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

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

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

Section 7 - Maintenance

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

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

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

Section 8 - Restrictions

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

b. No immoral, improper, offensive or unlawful use

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

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

Section 9 - Improvement Restriction

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

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

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

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

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

Section 10 - Cost Allotment of Improvements

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

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

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

Section 11 - Right of Access

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

Section 12 - Rules and Regulations of the Association

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

Section 13 - Right of Action

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

Governors.

Section 14 - Ingress and Egress of Unit Owners

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

ARTICLE IX - INSURANCE

Section 1 - Minimum Coverage - Association

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

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

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

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

(ii) all other perils which are customarily covered

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

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

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

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

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

- (i) recognition of any insurance Trust Agreement (if

any there be);

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The premium shall be a common expense.

ARTICLE X - DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 1 - Duty to Repair or Restore

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

Section 2 - Estimate of Cost

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

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

Section 3 - Collection of Construction Funds

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

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

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

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

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

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

Section 4 - Plans and Specifications

Any repair or restoration must be either

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

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

Section 5 - Units

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

a. Construction Funds

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

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

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

b. Performance of Work and Payment

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

Section 6 - Disbursements of Construction Funds

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

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

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

b. Payment for Repair and Restoration

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

c. Contribution by Owners

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

d. Surplus Funds

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

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

e. Determination Not to Repair or Restore

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

Section 7 - Certificates

The insurance trustee may rely on the following certifications:

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

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

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

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

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

Section 8 - Insurance Trustee to Administer Insurance

Proceeds in the Event of Loss

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

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

ARTICLE XI - MORTGAGES

Section 1 - Notice to Board of Governors

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

Section 2 - Listed Mortgagee

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

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

Section 3 - Unpaid Common Charges

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

Section 4 - Notice of Default

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

Section 5 - Examination of Books

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

Section 6 - Notice of Loss

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

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

ARTICLE XII - SALE OF UNITS

Section 1 - Appurtenant Interest

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

- a. such Unit Owner's undivided interest in the common areas and facilities and the rights in areas concerning which easements have been conveyed to the Association;
- b. membership in the Association;
- c. the interest of such Unit Owner in any other assets of the Association.

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

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

Section 2 - Waiver of Rights of Partition

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

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

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

ARTICLE XIV - CONFLICTS

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

ARTICLE XV - MISCELLANEOUS

Section 1 - Invalidity

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

Section 2 - Captions

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

Section 3 - Waiver

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

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

k/audnobylaws

ROY C. SMITH
P.O. BOX 2840
BREWSTER, MASSACHUSETTS 02631
Telephone (508) 896-5906
FAX (508) 896-5906

FAX NO: 508 264-9630

DATE: 8/13/93

TO: John MURRAY

FROM: ROY SMITH / AUBURTON

Number of Pages, Including Cover Page:

SUBJECT: SENIOR CENTER LEASE LETTER/FAX 8/12/93

MESSAGE: Dear John
 please add to the last
sentence of word PAR 3.4 after the word receipt
.... for review to insure that the daily flow
rate is not being exceeded ...

Thanks Roy Smith

P.S John sorry to be operating from here, but
I broke two ribs on Sunday and will be
restricted from travel until Monday.

If you do not receive all of the pages or have other problems call

(508) 896-5906. Ask for _____ .



292 Great Road • Acton, MA 01720
Tel: (508) 263-0011 • Fax: (508) 635-0421

August 12, 1993

John Murray
Town of Acton
472 Main Street
Acton, MA 01720

Re: Your Letter of 15 July 1993

Dear John,

I have reviewed your letter and make the following comments:

Paragraph 1 Snow Removal - I find no mention of snow removal in the references you quoted. I have given your letter to the two attorneys involved in the original negotiations and have asked for their comments.

Paragraph 2 Your comments sound familiar. Do not forget the roads maintained by the condominium owners are also used by Acton citizens to get to the conservation land.

Paragraph 3 There never was any threat of canceling the South Phase. The South Phase recreational center and all access roads would have been completed. It is likely that the North Phase would not have been built.

There were several reasons on both sides that a compromise or revision to the program was appropriate:

1. The restricted units were not moving well because of the rules and regulations concerning resale--a very common problem throughout the Commonwealth when the real estate market collapsed.
2. The Town of Acton was faced with the loss of five (5) affordable units because funds were not available for their purchase nor for the down payment. I had extended the acceptance date on the first units and switched units in an attempt not to lose them.

The compromise, therefore, benefitted both parties. I received a more saleable product by changing the remaining restricted units into market units thus allowing contingency financing since we used sales receipts to continue construction. The Town of Acton received \$130,000 for the Housing Authority units that clearly would be lost under the existing agreement, a \$450,000 investment

in the Senior Center and an increase in the residential tax basis in excess of \$6,000,000 per year.

Paragraph 4 Septic - I believe, John, that the following facts are correct:

<u>Parcel</u>	<u>Design Capacity</u>	<u>Constructed Capacity</u>
Lot N	6,740	6,951
Lot S	7,700	7,800
		14,751

To make sure that you do not trip review of the system by the State, the system must total less than 15,000 gallons; therefore, we have at this time an excess of 249 gallons (15,000-14,751) gallons per day adjusted to 245 gallons per day to insure compliance. Included in the 6,740 gallons per day is 600 gallons per day for the Senior Center. Add to that the excess of 211 gallons (6,951-6,740) that presently exists and the center has available 811 gallons per day. If you add through construction the 245 gallons per day, the Senior Center will have available 1,056 gallons per day (600 + 211 + 245).

The Senior Center will base its occupancy on 811 gallons per day initially and 1,056 gallons per day with the approval of the design and construction of an expansion of the Lot N septic system to a maximum capacity of 7,196 gallons per day. The costs, of course, belong to the Town of Acton.

Paragraph 8.4 Septic - The tenant will have the 1,000 gallon kitchen grease traps, both located outside the building under the parking lot, cleaned every six months as a minimum. The 1,500 gallon septic tank located in the same general area will be cleaned once a year as a minimum. The landlord will be notified when such cleaning is scheduled. If during cleaning it is apparent that the duration between cleanings is too long, they will be cleaned more frequently. Occupancy is based on 811 gallons per day until the installation of additional trenches is complete increasing the number to a maximum of 1,056 gallons per day. The installation to increase the capacity by 245 gallons per day will be accomplished by the Town of Acton prior to 30 November 1993. Water bills for the Senior Center will be sent to the Audubon Hill North Condominium Association within ten (10) days of receipt.

Yours truly,

Roy C. Smith
Roy C. Smith

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (508) 264-9612
Fax (508) 264-9630

John Murray
Assistant Town Manager

July 15, 1993

Roy Smith
R. Smith Associates
292 Great Road
Acton, MA 01720

Dear Roy,

We believe the snow removal question was fully addressed both in the Comprehensive Agreement (sections 5.2 & 5.3), and the lease (Article 7). The last full sentence in Section 5.2 of the Comprehensive Agreement states "Such Lease and Condominium Documents shall provide that in no event shall the Town be required to pay any form of condominium or common fees, special assessments or the like." We believe that a lease requiring the Town to maintain the parking lot and walkways free of snow is a special assessment or the like. Further, section 5.3 specifically states that "the Developer, or, following its creation, the Condominium Association, shall be responsible for the maintenance and repair of ... the grounds surrounding it (the senior center) at its sole expense". Article VII of the lease further defines the maintenance of the grounds to include the parking facilities.

I have inferred from your letter that there is an underlying theme that the residents of the complex are receiving less services and support from the Town than other citizens. I believe that it is time to set the record straight. The first point that I wish to address is your comment concerning the roadways of the development and property taxes. Property taxes are based upon the value of the property and not based upon the fact that the property is located on a private or public road. Also, the residents of your development enjoy the use of all the public roads in Acton (which in part are supported by the property tax), not just the roads located inside the development.

The second issue that I wish to address is lack of

support from the Town. As you and I are both aware, because of the cooperation of the Board of Selectmen, the Audubon Hill project was not cancelled during construction of the South Phase. Thereby, preserving the value of the units constructed early in the process, protecting those unit owners from the expense of finishing the required infrastructure, preserving the estimated unit condominium fee, and the Town obtaining a Senior Center. In my term with the Town, this has been the only project in which the Town, as an entity, has become intrinsically involved in rescuing the financing of a private business venture. Therefore, an argument could be constructed that members of the condominium associations have received an unprecedented amount of support from the Town, and support of this nature has not been awarded to any other citizen of the Town.

The final outstanding issue on appropriate seating level for the Senior Center dining operation is a real quagmire, with what I believe is an easy answer. The problem in a nutshell is that Title 5, does not specifically address a senior center flow rate. Therefore, your consultant chose a school with a cafeteria as the applicable flow rate (15 gal/seat). Our Health Department with guidance from DEP chose a Country Club flow rate, and I will allege that the correct flow rate should be "a large church with a kitchen" per the National Standard Plumbing Code (5-7 gal. per seat). Regardless of the standard finally selected, I believe the following language from section 5.3 of the agreement fulfills both our needs.

In the event the Town alters or expands its sewage demands for the Senior Center, such action shall be contingent upon Town approval and authorization of each action and shall be at no cost to the Condominium Association.

Sincerely Yours,

John Murray

"A"

RECEIVED
JUN 9 1980

GRANT OF RIGHT OF FIRST REFUSAL

of Acton HOUSING AUTHORITY (the "grantee") **ACTON BOARD OF HEALTH**

we, High Street PCRC (the "grantor")

of 292 Great Road, Acton, MA in consideration

of \$ 5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #128 Audubon Lane, Phase II, Type A, 1090 sq. ft., 1 bedroom, 1 bath, 1 den,

living room/dining room combination, kitchen, one car garage (handicap)

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437.

18611

445 & Cert. of Title Book 1036, Pg.179

Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of \$ 65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutually-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed within the required thirty days.

Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such transfer.

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of \$ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.
 - a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

 - b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

 - c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor*:

Roy C. Smith

For the Grantee:

Mark A. Keeler

For the Executive Office of Communities and Development:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Gingeri
Notary Public

Elizabeth M. Gingeri
Notary Public
My Commission Expires December 16, 1994. My commission expires: Dec. 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than one individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 128 Audubon Lane, Audubon Hill, High Street, Acton, Massachusetts, dated March 8, 1989, a copy of which is attached as "A". RCS

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Carol Wheeler

Roy C. Smith
Roy C. Smith

Jean C. Smith
Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Grinani
Notary Public
My commission expires: Dec. 16, 1994

Elizabeth M. Grinani
Notary Public

My Commission Expires December 16, 1994

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 12~~8~~ Audubon Lane, Audubon Hill, High Street, Acton, Massachusetts, ^(RC's) a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Roy C. Smith
Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March , 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

Elizabeth M. Thimaru
Notary Public

My commission expires: Dec 16, 1994

Elizabeth M. Thimaru

Notary Public

My Commission Expires December 16, 1994

"A"

RECEIVED
JUN 2 1986

GRANT OF RIGHT OF FIRST REFUSAL

of Acton HOUSING AUTHORITY (the "grantee") ACTON BOARD OF HEALTH

of High Street PCRC Trust (the "grantor")

of 292 Great Road, Acton, MA in consideration

of \$ 5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #4 Brewster Lane, Phase I, Type A, 1090 sq. ft., 1 bedroom, 2 baths, 1 den,

living room/dining room combination, kitchen, one car garage

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437 18611, Page 445 & Cert. of Title, Bk. 1036, Pg. 179

Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of \$ 65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutually-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed within the required thirty days.

3. Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such transfer.

