

STOUGHTON ZONING BOARD OF APPEAL  
THE VILLAGES AT STONEGATE COMPREHENSIVE PERMIT DECISION  
ZBA CASE No. 3884

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**I. BACKGROUND**

- Applicant: West Street Group LLC is the applicant (the “Applicant”). The term ‘Applicant’ shall include the Applicant’s successors and assigns, including any condominium association formed to govern any aspect of the project.
- Property Owner: Robert and Kathy MacEachern, 526 Plain Street, Stoughton, MA; Dorothy Cushing, 528 Plain Street, Stoughton, MA; Robert A. Adams and Mary M. Connors, 1080 West Street, Stoughton, MA; Ralph and Deborah Polillio, 1048 West Street, Stoughton, MA; and West Street Group LLC, 10 Porter Street, Stoughton, MA.
- Public Hearing: The public hearing, pursuant to notice duly published, posted and mailed to parties in interest was timely opened on November 16, 2007 and continued with the Applicant’s consent by the Zoning Board of Appeal (the “Board”) to January 11, 2007, March 15, 2007, May 3, 2007, June 21, 2007, August 2, 2007 and October 4, 2007. The public hearing was closed on October 4, 2007. Board Members Sherman Epro, Jerald Savage, Robert O’Regan, Peter Barron, and Herbert Musmon attended all iterations of the public hearing at which testimony was taken and participated in the decision.
- Decision Date: On November 8, 2007, Member Musmon moved and Member Savage seconded and the Board voted 3 to 2 to approve with conditions the Application for Comprehensive Permit, supported by the factual findings as set forth herein.
- The Site: A parcel consisting of approximately 35.5 acres of land located on the easterly side of West Street, Stoughton, Massachusetts, connecting with Plain Street via a private way, in the Residence RA and RB Zoning Districts, and shown on the Stoughton Assessors’ Map 38 as Lots 19, 21, and 31 and Map 39 as Lots 56, 57, and 58 (collectively, the “Site”).
- The Project: The Application seeks approval to construct and occupy 120 condominiums, with 30 “affordable” housing units, at the Site in 48 townhouse units, with 2 bedrooms each, and 72 garden style units, with 2 bedrooms each, for a total of 240 bedrooms. A total of 10 townhouse and 20 garden style units would be affordable units, with a total of 21 local preference units to reflect the required minority representation and local veteran preference as allowed by state law. The approval granted herein, however, reduced the total units allowed to 80 units as detailed below.

The Project is documented in the following materials:

- (1) An Application for Comprehensive Permit (the "Application") and accompanying Appendix (the "Appendix"), as filed with the Town Clerk's Office on October 10, 2006; and, thereafter, with the Board.
- (2) A plan entitled, "Site Plan for the Villages at Stonegate," in Stoughton, Massachusetts, consisting of 20 pages, dated November 1, 2006, and prepared by Site Design Professionals LLC, with revisions dated April 23, 2007 and June 7, 2007 incorporated therein, all made in accordance with the recommendations of the Board's peer review consulting engineers at Professional Services Corporation, PC (collectively, the "Plans").
- (3) A plan entitled, "Affordable Units Plan for The Villages at Stonegate" in Stoughton, Massachusetts, dated June 7, 2007, prepared by Site Design Professionals LLC.
- (4) A plan entitled "Landscaping Plan for The Villages at Stonegate" in Stoughton, Massachusetts, dated June 8, 2007, prepared by Site Design Professionals LLC.
- (5) Preliminary Architectural Drawings, prepared by The MZO Group, Architects, dated June 7, 2007.
- (6) "Stormwater Runoff Analysis for the Villages at Stonegate," dated November 1, 2006, revised June 8, 2007, and prepared by Site Design Professionals LLC.
- (7) A "Traffic Impact Assessment for The Villages at Stonegate," dated January 2006, prepared by Gillon Associates, Traffic Consultants, Norwood, Massachusetts, revised June 2007 to include additional areas of review at the request of the Board.
- (8) Project Eligibility Letter, dated September 12, 2006, by the Department of Housing & Community Development ("DHCD"), as amended on March 9, 2007. On July 9, 2007, DHCD further provided the Board with a letter clarifying DHCD's intention relative to a certain condition for review of a wetlands crossing as part of the Project. On August 2, 2007, DHCD provided the Board with a further letter clarifying DHCD's intention relative to a certain condition for review of a wetlands crossing as part of the Project.

In addition to the above, the Applicant, the Board's consultants, Town Officials and numerous abutters and interested members of the public entered into evidence numerous documents, letters, power point presentations, reports, draft decisions and other materials addressing matters and questions raised during the public hearing, all of which material is incorporated herein by reference.

## **II. DETERMINATIONS**

Following the close public hearing and based on all of the evidence submitted, the Board voted to make the following determinations as set forth below:

### **A. Jurisdictional Requirements:**

1. Under 760 CMR 31.01(1)(a), the Applicant shall be a public agency, a non-profit organization or a limited dividend organization. The Application (Tab 2) indicates that the Applicant shall comply with the limited dividend requirements.

**MOTION:** Member O'Regan and Member Savage seconded that the Board vote to find that the Applicant satisfied the jurisdictional prerequisites under 760 CMR 310.01(1)(a) for applying for this permit. The Motion was voted and approved by a vote of 5 to 0.

2. Under 760 CMR 31.01(1)(c), the Applicant is required to have control of the Site proposed for the project. The Application (Tab 10) includes a series of purchase and sales agreements for the Site and the Applicant provided evidence that the agreements have been extended. Site control to the proposed emergency access way was contested by members of the public. In response, on July 24, 2007, the Applicant submitted a title insurance commitment issued by Chicago Title Insurance Company, wherein the Applicant's right to use the right of way for access to the Site was listed among the rights appurtenant to the Site, committed for an insurance policy to be duly issued by Chicago Title Insurance Company.<sup>1</sup>

**MOTION:** Member O'Regan moved and Member Savage seconded that the Board find that site control has not been satisfactorily proven and that, as a condition of any approval that may be granted hereunder the Applicant shall obtain declaratory relief from a court of competent jurisdiction to confirm that the Applicant has the right to perform the proposed construction and use the emergency access and that the determinations shall be finally obtained before any clearing or construction occurs. The motion was voted and approved 5-0.

**MOTION:** Member O'Regan moved and Member Musmon seconded that the Board vote to find that the Applicant satisfied the jurisdictional prerequisites under 760 CMR 310.01(1)(c) for applying for this permit. The Motion was voted and approved by a vote of: 5 to 0.

3. Under 760 CMR 31.01(1)(b), the project must be fundable by a subsidizing agency and have a site approval letter. A Project Eligibility letter from DHCD, dated September 12, 2006, which expires on September 12, 2008, was provided (Application, Tab 3) under the LIP Program, with financing as set forth in the Eligibility Letter.

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<sup>1</sup> Filed under cover letter of Jonathan Cosco, Esq. to Zoning Board of Appeals dated July 24, 2007.

**MOTION:** Member O'Regan moved and Member Musmon seconded that the Board vote to find that the Applicant satisfied the jurisdictional prerequisites under 760 CMR 310.01(1)(b) for applying for the requested permit. The Motion was voted and approved by a vote of: 5 to 0 .

**B. Consistency with Statutory and Regulatory Needs.**

Whether a board may approve a comprehensive permit with conditions without regard for whether the conditions would make the project uneconomic or may deny the permit is governed by whether the Town has met certain minimum statutory and regulatory thresholds for the development of low and moderate income housing as set forth in set forth in G.L. c. 40B, §20 and 760 CMR 31.04. If the Town has satisfied any of the following statutory and regulatory exemption thresholds, then the Board has the right to either deny the application or impose its local regulations on an approval and the resulting decision shall be considered consistent with local needs and satisfy the requirements of G.L. c.40B.

1. Ten Percent Affordable Housing Exemption:  
10% of the Town's total housing stock is part of the subsidized housing inventory. G.L. c. 40B, §20; 760 CMR 31.04(1).
2. Existing Development Exemption:  
Affordable housing land exceeds 1½ % of total land area, excluding government-owned land.) G.L. c. 40B, §20; 760 CMR 31.04(2).
3. New Construction Exemption:  
New affordable housing construction land area in the calendar year exceeds .3 of 1% of the total land area. G.L. c. 40B, §20; 760 CMR 31.04(3).
4. Recent Progress: Affordable units created during the prior 12 months exceeds 2% of the Town's total housing stock. 760 CMR 31.07(1)(d).
5. Large Scale Project: The Application is for more than a certain number of units, depending on the Town's affordable housing stock. 760 CMR 31.07(1)(g).
6. Related Application: The Application is related to an application for zoning or subdivision approval on the same land made within the prior 12 months. 760 CMR 31.07(1)(h).
7. Planned Production: Certified progress on approved affordable housing planned production. 760 CMR 31.07(1)(i).

**MOTION:** Member O'Regan moved and Member Barron seconded that the Board vote to find that the Town has satisfied its low and moderate income housing needs under G.L c.40B, as of the date of this decision, as the Town's Subsidized Housing Inventory is at 11.7 percent and has made certified progress on affordable Housing under 760 CMR 31.07(1)(i). The Motion was voted and approved by a

vote of: 5 to 0.

Even if the Town has satisfied one or more of the statutory or regulatory thresholds, the Board still has the discretion to grant a comprehensive permit. The Board reviewed the Project to determine whether the continuing need for affordable housing, both regionally and locally, and the parameters of the Project would warrant the exercise of its discretion to grant a comprehensive permit although the Town has satisfies one or more of the affordable housing thresholds.

i. LIP Status

The Application was filed under DHCD's Local Initiative Program (LIP), a state housing program "established to give cities and towns more flexibility in their efforts to provide low and moderate-income housing."<sup>2</sup> A project qualifying under LIP, is afforded extensive technical and other assistance to assist the community in meeting its affordable housing goals.<sup>3</sup> Such a project can be considered "consistent with local housing needs."