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of \$ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.
 - a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

 - b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

 - c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor*:

Roy C. Smith

For the Grantee:

Walter M. Mueller

For the Executive Office of Communities and Development:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Gringer
Notary Public

Elizabeth M. Gringer
Notary Public

My Commission Expires December 16, 1994 - My commission expires: Dec. 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than one individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 4 ^{PCG} Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Charles Wheeler

Roy C. Smith
Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March , 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

Elizabeth M. Ginnari
Notary Public
My Commission expires: Dec. 16, 1994
Elizabeth M. Ginnari
Notary Public

My Commission Expires December 16, 1994

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 4 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, dated March 8, 1989, a copy of which is attached as "A". *PCS*

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheel
Carol Wheel

Roy C. Smith
Roy C. Smith
Jean C. Smith
Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Gringeri
Notary Public
My commission expires: Dec. 16, 1994
Elizabeth M. Gringeri
Notary Public
My Commission Expires December 16, 1994



GRANT OF RIGHT OF FIRST REFUSAL

ACTON BOARD OF HEALTH

O Acton HOUSING AUTHORITY (the "grantee")
/we, High Street PCRC Trust (the "grantor")

f 292 Great Road, Acton, MA in consideration
f \$ 5,000.00, (the "deposit") grant to the Acton

ousing Authority a Right of First Refusal to purchase

Unit #25 Brewster Lane, Phase I, Type B, 1140 sq. ft., 1 bedroom, 1 bath, 1 den,

living room/dining room combination, kitchen, one car garage (handicap unit)

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see
the deed recorded with the Middlesex County
Registry of Deeds at Book 18611, Page 437
18611 445 & Cert. of Title Book 1036, Pg. 179

1. Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of \$65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutually-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed within the required thirty days.

3. Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such transfer.

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of \$ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.
 - a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

 - b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

 - c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor:

Roy C. Smith

For the Grantee:

Mark M. Muel

For the Executive Office of Communities and Development:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Gringer
Notary Public

My Commission Expires December 15, 1994

Elizabeth M. Gringer
Notary Public
My commission expires: Dec. 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than one individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 25 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, dated March 8, 1989, a copy of which is attached as "A".

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Roy C. Smith
Roy C. Smith

Carol Wheeler

Jean C. Smith
Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Gringeri
Notary Public

My commission expires: Dec. 16, 1994

Elizabeth M. Gringeri

Notary Public

My Commission Expires December 16, 1994

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 25 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

[Signature]

[Signature]
Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March , 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

[Signature]
Notary Public
My commission expires: Dec. 16, 1994

My Commission Expires: [illegible]

"A"

RECEIVED
JUN 2 1989

GRANT OF RIGHT OF FIRST REFUSAL

TO Acton HOUSING AUTHORITY (the "grantee") **ACTON BOARD OF HEALTH**

I/we, High Street PCRC Trust (the "grantor")

of 292 Great Road, Acton, MA 01720 in consideration

of \$ 5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #2 Brewster Lane, Phase I, Type B, 1140 sq. ft., 1 bedroom, 2 baths, 1 den,

living room/dining room combination, kitchen, one car garage

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437

445 & Cert. of Title Book 1036, Pg.179

1. Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of \$ 65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.

2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutually-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed within the required thirty days.

Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such transfer.

The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of \$ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.

a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor*:

Roy C. Smith

For the Grantee:

Martin M. Mueller

For the Executive Office of Communities and Development:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Shingee

Elizabeth M. Shingee
Notary Public

Notary Public

My Commission Expires December 16, 1994

My commission expires: Dec 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than one individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 2 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, dated ⁽²⁵⁾ March 8, 1989, a copy of which is attached as "A".

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Carol Wheeler

Roy C. Smith
Roy C. Smith

Jean C. Smith
Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Gungor
Notary Public
My commission expires: Dec. 16, 1994

My Commission Expires December 16, 1994

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 2 Brewster Lane, Audubon Hill, High Street, Acton, Massachusetts, ^(2CS) a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Christ Wheeler

Roy C. Smith
Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March , 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

Elizabeth M. Gringeri
Notary Public
My commission expires: Dec. 16, 1994

Elizabeth M. Gringeri
Notary Public

My Commission Expires December 16, 1994

"A"

RECEIVED
JUN 6

GRANT OF RIGHT OF FIRST REFUSAL

TO Acton HOUSING AUTHORITY (the "grantee") ACTON BOARD OF HEALTH
I/we, High Street PCRC Trust (the "grantor")

of 292 Great Road, Acton, MA 01720 in consideration

of \$ 5,000.00, (the "deposit") grant to the Acton

Housing Authority a Right of First Refusal to purchase

Unit #126 Audubon Lane, Phase II, Type B, 1140 sq. ft., 1 bedroom, 2 baths, 1 den,

living room/dining room combination, kitchen, one car garage

located in Audubon Hill, High Street, Acton (the "property").

For grantor's title and a legal description of the property, see the deed recorded with the Middlesex County Registry of Deeds at Book 18611, Page 437 & Cert. of Title #181329
Book 18611 Page 445 Book 1036, Page 179

1. Upon issuance of a valid certificate of occupancy for the property, the grantor shall offer in writing to sell said property to the grantee at the price of \$65,000.00. Possession by the grantor of a valid certificate of occupancy for the property shall be a condition precedent to any such offer. Notice of such offer shall be addressed to the Acton Housing Authority and to the Executive Office of Communities and Development, Housing Development Bureau. The notice referred to in this paragraph must be actual notice by certified mail, return receipt requested; constructive notice by recording or otherwise shall not constitute such actual notice.
2. The grantee shall exercise the Right of First Refusal granted hereunder by written notice to the grantor within thirty (30) days of the grantor's offer, as described in Paragraph 1 above. If such notice shall not be given within such time, this Right of First Refusal shall be deemed to have lapsed, and the grantee shall have no further rights hereunder. The exercise of such Right of First Refusal is expressly contingent upon the execution of a mutually-acceptable purchase and sale agreement for the property which shall be subject to the approval of the Executive office of Communities and Development. Said purchase and sale agreement may also serve as the written notice to the grantor required by this paragraph, if executed within the required thirty days.
3. Should the grantee elect not to exercise this Right of First Refusal or should this Right lapse as described in Paragraph 2 above, the deposit with interest thereon, shall be returned forthwith to the grantee. The deposit shall be held in escrow by the grantor's attorney in an interest-bearing account, with interest to the grantee upon transfer of title to the property to the grantee, and shall be applied to the purchase price upon such transfer.

4. The grantor hereby for him/them(selves), their heirs, executors, administrators, and assigns, hereby covenants and agrees, said covenants and agreements to run with the land until released by the grantee, or until 1 January 1991, whichever shall occur first and that title to said property described above shall not be transferred or assigned by the grantor by sale or otherwise in whole or in part to a third party without the same, together with any improvements thereon, being first offered in writing to the grantee, as required herein. The grantor shall immediately notify any such third party of the existence of this Right of First Refusal upon the grantor's receipt of any offer to transfer or assign title to the property. In the event that the grantor transfers or assigns said property by sale or otherwise in violation of this provision, the grantor shall immediately tender to the grantee a certified check in the amount of \$ 5,000.00 as liquidated damages in this matter and the grantor's attorney shall immediately return to the grantee the deposit with interest thereon.

5. The Grantee, by execution of this right of first refusal hereby acknowledges that the property is to be conveyed subject to and with the benefit of the Restriction Agreement Deed Rider, a copy of which is attached hereto and made a part hereof, and all of the terms, conditions and restrictions as set forth in the Master Deed and By-Laws of the Audubon Hill South and Audubon Hill North Condominium drafts of which have been delivered to and reviewed by the Grantee, but have yet to be recorded.
 - a. Each Unit is hereby restricted to residential use and occupancy by a senior citizen or to a senior citizen and his or her spouse. For purpose of this Master Deed, a senior citizen shall be defined as any person of age 55 or older.

 - b. Every sale, resale, or other conveyance of every Unit, whether by the Declarant, or its successors, and or assigns, shall be to a senior citizen, or to the son or daughter of a senior citizen, so long as the senior citizen occupies the Unit owned by his or her son or daughter.

 - c. Each Residential Unit shall be occupied by no more than two persons as a single-family residence.

6. It is understood and agreed that upon execution, this Grant of Right of First Refusal shall be recorded by the grantee with the Middlesex County Registry of Deeds.

Executed as a sealed instrument this 8th day of March 1989.

For the Grantor*:

Roy C. Smith

For the Grantee:

Mark M. Weston

For the Executive Office of Communities and Development:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

March 8, 1989

Then personally appeared the above named Roy C. Smith and acknowledged the foregoing instrument to be his free act and deed, before me,

Elizabeth M. Granger
Notary Public

Elizabeth M. Granger

Notary Public

My commission expires: Dec 16, 1994

My Commission Expires December 16, 1994

*Where title to the property is held in the name of a trust, corporation, or more than one individual, A Certificate of Authorization must be attached to the Document stating that the Grantor has voted to execute this Document and that the person signing the Document for the Grantor is so authorized.

LETTER OF DIRECTION

March 8, 1989

This Letter of Direction is given in conjunction with and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE"), of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 126 Audubon Lane, Audubon Hill, High Street, Acton, Massachusetts, dated March 8, 1989, a copy of which is attached as "A".

The undersigned, as sole Beneficiaries of HIGH STREET PCRC TRUST hereby direct that ROY C. SMITH as TRUSTEE of said Trust execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler
Carol Wheeler

Roy C. Smith
Roy C. Smith
Jean C. Smith
Jean C. Smith

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

On this 8th day of March, 1989, before me personally appeared ROY C. SMITH and JEAN C. SMITH to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Elizabeth M. Guinori
Notary Public
My commission expires: DEC. 16, 1994

Elizabeth M. Guinori
Notary Public
My Commission Expires December 16, 1994

CERTIFICATE

HIGH STREET PCRC TRUST

March 8, 1989

This certificate is given in conjunction with, and as authority for the execution and delivery by ROY C. SMITH, TRUSTEE of HIGH STREET PCRC TRUST ("TRUSTEE") of a Grant of Right of First Refusal from High Street PCRC Trust to the Acton Housing Authority for Unit 126 Audubon Lane, Audubon Hill, High Street, Acton, Massachusetts, a copy of which is Attached as "A".

ROY C. SMITH hereby certifies that ROY C. SMITH is the sole Trustee of HIGH STREET PCRC TRUST, that ROY C. SMITH and JEAN C. SMITH are all of the Beneficiaries of HIGH STREET PCRC TRUST, and that the Trustee is fully authorized and empowered to execute and deliver the attached Grant of First Refusal.

WITNESS:

Carol Wheeler

Roy C. Smith
Roy C. Smith

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On this 8th day of March , 1989 before me personally appeared ROY C. SMITH and acknowledged the foregoing instrument to be his free act and deed.

Elizabeth M. Grings
Notary Public

My commission expires: Dec 16, 1994

Elizabeth M. Grings

Notary Public

My Commission Expires December 16, 1994

EXHIBIT H

LEASE

This instrument is an Indenture of Lease between ROY C. SMITH, as Trustee of the HIGH STREET PCRC TRUST u/d/t/ dated March 5, 1985, recorded with the Middlesex South Registry of Deeds at Book 18611, Page 409 and with the Middlesex South Registry District of the Land Court as Document No. 758061 (the "Landlord"), and the TOWN OF ACTON, MASSACHUSETTS, a Massachusetts municipal corporation acting by and through its Board of Selectmen (the "Tenant").

The parties to this instrument hereby agree with each other as follows:

ARTICLE I

SUMMARY OF BASIC LEASE PROVISIONS

1.1 BASIC DATA

Date:	June __, 1989
Landlord:	Roy C. Smith, as Trustee of the High Street PCRC Trust
Present Mailing Address of Landlord:	292 Great Road Acton, Massachusetts 01720
Tenant:	Town of Acton
Present Mailing Address of Tenant:	Acton Town Hall Acton, Massachusetts 01720 Attn: Town Manager
Leased Premises:	The Landlord's building to be constructed in accordance with the Plan referenced as Exhibit 1 to a Special Permit granted by the Town of Action Planning Board to the Landlord on March 4, 1989 (the "Building"), the approximately 1.66 acres of land (the "Lot") on which the Building is located, commonly known as the Town of Acton Senior Center, a common area located in the Audubon Hill South Condominium, Acton, Massachusetts 01720, together with all appurtenances thereto

and fixtures thereon, including the Parking Lot. The Building, Lot, appurtenances and fixtures are collectively referred to herein as the "Leased Premises".

Initial Lease Term:

Ninety nine (99) calendar years (plus the partial calendar month, if any, following the Commencement Date).

Option to Extend:

Tenant has the option to extend the term of this Lease for an additional ninety nine (99) years on the terms set forth in Section 3.4.

Annual Rent:

One Dollar (\$1.00) per year.

Commencement Date:

As determined pursuant to Section 3.1.

Permitted Use:

The Building may be used as a center for the use of all Senior Citizens who reside in the Town of Acton and uses incidental thereto, and such other uses which conform, as of right or otherwise, with the zoning laws of the Town of Acton, Massachusetts from time to time applicable thereto.

1.2 ENUMERATION OF EXHIBITS

Exhibit A:

Plan showing the planned configuration and location of the Building and the Lot.

ARTICLE II

2.1 DEMISE AND LOCATION OF PREMISES

The Landlord hereby leases to the Tenant, and the Tenant hereby accepts from the Landlord, the premises (the "Premises") described in Section 1.1 as the Leased Premises. Attached hereto as Exhibit A is a plan showing the planned location of the Building and the Lot.

ARTICLE III

TERM OF LEASE

3.1 COMMENCEMENT DATE

The original term (the "Term" or "Lease Term") of this Lease shall be for the period specified in Section 1.1 as the Lease Term. If Section 1.1 provides for a fixed Commencement Date, then the Commencement Date of the term hereof shall be such date. Otherwise, the term of this Lease shall commence on, and the Commencement Date shall be, the first to occur of:

- (a) the date on which the Premises shall be deemed ready for occupancy, as defined in Section 3.2 below; or
- (b) the date upon which Tenant commences beneficial use of the Premises.

Tenant shall, in all events, be treated as having commenced beneficial use of the Premises when it begins to move into the Premises furniture and equipment for its regular business operations.

As soon as may be convenient after the Commencement Date has been determined, Landlord and Tenant agree to join with each other in the execution, in recordable form, of a written Declaration in which the Commencement Date and specified term of this Lease shall be stated.

3.2 PREPARATION OF PREMISES FOR OCCUPANCY

The Premises shall be deemed ready for occupancy on the date on which (i) the Premises, together with sufficient facilities for reasonable access and service thereto, have been completed, except for items of work and mechanical adjustment of equipment and fixtures which because of season or weather or nature of the item cannot practicably be done at the time or are not necessary to make the Premises reasonably tenantable for its Permitted Use; and (ii) there has been delivered to Tenant both a registered architect's or engineer's certificate of such completion, and a certificate of occupancy covering the Premises (temporary or permanent) issued by the governmental authority having jurisdiction thereof.

Landlord shall complete as soon as conditions practicably permit all items of work excepted under the above paragraph and Tenant shall not use the Premises in such manner as to increase the cost of such completion.

3.3 TENANT'S CANCELLATION OPTION

The parties agree that Tenant shall have the exclusive option to terminate this Lease upon not less than one year's prior written notice to Landlord, such termination to be effective and such option to be exercised as hereinafter provided. To exercise such option, Tenant shall give written notice to Landlord of the election of such option to terminate, which notice shall specify the effective date of such termination; such termination date shall be no sooner than one year after the date of such notice. If Tenant gives such notice, the rights and obligations of the parties shall cease as of the termination date specified in such notice and rent shall be adjusted as of such termination date.

3.4 EXTENSION OPTION

If the Tenant is not in default hereunder, the Tenant shall have the right to extend the Term of this Lease for one ninety-nine (99) year extension to the Term, provided that on or before the date nine (9) months prior to the expiration of the original Lease Term, the Tenant gives written notice of its election to extend this Lease upon the same terms, covenants and conditions contained in this Lease.

ARTICLE IV

RENT AND OTHER CHARGES

4.1 RENT

Tenant shall pay to Landlord Annual Rent, in arrears, on the second day of each calendar year during the Lease Term. Payments of Annual Rent shall be made to Landlord, at Landlord's mailing address or at such other place as Landlord shall from time to time designate by written notice to Tenant.

Landlord and Tenant acknowledge that it is the intention that use of the Building and lot be a gift from Jean and Roy Smith in memory of their parents Arthur and Anna Cloonan, and John and Karin Smith, all of Holden, Massachusetts. Tenant agrees that Landlord may erect or cause to be erected a plaque located on the Leased Premises substantially to such effect.

4.2 TENANT TO PAY REAL ESTATE TAXES

Tenant shall be responsible for the payment before the same become delinquent, of all real estate taxes and taxes in the nature of real estate taxes (the "Taxes") upon the Building and the Lot, even if the Landlord shall construct an addition to the Building or construct an additional structure or structures on the Lot; provided, however, that the Town

may seek the full or partial abatement of Taxes on the Leased Premises, for so long as the Tenant occupies any part of the Premises. However, if authorities having jurisdiction assess real estate taxes, which Tenant deems excessive, Tenant may defer compliance therewith to the same extent permitted by the laws of the jurisdiction in which the same are located, so long as the validity or amount thereof is contested by Tenant in good faith, and so long as Tenant's occupancy of the Premises is not disturbed.

ARTICLE V

USE OF THE PREMISES

5.1 PERMITTED USES

The Tenant shall use the Premises only for the Permitted Use specified in Section 1.1. The Landlord warrants that as of the Commencement Date the use of the Premises as a senior citizens' center is permitted as of right by all applicable laws and regulations, including the applicable building and zoning codes and that there exist no deed restrictions or other restrictions as to the use of the Premises for the above-mentioned purposes. The Landlord warrants that it has full right and lawful authority to enter into this Lease, that this Lease has been duly authorized pursuant to the applicable trust documents and that it has good and marketable record title to the Premises. If any law, ordinance or regulation, or deed restriction or other restriction at any time prohibits the Permitted Use referred to in Section 1.1, then the Tenant may, at its option, terminate this Lease upon notice to the Landlord without prejudice to any other rights the Tenant may have at law or in equity.

The Tenant shall not commit, or suffer to be committed any waste upon the Premises or any public or private nuisance.

5.2 ALTERATIONS

The Tenant may, at its own expense, place office and trade fixtures, office equipment and the like in the Premises and make alterations, improvements, or additions to the Premises provided such work shall be performed in a good and workmanlike manner employing materials of good quality and in compliance with laws, rules, orders and regulations of governmental authorities having jurisdiction thereof. Furthermore, should the Tenant require sewage discharge capability in excess of that contemplated in the Plan for the Senior Center, the Tenant shall, at its own expense, obtain all necessary permits for and perform or cause to be performed the connection of the Building to the applicable public sewage system. All alterations, additions and improvements made by the Tenant to the Premises shall remain

therein and, at termination of the Lease, shall be surrendered as a part thereof, except for fixtures and equipment installed at the Tenant's cost, which fixtures and equipment may be removed by the Tenant. The Tenant shall, at Tenant's own expense, promptly repair all damage to the Premises or the Building resulting from any such removal. The Tenant shall not be required to redecorate the Premises at the termination of this Lease.

ARTICLE VI

ASSIGNMENT AND SUBLETTING

6.1 PERMITTED ASSIGNMENT AND SUBLETTING

The Tenant may not assign or otherwise transfer this Lease or any interest herein, or sublet, without the prior written consent of the Landlord, except the Tenant may assign this Lease to another municipal or quasi-municipal agency or organization without the Landlord's consent.

In the event of an assignment of this Lease by the Tenant, the Landlord shall execute an agreement with the assignee whereby the assignee agrees directly with the Landlord to be bound by all Tenant obligations hereunder and by the execution of such agreement, the Tenant shall be released of all liability for Tenant obligations under this Lease.

ARTICLE VII

RESPONSIBILITY FOR REPAIRS

7.1 REPAIRS

Except as otherwise provided in this Article VII, from and after the Commencement Date, and until the end of the Lease Term, the Tenant shall keep the interior of the Premises (including ceilings, interior walls, windows and window glass, and floors of the Premises and all sanitary and toilet facilities in the Premises) in good order, condition and repair, reasonable wear and tear and damage by fire or casualty and repairs made necessary as a result of a taking by condemnation or right of eminent domain and matters for which Landlord is responsible hereunder only excepted; and shall keep in good order, condition and repair the plumbing, electrical, lighting, heating, ventilating equipment, air-conditioning and other mechanical equipment of the Building and all utility lines, wires, pipes, ducts and conduits serving the Building; and the Tenant shall surrender the Premises at the end of the Lease Term in such condition.

The Landlord shall keep in good order, condition and repair the roof and exterior of the Building, the foundation of the Building, the structural elements of the Building and of the Premises, and the parking facilities on the Lot, and shall be responsible for all other repairs except those required to be made by the Tenant. Furthermore, the Landlord shall maintain and landscape the grounds in a manner consistent with the balance of the Audubon Hill project and a certain Conservation Restriction executed by the Landlord placed on property which includes the Lot.

ARTICLE VIII

UTILITIES

8.1 LANDLORD'S COVENANT

Landlord covenants that at the commencement of the Lease Term the plumbing, electrical, lighting, ventilating and heating equipment will all be in good mechanical and operating condition, and that the heating equipment will be of sufficient capacity to heat the Leased Premises at 70 degrees Fahrenheit when the outside temperature is 0 degrees Fahrenheit or above.

8.2 HEAT, VENTILATION AND AIR CONDITIONING

The Tenant shall be responsible for paying all costs of electricity and other utilities used by the systems providing heating and ventilation to the Building.

8.3 WATER, ELECTRICITY, OTHER UTILITIES

The water, septic sewer, electricity and other utilities furnished to the Premises, including electricity used in heating and ventilating the Premises, and other utilities shall be separately metered. The Tenant shall pay directly to the supplier of such utility services the cost of such utilities consumed in the Premises.

8.4 SEWER

In the event that the Tenant elects to connect the Building with the appropriate public sewage system as provided in Section 5.2 hereof, the Tenant agrees to pay directly to the supplier of such utility service the cost of such utilities consumed in the Premises.

ARTICLE IX

INSURANCE AND INDEMNITY

9.1 TENANT'S LIABILITY INSURANCE

The Tenant agrees to maintain in full force from the date upon which the Tenant first enters the Premises for any reason, throughout the Lease Term, and thereafter so long as the Tenant is in occupancy of any part of the Premises, a policy of comprehensive general liability insurance, written on an occurrence basis and including broad form contractual liability coverage insuring against all claims for injury to or death of persons or damage to property on or about the Premises or arising out of the use of the Premises, and under which the Landlord is named as an additional insured.

The minimum combined single limit of liability of such insurance shall be one million dollars (\$1,000,000) per occurrence.

Such insurance coverage shall be effected upon terms reasonably available with insurers authorized to do business in Massachusetts and under valid and enforceable policies which shall be non-amendable and non-cancellable without ten days' prior notice to the respective insureds. Upon the request of the Landlord, a duplicate original policy or certificate of such policy shall be delivered to the Landlord.

9.2 CASUALTY INSURANCE

The Tenant shall procure, keep in force, and pay for, at its sole expense, an All Risk (Open Perils) policy of insurance upon the Building and its fixtures and other equipment, including fire and extended coverage, and in any event in an amount at least equal to the full replacement cost of the Building, subject to appropriate co-insurance requirements, as well as insurance against breakdown of boilers and other machinery as customarily insured against, under which the Landlord is named as an additional insured and to supply to the Landlord from time to time certificates of all such insurance issued by or on behalf of the insurers named therein by a duly authorized agent.