The Applicant began developing the Project in the Fall of 2005. The Applicant's initial proposal received the unanimous support of the Board of Selectmen. After receipt of a petition from neighbors, however, the endorsement was withdrawn and the Applicant was asked to meet with neighborhood representatives in an effort to accommodate neighbor concerns. The Applicant spent several months discussing its plans with neighborhood representatives and reduced the proposed number of units from 140 to 120 and redesigned the roadways, infrastructure, buildings and amenities to incorporate a number of neighborhood concerns. The Applicant resubmitted its plans and received the Board of Selectmen's endorsement of the Project as a LIP application to DHCD. The Applicant attempted to maintain communication with neighborhood representatives. Since its initial filing, the Applicant has held over two dozen neighborhood meetings, public forums, site walks, and off-site visits to representative housing.<sup>4</sup>

ii. Stoughton's Affordable Housing Plan

In 2006, the Town established and filed with DHCD an Affordable Housing Plan (the "Housing Plan"), which establishes the areas of need for new housing – affordable and otherwise – for the Town. The Housing Plan incorporates a number of housing issues raised in the June 2004 Town of Stoughton Community Development Plan:<sup>5</sup>

- In spite of Stoughton's recent growth, much of its housing is relatively old. Only 26% of the town's housing units were built before 1950, but fully 60% were built before the 1970's. . . .

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<sup>2</sup> See "Local Initiative Program Guidelines," published by the Department of Housing and Community Development, November 2006, pp. 1-2.

<sup>3</sup> Id.

<sup>4</sup> Testimony of James N. Marathas, Public Hearing January 11, 2007.

<sup>5</sup> The Applicant provided testimony indicating that it began discussing and attempting to address the concerns set forth in the Housing Plan *before* it was drafted and published, during its LIP hearings with the Board of Selectmen in the Fall of 2005 (included as an exhibit at Tab 13).

- Stoughton's new housing will be primarily single-family, owner-occupied, lower density, and more expensive than existing housing. This will represent a further shift in the housing balance and less housing choice.
- 10% (affordable housing) is a moving target. As the base number of housing units grows, the 10% grows as well; thus, new affordable housing must be added simply to keep pace.
- 10% is an arbitrary number and is not based on need. Given that 42% of Stoughton's households have low-to-moderate incomes, 10% may not be enough to meet the need.<sup>6</sup> (emphasis added)

As a result of these issues and trends, the Housing Plan cites the Town's stated general housing goal to:

[D]iversify the mix of housing option and preserve affordability for residents of all income levels, life stages and persons with special needs. Ongoing negotiations with developers will encourage them to design projects that meet the general development guidelines, while meeting the Town's need for diverse housing.<sup>7</sup> (emphasis added)

iii. Impact on Local Planning Concerns:

The Project as designed, through both the LIP process and the Board's peer review, considered and attempted to address potential impacts to the health, safety, and welfare of the Town and its residents.

**MOTION:**

Member O'Regan moved and Member Savage seconded that the Board vote to determine that the Project should be considered under local criteria. The Board approved the motion 5 to 0.

**III. FINDINGS OF FACT**

Over the course of the public hearing, the Board heard testimony and received written comments from numerous Town boards and officials, the Applicant and its representatives and numerous abutters and members of the public. The Board retained H&H Associates, LLP ("H&H") to review the pro forma and Professional Services Corp. ("PSC") to review the engineering data provided. After the public hearing closed, the Board met during open session at a duly posted meeting on November 1, 2007 to consider the following findings of fact:

1. Pro Forma and Financial Review

H&H provided the Board with a final report that set forth a number of questions relating to the Applicant's pro forma. An issue was raised regarding the Applicant's property appraisal. The

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<sup>6</sup> Housing Plan, p. 10. *See also*, Stoughton Community Development Plan, pp. 17-30.

<sup>7</sup> Housing Plan, p. 15.

Applicant made its appraiser, Robert P. Clark, Massachusetts Certified General R.E. Appraiser #1645 available to answer questions posed by the Board and the public. Additionally, both the *Local 40B Review and Decision Guidelines*<sup>8</sup> and the *Local Initiative Program Guidelines*<sup>9</sup> provide standards for determining value and, more specifically, appraisals provided for site eligibility.

**MOTION:** Member O'Regan moved and Member Savage seconded that the Board find that the Applicant's appraisal was not credible and the Board shall disregard it. The Board voted to approve the motion by a vote of 5 to 0.

2. Engineering Review By Professional Services Corporation

**MOTION:** Member O'Regan moved and Member Savage seconded that the Board find that any approval hereunder shall require that the Applicant conform to the conditions set forth in PSC's final report. The Board voted to approve the motion 5 to 0.

3. Traffic Engineering Review By Professional Services Corporation

**MOTION:** Member Savage moved and Member O'Regan seconded that the Board vote to find that the Applicant shall place sufficient funds into escrow (or a satisfactory performance bond) as a condition of any approval hereunder to install traffic signalization at West Street and Plain Street, with the funds to be held for a period of two years following the last occupancy permit, with the amount to set by the Board in consultation with the Department of Public Works, and following the two year period there shall be a further public hearing by the Board, with the Department of Public Works, and a recommendation made to the Town as to whether the funds shall be used. The Board approved the motion 5 to 0.

4. Police and Fire Department Review

The Applicant obtained review letters of both the Fire Chief and Police Chief.

Fire Chief Jardin noted that "The street length of 900' is not an issue, there is ample turnaround for apparatus, we generally would not back up that distance unless absolutely necessary."<sup>10</sup> Chief Jardin's comments on hydrant location were incorporated into the Project.

Acting Police Chief Christopher Ciampa also reviewed the plans for the Project, and submitted a letter stating that: "The Police Department is satisfied that the development meets or exceeds public safety requirements regarding the width of streets and accessibility."<sup>11</sup>

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<sup>8</sup> *Local 40B Review and Decision Guidelines* – A Practical Guide for Zoning Boards of Appeals Reviewing Applications for Comprehensive Permits Pursuant to Chapter 40B, Massachusetts Housing Partnership and Edith M. Netter, Esq., November 2005.

<sup>9</sup> *Local Initiative Program Guidelines*, Department of Housing and Community Development, November 2006.

<sup>10</sup> Memorandum from Chief David Jardin dated February 8, 2007.

<sup>11</sup> Letter from Acting Police Chief Christopher Ciampa dated March 26, 2007.

5. Sewer and Water

The Project shall be serviced by municipal water and sewer, both of which were reviewed by PSC in its engineering site review. The issues raised by PSC were resolved in PSC's June 11, 2007 final review memorandum.<sup>12</sup>

On April 19, 2007, with the supervision of the Department of Public Works, the Applicant performed a water flow test with satisfactory results, and submitted those results to PSC for review, with no further comment.<sup>13</sup>

The Applicant discussed with the Department of Public Works, Deputy Superintendent William Hammel, the provision of municipal sewerage to the Project via a West Street connection. The results of these discussions, confirmed by PSC, were that there will be sufficient municipal sewer capacity available to the Project, with minimal development from West Street.<sup>14</sup>

These findings confirm the earlier report from Assistant Town Engineer Jonathan Beder that there is sufficient design and capacity for municipal water and sewer available for the Project.<sup>15</sup>

6. Waste Disposal

By letter of May 31, 2007, Waste Management Inc., of Mansfield, Massachusetts provided a commitment for waste removal services for the Project, to be scheduled "in cooperation with the trash pickup dates for the Town of Stoughton, being Mondays."<sup>16</sup>

7. Wetlands Protection Issues

(a) Site Eligibility Issue -

The Applicant's September 12, 2006 Site Eligibility Letter issued by DHCD for the Project provided a condition that the Board retain a consultant to "assess the feasibility of a proposed wetlands crossing on the site, parameters of the wetlands and its borders, consultation with the Massachusetts Natural Heritage and Endangered Species Program regarding habitat conditions, and such other issues at the Zoning Board of Appeals may identify."<sup>17</sup> By letter of July 9, 2007, and a second letter issued August 2, 2007, DHCD clarified its wetlands condition, stating:

DHCD subscribes to the premises as put forth in the Massachusetts Housing Partnership publication, *A Practical Guide for Zoning Boards for Appeal Reviewing Applications for Comprehensive Permits Pursuant to M.G.L. Chapter 40B* (November 2005), which provides extensive comments on how a Zoning Board of Appeals may gather and

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<sup>12</sup> See Professional Services Corporation letter dated June 18, 2007, p. 30, comments 67-69.

<sup>13</sup> See Professional Services Corporation letter dated June 18, 2007. p. 30, comment 68.

<sup>14</sup> See Professional Services Corporation letter dated June 18, 2007, comments 56, 63, 67, and 69.

<sup>15</sup> Letter of Jonathan Beder, Assistant Town Engineer date March 12, 2007.

<sup>16</sup> Letter of Waste Management Inc. dated May 31, 2007.

<sup>17</sup> Site Eligibility Letter dated September 12, 2006, p. 2.



evaluate the information necessary to render a decision relative to the issuance of a comprehensive permit....

. . . It does appear, however, that the information in hand from reports already prepared and reviewed, as well as the issuance of the Order of Resource Area Delineation by the Town's Conservation Commission, provided sufficient information on which to proceed.”

After some discussion, the Board sought to engage Horsley-Witten Group (HWG) to review wetlands issues on the Board's behalf. The Chairman contacted HWG wetland scientist, Amy Ball, who had reviewed wetlands issues for the Conservation Commission in connection with the Abbreviated Notice of Resource Area Delineation (ANRAD) filed by the Applicant. In the end, HWG declined to work with the Board on this project.

In response to HWG's declination, the Applicant retained a new wetlands scientist, Michele Grenier, a wetlands scientist with Wetlands and Wildlife – Environmental Consultants. In addition to her private work, Ms. Grenier presently serves as the Environmental Affairs Director for the Town of Mansfield, and worked in that capacity for the Town of Stoughton in the 1990's.

(b) Intermittent Stream Issue -

Ms. Grenier testified that she spoke with Amy Ball of HWG, who had, herself, inspected the property on several occasions for the Conservation Commission. In her letter of June 18, 2007, as well as her testimony during the public hearing, Ms. Grenier, confirming prior finding of HWG's Amy Ball,<sup>18</sup> testified that:

She had made five (5) site visits within the two-week period prior to the public hearing, and based upon her observations:

- That the most recent data publish by USGS clearly show this stream as intermittent;
- That the engineering calculation for watershed require designation of this stream as intermittent; and
- That her field observations clearly show this stream as intermittent.

These findings comport with those of Amy Ball of HWG from February 7, 2007, confirming her earlier report of January 4, 2007, where she opined that this stream is intermittent.