9.3 NON-SUBROGATION

Insofar as, and to the extent that, the following provision may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies (even though extra premium may result therefrom), the Landlord and the Tenant mutually agree that, with respect to any hazard which is covered by insurance required to be carried by them hereunder, respectively, the one carrying such insurance and suffering

such loss releases the other of and from any and all claims with respect to such loss; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. In the event that extra premium is payable by either party as a result of this provision, the other party shall reimburse the party paying such extra premium. If, at the request of one party, this release and non-subrogation provision is waived then the obligation of reimbursement shall cease for such period of time as such waiver shall be effective. If the release of either party provided above shall contravene any law with respect to exculpatory agreements, the liability of the party for whose benefit such release was intended shall remain but shall be secondary to that of the other party's insurer.

9.4 TENANT'S INDEMNITY

Except to the extent caused by any act, fault, omission, misconduct or negligence of Landlord or Landlord's agents or employees, Tenant agrees to indemnify and save harmless the Landlord from and against all claims, expenses, or liability of whatever nature (a) arising from any act, omission, or negligence of Tenant, Tenant's contractors, licensees, agents, servants, employees, or customers or (b) arising directly or indirectly from any occurrence, accident, injury, or damage, however caused, to any person or property on or about the Premises.

The foregoing indemnity and hold harmless agreement shall include indemnity against all costs, expenses, and liabilities incurred in connection with any such claim or proceeding brought thereon, and the defense thereof with counsel acceptable to Landlord or counsel selected by an insurance company that has accepted liability for any such claim.

9.5 LANDLORD'S INDEMNITY

The Landlord shall indemnify and save harmless the Tenant and its Board of Selectmen, officers, agents and employees from and against all claims, expenses (including, without limitation, attorney's fees) or liability of whatever nature arising: (a) from any act, fault, omission, misconduct or negligence of the Landlord, or the Landlord's contractors, licensees, agents, servants or employees; or (b) directly or indirectly out of default by the Landlord under any of the terms or covenants of this Lease; provided, however, that in no event shall the Landlord be obligated under this Section 9.5 to indemnify the Tenant, its Selectmen, officers, agents and employees, where such claim, expense or liability arose from any act, omission, fault, negligence or other misconduct of the Tenant or such persons on or about the Premises or the Building.

This indemnity and hold harmless agreement shall include indemnity against all expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof (with counsel reasonably acceptable to the Landlord).

ARTICLE X

LANDLORD'S ACCESS TO PREMISES

10.1 LANDLORD'S RIGHT OF ACCESS

The Landlord shall have the right to enter the Premises during normal business hours upon reasonable prior notice to the Tenant, and in the event of an emergency at any hour without notice, for the purpose of making repairs to the same, and the Landlord shall also have the right to make access available during normal business hours upon reasonable prior notice to the Tenant to prospective or existing mortgagees or purchasers of the Premises. The Rent and all other charges payable hereunder shall abate for any period and to the extent that any portion of the Premises is made untenable by such activity.

ARTICLE XI

CASUALTY

11.1 DEFINITION OF "SUBSTANTIAL DAMAGE" AND "PARTIAL DAMAGE."

The term "substantial damage" as used herein, shall refer to damage which is of such a character that the same cannot, in the Tenant's reasonable opinion, be reasonably expected to be repaired within forty-five (45) days from the time that such work would commence. Any damage which is not "substantial damage" is "partial damage."

11.2 PARTIAL DAMAGE TO THE BUILDING

If during the Lease Term there shall be partial damage to the Building by fire or other casualty, the Landlord shall promptly proceed to restore the Building to substantially the condition in which it was immediately prior to the occurrence of such damage and shall diligently pursue such restoration, to the extent insurance proceeds are available therefor.

11.3 SUBSTANTIAL DAMAGE TO THE BUILDING

If during the Lease Term there shall be substantial damage to the Building by fire or other casualty and if such damage shall unreasonably interfere with the Tenant's use of

the Premises as contemplated by this Lease, the Landlord shall promptly and diligently proceed to restore, or cause to be restored, the Building to substantially the same condition in which it was immediately prior to the occurrence of such damage, to the extent insurance proceeds are available therefor, unless Tenant, within thirty (30) days after the occurrence of such damage, shall give notice to the Landlord of its election to terminate this Lease. If Tenant shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

11.4 ABATEMENT OF RENT

If during the Lease Term the Building or the Premises shall be damaged by fire or other casualty and if such damage shall interfere with the Tenant's use of the Premises as contemplated by this Lease, the Rent and all other charges payable hereunder, or a fair and just proportion thereof, according to the nature and extent of such loss of use, shall be suspended or abated until the Building or the Premises, as the case may be, are restored as provided in this Article XI.

ARTICLE XII

EMINENT DOMAIN

12.1 RIGHTS OF TERMINATION FOR TAKING

If the Building, the Lot or a portion thereof shall be taken by condemnation or right of eminent domain (including a temporary taking) and if such taking shall be such as in the ordinary course would interfere with the Tenant's use of the Premises for the purposes leased hereunder (including, without limitation, interference with the use of Tenant's Parking Spaces), the Tenant shall have the right to terminate this Lease by notice to the Landlord of its desire to do so, provided that such notice is given not later than thirty (30) days after the effective date of such taking.

Should any part of the Building, the Lot or any portion thereof be so taken and should this Lease be not terminated in accordance with the foregoing provisions, the Landlord shall with all reasonable diligence, restore the Building to an architectural unit that is reasonably suitable to the uses of the Tenant and to the extent applicable, provide replacement parking facilities substantially equal in size and, to the extent possible, accessibility, to those parking facilities taken, to the extent of proceeds available therefor. If the Landlord shall not have completed such restoration work to the extent necessary to enable the Tenant to use the Premises for the purposes and in the manner contemplated by

this Lease by the expiration of ninety (90) days after the effective date of such taking, then the Tenant may terminate this Lease by notice to the Landlord with the same force and effect as if such date were the date originally established as the expiration date hereof.

12.2 ABATEMENT OF RENT

In the event of a taking described in Section 12.1, the Rent and all other charges payable hereunder, or a fair and just proportion thereof according to the nature and extent of the Tenant's loss of use shall be suspended or abated until the Premises are restored as provided in this Article XII.

12.3 AWARD

The Landlord and Tenant shall have the right to recover for damages to the Building and the Land and the leasehold interest hereby created, and to compensation accrued or hereafter to accrue by reason of such taking, as their respective interests may appear. Nothing contained herein, however, shall be construed to prevent the Tenant from prosecuting in any condemnation proceeding a claim for the value of the Tenant's trade fixtures and for relocation expenses.

ARTICLE XIII

DEFAULT

13.1 TENANT'S DEFAULT

If:

(a) the Tenant shall fail to pay the Rent or other charges on or before the date on which the same becomes due and payable and the same continues for thirty (30) days after notice from the Landlord thereof, or

(b) the Tenant shall fail to perform or observe any other term or condition contained in this Lease and the Tenant shall not cure such failure within sixty (60) days after notice from the Landlord thereof and promptly and diligently complete the curing of the same (or unless such failure is of such a nature that it cannot be cured within sixty days, in which case no default shall occur so long as Tenant shall commence the curing of the failure within such sixty-day period and shall thereafter promptly and diligently complete the curing of the same), then, and in any of such cases, the Landlord may, immediately or at any time thereafter while such failure continues, terminate this Lease by giving notice of termination to the Tenant. The Tenant covenants and agrees, notwithstanding such termination

of this Lease, to pay and be liable for, on the days originally fixed herein and for the payment thereof, amounts equal to the several installments of rent and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated, but in the event the Premises or any part thereof shall be relet by the Landlord, the Tenant shall be entitled to a credit equal to the net amount of rent received by the Landlord in reletting, determined as follows:

Amounts received by the Landlord from reletting and for the remainder of what would have been the Lease Term had the Tenant fully complied with the terms of this Lease (and no other special event allowing termination had occurred) shall be credited against the Tenant's obligations as of each day when a payment would fall due under this Lease, and only the net amount thereof, if any, shall be payable by the Tenant. In the event of such termination, the Landlord agrees to use reasonable efforts to relet the Premises promptly and upon such terms as to minimize the Tenant's damages hereunder.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

14.1 WAIVER

Failure on the part of the Landlord or the Tenant to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by the Tenant or the Landlord, respectively, of any of the other's rights hereunder. Further, no waiver at any time of any of the provisions hereof by the Landlord or the Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the Landlord or the Tenant to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary the Landlord's or the Tenant's consent or approval to or of any subsequent similar act by the other.

14.2 COVENANT OF QUIET ENJOYMENT

Subject to the terms and provisions of this Lease and on payment of the Rent and compliance with all of the terms and provisions of this Lease, the Tenant shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Premises

during the term hereof, the foregoing covenant of quiet enjoyment is in addition to and not in lieu of the Tenant's rights of quiet enjoyment under common law.

14.3 INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

14.4 PROVISIONS BINDING, ETC.

Except as herein otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the Landlord and the Tenant. Each term and each provision of this Lease to be performed by the Tenant and the Landlord shall be construed to be both a covenant and a condition.

14.5 RECORDING

The Landlord and the Tenant agree to record this Lease, or to execute, acknowledge and deliver a notice of lease referencing, without limitation, Tenant's option to extend the term of this Lease in form reasonably acceptable to Tenant. Any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

14.6 NOTICES

Whenever, by the terms of this Lease, a notice shall or may be given either to the Landlord or to the Tenant, such notice shall be in writing and shall be sent by hand delivery or by registered or certified mail, return receipt requested, postage prepaid as follows:

If intended for the Landlord, addressed to the Landlord at the address set forth on the first page of this Lease with a copy to Landlord's attorneys: Richard M. Cotter, Esq., Wilson, Orcutt, Cotter & Greenberg, P.C., 201 Great Road, Acton, Massachusetts 01720 and, if intended for the Tenant, addressed to the Tenant at the address set forth on the first page of this Lease with a copy to Tenant's attorney: Norman P. Cohen, Esq., Palmer & Dodge, One Beacon Street, Boston, Massachusetts 02108 or to such other address or addresses as may from time to time hereafter be designated by either party by like notice.

All such notices shall be effective upon receipt or upon refusal to receive.

14.7 PARAGRAPH HEADINGS

The paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

14.8 NO BROKERAGE

Each party warrants and represents to the other that each has dealt with no broker in connection with the consummation of this Lease, and, in the event of any brokerage claims against one party predicated upon prior dealings with the other party, the other party agrees to defend the same and indemnify the one party against any such claim.

14.9 WHEN LEASE BECOMES BINDING

This document shall become effective and binding only upon the execution and delivery hereof by both the Landlord and the Tenant. All negotiations, consideration, representations and understandings between the Landlord and the Tenant are incorporated herein and may be modified or altered only by written agreement between the Landlord and the Tenant, and no act or omission of any employee or agent of the Landlord shall alter, change or modify any of the provisions hereof.

14.10 STATUS REPORT; MODIFICATION

Recognizing that both parties may find it necessary to establish to third parties, such as accountants, mortgagees or the like, the then current status of performance hereunder, either party, on the request of the other made from time to time, will promptly furnish a statement of the status of any matter pertaining to this Lease. Where either party's consent or approval is required hereunder, it shall not be unreasonably withheld or delayed.

14.11 SELF-HELP

Tenant shall have the right, but shall not be required, to pay such sums or do any act which requires the expenditure of moneys which may be necessary or appropriate by reason of the failure or neglect of the Landlord to perform any of the provisions of this Lease, and in the event of the exercise of such right, the Landlord agrees to pay all such sums forthwith upon demand.

14.12 HOLDING OVER

Any holding over by the Tenant after the expiration of the Lease Term shall be treated as a tenancy from month to month terminable upon sixty (60) days' notice by either Landlord or Tenant to the other and otherwise on the terms and conditions set forth in this Lease, so far as applicable.

14.13 NON-INTERFERENCE

Any action taken by the Landlord under this Lease shall be taken in a manner so as not to interfere unreasonably with the Tenant's use and occupation of the Premises.

14.14 CONSENT

Where either party's consent or approval is required hereunder, it shall not be unreasonably withheld, delayed or qualified.