(c) Vernal Pool Issue –

Members of the public raised the issue of vernal pools and submitted certification of several vernal pools located adjacent to West Street. Ms. Grenier testified that the vernal pools cited by the opponents are located off-site, and although they carry a buffer area the same as any other

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<sup>18</sup> Letter of Amy Ball, Wetland Scientist (to the Stoughton Conservation Commission) dated February 7, 2007.

jurisdictional wetland, the vernal pools were about 100 feet from the property line, and therefore did not impact the project with a jurisdictional buffer area.<sup>19</sup>

(d) Four-toed Salamander Issue –

Members of the public raised the issue of the presence of the four-toed salamander at the Site, a species listed as a “species of special concern” which the opposition group had identified and reported to Massachusetts Natural Heritage and Endangered Species Program (NHESP). Ms. Grenier testified that she had discussed this issue with Jonathan Regosin, Ph.D. of NHESP. She submitted her findings on this issue and testified that:

- The habitat for the salamander is in and around vernal pools, which are located more than 100 feet off-site;
- That she made numerous inspections of the site specifically looking for the salamander and the only observation she made was off-site in the area of one of the vernal pools south of the property;
- Four-toed salamanders rarely stray beyond the vernal pool area, and generally not more than approximately 40 feet, and that her field observation confirmed that none were found beyond the vernal pool area; and
- That, although the species is presently listed, there are current discussions about removing this species from the protected species list.<sup>20</sup>

Ms. Grenier further detailed for the Board that Jon Regosin of NHESP visited the site as a result of a reported observation. Mr. Regosin stated that he visited the site after receiving photographs of what was being reported as “spotted salamander eggs” – a *rare* species. He went out to observe in the field and found that the reported observation was incorrect, and he observed the more common “four-toed” salamander.<sup>21</sup>

(e) Order of Resource Area Delineation -

The Project will need approval from the Stoughton Conservation Commission under the Wetlands Protection Act, but has been through the process of filing an Abbreviated Notice of Resource Area Delineation (ANRAD). The ANRAD was approved by the Stoughton Conservation Commission, and the wetlands delineation substantially established under an Order of Resource Area Delineation (ORAD).<sup>22</sup>

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<sup>19</sup> See Testimony of Michele Grenier, PWS, CWS, Public Hearing Minutes, June 21, 2007, pp. 72-73.

<sup>20</sup> See Testimony of Michele Grenier, PWS, CWS, Public Hearing Minutes, August 2, 2007, pp. 26-30.

<sup>21</sup> Id.

<sup>22</sup> See Order of Resource Area Delineation (ORAD) issued by the Stoughton Conservation Commission.

8. Smart Growth Analysis

The Site has been identified within the Town of Stoughton's Open Space Plan, creating a presumption pursuant to 760 CMR 31.07(3)(c) that the site is needed for open space and recreation purposes. This fact "shall create a presumption that the site is needed to preserve open spaces unless the applicant produces evidence to the contrary". 760 CMR 31.07(3)(c).

**MOTION:** Member Savage moved and Member O'Regan seconded that the Board vote to find that while the Project met some of the Smart Growth criteria, the Project does not satisfy a majority of the principles. The motion was approved 5 to 0.

**MOTION:** After considering all of the evidence submitted during the course of the public hearing, Member O'Regan moved and Member Savage seconded that the Board vote to adopt the above findings of fact and the Motion was approved 5 to 0.

**IV. CONDITIONS**

A. Regulatory Conditions.

1. **MOTION:** Member Barron moved and Member O'Regan seconded that the number of units be reduced as follows:

The total number of units that may be constructed or occupied on the Site shall be limited to a maximum of 80 condominium units, with a maximum of 160 bedrooms, of which 44 shall be townhouse units and 36 shall be garden style units, to be developed, constructed, completed and managed in conformance with the Application and the Plans (as revised) and any and all conditions of approval set forth herein. Each unit shall have a maximum of 2 bedrooms. The motion was approved 3-2, with Members Epro and Savage dissenting.

**MOTION:** Member O'Regan moved and Member Barron seconded that: All parking for the garden style units shall be below grade and no building shall exceed 2 ½ stories. The Plans shall be revised to move the buildings as far away from the wetlands as the resulting decrease in units and parking will allow. The Board approved the motion 5-0.

Any increase in density shall require a modification of any approval granted hereunder, together with updated drainage calculations and peer review.

2. Except as more particularly provided for in this decision, if approved, the Project shall be constructed in conformance with the plans of record described above and shall be developed, constructed, completed and managed in conformance with the Application and the conditions herein.
3. The Applicant agreed to dedicate for public open space the area of land at the southerly end of the Site, contiguous with the Town's conservation lands, upon which the Applicant proposes no construction, as a condition of any approval hereunder. In the

event that the Applicant is unable to donate this land to the Town because it is not accepted by the Town, the Applicant shall place a permanent restriction on this area of land against future development and shall keep this land available for public passive recreation use in common with abutting conservation land.

4. The Applicant shall not receive any building permit until the Applicant has executed and delivered a Regulatory Agreement, Deed Rider, and Monitoring Agreement in a form approved by the Board. The Deed Rider shall be in the form attached hereto as Exhibit A (being the Deed Rider on MassHousing's web site entitled "MassHousing Uniform Instrument Form B-114 © 7.10.06) or as mutually agreed upon by DHCD and the Town (the "Deed Rider") and a Regulatory Agreement and Monitoring Agreement in the form approved by MassHousing.
5. The Deed Rider shall serve as the affordable housing restriction and shall be enforceable by the Town, by and through the Board, requiring that the affordable units shall remain affordable in perpetuity as approved by the Board. The Deed Rider shall be recorded to protect the continued availability of and requirement for the affordable units. The Applicant shall not receive a building permit until evidence of the recording of such Deed Rider has been provided to the Board. The recording of this decision also shall preclude any sale of any affordable unit without the required Deed Rider.
6. The Applicant shall provide a separate restrictive covenant that shall be recorded against the Property before the first deed is conveyed or the first occupancy permit issued, whichever occurs first, which shall provide that that 25% of the total units in the Project shall remain permanently affordable, so as to count toward the Town's Subsidized Housing Inventory as maintained by the DHCD or its successor agency, so long as the units do not conform to zoning requirements.
7. The affordable units shall be designated by the Applicant by agreement with the Monitoring Agent and shall be located as designated on the Plans. A total of 25% units shall be affordable and shall be evenly distributed, with a total the maximum local preference units that reflect the required minority representation and preferences for veterans as allowable under state law. The affordable units shall be indistinguishable from the exterior from the market rate units.
8. The affordable units shall be restricted, in perpetuity, as low or moderate income housing for sale to households earning no more than eighty (80%) percent of the Median Family Income, adjusted for household size, for the applicable jurisdictional area, as may be determined by income data compiled by the United States Department of Housing and Urban Development (HUD) or the Massachusetts Department of Housing and Community Development (DHCD) or the successor agencies thereto. The initial sale price for such affordable units shall not exceed an amount that is deemed affordable to households earning no more than seventy (70%) percent of the Median Family Income, adjusted for household size, for the applicable jurisdictional area, as may be determined by reference to income data compiled by HUD or DHCD or the successor agencies thereto. The initial sales prices of the affordable units shall be calculated using the

- formula approved by DHCD. The affordable units shall be indistinguishable from the market rate units on the exterior and shall be dispersed evenly throughout the Project.
9. Any resale of an affordable unit shall be as provided for in the Deed Rider or, in any event, shall allow the unit to continued be included in the Town's Subsidized Housing Inventory as maintained by DHCD or any successor agency.
  10. The affordable units shall be constructed on a schedule that shall provide for the construction of affordable units and market-rate units on a proportionally equal basis.
  11. Insofar as allowed under M.G.L. c. 40B and the regulations promulgated thereunder and other applicable law, with respect to at least 70% of the affordable units or the full extent allowed by law, the Applicant shall provide a preference category for Stoughton residents, their parents and children and for those persons who had resided in Stoughton within two years immediately preceding their application for housing. As allowed by state law, there shall be a preference for veterans. These preferences shall be implemented by the Monitoring Agent, which shall also review the Applicant's fair housing marketing plan. The costs associated with the marketing plan, including the advertising and processing for the affordable units shall be borne by the Applicant.
  12. The Stoughton Housing Authority shall act as Monitoring Agent for the affordability requirements for the Project. Mass Housing shall act as the Monitoring Agent for the limited dividends monitoring; however, the Town shall be afforded all the documentation provided to Mass Housing by the Applicant at the same time that it is provided to Mass Housing and the Town shall have all of the rights provided for by law to enforce those requirements. Prior to issuance of a Building Permit the Applicant shall enter into a Monitoring Services Agreement in a form approved by the Board. Services to be performed by the Monitoring Agent shall include but not be limited to:
    - a. review and approval of the affordable unit sale prices and the architectural nuances and design to ensure similarity with the market-rate unit;
    - b. review and approval of the affirmative marketing plan for the affordable units;
    - c. review and approval of the selection process for buyers of the affordable units; and
    - d. review and approval of annual compliance of affordable units with respect to the Regulatory Agreement.
  13. If at any time the Applicant is in violation of the Regulatory Agreement, following a hearing of which the Applicant has been given prior notice, then the Board may pursue such enforcement rights as it may have under the Regulatory Agreement and/or the Deed Rider and/or applicable law.
  14. Applicant agrees that the profit to the Applicant or to the partners, shareholders or other owners of the Applicants or of the Project shall not exceed twenty (20%) percent of the total development costs of the Project, exclusive of a developer's fee (hereafter referred to as the "Allowable Profit"). The developer's fee shall not be construed to include the payment of a construction manager in accordance with general practice and prices in the industry.

Prior to issuance of the final Certificate of Occupancy for all of the units in the Project, the Applicant shall deliver to the Auditor an itemized statement of the total development costs together with a statement of gross revenues from the Project received by the Applicant to date prepared by an independent Certified Public Account according to generally accepted accounting principals (GAAP), (hereinafter referred to as the "Certified Cost and Income Statement"). The Auditor may have access to the Applicant's books and records with respect to this Project during normal business hours after reasonable notice to verify cost certification. All profits from the Project in excess of the Allowable Profit shall be paid by the Applicant to the Town for deposit in an affordable housing fund to be used for the purposes of encouraging, creating or subsidizing construction or rehabilitation of affordable housing in the Town of Stoughton.

15. The Applicant's Allowable Profit to all partners, shareholders or other owners shall be limited to no more than twenty percent (20%) of total allowable development costs, as provided in Condition 10. This figure may or may not be used for other calculations made by the subsidizing agency or other entities for other purposes, but shall be used to calculate the profits of the limited dividend organization as defined in this comprehensive permit.
16. The Town may select an Auditor to audit the financial performance of the limited liability corporation, at the Applicant's expense, up to a maximum expense to the Applicant of \$25,000.00. The Applicant shall deliver to the Auditor selected or approved by the Board, the financial records of the Project to allow the Auditor to determine whether the Applicant has conformed to the Limited Dividend definition found in this decision.
  - a. A report shall be delivered to the Auditor at the sale of 75% of the units sold.
  - b. The information will be provided in a form consistent with the 40B pro forma.
  - c. All costs of retaining the Auditor, including legal fees incurred by the Board and/or the Town, shall be paid by the Applicant up to \$25,000.00 prior to issuance of the final occupancy permit.
  - d. The final audit will be completed and a report delivered to the Town on the earlier of 60 days after the sale of the final unit or 120 days of the issuance of the final occupancy certificate.
17. In determining whether the Applicant has conformed to the limited dividend requirement of this Comprehensive Permit Decision, the Auditor shall be required to certify that:
  - a. The methodology used to calculate profit follows the requirements of Mass Housing and this decision;
  - b. The total profit paid to the Applicant and to its parents, subsidiaries, affiliates, successors, and assigns, and their respective partners, limited partners, shareholders, managers, or other owners, and the relatives of the same (collectively the "Applicant") does not exceed 20% of total development costs in accordance with Mass Housing requirements; and
  - c. The Applicant has not made unreasonable or excessive payments (i.e. payments in excess of reasonable industry standards applicable to an arm's length transaction) to the Applicant or to its parents, subsidiaries, affiliates, successors, and assigns, or to their respective partners, limited partners,

shareholders, managers, or other owners, or to the relatives of the same in connection with work performed on the Project in order to artificially inflate the costs of development of the Project.

18. The Auditor shall be provided access by the Applicant during regular business hours and upon reasonable notice to the Applicant to any reasonable financial information necessary to make these determinations and to verify whether the income and expenses of the Project, including without limitation land acquisition costs, construction costs, landscaping costs, and other expenses, represent fair market value for such items, with particular attention to those arrangements between parties with overlapping ownership to owners of the Applicant. Where ever possible the Auditor shall utilize the information provided to the subsidizing agency to conduct the review. In the event the information provided is not sufficient, the Applicant shall provide additional information as requested by the Auditor.

B. General Conditions

1. There shall be no construction activity on the Premises before 8:00 a.m., except fueling of vehicles which may begin at 7:30 a.m., or after 7:00 p.m., Monday through Friday and before 9:00 a.m. or after 5:00 p.m. on Saturday. There shall be no construction on the Premises on Sundays or the following legal holidays: New Years Day, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas.
2. The Applicant shall locate all utilities within the Premises underground.
3. The interior and exterior of all buildings and structures shall be constructed substantially as represented on the Plans submitted to the Board.
4. The Project shall be serviced by municipal water and sewer. Applicant shall install all water and sewer infrastructure as shown on the Plans and in accordance with the Town's requirements and the conditions listed in the Findings of Facts herein.
5. Before any occupancy permit issues, all lighting for the Project shall be installed and maintained in such a way that lights shall be shielded and directed so as to eliminate the direct emission of light onto nearby residential properties exceeding 0.5 foot candles at the property line and any unshielded point sources of light visible from public ways or adjacent properties. A lighting plan shall be submitted to the Board for its approval prior to issuance of any building permit.
6. Prior to the start of any clearing or construction, the Applicant shall obtain any order of conditions required under the state wetlands protection act and Board of Health permits and approvals required for the Project. If any Order of Conditions or other decision by any permit granting authority is issued after the date of this decision and requires any change to the Plans approved hereunder, the Applicant shall describe said changes at the time of filing copies of such decision and request further hearing by the Board for modification of this decision or other action, as appropriate.

7. Before any occupancy permit issues, the Applicant shall install the proposed water, sewer, and drainage system over Town owned property pursuant to the Plans. All utility work shall be performed and conducted in conformance with the regulations of the Town, if any. Contractors shall be duly licensed as required by the Town. All such work shall be performed in accordance with current engineering and construction standards. Final design of storm water management system shall comply with Department of Environmental Protection Storm Water Management Policy, in particular Volume 2 Best Management Practices for treatment of stormwater and recharge of stormwater runoff to groundwater. An as-built survey of the completed on-site storm drainage system shall be certified by a Registered Professional Engineer as complying with said Storm Water Management Policy BMP Vol 2 subject to review of the Town Engineer or the Board's consulting engineer, at Applicant's expense.

8. All ways within the Project shall remain private in perpetuity, with the Project owners to bear the cost of maintenance, repairs, and snow plowing and trash removal.

Before the issuance of any building permit or any deed conveyance of any portion of the subject Property, a restrictive covenant running to the Town shall be provided and recorded against the Property whichever occurs first. This requirement shall constitute a restrictive covenant against the Site.

9. Prior to the issuance of any building permit, an updated landscaping plan shall be submitted to the Board for approval. The landscaping plan shall include a vegetative buffer, so as to mitigate the visual impact of the Project from abutting parcels. To the extent that landscaping for the Project is not completed prior to the issuance of the first certificate of occupancy, the Applicant shall provide the Town with a bond or surety in a form mutually agreed upon by the Town and the Applicant, and in an amount to be determined by the Board in consultation with Town boards and officials and other consultants based upon the Applicant's reasonable estimate of the costs to complete such landscaping work. Such bond or surety shall be held by the Town Treasurer until he is notified by the Board to release the surety. Requests to reduce the surety may be submitted as the landscaping work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The amount of the surety retained shall be based on the cost estimate of the remaining work, and surety shall be fully released upon the completion of the landscaping work.

10. Before any clearing or construction begins, fire hydrants and pull boxes shall be located on the Plans as required by the Fire Chief. No building permit shall issues until after the fire hydrants and pull boxes (other than interior to a structure) have been installed. The Project shall comply with the requirements of G.L. c.148, §26I as to sprinklers in the structures. Before any building permit issues, the Applicant shall provide the Fire Chief with the final fire alarm/sprinkler plan and obtain his approval. The Applicant shall provide final drawings showing the on-site water distribution system to the Fire Chief for his review and approval. Any required gates with fire department lock boxes shall be installed with the approval of the Fire Chief.



11. The Applicant shall equip each unit with water saving plumbing fixtures in every bathroom, kitchen and laundry area, and all underground water pipes shall be installed with water tight joints.
12. Prior to the issuance of any occupancy permit, all infrastructures (utilities, driveways, roads, sidewalks drainage, etc.) shall be constructed as shown on the final development plans, as amended, as required under this decision.
13. Prior to the issuance of any building permit, the emergency access way shall be installed and paved. The litigation confirming the right of the Applicant to construct and use the emergency access way shall be finally resolved in the Applicant's favor before any construction or clearing or removal of vegetation begins.
14. One parking space shall be marked and assigned to each dwelling unit and the remainder of the spaces shall be clearly designated as "guest" parking spaces. No parking shall be allowed on the access way or any off-premises area or on the emergency access way.
15. Prior to issuance of any building permit, the Applicant shall submit final revised plans and drainage calculations, which shall conform to all of the terms and conditions stated in this decision and shall be reviewed and approved by the Town Engineer or an independent, third party peer reviewer appointed by the Board, at the Applicant's expense.
16. Prior to issuance of any building permit, the Applicant shall provide the following to the Board for its review and approval and, as deemed appropriate by the Board, for peer review at Applicant's expense:
  - a. An effective snow storage and management plan, including a narrative description and snow storage locations shown on the plans, in order to meet the "no untreated runoff discharging to wetlands standard" of the Massachusetts Stormwater Management Policy.
  - b. A plan setting out procedures that outline the specific operation and maintenance measures for all stormwater/drainage facilities that will be employed to minimize or eliminate the threat of transmission of mosquito born diseases to the residents of the project and nearby resident of Stoughton.
  - c. A final approved erosion and sediment control plan that illustrates, at a minimum, locations of measure such as hay bales, silt fence, sedimentation basins, and all other erosion controls on the plans, and provides detailed construction sequencing and methods to protect the infiltration capacity of each infiltration system, all in all in conformance with any requirements of the Conservation Commission during the Order of Conditions process.
  - d. A final approved stormwater management operation and maintenance plan, including detail with respect to inspection, maintenance and potential repair, and including the specific activities needed to conduct the routine and less frequent maintenance required. The Applicant should consider the fiscal resources required to repair or replace a system.

- e. Documentation showing that all of the Massachusetts DEP stormwater management standards have been met, including but not limited to, water quality volume requirements, recharge requirements, and total suspended solids (TSS) removal. The Applicant's counsel agreed on January 11, 2007 that there will be no greater rate or volume of stormwater runoff post-construction, when compared to pre-construction conditions, and no building permit shall issue until after the plans have been finalized and the Applicant's Registered Professional Engineer has certified and the Board's peer review consultant has confirmed the certification that no such increase shall occur.
17. Before any clearing of land or construction occurs, the Applicant shall provide evidence to the Board of a National Pollutant Discharge Elimination System Permit (NPDES) from the United States Environmental Protection Agency, as necessary for construction of the Project.
  18. Before any clearing or construction occurs, the final water system design shall be reviewed by the Town Engineer or an equivalent third-party reviewer and approved by the Board. Prior to issuance of any building permit, the Applicant shall conduct a hydrant flow test to determine the water availability for fire flow. The procedure for flushing, disinfecting and pressure testing of the water mains shall be approved by the Town Engineer. In the event that there is insufficient water pressure or volume for fire protection, the Plans shall be revised to include on-site improvements such as a fire pump or off-site improvements to the municipal water distribution system as required to maintain a residual pressure of 20 psi in the municipal water distribution system. The procedure for flushing, disinfecting and pressure testing of the water mains shall be approved by the Town Engineer.
  19. Before any building permit issues, the final sewer system design shall be reviewed by the Town Engineer or an equivalent third-party reviewer (at the Applicant's expense) and approved by the Board.
  20. Prior to issuance of any building permit, the Applicant shall provide to the Board for peer review at the Applicant's expense the following:
    - a. Road right-of-way design data (width, radii, paving sections, etc.) for the proposed roadways.
    - b. Roadway profiles including all utilities.
    - c. Construction details, including but not limited to, all proposed drainage and stormwater elements, proposed retaining walls and proposed pavement, water supply, wastewater and all other applicable design elements, and a schedule of elevations for all sewer and drainage facilities, including detention pond outlet structures.
  21. All rim and invert elevations for all drainage and sewer structures shall be provided. Clear labeling of which catch basins will be double catch basins, and clear labeling of types of grates to be used, shall be provided.