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

LANDLORD: ROY C. SMITH, AS TRUSTEE OF
HIGH STREET PCRC TRUST

By _____
Roy C. Smith, not individually
but as Trustee

TENANT: TOWN OF ACTON, MASSACHUSETTS

By _____
not individually but as a
member of the Town of Acton
Board of Selectmen

By _____
not individually but as a
member of the Town of Acton
Board of Selectmen

By _____
not individually but as a
member of the Town of Acton
Board of Selectmen

STANDARD FORM CONDOMINIUM PURCHASE AND SALE AGREEMENT

From the Office of: David Y. Barnard, Esquire Palmer & Dodge One Beacon Street Boston, Massachusetts 02108

This _____ day of _____ 19 _____

1. PARTIES (fill in)

Roy C. Smith, as Trustee of the High Street FRC Trust, u/d/t dated March 5, 1987 and recorded with Middlesex South Registry of Deeds in Book 19611, Page 409 hereinafter called the SELLER, agrees to SELL and the Acton Housing Authority, acting by and through the Board of Selectmen of the Town of Acton, Massachusetts

hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION (fill in and include title reference)

Unit No. _____ (the "Unit") of _____ (See Section 30) Condominium, (the "Condominium") created pursuant to Chapter 183A of the Massachusetts General Laws (the "Act") by Master Deed dated _____, 19 _____, and recorded with Middlesex South Registry of Deeds at Book _____, Page _____ (the "Master Deed"), together with (a) an undivided _____ percentage interest in both the common areas and facilities of the Condominium and the organization of unit owners through which the Condominium is managed and regulated, (b) the exclusive right to use the parking space and storage area, if any, assigned to the Unit, and (c) such other rights and easements appurtenant to the Unit as may be set forth in any document governing the operation of the Condominium, including without limitation the Master Deed, the By-Laws of the organization of unit owners, and any administrative rules and regulations adopted pursuant thereto (all of which are hereinafter referred to as the "Condominium Documents"). The above described premises are those conveyed to the SELLER by deed dated _____, 19 _____, and recorded with _____ Registry of Deeds Book _____, Page _____

3. FIXTURES

Included in the sale as a part of the Unit are the fixtures belonging to the SELLER and used in connection therewith. The extent to which any of such fixtures belong to the SELLER may be governed in part by provisions contained in the Condominium Documents.

4. TITLE DEED (fill in)

Said premises are to be conveyed by a good and sufficient QUITCLAIM deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws;
(b) Such taxes for then current year as are not due and payable on the date of the delivery of such deed;
(c) Any liens for municipal betterments assessed after the date of this agreement;
(d) The provisions of the Act and the Condominium Documents including without limitation all obligations of the unit owners to pay a proportionate share of the common expenses of the Condominium;
(e) All restrictions, easements and encumbrances referred to in the Condominium documents;

*Include here by specific reference any restrictions, easements, rights and obligations not included in (e), leases, municipal and other liens, other encumbrances, and make provision to protect SELLER against BUYER'S breach of SELLER'S covenants in leases, where necessary.

5. PLANS

If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

6. REGISTERED TITLE

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a memorandum certificate of title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such memorandum certificate of title.

7. PURCHASE PRICE (fill in); space is allowed to write out the amounts if desired

The agreed purchase price for said premises is SIXTY-FIVE THOUSAND DOLLARS (65,000) PER UNIT dollars, of which \$ _____ have been paid as a deposit this day and \$ 65,000 are to be paid at the time of delivery of the deed in cash, or by certified, cashier's, treasurer's or bank check.

\$ _____ TOTAL \$ 65,000



8. TIME FOR PERFORMANCE; DELIVERY OF DEED (fill in) Such deed is to be delivered at ten o'clock A. M. on the See Section 31 day of 19 , at the Middlesex South Registry of Deeds, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement. as contemplated in the Plan (See Section 31)
9. POSSESSION and CONDITION of PREMISES. (attach a list of exceptions, if any) Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with the provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled to an inspection of the Unit prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.
10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM (Change period of time if desired). If the SELLER shall be unable ^{shall} to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then ~~any payments made under this agreement shall be refunded and all other obligations of the parties hereto shall cease and this agreement shall be void and without recourse to the parties hereto, unless the SELLER elects to use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days.~~
11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc. If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the organization of unit owners shall fail to agree, within the time period set forth in the Act, if applicable, to proceed with such repair or restoration as may be necessary for such purposes, or shall expressly agree not to so proceed, or the holder of a mortgage on the Unit shall refuse to permit any insurance proceeds to be used for such purpose, then at the BUYER's option, any payments made under this agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.
12. BUYER'S ELECTION TO ACCEPT TITLE The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefor the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against by the organization of unit owners or by the SELLER, then the SELLER shall, on delivery of the deed, unless said premises have previously been restored to their former condition, pay over or assign to the BUYER all amounts recovered or recoverable by the SELLER on account of such insurance, and give the BUYER a credit against the purchase price equal to any amounts otherwise so recoverable which are retained by the holder of a mortgage on the Unit, less any amounts reasonably expended by the SELLER for any partial restoration.
13. ACCEPTANCE OF DEED The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.
14. USE OF PURCHASE MONEY TO CLEAR TITLE To enable the SELLER to make conveyance as herein provided, the SELLER may, 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, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.
15. INSURANCE *Insert amount The SELLER represents that at the time of execution of this agreement, the organization of unit owners maintains insurance with respect to the Condominium as follows:
- | <u>Type of Insurance</u> | <u>Amount of Coverage</u> |
|--------------------------|---------------------------|
| (a) Fire | *§ See Section 32 |
| (b) Extended Coverage | |
| (c) | |
- Until the delivery of the deed, the SELLER shall maintain any supplemental insurance now in effect covering the Unit itself and any fixtures therein.
16. EVIDENCE OF INSURANCE At the time of the delivery of the deed, the SELLER shall deliver to the BUYER a certificate of the Condominium insurance referred to in clause 15 as then in effect. The procuring of any supplemental insurance shall be at the option and sole expense of the BUYER.

17. **ADJUSTMENTS** Collected rents, mortgage interest, taxes for the then current tax period and common expenses for the then current month shall be apportioned, as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed. Uncollected rents for the current rental period shall be apportioned if and when collected by either party. The SELLER's allocable share of any working capital reserve held by the organization of unit owners shall be assigned to the BUYER and the amount thereof shall be added to said purchase price.
18. **ADJUSTMENT OF UNASSESSED AND ABATED TAXES** If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.
19. **BROKER'S FEE**
(fill in fee with dollar amount or percentage; also name of Broker(s))
~~A broker's fee for professional services of is due from the SELLER to~~
No broker's fee is due to any broker
~~the Broker(s) herein, but if the SELLER pursuant to the terms of clause 22 hereof retains the deposits made hereunder by the BUYER, said Broker(s) shall be entitled to receive from the SELLER an amount equal to one-half the amount so retained or an amount equal to the broker's fee for professional services according to this contract, whichever is the lesser.~~
20. **BROKER(S) WARRANTY**
(fill in name)
~~The Broker(s) named herein warrants that he (they) is (are) duly licensed as such by the Commonwealth of Massachusetts.~~
21. **DEPOSIT**
(fill in, or delete reference to broker(s) if SELLER holds deposit)
~~All deposits made hereunder shall be held by the broker(s) as agent for the SELLER, subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement.~~
22. **BUYER'S DEFAULT; DAMAGES** If the BUYER shall fail to fulfill the BUYER'S agreements herein, all deposits made hereunder by the Buyer shall be retained by the SELLER as liquidated damages unless within thirty days after the time for performance of this agreement or any extension hereof, the SELLER otherwise notifies the BUYER in writing.
23. **SALE OF PERSONAL PROPERTY**
(fill in and attach list or delete entire clause)
The BUYER agrees to buy from the SELLER the articles of personal property enumerated on the attached list for the price of \$ NONE and the SELLER agrees to deliver to the BUYER upon delivery of the deed hereunder, a warranty bill of sale therefor on payment of said price. The provisions of this clause shall constitute an agreement separate and apart from the provisions herein contained with respect to the real estate, and any breach of the terms and conditions of this clause shall have no effect on the provisions of this agreement with respect to the real estate.
24. **RELEASE BY HUSBAND OR WIFE**
~~The SELLER'S spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said premises.~~
25. **BROKER AS PARTY**
~~The broker(s) named herein, join(s) in this agreement and become(s) a party hereto, in so far as any provisions of this agreement expressly apply to him (them), and to any amendments or modifications of such provisions to which he (they) agree(s) in writing.~~
26. **LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.** If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.
27. **WARRANTIES AND REPRESENTATIONS**
(fill in); if none, state "none"; if any listed, indicate by whom each warranty or representation was made
The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): NONE

multiple counterpart originals

28. CONSTRUCTION OF AGREEMENT
**delete "triplicate" and substitute "quadruplicate" if required.*

This instrument, executed in ~~triplicate~~ ⁴ is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and ensures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

29. ADDITIONAL PROVISIONS

At the time of the delivery of the deed, the SELLER shall deliver to the BUYER a statement from the organization of unit owners in recordable form and setting forth, in accordance with Section 6(d) of the Act, that there are no outstanding common expenses assessed against the Unit as of said time. The initialed riders, ~~if any~~, attached hereto, ~~are~~ incorporated herein by reference.

is

SELLER (or spouse)

SELLER

BUYER

BUYER

Broker(s)

EXTENSION

The time for the performance of the foregoing agreement is extended until _____ o'clock _____ M. on the _____ day of _____ 19____, time still being of the essence of this agreement as extended. In all other respects, this agreement is hereby ratified and confirmed.

Date _____

This extension, executed in triplicate, _____ is intended to take effect as a sealed instrument.

SELLER (or spouse)

SELLER

BUYER

BUYER

Broker(s)

RIDER TO PURCHASE AND SALE AGREEMENT BETWEEN ROY C. SMITH, AS
TRUSTEE OF THE HIGH STREET PCRC TRUST, AS SELLER AND THE
ACTON HOUSING AUTHORITY, AS BUYER

30. DESCRIPTION. The Seller agrees to convey the following Units, together with the undivided interest in the common areas and facilities of the respective condominium appurtenant to each of the following units as further described in the Condominium Documents to be recorded:
- (a) Unit #128 Audubon Lane, Phase II, Type A 1090 sq. ft.;
 - (b) Unit #4 Brewster Lane, Phase I, Type A, 1090 sq. ft.;
 - (c) Unit #25 Brewster Lane, Phase I, Type B, 1140 sq. ft.;
 - (d) Unit #2 Brewster Lane, Phase I, Type B, 1140 sq. ft.
 - (e) Unit #126 Audubon Lane, Phase II, Type B, 1140 sq. ft.

Each of the foregoing units shall be located in either the Audubon Hill North Condominium or the Audubon Hill South Condominium, to be established by the Seller pursuant to the Act.

31. TIME FOR PERFORMANCE. The date for performance of this Agreement is thirty (30) days following the Completion of Construction, as such term is defined in the Comprehensive Development Agreement between the Seller and the Town of Acton dated June 23, 1989, including the Plan referenced therein to be recorded with the Middlesex South Registry of Deeds and the Middlesex South Registry District of the Land Court herewith (the "Agreement"), of each of the units listed in Section 30 hereof.
32. INSURANCE. Until delivery of the deed, the Seller shall keep the premises insured as provided in Article VII of the Agreement.
33. NOTICE. Whenever by the terms of this Agreement notice shall or may be given either to the Buyer or to the Seller, such notice shall be deemed to have been given only if in writing and delivered or sent by registered or certified mail, postage prepaid, if intended for Seller to:

R. Smith Associates
292 Great Road
Acton, Massachusetts 01720

with a copy to:

Richard M. Cotter, Esq.
Wilson, Orcutt, Cotter & Greenberg, P.C.
201 Great Road
Acton, Massachusetts 01720

and if intended for the Buyer to:

The Town of Acton
Acton Town Hall
Acton, Massachusetts 01720
Attn: Town Manager

with a copy to:

Norman P. Cohen, Esq.
Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108

or to such other address as may be specified by either party to the other by like notice. All notices shall be effective when delivered.