22. The Applicant shall abide by orders issued by the Town, by and through the Board or the Building Inspector, in conformance with applicable law in conjunction with construction of the Project, subject to the Applicant's rights of appeal under applicable law.
23. Buffer zones within 25 feet of wetlands shall not be used for stockpiling of earth or construction materials, for parking of construction vehicles and equipment, refueling and maintenance of construction vehicles or equipment, or for storage of diesel fuel or hazardous materials.
24. Prior to any clearing activity, erosion and sedimentation control measures shall be installed, including physical barriers to provide tree protection along the limit of clearing line and around specimen trees to be preserved. Erosion controls and tree protection measures shall be continuously maintained throughout the course of construction. Adjacent public streets shall be swept as needed to remove sediment and debris. Disturbed areas shall be brought to final finished grade and stabilized permanently against erosion as soon as practicable. Bare ground that cannot be permanently stabilized within 60 days shall be stabilized annual rye grass following U.S. Natural Resource Conservation Service (NRCS) procedures.
25. Fertilizer, pesticide and herbicide use shall be minimized to the extent consistent with good landscape maintenance practice. Road salt shall not be used for vehicular areas. Dumping of landscape debris including leaves, grass clippings and brush within any 25-foot buffer zone is prohibited.
26. The Applicant shall offer a shuttle service and promote car pooling of residence to the MBTA commuter rail each morning (6 to 9) and evening (5 to 6:30) and shall install bicycle racks around the Project.

C. Required Fees

The Applicant shall pay all reasonable fees imposed for the purpose of inspecting and monitoring the compliance of the Project's construction with the terms of this permit, local bylaw requirements not waived by this permit, and other permits and approvals issued with respect to this Project for which the Town has monitoring responsibility. Consistent with Town practice, the Town engineer will be used for this purpose where applicable, or, if the Town engineer determines that a consulting engineer is required, such a consulting engineer shall be used. All fees for Board consultants including fees incurred prior to the date of this decision shall be paid by the Applicant within 30 days of approval of this permit. Thereafter, the Applicant shall maintain an escrow account with the Town that shall be sufficient to pay for any anticipated consulting fees. No occupancy permits shall be issued if there is a deficiency in the escrow account.

D. Plan Revisions and Endorsement

1. All plan revisions required by this decision shall be incorporated into the record set of Plans which shall be submitted for endorsement for peer review and endorsement by the Board within 120 days of the date any approval granted shall become final, with all appeals periods having expired without any appeal having been taken or any appeals taken having been finally decided upholding any approval granted hereby. The time allowed to make the revisions may be extended by a vote of the Board. Such extension shall not be unreasonably withheld.
2. The final revised plans shall be incorporated into any approval hereunder by reference and made a part hereof and shall be voted and signed by the Board (the "Endorsed Plans"). The Endorsed Plans shall be recorded and evidence of such recording at the Norfolk Registry of Deeds shall be provided to the Board and the Board before any clearing or construction begins.
3. The Endorsement Plans shall be signed and sealed by a Massachusetts Professional Engineer and a Massachusetts Registered Landscape Architect and shall include the following:
  - (a) Utilities, including on-site utilities and connections to utilities in adjacent public ways, which shall conform to all requirements of municipal departments or private utility companies having jurisdiction and to all applicable codes;
  - (b) Stormwater Pollution and Prevention Plan (SWPPP) notes that address mitigation of sedimentation and erosion, including details relating to any temporary drainage basins;
  - (c) Letter from a qualified consultant providing that the Project complies with Architectural Access Board (AAB) Regulations; and
  - (d) Details of any temporary construction signs.
4. The landscape development sheets of the site Endorsement Plans shall include the following:
  - (a) Shade trees shall be specified as 2 inch caliper minimum;
  - (b) A water efficient irrigation system;
  - (c) Revised masonry structure designs when necessary (not including modular retaining walls) that provide foundations that extend a minimum of 4 feet below grade or as required by the Massachusetts Building Code for frost stability; and
  - (d) Revised planting requirements that exclude Norway maple (*Acer platanoides*) and Sycamore maple (*Acer pseudoplatanus*) and all other species listed on the Department of Agricultural Resources' Massachusetts Prohibited Plant List dated January 1, 2006.

- (e) Planting schedules that list the specific species and caliper of all plants and appropriate planting details. All plant materials shall have the cold tolerance required for the site's plant hardiness zone.
  - (f) To the extent permitted by the Conservation Commission, revised planting requirements for wetland buffer areas within 25 feet of wetlands along the perimeter of the site that feature native species, minimize turf grass areas, incorporate native ground cover plants and leaf litter beds, and feature plants that have value for wildlife. Consultation with a qualified wetlands ecologist is recommended.
  - (g) Tree protection requirements that utilize physical barriers such as snow fencing to be placed at the limit of work line or at the drip line of specimen trees to be preserved within work areas.
5. Prior to endorsement by the Board of the final plans, the Applicant shall obtain the Board's approval of a Condominium Association Trust instrument, which instrument shall apply to all units in the Project and evidence of recording of such instrument shall be provided to the Board and Board prior to issuance of any building permit. Under the instrument, first the Applicant and then the Association shall be responsible for:
- a. Contracting for plowing, sanding, and snow removal;
  - b. Retaining a service provider for site maintenance and establishing a regular schedule for site maintenance;
  - c. Repairing and maintaining all ways, including drainage structures and utilities therein and regular street sweeping and drainage cleanouts;
  - d. Conducting yearly inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines;
  - e. Filing an annual report with the Board, not later than April 30, that the annual drainage system inspection has been completed and all deficiencies corrected;
  - f. Maintaining any and all easements shown on the Plans;
  - g. Street lights;
  - h. Development and implementation of a vegetation management plan;
  - i. Control and management of use of chemicals on the Site; and
  - j. Development and implementation of an Operations and Maintenance Plan, which shall be reviewed and approved by the Board prior to the first occupancy permit.
6. Substantial changes to the Project shall be governed by 760 CMR 31:03 or any successor regulation thereto and shall require the recording of the revisions at the Norfolk Registry of Deeds.

#### E. Surety

1. In addition to the surety requirements set forth above, with respect to the work to be done by the Applicant within a public way, on Town property or in any Town easement, a form of surety mutually agreed upon in an amount to be determined by the Board in

consultation with Town boards and officials and other consultants shall be given to the Town prior to starting any activity authorized by this approval, to ensure the proper and timely completion of all such work that shall be held by the Town Treasurer until he is notified by the Board to release the surety. Requests to reduce the surety may be submitted as work progresses and shall include the amount of requested reduction, a list of work outstanding and a cost estimate of the same. The surety retained shall be based on the work remaining.

2. In addition to the surety requirements set forth above, with respect to the work to be done by the Applicant within the Site, a bond or other form of surety mutually agreed upon in the amount to be determined by the Board in consultation with the Town's Department of Public Works shall be given to the Town's Treasurer in an amount sufficient to ensure the completion of incomplete roads or site drainage work and all other required infrastructure, including landscaping and lighting, within the Premises prior to issuance of the first building permit. Furthermore, no certificates of occupancy shall be issued by the Town until the Applicant has fully completed all site drainage and utility work and has installed a binder course of pavement on driveways and parking areas within the Premises.

F. Construction.

1. Prior to the start of any activity that may be authorized hereunder ("Authorized Activity"), adequate erosion and sedimentation control measures to be implemented by the Applicant shall be submitted to the Board for its approval and installed to its satisfaction and the satisfaction of any peer inspector appointed by the Board. Said measures shall be maintained throughout construction of the Project and until all disturbed areas have been permanently stabilized with either an adequate vegetative or asphalt cover in accordance with the Plans. The Board's inspector shall monitor and enforce this condition, at the Applicant's expense.
2. Prior to any Authorized Activity, the Applicant's final construction plans shall be revised to expressly provide that construction of the Project shall be performed in accordance with all applicable laws and regulations regarding noise, vibration, dust and sedimentation control and that no stumps or construction debris shall be buried or disposed of on-site.
3. Prior to any Authorized Activity, the Applicant shall designate areas at the Site for stockpiling any and all construction material, debris, fill and excavated material, after consulting with the Board. Said material shall be stabilized to prevent erosion and to control dust. All excess fill and excavated materials that are not used in conjunction with construction shall be removed from the Site and shall be disposed of in accordance with state laws and regulations. The Board shall be notified in writing of final disposition. At no time shall any debris or other material be buried or disposed of within a Resource Area as defined by G.L. c. 131 §40.
4. Prior to any Authorized Activity, the Applicant and the general contractor shall hold a preconstruction meeting with the Building Inspector, Conservation Agent, and DPW

representative and any peer inspector appointed by the Board to review this approval.

5. Prior to the preconstruction meeting and any Authorized Activity, the Applicant shall provide to the Building Inspector and the Board:
  - (a) The company affiliation, name, address and business telephone number of the construction superintendent who shall have overall responsibility for construction activities on site and this information shall be provided to the Fire and Police Departments and shall be updated as necessary with regard to any changes;
  - (b) A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the Premises have been paid;
  - (c) Certification that all required federal, state and local licenses and permits have been obtained;
  - (d) Proof that "Dig-Safe" has been notified at least 72 hours prior to the start of any site work;
  - (e) Proof that street signage is in place to ensure that emergency personnel can locate the site to provide emergency services to protect and secure the site and construction personnel and that the Fire Department and Police Department have been provided notice of the installation of the signage;
  - (f) At least 48 hour written notice. If activity on site ceases for longer than one month, 48 hour written notice prior to restarting work; and
  - g) Proof that all required federal, state and local licenses and permits have been obtained.
6. Prior to the start of construction, a Massachusetts Registered Professional Engineer shall observe soil conditions in the subsurface stormwater disposal area and shall relocate or modify the design of the facility if impervious soils or bedrock are present within the limits of the excavation and the Applicant shall obtain the necessary modification.
7. During construction, at the end of each work day, the Applicant shall cause all erosion control measures to be in place and make all necessary repairs and shall cause all materials and equipment to be properly secured.
8. During construction, all construction material, debris, fill and excavated material shall be stockpiled in areas on the Site designated by the Applicant after consultation with the Board. Said material shall be stabilized to prevent erosion and to control dust. All excess fill and excavated materials that are not used in conjunction with construction shall be removed from site and disposed of in accordance with state laws and regulations. At no time shall any

debris or other material be buried or disposed of within a Resource Area as defined by M.G.L. c. 131, §40.