STANDARD FORM PURCHASE AND SALE AGREEMENT

From the Office of:

David Y. Bannard, Esq. Palmer & Dodge One Beacon Street Boston, Massachusetts 02108

This _____ day of _____ 19____

1. PARTIES AND MAILING ADDRESSES

Roy C. Smith, as Trustee of the High Street PCRC Trust, u/d/t dated March 5, 1987, recorded with the Middlesex Registry of Deeds in Book 18611, Page 409 hereinafter called the SELLER, agrees to SELL and

(fill in)

The Town of Acton, Massachusetts, a Massachusetts municipal corporation acting by and through its Board of Selectmen

hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

2. DESCRIPTION (fill in and include title reference)

The Option A property described in Exhibit C and the Option B property described in Exhibit F attached hereto.

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES

Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any, all wall-to-wall carpeting, drapery rods, automatic garage door openers, venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposers, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants, and, ONLY IF BUILT IN, refrigerators, air conditioning equipment, ventilators, dishwashers, washing machines and dryers; and

(fill in or delete)

but excluding,

4. TITLE DEED (fill in)

* Include here by specific reference any restrictions, easements, rights and obligations in party walls not included in (b), leases, municipal and other liens, other encumbrances, and make provision to protect SELLER against BUYER's breach of SELLER's covenants in leases, where necessary.

Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER, or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except

- (a) Provisions of existing building and zoning laws; (b) Existing rights and obligations in party walls which are not the subject of written agreement; (c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed; (d) Any liens for municipal betterments assessed after the date of this agreement; (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said premises;

*X

5. PLANS

If said deed refers to a plan necessary to be recorded therewith the SELLER shall deliver such plan with the deed in form adequate for recording or registration.

6. REGISTERED TITLE

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of Title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.

7. PURCHASE PRICE (fill in); space is allowed to write out the amounts if desired

The agreed purchase price for said premises is to be determined according to Section 30 hereof. ~~dollars of which~~

\$ have been paid as a deposit this day and \$ are to be paid at the time of delivery of the deed in cash, or by certified, cashier's, treasurer's or bank check(s). \$ TOTAL



8. TIME FOR PERFORMANCE: DELIVERY OF DEED (fill in) Such deed is to be delivered at ten o'clock A. M. on the _____ day determined according to Section 31 hereof, at the Middlesex South Registry of Deeds, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.
9. POSSESSION AND CONDITION OF PREMISE. (attach a list of exceptions, if any) Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled personally to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.
10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM (Change period of time if desired). If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then ~~any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto, unless the SELLER elects to use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days.~~ shall ~~at Buyer's election,~~
11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc. If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.
12. BUYER'S ELECTION TO ACCEPT TITLE The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises to their former condition, either
 (a) pay over or assign to the BUYER, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration, or
 (b) if a holder of a mortgage on said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
13. ACCEPTANCE OF DEED The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.
14. USE OF MONEY TO CLEAR TITLE To enable the SELLER to make conveyance as herein provided, the SELLER may, 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, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.
15. INSURANCE *Insert amount (list additional types of insurance and amounts as agreed) Until the delivery of the deed, the SELLER shall maintain insurance on said premises as follows:
 Type of Insurance _____ Amount of Coverage _____
 (a) Fire and Extended Coverage _____ as provided in Section 32 hereof.
 (b) _____
16. ADJUSTMENTS (list operating expenses, if any, or attach schedule) Collected rents, mortgage interest, water and sewer use charges, operating expenses (if any) according to the schedule attached hereto or set forth below, and taxes for the then current fiscal year, shall be apportioned and fuel value shall be adjusted, as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of delivery of the deed. Uncollected rents for the current rental period shall be apportioned if and when collected by either party.

17. ADJUSTMENT OF UNASSESSED AND ABATED TAXES
If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.
18. BROKER'S FEE
(fill in fee with dollar amount or percentage; also name of Brokerage firm(s))
No
A Broker's fee for professional services of is due from the SELLER:
~~the Broker(s) herein, but if the SELLER pursuant to the terms of clause 21 hereof retains the deposits made hereunder by the BUYER, said Broker(s) shall be entitled to receive from the SELLER an amount equal to one-half the amount so retained or an amount equal to the Broker's fee for professional services according to this contract, whichever is the lesser.~~
19. BROKER(S) WARRANTY
(fill in name)
The Broker(s) named herein warrant(s) that the Broker(s) is(are) duly licensed as such by the Commonwealth of Massachusetts.
20. DEPOSIT
(fill in name)
All deposits made hereunder shall be held in escrow by as escrow agent subject to the terms of this agreement and shall be duly accounted for at the time for ~~performance of this agreement.~~
21. BUYER'S DEFAULT; DAMAGES
If the BUYER shall fail to fulfill the BUYER's agreements herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages unless within thirty days after the time for performance of this agreement or any extension hereof, the SELLER otherwise notifies the BUYER in writing.
22. RELEASE BY HUSBAND OR WIFE
~~The SELLER's spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said premises.~~
23. BROKER AS PARTY
~~The Broker(s) named herein join(s) in this agreement and become(s) a party hereto, insofar as any provisions of this agreement expressly apply to the Broker(s), and to any amendments or modifications of such provisions to which the Broker(s) agree(s) in writing.~~
24. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, etc.
If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.
25. WARRANTIES AND REPRESENTATIONS
(fill in); if none, state "none"; if any listed, indicate by whom each warranty or representation was made
The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s): None
26. MORTGAGE CONTINGENCY CLAUSE
(omit if not provided for in Offer to Purchase)
~~In order to help finance the acquisition of said premises, the BUYER shall apply for a conventional bank or other institutional mortgage loan of \$ _____ at prevailing rates, terms and conditions. If despite the BUYER's diligent efforts a commitment for such loan cannot be obtained on or before _____, 19____ the BUYER may terminate this agreement by written notice to the SELLER and/or the Broker(s), as agent(s) for the SELLER, prior to the expiration of such time, whereupon any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto. In no event will the BUYER be deemed to have used diligent efforts to obtain such commitment unless the BUYER submits a complete mortgage loan application conforming to the foregoing provisions on or before _____.~~
19

RIDER TO PURCHASE AND SALE AGREEMENT BETWEEN ROY C. SMITH, AS TRUSTEE OF THE HIGH STREET PCRC TRUST, AS SELLER AND THE TOWN OF ACTON, MASSACHUSETTS, AS BUYER

30. PURCHASE PRICE. Reference is made to a certain Comprehensive Development Agreement dated as of June 23, 1989 between the parties to this agreement (the "Development Agreement"), to be recorded with the Middlesex South Registry of Deeds. In the event that the Seller fails to perform its obligations under the Development Agreement and the conditions of Section 8.1 of that Agreement are satisfied, either the Option A Property or the Option B Property or both shall be conveyed to the Buyer, at the Buyer's option upon the terms and conditions contained herein. In the event of any such conveyance, the purchase price for the property so conveyed shall be determined in accordance with the provisions of Section 8.3 contained in the Development Agreement.
31. TIME FOR PERFORMANCE. The time for performance hereunder shall also be determined in accordance with the provisions of Section 8.1(f) of the Development Agreement.
32. INSURANCE. Until delivery of the deed, the Seller shall maintain insurance on both the Option A Property and the Option B Property in accordance with the provisions of Article VII of the Development Agreement.
33. NOTICE. Whenever by the terms of this Agreement notice shall or may be given either to the Buyer or to the Seller, such notice shall be deemed to have been given only if in writing and delivered or sent by registered or certified mail, postage prepaid, if intended for Seller to:

R. Smith Associates
292 Great Road
Acton, Massachusetts 01720

with a copy to:

Richard M. Cotter, Esq.
Wilson, Orcutt, Cotter & Greenberg, P.C.
201 Great Road
Acton, Massachusetts 01720

and if intended for the Buyer to:

The Town of Acton
Acton Town Hall
Acton, Massachusetts 01720
Attn: Town Manager

with a copy to:

Norman P. Cohen, Esq.
Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108

or to such other address as may be specified by either party to the other by like notice. All notices shall be effective when delivered or refused.

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

ATTORNEYS AT LAW

268 MAIN STREET

ACTON, MASSACHUSETTS 01720-2223

508-263-7777

FAX 508-264-4868

FILE COPY

BOSTON OFFICE:
ONE BOSTON PLACE

CABLE "DALYN"

FEB 11 1991

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

February 8, 1991

David Y. Bannard, Esquire
Palmer & Dodge
One Beacon Street
Boston, MA 02108

Re: Audubon Hill South Condominium, Acton, Massachusetts

Dear Dave:

I was contacted by Roy Smith's office several days ago to prepare an amendment to the Master Deed of Audubon Hill South Condominium deleting Unit No. 38 as a Restricted Unit and substituting Unit No. 29 in its place. Roy informs me that Unit No. 29 was always intended to be a Restricted Unit, but was changed to Unit 29 in order to accomodate a potential buyer, who is no longer interested in purchasing Unit No. 38 as a Restricted Unit.

Due to the nature of the requested change, I am forwarding a copy of the proposed Amendment to you for your review. I am forwarding the original directly to Don Johnson and would ask that you give Don your approval to execute the assent and return the executed original directly to me.

Thankyou for your prompt consideration in this matter.

Very truly yours,

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

By: 
Stanley L. Gordon

SLG/
j/bannard.i

cc: R. Smith Associates, Inc.
Don Johnson, Town Manager

AMENDMENT NO. 1 TO THE MASTER DEED
OF AUDUBON HILL SOUTH CONDOMINIUM

R. Smith Associates, Inc., a Massachusetts Corporation, having a usual place of business at 292 Great Road, Acton, MA 01720, being the Declarant in a Master Deed of Audubon Hill South Condominium dated November 15, 1990, recorded November 20, 1990 in Book 20875, Page 79 with the Middlesex South District Registry of Deeds, in accordance with the provisions of said Master Deed as amended, including but not limited to Sections 1, 11 and 14 of said Master Deed do hereby amend the Master Deed of Audubon Hill South Condominium by deleting Unit No. 38 from Section 9.2, Subsection (a) and Subsection (b) and substituting Unit No. 29 in its place. Notwithstanding anything to the contrary, it is the intent of this amendment that Unit No. 29 be a "Restricted Unit" and that Unit No. 38 not be a "Restricted Unit".

In all other respects, the terms and provisions of the Master Deed, as amended, are hereby ratified and confirmed.

Witness our hand and seal this _____ day of February, 1991.

R. SMITH ASSOCIATES, INC.

By: _____
Roy C. Smith, President

By: _____
Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

February , 1991

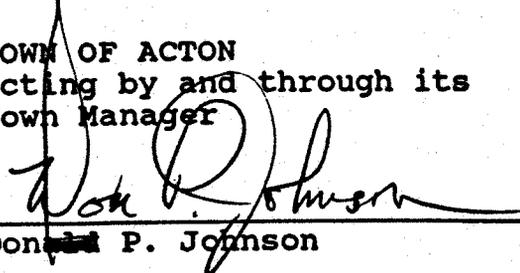
Then personally appeared the above-named Roy C. Smith, President, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Notary Public
My commission expires:

k/amendment

The Town of Acton hereby assents to the foregoing Amendment Number 1 To The Master Deed of Audubon Hill south Condominium and certifies that this document complies with the Terms, Conditions and Restrictions as delineated in the Comprehensive Development Agreement dated June 23, 1989, recorded in Book 19966, Page 008 with the Middlesex South District Registry of Deeds as supplemented by a Supplemental Agreement dated October 27, 1989, recorded in Book 20205, Page 227, said Deeds.