9. Corrugated HDPE pipe with smooth interior walls is generally permitted for storm drains. After backfilling and after the site is brought to sub grade, but prior to paving, all segments of the drainage system shall be video inspected and any sagged or deformed pipe sections shall be replaced.
10. "No Parking" signs shall be located along the access ways for the Site. Signs acceptable to the Department of Public Works shall also be placed in any areas where snow is to be placed by snow removal operations. These signs shall indicate that no parking will be allowed in these designated areas during snowstorm events.
11. Parking spaces for residents, visitors and emergencies shall all be located as depicted on the plans.
12. All parking is to be provided within the property lines of the Project and not on any public way.
13. Sidewalks with handicap accessibility shall be constructed within the Site.
14. Any section of a public way that is disturbed during construction of the Project shall be repaved from curb to curb.
15. The Applicant shall be responsible for the following at the Project:
  - (a) all plowing, sanding, and snow removal. In the event that snow accumulation at the Project exceeds the capacity of the designated Snow Storage Locations shown on the Snow Storage Plan included in the Plans, the Applicant shall cause such excess snow to be transported from the Project to an off-site location for the legal disposal thereof;
  - (b) all site maintenance and establishing a regular schedule for site maintenance;
  - (c) repairing and maintaining all on-site roadways, including drainage structures and utilities therein;
  - (d) conducting annual inspection, maintenance and cleaning of all elements of the drainage system, including but not limited to catch basins, drain manholes, detention basins, swales and pipelines;
  - (e) maintaining all easements shown on the Plans; and
  - (f) site lighting.
16. The Applicant shall expend commercially reasonable efforts to develop and install an on-site irrigation well, provided it can be located on the Premises without damage to wetlands.



17. The Project as constructed shall not increase the peak rate of runoff from the 2, 10, 25 and 100 year storm events. As part of the As-Built approval required hereunder, a Registered Professional Engineer shall submit an As-Built plan on the entire drainage system. In addition, the engineer shall certify in writing that there is no increase in the peak rate of runoff from the 2, 10, 25 and 100 year storm events. The area to be included in the drainage calculations used for this certification shall be the whole drainage area contributing runoff to the site.
18. The Building Inspector may require that any foundations which are constructed on Site shall be secured as necessary in his opinion for any foundations left open to the weather for an extended period of time.
19. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant and/or Applicant's successor shall be responsible for maintaining the site's storm-water management system in accordance with generally accepted practice, as the same may, from time to time, change.
20. Within ninety days of completion of the Authorized Activities, the Applicant shall submit to the Board a written request for As-Built approval accompanied by two sets of As-Built Plans for all infrastructure improvements and, if applicable, proof of compliance with this Comprehensive Permit and any other permits required for the construction of the improvements contemplated by this Comprehensive Permit. The Applicant's Registered Professional Engineer shall provide a written description of any material deviations from the Building Permit plans. The Board's peer review engineering consultant shall approve the As-Built Plans. As-Built approval shall not be considered complete until the As-Built vote of the Board and all surviving conditions have been recorded at the Norfolk County Registry of Deeds and/or Land Court. Proof of the filing of As-Built approval shall be provided to the Board..
21. Upon completion of all work on site and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.
22. Applicant shall obtain building permits for any and all retaining walls at the Site which are 4 feet in height or higher. Retaining wall segments adjacent to vehicular areas shall have guardrails or parapet walls sufficient to confine vehicles in accordance with Section 1825.5 of the Massachusetts State Building Code. Retaining wall segments having an exposed face greater than 4 feet shall have pedestrian railings, also in accordance with Section 1825.5 of the Massachusetts State Building Code. Guardrails and pedestrian railings may be installed either on or directly behind the retaining wall that surrounds much of the Project. A Massachusetts Professional Engineer shall determine the bearing capacity of the soil supporting the retaining wall and the wall design may not require later on-site determination of soil conditions.

23. All catch basins and detention basins shall be cleaned at the end of construction. Thereafter, the Applicant and/or Applicant's successor shall be responsible for maintaining the site's storm-water management system in accordance with generally accepted practice, as the same may, from time to time, change.
24. Prior to issuance of the first certificate of occupancy, the Applicant shall obtain approval from the U.S. Postmaster of the centralized location for mail boxes and parcel areas in each of the Project's residential buildings.
25. The Board or its agent shall have authority to enter the Premises during construction of the Project (subject to safety standard compliance, including hard hat, boots and safety glasses, as required) and until as-built plans are approved, with or without prior notice to determine conformance with this Decision.

G. Ownership and Affordability Conditions

1. Any Comprehensive Permit approved hereunder shall issue to the Applicant and shall not be transferable, except in accordance with the provisions of M.G.L. c. 40B; provided, however, that if the Applicant creates a limited liability company controlled by the Applicant to develop the Project, this shall not be considered a transfer requiring Board approval.
2. At all times, the Applicant or its successor or assign shall be a limited dividend corporation and comply with the limited dividend requirement of G.L. c. 40B, §20, as a "Limited Dividend Organization."
3. The Applicant's profit from the Development Project, including profits to its principals, parents, subsidiaries, affiliates, successors, and assigns, and to respective partners, limited partners, shareholders, managers or other owners, shall not exceed 20% of its actual development costs for the Project. Any profit in excess of such amount ("Excess Profits") shall be paid to the Town of Stoughton, upon completion of the Project, for use in facilitating development of affordable housing.
4. The Applicant shall provide a copy of the deed and HUD settlement statement for the sale of each unit of the Project. The Applicant shall also provide the Board with a certified cost and income statement for the entire project promptly upon the sale of the last unit. The Applicant shall also provide the Board with copies of any and all documents and statements provided by the Applicant to any designated monitoring agent for the project. The Board shall not be bound by the audit of any monitoring agent and shall be permitted to conduct its own independent audit of the Applicant's costs and revenues in order to determine the Applicant's compliance with its limited dividend obligations. The Board shall be permitted to independently enforce the Applicant's limited dividend obligations, to the extent allowed by law. In order to facilitate the Board's rights, the Applicant shall permit the Board, or its duly authorized representatives, to examine or audit the Applicant's records during normal business hours and shall, upon the Board's request, explain the methods of keeping the records.

5. Prior to the issuance of any building permits for the Development Project, and prior to the Applicant's conveyance of any of the units in the Development Project, the Applicant shall execute a Regulatory Agreement in a form acceptable to the Board. The Regulatory Agreement shall provide among other things that:
  - (a) The Affordable Units shall each be sold subject to a Deed Rider ensuring permanent affordability;
  - (b) Development cost certifications shall be prepared in accordance with the procedures established by the Monitoring Agent and in accordance with the approved Regulatory Agreement, and the Applicant shall provide to the Board, upon completion of the Development Project and the sale of the last unit, a full certification of the total development costs and total revenues, on a federal income tax basis, prepared by a certified public accountant acceptable to the Monitoring Agent and to the Board, to enable the Board to make its own determination as to whether the Applicant has complied with the Regulatory Agreement and the profit limitations applicable to it as a "Limited Dividend Organization."
6. The Affordable Units shall be distributed throughout the entire Development Project, and shall be included in all phases of the unit construction.
7. Any comprehensive permit issued hereunder shall expire, if the Applicant has not, for whatever cause, obtained building permits for the units within one year of the date that this decision becomes final, or if Applicant has not completed construction on the Project within two years of the date this decision becomes final unless extended by the Board before expiration occurs.
8. The decision shall be deemed to have become final upon the date the decision is filed with the Town Clerk, if no appeal is filed, or, in the event of an appeal, then the date the last appeal is decided or otherwise terminated.

**MOTION:**

Member O'Regan moved and Member Savage seconded that the Board vote to impose the conditions set forth above, in addition to any and all conditions contained in Section III. Findings of Fact, as a requirement of any approval or waiver granted hereunder, as said conditions are deemed essential by the Board to any approval of the Project, and the Board voted to approve the motion by a vote of 5 to 0.

**V. WAIVERS:**

If a comprehensive permit were granted, the Applicant shall comply with all State laws and the Town's current Zoning Bylaw, Rules and Regulations for the Subdivision of Land, Wetlands

Protection Bylaw, Earth Removal Bylaw, and other local development controls, except as expressly provided in the schedule of waivers attached to this permit as Exhibit B.

No other waivers are granted, except as specifically and expressly provided hereunder, and all local by-laws and regulations not waived shall be enforced in their entirety. There shall be no waiver of permit or inspectional fees, except as provided hereunder. Any subsequent revision to the Plans that requires additional or more expansive waivers shall be approved by the Board in accordance with 760 CMR 31.03.

#### **VI. SUCCESSORS AND ASSIGNS**

If a comprehensive permit were granted, the provisions of the permit shall be binding upon the successors and assigns of the Applicant, and the obligations hereunder shall run with the land. In the event that the Applicant sells, transfers, or assigns any of its interest in the Project, any permit granted shall be binding upon the purchaser, transferee or assignee, and any such sale, transfer or assignment shall be subject to the prior approval of the Zoning Board of Appeals, which approval shall not be unreasonably withheld or delayed.

#### **VII. VALIDITY OF ANY APPROVAL OR MODIFICATION**

If a comprehensive permit were granted, said approval shall not be valid until recorded with the Norfolk County Registry of Deeds and evidence of such recording is provided to the Board and the Board. Any modification of any approval under this decision shall be subject to the provisions of 760 CMR 31.03 or any successor regulation thereto.

#### **VII. VOTES OF THE BOARD**

**MOTION:** Member moved Musmon and Member Savage seconded that the Board vote to determine that, while the Town has met its share of the regional low and moderate income housing need, the Board shall exercise its discretion to grant a comprehensive permit to the Project because it is consistent with some of the goals of the 2006 Town's Housing Plan. The Motion was voted and approved by a vote of: 5 to 0.

**MOTION:** Member O'Regan moved and Member Musmon seconded that the Board vote to find that the potential impacts that the Project would cause, if subjected to the conditions required hereunder would not endanger the health and safety of the occupants or the public and would be consistent with local needs. The Motion was voted and approved by a vote of: 4 to 1, with Member Barron dissenting.

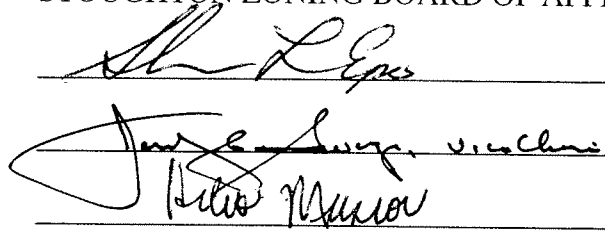
**MOTION:** Member Savage moved and Member Musmon seconded that the Board vote to find that the Project meets the requirements for a comprehensive permit under G.L. c. 40B. The Motion was voted and approved by a vote of: 4 to 1, with Member Barron dissenting.