TOWN OF ACTON
Acting by and through its
Town Manager

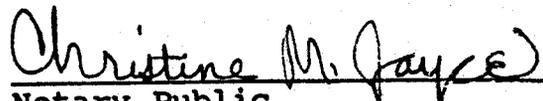

Donald P. Johnson

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

February , 1991

Then personally appeared the above named Donald P. Johnson Town Manager of the Town of Acton, and acknowledged the foregoing to be the free act and deed of the Town of Acton, before me


Notary Public
My Commission Expires: 05-13-94

k/audusouthmasterdeed

243
D'AGOSTINE, LEVINE & GORDON, P.C.

ATTORNEYS AT LAW

268 MAIN STREET

ACTON, MASSACHUSETTS 01720-2223

508-263-7777

FAX 508-264-4868

August 15, 1991

AUG 16 1991

BOSTON OFFICE:
ONE BOSTON PLACE

CABLE "DALYN"

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

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

Re: Audubon Hill South Condominium, Acton, Massachusetts

Dear Don:

Enclosed herewith please find the following documents, which revisions have been made in accordance with my telephone conference of August 14, 1991, with Dave Bannard:

1. Copy of Amendment No. 3 to the Master Deed of Audubon Hill South Condominium;
2. Original Assent to Amendment No. 3 to the Master Deed of Audubon Hill South Condominium;
3. Original Second Supplemental Agreement; and
4. Original Release of Right of First Refusal.

I am waiting for June Thornton of Roy Smith's office to obtain the form Grant of Right of First Refusal from the Acton Housing Authority, identical to the form previously utilized and attached to the Comprehensive Development Agreement as Exhibit G. Upon receipt of such form, I will prepare and have executed a Grant of Right of First Refusal from R. Smith Associates, Inc. to the Acton Housing Authority to purchase Unit 130 in the Audubon Hill South Condominium.

I am forwarding copies of all of the enclosed documents to Attorney Dave Bannard. You should speak with Dave to confirm that you can execute the originals. When he gives you the go ahead, I would ask that you execute same in front of a notary public and return them to me at your earliest convenience. I will not record any of these documents until R. Smith Associates, Inc. has executed a Grant of Right of First Refusal to the Acton Housing Authority to purchase Unit 130, which Grant will be recorded simultaneously with the other original documents.

Please contact me with any specific questions or concerns.

Very truly yours,

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

By: Stanley L. Gordon

SLG/vv

Enclosures (4)

cc: David Y. Bannard, Esquire
R. Smith Associates, Inc.

AMENDMENT NO. 3 TO THE MASTER DEED
OF AUDUBON HILL SOUTH CONDOMINIUM

R. Smith Associates, Inc., a Massachusetts Corporation, having a usual place of business at 292 Great Road, Acton, MA 01720, being the Declarant in a Master Deed of Audubon Hill South Condominium dated November 15, 1990, recorded November 20, 1990, in Book 20875, Page 79 with the Middlesex South District Registry of Deeds, as amended by Amendment No. 1 To The Master Deed of Audubon Hill Condominium dated February 26, 1991, recorded as Instrument Number 51 of July 26, 1991 and Amendment No. 2 To The Master Deed of Audubon Hill Condominium dated July 24, 1991, recorded as Instrument Number 53 of July 26, 1991, in accordance with the provisions of said Master Deed as amended, including but not limited to Sections 1, 11, and 14 of said Master Deed do hereby amend the Master Deed of Audubon Hill South Condominium by deleting Unit Numbers 23, 27, 29, and 31 as "Restricted Units" from Section 9.2, Subsection (a) and Subsection (b) and by removing Unit Number 25 as an "A.H.A. Restricted Unit" since the Acton Housing Authority has failed to exercise its option to purchase Unit 25. Notwithstanding anything to the contrary, Unit Nos. 1, 6, 8, 10, 13, 14, 17, 18, 48, 2, 4, and 25 shall be known as the "Restricted Units" and Unit Nos. 2 and 4 shall be known as the "A.H.A. Restricted Units" within Section 9.2, Subsection (a) and Subsection (b) of the Master Deed of the Audubon Hill South Condominium.

In all other respects, the terms and provisions of the Master Deed, as amended, are hereby ratified and confirmed.

Witness our hand and seal this 26th day of August, 1991.

R. SMITH ASSOCIATES, INC.

By: Roy C. Smith
Roy C. Smith, President

By: Jean Smith
Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August 26, 1991

Then personally appeared the above-named Roy C. Smith, President, and Jean Smith, Treasurer, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

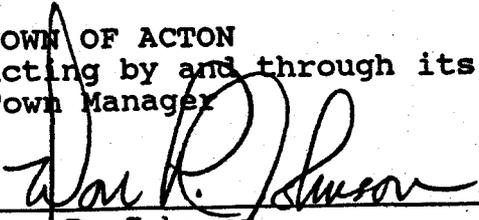
Albert O. Merrill

Notary Public
My commission expires:

December 4, 1993

The Town of Acton hereby assents to the foregoing Amendment Number 3 To The Master Deed of Audubon Hill South Condominium and certifies that this document complies with the Terms, Conditions and Restrictions as delineated in the Comprehensive Development Agreement dated June 23, 1989, recorded in Book 19966, Page 008, with the Middlesex South District Registry of Deeds, as supplemented by a Supplemental Agreement dated October 27, 1989, recorded in Book 20205, Page 227, said Deeds.

TOWN OF ACTON
Acting by and through its
Town Manager

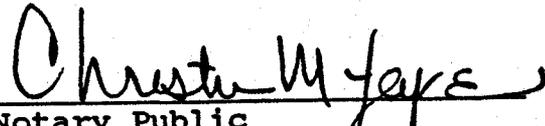

Don P. Johnson 8/28/91

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

August 28, 1991

Then personally appeared the above-named Don P. Johnson, Town Manager of the Town of Acton, and acknowledged the foregoing instrument to be the free act and deed of the Town of Acton, before me


Christine M. Jaffe
Notary Public

My commission expires: 05-13-94

k/amendment.vii

SECOND SUPPLEMENTAL AGREEMENT

This Agreement (the "Second Supplemental Agreement") is made as of the _____ day of August, 1991, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation, having a usual place of business at the Acton Town Hall, Acton, MA 01720, acting by and through its Town Manager, the duly authorized designee of the Town's Board of Selectmen under the terms and conditions of a certain Comprehensive Development Agreement (the "Comprehensive Development Agreement") dated as of June 23, 1989, and recorded in Book 19966, Page 008 with the Middlesex South District Registry of Deeds, and a Supplemental Agreement (the "Supplemental Agreement" dated as of October 27, 1989, and recorded in Book 20205, Page 227 with said Deeds, and R. Smith Associates, Inc. (the "Developer"), a Massachusetts corporation having a usual place of business at 292 Great Road, Acton, MA 01720.

RECITALS

Reference is hereby made to the following facts:

A. The Town and the Developer entered into the Comprehensive Development Agreement and the Supplemental Agreement in order to set out the terms and conditions under which the Development Property (as defined in the Comprehensive Development Agreement) would be developed.

B. The Developer has created the Audubon Hill South Condominium by Master Deed dated November 15, 1990, recorded November 20, 1990, in Book 20875, Page 79 with the Middlesex South District Registry of Deeds (the "Master Deed"). Section 9.2 of the Master Deed indicated that Unit Numbers 1, 6, 8, 10, 13, 14, 17, 18, 23, 27, 31, 38, 48, 2, 4, and 25 would be "Restricted Units" in partial satisfaction of Section 3.3 (c) of the Comprehensive Development Agreement and that Unit Numbers 2, 4, and 25 (the "A.H.A. Restricted Units") would each be conveyed to the Acton Housing Authority for the price of Sixty Five Thousand (\$65,000.00) Dollars in partial satisfaction of Section 3.3(f) of the Comprehensive Development Agreement, subject to the Developers right to amend the restriction as set forth in Section 9.2(b) and Section 9.4 of the Master Deed by substituting a different Unit for any of the above-referenced "Restricted Units" so long as the total number of Units, so restricted is not reduced in number.

C. Despite an active sales and marketing campaign, the Developer has had difficulty in finding a sufficient number of qualified purchasers ("Eligible Purchasers" as defined in the "Master Deed") to purchase the "Restricted Units" in a manner to accommodate the scheduled order of construction.

D. The Acton Housing Authority has been unable to obtain sufficient funds to allow it to exercise its right of first refusal

to purchase Unit Number 25 (an "A.H.A. Restricted Unit") in accordance with the Grant of Right Of First Refusal recorded in Book 19966, Page 264 with said Deeds as an Exhibit to the Comprehensive Development Agreement. While the Developer's obligation to convey Unit Number 25 terminates upon the Acton Housing Authority's failure to exercise its option under the Grant of Right of First Refusal, the Developer desires to transfer the Acton Housing Authority's right of first refusal to a unit to be constructed in the Audubon Hill North Condominium in the hope that the Acton Housing Authority will have funds available at such time in order to allow the AHA to purchase five (5) units in accordance with the original Comprehensive Development Agreement.

E. The Town and the Developer wish to clarify certain of the terms and conditions of the Comprehensive Development Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements in this Second Supplemental Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Unit Numbers 23, 27, 29, and 31 of the Audubon Hill South Condominium shall no longer be "Restricted Units". The Developer shall, at the time of the creation of the Audubon Hill North Condominium, establish Unit Number 125, 127, 130, and 132 as "Restricted Units". Unit Numbers 1, 6, 8, 10, 13, 14, 17, 18, 48, 2, 4, and 25 shall be the "Restricted Units" within the Audubon Hill South Condominium, subject to the Developers continuing right to substitute a different Unit for any of the above-described "Restricted Units", so long as the total number of Units so restricted is not reduced in number.

2. Section 3.3(f) of the Comprehensive Development Agreement is hereby amended to reflect that three (3) of the "A.H.A. Restricted Units" shall be constructed in the Audubon Hill North Condominium and that two (2) of the "A.H.A. Restricted Units" shall be constructed in the Audubon Hill South Condominium. Further, Unit Number 25 shall no longer be an "A.H.A. Restricted Unit" since the Acton Housing Authority has failed to exercise its right of first refusal to purchase said Unit. The Developer hereby grants the Acton Housing Authority a right of first refusal to purchase Unit Number 130 in the Audubon Hill North Condominium, upon the same terms and conditions as existed in regard to the purchase of Unit Number 25 of the Audubon Hill South Condominium. Unit Numbers 2 and 4 of the Audubon Hill South Condominium remain the only "A.H.A. Restricted Units within the Audubon Hill South Condominium.

3. Capitalized terms used in this Second Supplemental Agreement and not otherwise defined shall have the meaning ascribed to them in the Comprehensive Development Agreement.

4. Except as amended hereby, the Comprehensive Development Agreement and the Supplemental Agreement remain in full force and effect and this Second Supplemental Agreement shall be construed so as to supplement, clarify and amend such prior agreement.

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

TOWN OF ACTON
Acting by and through
its Town Manager

Don P. Johnson 8/28/91
Don P. Johnson, hereunto
duly authorized

R. SMITH ASSOCIATES, INC.

By: Roy C. Smith
Roy C. Smith, President

Jean Smith
Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August 28, 1991

Then personally appeared the above-named Don P. Johnson, Town Manager of the Town of Acton, and acknowledged the foregoing instrument to be the free act and deed of the Town of Acton, before me

Christine M. Joyce
Notary Public
My commission expires: 05-14-94

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August, 1991

Then personally appeared the above-named Roy C. Smith, President, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Albert O. Merrill
Notary Public
My commission expires:
December 4, 1993

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August, 1991

Then personally appeared the above-named Jean Smith, Treasurer, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Albert O. Merrill
Notary Public
My commission expires:
December 4, 1993

k/supplemental

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

ATTORNEYS AT LAW

208 MAIN STREET

ACTON, MASSACHUSETTS 01720-2223

508-263-7777

FAX 508-264-4868

BOSTON OFFICE:
NOV 27 1991
EIGHT PLACE

CABLE "DALYN"

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

November 25, 1991

Roy C. Smith, President
R. Smith Associates, Inc.
292 Great Road
Acton, MA 01720

Re: Audubon Hill South Condominium

Dear Roy:

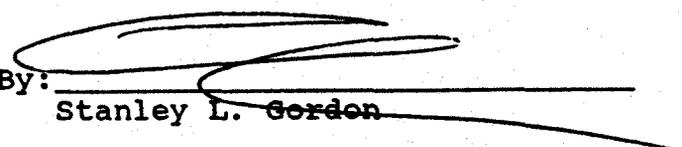
Pursuant to your request, please find Amendment No. 5 To The Master Deed and the Third Supplemental Agreement, both of which are substantially the same documents utilized in August of 1991, when you last changed restricted units in the Audubon Hill development.

I am forwarding copies of the same to Don Johnson and David Bannard for their information.

Please execute the originals and deliver them to the Town for signature. Be sure to return the originals to me for recording purposes.

Very truly yours,

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

By: 
Stanley L. Gordon

SLG/vv

Enclosures

cc: Don P. Johnson, Town Manager ✓
David Bannard, Esquire

j/smith.i

AMENDMENT NO. 5 TO THE MASTER DEED
OF AUDUBON HILL SOUTH CONDOMINIUM

R. Smith Associates, Inc., a Massachusetts Corporation, having a usual place of business at 292 Great Road, Acton, MA 01720, being the Declarant in a Master Deed of Audubon Hill South Condominium dated November 15, 1990, recorded November 20, 1990, in Book 20875, Page 79 with the Middlesex South District Registry of Deeds, as amended by Amendment No. 1 To The Master Deed of Audubon Hill Condominium dated February 26, 1991, recorded as Instrument No. 51 of July 26, 1991, Amendment No. 2 To The Master Deed of Audubon Hill Condominium dated July 24, 1991, recorded as Instrument No. 53 of July 26, 1991, Amendment No. 3 to the Master Deed of Audubon Hill Condominium dated August 26, 1991, recorded as Instrument Number 620 of November 1, 1991 and Amendment No. 4 to the Master Deed of Audubon Hill Condominium dated October 28, 1991, recorded as Instrument No. 623 of November 1, 1991 in accordance with the provisions of said Master Deed as amended, including but not limited to Sections 1, 11, and 14 of said Master Deed do hereby amend the Master Deed of Audubon Hill South Condominium by deleting Unit Numbers 6, 8, 10 and 14 as "Restricted Units" from Section 9.2, Subsection (a) and Subsection (b). Notwithstanding anything to the contrary, Unit Nos. 1, 13, 17, 18, 48, 2, 4, and 25 shall be known as the "Restricted Units" and Unit Nos. 2 and 4 shall be known as the "A.H.A. Restricted Units" within Section 9.2, Subsection (a) and Subsection (b) of the Master Deed of the Audubon Hill South Condominium.

In all other respects, the terms and provisions of the Master Deed, as amended, are hereby ratified and confirmed.

Witness our hand and seal this _____ day of November, 1991.

R. SMITH ASSOCIATES, INC.

By: _____
Roy C. Smith, President

By: _____
Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

November , 1991

Then personally appeared the above-named Roy C. Smith, President, and Jean Smith, Treasurer, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Notary Public
My commission expires:

The Town of Acton hereby assents to the foregoing Amendment Number 5 To The Master Deed of Audubon Hill South Condominium and certifies that this document complies with the Terms, Conditions and Restrictions as delineated in the Comprehensive Development Agreement dated June 23, 1989, recorded in Book 19966, Page 008, with the Middlesex South District Registry of Deeds, as supplemented by a Supplemental Agreement dated October 27, 1989, recorded in Book 20205, Page 227, said Deeds and a Second Supplemental Agreement, dated August 26, 1991, recorded as Instrument No. 621 of November 1, 1991, with said Deeds.

TOWN OF ACTON
Acting by and through its
Town Manager

Don P. Johnson

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

November , 1991

Then personally appeared the above-named Don P. Johnson, Town Manager of the Town of Acton, and acknowledged the foregoing instrument to be the free act and deed of the Town of Acton, before me

Notary Public
My commission expires:

k/amendment.ix

THIRD SUPPLEMENTAL AGREEMENT

This Agreement (the "Third Supplemental Agreement") is made as of the _____ day of November, 1991, by and between the Town of Acton, Massachusetts (the "Town"), a Massachusetts municipal corporation, having a usual place of business at the Acton Town Hall, Acton, MA 01720, acting by and through its Town Manager, the duly authorized designee of the Town's Board of Selectmen under the terms and conditions of a certain Comprehensive Development Agreement (the "Comprehensive Development Agreement") dated as of June 23, 1989, and recorded in Book 19966, Page 008 with the Middlesex South District Registry of Deeds, and a Supplemental Agreement (the "Supplemental Agreement") dated as of October 27, 1989, and recorded in Book 20205, Page 227 with said Deeds, and a Second Supplemental Agreement (the "Second Supplemental Agreement") dated as of August 26, 1991 and recorded as Instrument No. 621 of November 1, 1991 with said Deeds and R. Smith Associates, Inc. (the "Developer"), a Massachusetts corporation having a usual place of business at 292 Great Road, Acton, MA 01720.

RECITALS

Reference is hereby made to the following facts:

A. The Town and the Developer entered into the Comprehensive Development Agreement and the Supplemental Agreement in order to set out the terms and conditions under which the Development Property (as defined in the Comprehensive Development Agreement) would be developed.

B. The Developer has created the Audubon Hill South Condominium by Master Deed dated November 15, 1990, recorded November 20, 1990, in Book 20875, Page 79 with the Middlesex South District Registry of Deeds (the "Master Deed"). Section 9.2 of the Master Deed indicated that Unit Numbers 1, 6, 8, 10, 13, 14, 17, 18, 23, 27, 31, 38, 48, 2, 4, and 25 would be "Restricted Units" in partial satisfaction of Section 3.3 (c) of the Comprehensive Development Agreement, subject to the Developers right to amend the restriction as set forth in Section 9.2(b) and Section 9.4 of the Master Deed by substituting a different Unit for any of the above-referenced "Restricted Units" so long as the total number of Units, so restricted is not reduced in number.

C. The Second Supplemental Agreement modified the Comprehensive Development Agreement by removing Unit Numbers 23, 27, (29) and 31 as "Restricted Units" and establishing Unit Numbers 125, 127, 130 and 132 of the Audubon Hill North Condominium as "Restricted Units, in their place, and leaving Unit Numbers 1, 6, 8, 10, 13, 14, 17, 18, 48, 2, 4 and 25 as "Restricted Units" in the Audubon Hill South Condominium

D. Despite an active sales and marketing campaign, the Developer has continued to have difficulty in finding a sufficient number of qualified purchasers ("Eligible Purchasers" as defined in the "Master Deed") to purchase the "Restricted Units" in a manner to accommodate the scheduled order of construction.

E. The Town and the Developer wish to clarify certain of the terms and conditions of the Comprehensive Development Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements in this Third Supplemental Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Unit Numbers 6, 8, 10, and 14 of the Audubon Hill South Condominium shall no longer be "Restricted Units". The Developer shall, at the time of the creation of the Audubon Hill North Condominium, establish Unit Numbers 104, 108, 112, and 118 as "Restricted Units". Unit Numbers 1, 13, 17, 18, 48, 2, 4, and 25 shall continue to be the "Restricted Units" within the Audubon Hill South Condominium, subject to the Developers continuing right to substitute a different Unit for any of the above-described "Restricted Units", so long as the total number of Units so restricted is not reduced in number.

3. Capitalized terms used in this Third Supplemental Agreement and not otherwise defined shall have the meaning ascribed to them in the Comprehensive Development Agreement.

4. Except as amended hereby, the Comprehensive Development Agreement, the Supplemental Agreement and the Second Supplemental Agreement remain in full force and effect and this Third Supplemental Agreement shall be construed so as to supplement, clarify and amend such prior agreement.

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

TOWN OF ACTON
Acting by and through
its Town Manager

Don P. Johnson, hereunto
duly authorized

R. SMITH ASSOCIATES, INC.

By: _____
Roy C. Smith, President

Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

November , 1991

Then personally appeared the above-named Don P. Johnson, Town Manager of the Town of Acton, and acknowledged the foregoing instrument to be the free act and deed of the Town of Acton, before me

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

November , 1991

Then personally appeared the above-named Roy C. Smith, President, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August , 1991

Then personally appeared the above-named Jean Smith, Treasurer, as aforesaid, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Notary Public
My commission expires:

k/supplemental.4

F

AMENDMENT NO. 6 TO THE MASTER DEED
OF AUDUBON HILL SOUTH CONDOMINIUM

R. Smith Associates, Inc., a Massachusetts Corporation, having a usual place of business at 292 Great Road, Acton, MA 01720, being the Declarant in a Master Deed of Audubon Hill South Condominium dated November 15, 1990, recorded November 20, 1990 in Book 20875, Page 79 with the Middlesex South District Registry of Deeds, in accordance with the provisions of said Master Deed as amended, including but not limited to Sections 1, 11 and 14 of said Master Deed does hereby amend the Master Deed of Audubon Hill South Condominium as follows:

1. Section 9.2 Restrictions On The Sale Of The Restricted Units and Section 9.3 Restrictions On The Resale Of The Restricted Units are hereby declared null and void and of no further force and effect except as to the four (4) Restricted Units numbered 17, 18, 25 and 48 which have previously been constructed and sold as Restricted Units.

2. The purpose of this Amendment is to confirm that there are no longer any Restricted Units in the Audubon Hill South Condominium except for Units 17, 18, 25 and 48 and that there are no longer any A.H.A. Restricted Units in the Audubon Hill South Condominium.

For additional authority, also see the Third Supplemental Development Agreement, to be recorded herewith.

In all other respects, the terms and provisions of the Master Deed, as amended, are hereby ratified and confirmed.

Witness our hand and seal this 25th day of February, 1992.

R. SMITH ASSOCIATES, INC.

By: Roy C. Smith
Roy C. Smith, President

By: Jean Smith
Jean Smith, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

February 25, 1992

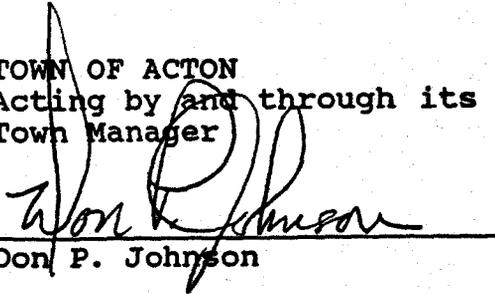
Then personally appeared the above-named Roy C. Smith, President, and acknowledged the foregoing to be the free act and deed of R. Smith Associates, Inc., before me

Christine M. Joyce
Notary Public

My commission expires: 5-13-94

The Town of Acton assents to the foregoing Amendment Number 6 To The Master Deed of Audubon Hill South Condominium and certifies that there shall be no Restricted Units in the Audubon Hill South Condominium except for Units 17, 18, 25 and 48 and that there shall be no A.H.A. Restricted Units in the Audubon Hill South Condominium. This Amendment complies with the Terms, Conditions and Restrictions as delineated in the Comprehensive Development Agreement dated June 23, 1989, recorded in Book 19966, Page 008, with the Middlesex South District Registry of Deeds, as supplemented by a Supplemental Agreement dated October 27, 1989, recorded in Book 20205, Page 227, said Deeds, as supplemented by a Second Supplemental Agreement dated as of August 26, 1991, recorded in Book 21513, Page 494, said Deeds and a Third Supplemental Agreement, to be recorded herewith.

TOWN OF ACTON
Acting by and through its
Town Manager

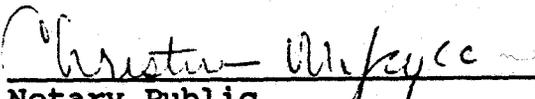

Don P. Johnson

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

February 25, 1992

Then personally appeared the above-named Don P. Johnson, Town Manager of the Town of Acton, and acknowledged the foregoing instrument to be the free act and deed of the Town of Acton, before me


Notary Public
My commission expires: 5-13-94

k/audubonamendment.2