**MOTION:** Member Musmon moved and Member Savage seconded that the Board vote to **grant with conditions** the requested comprehensive permit for the construction and occupancy of the 80 units as described in the materials for the Project submitted by the Applicant, but only as amended by and in full compliance with the conditions set forth herein. The motion was approved by a vote of 3 to 2, with Members Barron and O'Regan dissenting.

### **VIII. APPEALS**

Any person aggrieved by this decision may appeal to a court of competent jurisdiction within 20 days as provided for under state law.

STOUGHTON ZONING BOARD OF APPEAL



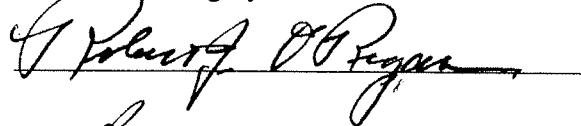
The image shows three handwritten signatures in black ink, each written over a horizontal line. The top signature is the most legible, appearing to read 'Sh. L. Egan'. The middle signature is more stylized and appears to read 'James Savage, Vice Chair'. The bottom signature is also stylized and appears to read 'Peter Musmon'.

### **Dissent**


While we appreciate the time and effort that the Board put into reaching this decision, we disagree with approval of the project. The Board spent nearly 5 hours in careful deliberations of physical aspects of the project to reach a consensus on the number of units and conditions that would fit the site. Environmental impact, traffic, the character of the surrounding houses, design of the project, added diversity to the housing stock and other factors resulted in the Board's conclusion to limit density that would be considered to an 80-unit project, with a maximum of 160 bedrooms. Only 20 units would be affordable. This zoning district is limited to single family homes.

The project was presented as advancing smart growth and the town's housing plan. The design of the buildings, particularly the townhomes, is attractive and they should be desirable to live in. The Board correctly rejected the proponent's position that the project advanced the housing plan and furthered development according to smart growth principles. The decision also gives better perspective to the environmental concerns by opponents, which seemed to have been overstated. However, the location and destruction of open space to build this project alone make it incompatible with smart growth principles. This property has been identified as a priority for preservation and acquisition by the Open Space Committee, and it abuts conservation land. The affordable housing plan's primary focus is on new and rehabilitated housing with an emphasis on apartments in the downtown area as dictated by smart growth principles.

Every proposal has its favorable and unfavorable attributes, and this proposal had many positive aspects. Not every project will fall neatly into smart growth principles or the policies in the housing plan, but this project does not fit well enough into either. We disagree with how the decision balances the benefits from the project against its negative impact. In our view, the town does not need 80 more condominiums, and the nominal addition of 20 more affordable units from this project does not justify overriding the zoning bylaw through chapter 40B for this project at this site. The gist of the proposal seems to have been an overly dense cluster development that could not be built under our cluster development bylaw, so the carrot for approval was affordable housing. The developer could still achieve its goals of a desirable project offering a different style of living with less environmental impact through a cluster development. Perhaps the better solution would be to evaluate why the cluster development bylaw does not work and fix it. We believe that the costs in loss of open space and the density, traffic impact and other negative factors of this proposal outweigh its benefits, particularly because of the relatively low contribution of 20 affordable units to our already satisfactory count, so that it does not merit approval as an override to the zoning bylaw.



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Date: November 8, 2007

Filed with Town Clerk:

Mailed by Certified Mail to Applicant:

EXHIBIT B

**WAIVERS**

<b>ZONING BY-LAW</b>		
<b>Section</b>	<b>Standard</b>	<b>Requested Exception</b>
III.E	Contains restrictions in flood hazard, wetland, and watershed	Waive requirements; state wetlands regulations will govern
V.D. (Principal residential use #3)	Multi-family dwellings not a permitted use; maximum 10% three-bedroom units	Allow multi-family use as shown on the plans
V.D. (Accessory use #5)	Parking garages not a permitted accessory use	Allow accessory parking garages as shown on the plans
V.D. (Accessory use #4)	Maintenance buildings not a permitted accessory use	Allow accessory maintenance building as shown on the plans
V.D. (Accessory use #4)	Clubhouses are not a permitted accessory	Allow clubhouses with associated management office and resident amenities as an accessory use as shown on the plans
V.D. (Principal retail/ trade use #25)	Requires special permit for construction of drainage structures	Allow construction of drainage structures as shown on the plans
V.D. (Principal retail or trade use #23 and Accessory use #16)	Requires special permits for filling of depressions, etc.	Allow filling as shown on the plans
V.D. (Accessory use #17)	Requires special permit for removal of sand, gravel and earth	Allow removal of sand, gravel and earth as shown on the plans
VI.B.	Minimum dimensional requirements (Table of Dimensional and Density Regulations)	Allow dimensions as shown on the plans
VI.B (minimum lot frontage)	Requires 150 feet of frontage	Allow frontage as shown on the plans
VI.B (minimum lot width)	Requires minimum lot width of 125 feet	Allow lot width as shown on the plans
VI.B (side yard)	Requires 25-foot side yard	Allow side yards as shown on the plans.
VI.G.3	Prohibits more than one principal structure on a lot	Allow principal structures as shown on the plans
VI.G.4	Requires minimum outdoor recreation area	Allow outdoor recreation area as shown on the plans
VIII.A	Required on-site parking spaces	Allow parking spaces as shown on the plans
VIII.G. 7,8,12 and 14	Requires specific design standard for parking area with over five parking spaces	Allow parking design as shown on the plans

XI	Requires special permits for various construction activities	Pursuant to M.G.L. Chapter 40B, all local permits are included in Comprehensive Permit issued by the ZBA
XII	Requires separate natural features, conservation and landscape review	Pursuant to M.G.L. Chapter 40B, all local permits are included in Comprehensive Permit issued by the ZBA
<b>Site Plan Review By-Law</b>		
2.1	Requires site plan review for new construction other than single-family and two-family residences	Pursuant to M.G.L. Chapter 40B, all local permits are included in Comprehensive Permit issued by the ZBA
<b>Land Subdivision Regulations</b>		
I-VIII	Requires planning board approval of subdivisions of land and multiple buildings on a single lot	Pursuant to M.G.L. Chapter 40B, all local permits are included in Comprehensive Permit issued by the ZBA; further, the proposed development will be on a single lot with all roadways, utilities and infrastructure to be privately owned and maintained
<b>ZBA Rules and Regulations Governing Comprehensive Permits</b>		
3.1.2	Requires completion of all ways, improvements and utilities by the specified time	Waive requirements; proposed development is not a subdivision
3.1.6	Requires filing covenant	Waive requirement; proposed development is not a subdivision
3.1.7	Requires filing of maintenance association agreement	Waive requirement; proposed development is not a subdivision
3.1.8	Requires soil surveys and percolation tests at the request of the ZBA	Waive requirement; proposed development has no on-site septic and plans submitted are preliminary site development plans as required by HAC regulations
3.2	Requires detailed plans of proposed site improvements, including plans and profiles of each street	Waive requirement; plans submitted are preliminary site development plans as required by HAC regulations



3.2.7	Requires detailed information on all streets, lot and boundary lines, easements, etc.	Waive requirement; plans submitted are preliminary site development plans as required by HAC regulations
3.2.13	Requires detailed layout plans of streets, utilities, etc.	Waive requirement; plans submitted are preliminary site development plans as required by HAC regulations
3.2.14	Requires detailed roadway and easement profiles	Waive requirement; plans submitted are preliminary site development plans as required by HAC regulations
3.2.15	Requires detailed topographical information	Waive requirement; plans submitted are preliminary site development plans as required by the HAC regulations
3.2.17	Requires boundary traverse closure tables	Waive requirement; proposed development is not a subdivision and plans submitted are preliminary site development plans as required by HAC regulations
3.2.18	Requires location and results of soil, percolation and water tables tests	Waive requirement; proposed development has no on-site septic system and plans submitted are preliminary site development plans as required by HAC regulations
3.2.19	Requires detailed drainage design	Waive requirement; plans submitted are preliminary site development plans as required by HAC regulations
3.2.20	Requires retention of trees and specific location of trees	Waive requirement; trees to be as shown on plans
3.2.21	Requires typical cross-sections of streets, roadways and sidewalks	Waive requirement; plans submitted are preliminary site development plans as required by HAC regulations
3.2.27	Requires note on plans regarding covenant	Waive requirement; proposed development is not a subdivision
3.2.35	Requires note regarding construction in conformance with subdivision regulations	Waive requirement; proposed development is not a subdivision

3.2.38	Requires standard construction detail sheets per subdivision regulations	Waive requirement; proposed development is not a subdivision
3.2.44	Requires projections of concentrations of chemicals to be disposed of on-site	Waive requirement; proposed development involves only residential uses and has no on-site septic
3.3.5	Regulates wastewater treatment systems	Waive requirement; proposed development does not have on-site wastewater treatment
3.3.7	Requires property line setbacks per Zoning By-Law and setback between buildings equal to building height	Allow setbacks as shown on the plans (see zoning by-law exceptions above)
3.3.9	Requires off-street parking per zoning by-law plus additional spaces	Allow parking spaces as shown on the plans (see zoning by-law exceptions above)
3.3.10	Requires periodic monitoring in cases of significant risk of contamination to water supply	Waive requirement; proposed development is residential is use and involves no on-site septic
3.3.12	Limits amount of soil excavation to five feet above maximum groundwater elevation	Allow grading generally as shown on the plans
3.3.14	Requires secondary access roadway if required by ZBA	Allow emergency access roadway as shown on the plans
3.3.16	Provides for potable water availability per the Board of Selectmen acting as water commissioners	Pursuant to M.G.L Chapter 40B, all local permits are included in the comprehensive permit issued by the ZBA
3.4	Provides requirements for maintenance association agreements	Waive requirement; proposed development is not a subdivision
7.0	Requires performance guaranty per subdivision regulations	Waive requirement; proposed development is not a subdivision
9.0	Provides mechanism for release of performance guaranty	Waive requirement; proposed development is not a subdivision
<b>Wetlands Protection By-Law and Regulations</b>		
178.03 (2) (b)	Restricts activities in the Buffer Zone	Waive requirements for 50 ft. limit of work and 75ft. limit of building in accordance with the exceptions listed for Section 178.81 (3) below, as shown on the plans

178.81 (3)	75 ft. limit of building	Allow construction of garages within 75 ft. Buffer Zone to the wetland
178.81 (3)	50 ft. limit of work	Allow general site grading within the 50 ft. Buffer Zone to the wetland the 50 ft. Buffer Zone
148-10 to 148-17	Regulates street layouts	Allow access ways as shown on the plans

**MOTION:**

Member Savage moved and Member O'Regan seconded that the Board vote to grant the waivers requested above, provided that any waiver no longer necessary due to the reduction in density and impervious surface required hereunder is hereby denied; and furthermore, any waiver not expressly granted is denied. The Board voted to approve the motion by a vote of 4 to 1, with Member Barron dissenting.

**MOTION:**

Member O'Regan moved and Member Musmon seconded that the Board vote that, when the Applicant submits final, revised plans, any request for waivers of the wetlands by-law shall be supported by engineering reports that justify why the waivers are still necessary, given the reduction in density required hereunder. The Board voted 5-0 to approve the motion.

330627/stouzba/0013

**AFFORDABLE HOUSING RESTRICTION**

*For Projects in Which  
Affordability Restrictions Survive Foreclosure*

THIS AFFORDABLE HOUSING RESTRICTION (this "Restriction") is:  
[ ] incorporated in and made part of that certain deed (the "Deed") of certain property (the "Property") from

\_\_\_\_\_ ("Grantor")  
to \_\_\_\_\_ ("Owner") dated  
\_\_\_\_\_, 20\_\_; or

[x] being granted in connection with a financing or refinancing secured by a mortgage on the Property dated \_\_\_\_\_, 20\_\_. The Property is located in the City/Town of \_\_\_\_\_ (the "Municipality").

RECITALS

WHEREAS, the Owner is purchasing the Property, or is obtaining a loan secured by a mortgage on the Property that was originally purchased, at a consideration which is less than the fair market value of the Property; and

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

(i)  granted a Comprehensive Permit under Massachusetts General Laws Chapter 40B, Sections 20-23, from the Board of Appeals of the Municipality or the Housing Appeals Committee and recorded/filed with the \_\_\_\_\_ County Registry of Deeds/Registry District of Land Court (the "Registry") in Book \_\_\_\_\_, Page \_\_\_\_\_/Document No. \_\_\_\_\_ (the "Comprehensive Permit"); and/or

(ii)  subject to a Regulatory Agreement among \_\_\_\_\_ (the "Developer"), [ ] Massachusetts Housing Finance Agency ("MassHousing"), [ ] the Massachusetts Department of Housing and Community Development ("DHCD") [ ] the Municipality; and [ ] \_\_\_\_\_, dated \_\_\_\_\_ and recorded/filed with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_/as Document No. \_\_\_\_\_ (the "Regulatory Agreement"); and/or

(iii)  subsidized by the federal or state government under \_\_\_\_\_, a program to assist construction of low or moderate income housing the "Program"; and

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

WHEREAS, \_\_\_\_\_ (singly,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Maximum Resale Price** means the sum of (i) the Base Income Number (at the time of resale) multiplied by the Resale Price Multiplier, plus (ii) the Resale Fee and any necessary marketing expenses (including broker's fees) as may have been approved by the Monitoring Agent, plus (iii) Approved Capital Improvements, if any (the original cost of which shall have been discounted over time, as calculated by the Monitoring Agent); provided that in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Purchaser earning seventy percent (70%) of the Area Median Income (or, if checked [ ] \_\_\_\_\_ percent (\_\_\_\_%) of Area Median Income, as required by the Program) for an Appropriate Size Household could obtain mortgage financing (as such purchase price is determined by the Monitoring Agent using the same methodology then used by DHCD for its Local Initiative Program or similar comprehensive permit program); and further provided that the Maximum Resale Price shall not be less than the purchase price paid for the Property by the Owner unless the Owner agrees to accept a lesser price.

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

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

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

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

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

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

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

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

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

3. **Restrictions Against Leasing, Refinancing and Junior Encumbrances.** The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Monitoring Agent; provided that this provision shall not apply to a first mortgage granted on the date of the delivery of the Deed in connection with the conveyance of the Property from Grantor to Owner securing indebtedness not greater than one hundred percent (100%) of the purchase price. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not

received the requisite written consent of the Monitoring Agent shall be paid upon demand by Owner to the Municipality for deposit to its Affordable Housing Fund. The Monitoring Agent or Municipality may institute proceedings to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees. Upon recovery, after payment of costs, the balance shall be paid to the Municipality for deposit to its Affordable Housing Fund. In the event that the Monitoring Agent consents for good cause to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceed the actual carrying costs of the Property as determined by the Monitoring Agent, shall be paid to the Municipality for deposit to its Affordable Housing Fund.

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

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



a purchase and sale agreement and purchase the Property by the end of such sixty (60)-day period or such further time as reasonably requested to carry out the purchase and sale agreement.

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

(d) If an Eligible Purchaser fails to purchase the Property within the 90-day period (or such further time determined as provided herein) after receipt of the Conveyance Notice, and the Monitoring Agent or Municipality or designee does not purchase the Property during said period, then the Owner may convey the Property to an Ineligible Purchaser no earlier than thirty (30) days after the end of said period at the Maximum Resale Price, but subject to all rights and restrictions contained herein; provided that the Property shall be conveyed subject to a Restriction identical in form and substance to this Restriction which the Owner agrees to execute, to secure execution by the Ineligible Purchaser and to record with the Deed; and further provided that, if more than one Ineligible Purchaser is ready, willing and able to purchase the Property the Owner will give preference and enter a purchase and sale agreement with any individuals or households identified by the Monitoring Agent as an Appropriate Size Household earning more than eighty percent (80%) but less than one hundred twenty percent (120%) of the Area Median Income.

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

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

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

**5. Delivery of Deed.** (a) In connection with any conveyance pursuant to an option to purchase as set forth in Section 4 above, the Property shall be conveyed by the Owner to the selected purchaser by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Conveyance Notice, (iii) provisions of local

building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the deed from the Owner to the selected purchaser, (v) such additional easements, restrictions, covenants and agreements of record as the selected purchaser consents to, such consent not to be unreasonably withheld or delayed, (vi) the Regulatory Agreement, and (vii), except as otherwise provided in the Compliance Certificate, a Restriction identical in form and substance to this Restriction which the Owner hereby agrees to execute, to secure execution by the selected purchaser, and to record with the deed. **Said deed shall clearly state that it is made subject to the Restriction which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the selected purchaser or the enforceability of the restrictions herein.

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

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

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

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

(f) If Owner shall be unable to give title or to make conveyance as above required, or if any change of condition in the Property not included in the above exception shall occur, then Owner shall be given a reasonable time not to exceed thirty (30) days after the date on which the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition herein required. The Owner shall use best efforts to remove any such defects in the title, whether voluntary or involuntary, and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Owner that such defect has been cured or that the Property has been so restored. The selected purchaser shall have the election, at either the original or any extended time for performance, to accept such title as the Owner can deliver to the Property in its then condition

and to pay therefor the purchase price without deduction, in which case the Owner shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Owner shall, unless the Owner has previously restored the Property to its former condition, either:

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

(B) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the selected purchaser a credit against the purchase price, on delivery of the deed, equal to said amounts so retained by the holder of the said mortgage less any amounts reasonably expended by the Owner for any partial restoration.

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

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

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

7. **Survival of Restrictions Upon Exercise of Remedies by Mortgagees.** (a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Monitoring Agent, the Municipality and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Monitoring Agent and the Municipality as set forth in this Restriction, and to the senior Mortgagee(s) as set

forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Restriction.

(b) The Owner grants to the Municipality or its designee the right and option to purchase the Property upon receipt by the Municipality of the Foreclosure Notice. In the event that the Municipality intends to exercise its option, the Municipality or its designee shall purchase the Property within one hundred twenty (120) days of receipt of such notice, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Property by the Owner)(the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over such foreclosing Mortgagee's mortgage, and further subject to a Restriction identical in form and substance to this Restriction which the Owner hereby agrees to execute, to secure execution by the Municipality or its designee, and to record with the deed, except that (i) during the term of ownership of the Property by the Municipality or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible Purchaser), and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by the Municipality or its designee, but not greater than the Applicable Foreclosure Price. **Said deed shall clearly state that it is made subject to the Restriction which is made part of the deed.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the Municipality or its designee or the enforceability of the restrictions herein.

(c) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the Monitoring Agent, the Municipality and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the

Property having priority over the foreclosing Mortgagee's mortgage, and further subject to a Restriction, as set forth below.

(d) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the Municipality for its Affordable Housing Fund after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the Municipality is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the Municipality. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the Municipality.

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

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

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

(h) The Owner understands and agrees that nothing in this Restriction or the Regulatory Agreement (i) in any way constitutes a promise or guarantee by MassHousing, DHCD, the Municipality or the Monitoring Agent that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

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

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

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

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

Municipality:

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Grantor:  
(applicable  
only if this  
Restriction  
is attached  
to the Deed)

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Owner:

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Monitoring Agent[s]

(1)

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(2)

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Others:

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

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

**11. Enforcement.** (a) The rights hereby granted shall include the right of the Municipality and the Monitoring Agent to enforce this Restriction independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Property to the condition, affordability or occupancy which existed prior to the violation impacting such condition, affordability or occupancy (it being agreed that there shall be no adequate remedy at

law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality and the Monitoring Agent.

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

- (i) specific performance of the provisions of this Restriction;
- (ii) money damages for charges in excess of the Maximum Resale Price, if applicable;
- (iii) if the violation is a sale of the Property to an Ineligible Purchaser except as permitted herein, the Monitoring Agent and the Municipality shall have the option to locate an Eligible Purchaser to purchase or itself purchase the Property from the Ineligible Purchaser on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Restriction; specific performance of the requirement that an Ineligible Purchaser shall sell, as herein provided, may be judicially ordered.
- (iv) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Restriction in the absence of a Compliance Certificate, by an action in equity to enforce this Restriction; and
- (v) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchaser.

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

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

**12. Monitoring Agent Services; Fees.** The Monitoring Agent shall monitor compliance of the Project and enforce the requirements of this Restriction. As partial compensation for providing these services, a Resale Fee [ ] shall [ ] shall not be payable to the



Monitoring Agent on the sale of the Property to an Eligible Purchaser or any other purchaser in accordance with the terms of this Restriction. This fee, if imposed, shall be paid by the Owner herein as a closing cost at the time of Closing, and payment of the fee to the Monitoring Agent shall be a condition to delivery and recording of its certificate, failing which the Monitoring Agent shall have a claim against the new purchaser, his, her or their successors or assigns, for which the Monitoring Agent may bring an action and may seek an attachment against the Property.

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

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

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

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

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

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

Grantor:  
(applicable only if this  
Restriction is attached to the Deed)

Owner:

By: \_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ [Space Below This Line for Acknowledgement] \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ in its capacity as the \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ in its capacity as the \_\_\_\_\_ of \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires: