

TOWN OF LITTLETON
LITTLETON, MASSACHUSETTS 01460

ZONING BOARD OF APPEALS

FINDING AND DECISION

Re: Village on the Common, LLC
for a Comprehensive Permit (the "Application")
for the property at Great Road in Littleton, Massachusetts

Date: July 12, 2006

A. PROCEDURAL HISTORY

1. On or about October 4, 2005, Village on the Common, LLC, a limited dividend corporation with a principal address of 133 Pearl Street, Boston, MA 02110 (the "Applicant"), applied for a Comprehensive Permit, pursuant to M.G.L.c.40B, to construct a development (the "Development") consisting of: (a) one hundred and eight (108) condominium units located in fifty four (54) duplex buildings; (b) a pavilion; (c) a wastewater treatment plant; and (d) associated structures and infrastructure, as shown on the Site Plan entitled 40B Residential Development Village on the Common prepared by Goldsmith, Prest & Ringwall, Inc date October 2005. The Development will be built on approximately 41.4 acres of land located off Great Road in Littleton, Massachusetts (the "Property"). The Property is recorded in the Middlesex District Registry of Deeds in book 46794, page 411, book 21594 page 321 and book 29952 page 317. The Development will be a "for sale" project.
2. A duly advertised public hearing of the Littleton Zoning Board of Appeals (the "Board") was opened on October 27, 2005, and continued to the following dates:

November 17, 2005
December 15, 2005
January 19, 2006
February 23, 2006
March 16, 2006
March 23, 2006
April 13, 2006
May 25, 2006
June 22, 2006

3. The public hearing was closed on June 22, 2006
4. The documents and exhibits as set forth on **Exhibit A** were received and are hereby incorporated by reference in the decision.

B. FINDINGS

1. The Applicant is qualified to make the Application pursuant to 760 CMR 31.01 in that:
 - a. It is a "limited dividend corporation" as that term is used in M.G.L.c.40B, s.21 and 760 CMR 31.01(1);
 - b. It has a funding commitment from a subsidizing agency as evidenced by the Site Approval letter issued by the Department of Housing and Community Development ("DHCD") under its Local Initiative Program ("LIP"); and
 - c. It has "control of the site" a term that is used in 760 CMR 30.00 et seq. in that the Applicant owns 36.73 +/- acres of the site and has Purchase and Sales Agreements for the remaining 4.67 +/- acres.
2. The Town of Littleton does not currently meet the statutory minimum set forth in M.G.L.c. 40B, s. 20 or 760 CMR 31.04, nor is affordable housing located on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial or industrial use. The development of Affordable Units consistent with this Application will not result in the commencement of construction of such housing sites comprising more than three tenths of one percent of such land area.
3. The Property is referenced as Assessor's Tax Map U-7, Parcels 19; 19-5; 19-6; & 2-19, Assessor's Tax Map U-6, Parcel 2. It is situated within the Residential Zoning District as set forth in the Littleton Zoning Bylaw. The site has 150.23 feet of frontage on Robinson Road and 124.04 feet of frontage on Great Road.
4. The zoning surrounding the site is both residential and commercial. Currently there are several large-lot residential developments to the west and north of the property. East and southeast of the property is a large undeveloped wooded area. Directly south is undeveloped farmland. To the west the site borders on commercial development along Great Road, including medical offices, restaurants, and a hardware store. To the north, the site is adjacent to a horticultural retail center.
5. The Property comprises approximately 34.3 acres of upland area with approximately 7.1 acres of wetlands.
6. The Property is primarily open field with some wooded areas.
7. Existing public utilities available to the Property include water, telephone, electric, gas and cable television/internet.
8. The Town of Littleton does not have a municipal sewer system.
9. The Applicant has proposed an on-site wastewater disposal system.
10. The Applicant has proposed a development consisting of: (a) one hundred and eight (108) condominium units located in fifty-four (54) duplex buildings; (b) a pavilion; (c) a wastewater treatment plant; and (d) associated structures and infrastructure.

11. As proposed, twenty-five percent (25%) of the one hundred eight (108) dwelling units, or twenty-seven (27) units (the "Affordable Units"), would be reserved for sale to families earning no more than eighty percent (80%) of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA (HUD Metro Fair Market Rent Area), as defined by the U.S. Department of Housing and Urban Development (HUD) and as adjusted for household size.
12. The Applicant has proposed a maximum of four hundred eighty-two (482) parking spaces, including handicapped spaces as required by 521 CMR 23.2.1.
13. The Roadway names as shown on the plans have been renamed as follows:
 - a. Road A and Drive 2 will be known as Old Stage Coach Road,
 - b. Drive 8 will be known as Cataldo Pond Way,
 - c. Drive 1 will be known as Taffy Trail,
 - d. Drive 3 will be known as Cow Well Lane,
 - e. Drive 4, 5 & 6 will be known as Grazing Pasture Road,
 - f. Drive 9 & 10 will be known as Pumpkin Hill Path, and
 - g. Drive 7 will be known as Cut Betula Lane
14. The Board retained the following consultants to assist in the review of the Application:
 - a. Civil Engineering: H2O Engineering Consulting Associates Inc., Bedford, MA;
 - b. 40B Consultant: Edward Marchant, Brookline, MA
 - c. Financial Review Consultant: Edward Marchant, Brookline, MA
 - d. Fire Safety: Performance Consultants, Inc., Holland, MA
 - e. Traffic: Judith Nitsch Engineering Inc., Boston, MA
 - f. Town Counsel: Miyares and Harrington LLP, Watertown, MA
15. Information on the proposed development was distributed to the following municipal officers or agencies:
 - a. Board of Health
 - b. Planning Board
 - c. Building Inspector
 - d. Conservation Commission
 - e. Fire Department

- f. Littleton Highway Department
- g. Board of Selectmen
- h. Police Department
- i. Littleton Housing Authority
- j. Town Counsel
- k. Littleton Electric Light & Water Departments
- l. Littleton Public Schools District

16. After reviewing the Applicant's stormwater management, water distribution and wastewater disposal plans, and traffic analysis the Board's engineering consultants prepared detailed reports indicating that the Development, as conditioned below, would not endanger public health or safety or the environment.

17. The Development, as conditioned below, is consistent with local needs.

C. DECISION

Pursuant to G.L. c. 40B, the Zoning Board of Appeals of Littleton, after a public hearing and findings of fact, hereby grants a Comprehensive Permit to the Applicant for the construction of one hundred-eight (108) dwelling units on the Property, a pavilion, a wastewater treatment plant and associated infrastructure improvements, subject to the following conditions. The term "Applicant" as set forth herein shall mean the Applicant, its heirs, successors and assigns, including the required Unit Owners Association. The term "Board" as set forth herein shall mean the Littleton Zoning Board of Appeals. Unless otherwise indicated herein, the Board may designate an agent to review and approve the matters as set forth herein. The Development shall be a "for sale" project.

Conditions:

1. The Development shall be constructed in substantial conformance with the most recent Site, Architectural, Engineering Plans, Standard Features Included in Base Pricing (June 22, 2006) and the Phasing Plan (May 3, 2006) (collectively referred to as "the Plans") as set forth on **Exhibit B**. Any deviation from these plans and/or documents shall require a modification of this Comprehensive Permit by the Board as set forth in 760 CMR 31.03.
2. The Development, as authorized by this permit, shall be limited to one hundred eight (108) home-ownership dwelling units located in fifty-four (54) duplex buildings, one (1) pavilion, and (1) wastewater treatment plant situated on approximately 41.4 acres of land. Eighty (80) of the dwelling units shall have two (2) bedrooms each. Twenty-eight (28) of the dwelling units shall have three (3) bedrooms each. The Board hereby limits the total number of bedrooms in the Development to two hundred forty-four (244). The number of bedrooms per unit as shown on the site and architectural plans will not be allowed to be increased. Said restriction shall be included in the Condominium Master deed for the Village on the Common Residential Development. Twenty-five percent (25%) or twenty-seven (27) of the one hundred eight (108) dwelling units (the "Affordable Units"), shall be reserved in perpetuity for sale to households earning no more than eighty percent (80%) of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA, or applicable PMSA in the event of a change, as determined by the U.S. Department of Housing and Urban

Development and as adjusted for household size.

The maximum initial sales price for the Affordable Units shall be set at a price no greater than "that which can be afforded" (including principal and interest payments based upon a zero points, 30 year fixed interest rate amortizing mortgage loan, realistic condominium fees that accurately project the anticipated costs of operating and maintaining the private Waste Water Treatment Plant, property insurance, real estate taxes, and private mortgage insurance) by households earning no more than seventy percent (70%) of the applicable Median Family Income, adjusted for household size.

Households purchasing Affordable Units must also satisfy applicable First Time Home Buyer, Asset Limitation, and any other applicable Local Initiative Program eligibility requirements as established by the Massachusetts Department of Housing and Community Development, including the requirement that mortgages loans of buyers of Affordable Units be thirty (30) years, fixed interest rate, level payment amortizing loans.

Finance/Legal:

3. All Affordable Units shall remain affordable in perpetuity or the longest period allowed by law and shall contain a restriction that remains senior to any other lien on the property. An affordable housing restriction, enforceable by the Town of Littleton, requiring that the Affordable Units remain affordable in perpetuity, in the form approved by the Board's counsel, shall be recorded senior to any liens on the Premises to protect the continued availability of and requirement for the Affordable Units in the event of any foreclosure, bankruptcy, refinancing or sale. The Applicant shall not receive a building permit until evidence of the recording of such affordable housing restriction has been provided to the Board. The Condominium Documents shall provide that the premises described in the Master Deed are subject to the terms and provisions of this restriction and that any amendment purporting to alter, amend or delete this restriction shall be void and of no force and effect unless such modification demonstrates the compliance with the termination and extinguishment provisions of this restriction..
4. Of the twenty-eight (28) three-bedroom units; twenty-one (21) shall be market value units including ten (10) that shall be constructed upon slab on grade and eleven (11) that shall have full basements. Seven (7) of the three-bedroom units shall be Affordable Units including five (5) that shall be constructed upon slab on grade and two (2) shall have full basements. Of the eighty (80) two-bedroom units, sixty (60) shall be market value units including twenty (20) that shall be constructed upon slab on grade and forty (40) that shall have full basements. Of the twenty (20) Affordable Units three (3) shall be constructed upon slab on grade and seventeen (17) shall have full basements. The locations of the Affordable Units are shown on the Site Plans listed above.
5. For cost certification purposes, General Conditions, Builder's General Overhead, and Builders Profit as well as any other work done by or materials purchased from related parties must have pricing consistent with normally accepted industry standards.

6. Should there be an identity of interest between the Applicant and the Real Estate Broker, the brokerage fee on the market-rate units shall not exceed 5%. No brokerage fee shall be allowed on Affordable Units. Lottery fees shall be allowed on Affordable Units consistent with industry standards.
7. To the extent permitted by law, preference for the sale of seventy percent (70%) of the Affordable Units in the initial round of sales shall be given to households who satisfy all eligibility requirements and who are either (a) Littleton residents, which shall mean current residents of the Town of Littleton; and/or (b) the parents of Littleton residents; and/or (c) employees of the Town of Littleton, including all employees of the Littleton public schools. The local preference shall also apply to any resales of Affordable Units, to the extent feasible and practical to sellers of Affordable Units and subject to DHCD approval. The local preference shall be subject to applicable state and federal fair housing guidelines and/or regulations. The lottery shall be implemented by a Lottery Agent, proposed to be Stockard, Engler Brigham, LLC. Prior to conducting the Lottery, the Lottery agent shall submit a final Lottery plan, including the proposed sales price for the Affordable Units with a clear explanation of assumptions used to project the proposed sales price, to the Board of Appeals for its approval. DHCD, as the Project Administration under the LIP Program, has final approval of said Affordable Units sale prices and lottery procedures. Given that the Development is proposed to be constructed in three phases, there shall be a separate Lottery for each phase. Lottery materials for the initial lottery must clearly state that the subject lottery applies only to the Affordable Units in the first phase and that separate Lotteries will be held for the second and third phases. The timing and substance of the initial Lottery shall comply with DHCD requirements. If, based upon real estate market conditions the timing and/or frequency of the Lottery needs to be modified, the Applicant and Board may mutually agree upon an alternative schedule, subject to DHCD approval. All costs associated with the Lottery shall be exclusively borne by the Applicant.
8. Prior to the issuance of any building permit, the Applicant shall submit the final drafts of Condominium documents (Master Deed, Bylaws and Rules and Regulations), a Regulatory Agreement, a Monitoring Agreement, an Affordable Unit Deed Rider and an Affirmative Marketing Plan to the Board for approval by the Board's legal counsel. Prior to the issuance of any building permit, the Regulatory Agreement shall be executed by and with the Board and/or the Town and shall be transmitted to the Project Administrator, the Department of Housing and Community Development (DHCD). Any assumptions used to determine the initial sales price of the Affordable Units must include reasonable condominium fee budget projections of all costs, including operation, maintenance and repair reserve for the wastewater treatment plant. Prior to the issuance of any building permit the Monitoring Agreement shall be executed by and with the Town. The Regulatory Agreement shall contain at a minimum, the following terms:
 - a. The Affordable Units shall be reserved for sale in perpetuity to households earning no more than eighty percent (80%) of the Median Family Income for the Boston-Cambridge-Quincy, MA-NH HMFA, or applicable PMSA in the event of a change, as determined by the U.S. Department of Housing and Urban Development and as adjusted for household size. Any mortgage loan to an Affordable Unit buyer that is secured by any of the twenty-seven (27) Affordable

Units shall be subordinate to the perpetual Chapter 40B affordability requirement that is a fundamental condition of this Comprehensive Permit. The form of Deed Rider to be used is the "Affordable Housing Deed Rider For Projects in Which Affordability Restrictions Survive Foreclosure," now commonly referred to as the "Universal Deed Rider."

- b. The right of first refusal to purchase an Affordable Unit on resale shall be granted to the Town of Littleton, or its designee, which shall be the Littleton Housing Authority. The Littleton Housing Authority shall comply with all applicable eligibility requirements.
- c. The actual Affordable Units shall be units 2B, 3B, 7B, 8B, 10A, 13B, 15A, 16A, 18A, 19A, 22B, 23A, 24A, 25A, 28A, 30A, 31A, 36B, 37B, 39A, 42B, 43A, 45B, 48A, 49B, 52A and 54A, as identified in the Regulatory Agreement.
- d. The Affordable Units shall be owner-occupied, except for bona fide temporary absences, during which rental may be permitted to qualified households upon approval of the Littleton Housing Authority.
- e. The development shall be limited to two hundred forty-four (244) bedrooms. Eighty (80) units shall only have two (2) bedrooms; twenty-eight (28) units shall have only three (3) bedrooms. There shall be no conversion of any other space into bedrooms. This condition shall also be placed in the Master Deed of the Unit Owners Association.
- f. Unit Owners Association fees and applicable betterment fees for the Affordable Units shall be established in accordance with M.G.L. Chapter 183A. As a result, the percentage of interest allocated to Affordable Units shall be based upon market value of the Affordable Units and therefore the percentage of interest shall be less than that assigned to a similar sized Market unit.
- g. The Monitoring Agent for this development shall be Littleton Housing Authority subject to the approval of the Department of Housing and Community Development and subject to any terms of such approval.
9. The Applicant shall bear all expenses associated with services provided by Littleton Housing Authority as the Monitoring Agent for the cost certification monitoring and monitoring the initial sale of each of the twenty-seven (27) Affordable Units, which shall be approved by DHCD.
10. As a "Limited Dividend Organization," the Applicant's profit shall not exceed twenty percent (20%) of its approved development costs in the Project. Any profit in excess of such amount shall be paid to the Town, in a form that will allow the Town to use such funds to facilitate the development of affordable housing. Review of the Applicant's limited dividend obligations shall be done in accordance with a Regulatory Agreement approved by the Board's Counsel. No foundation or building permit may be issued until such Regulatory Agreement is approved by the Board's Counsel and executed by the Applicant, the Town and DHCD. The Applicant shall provide to the Board a full certification of total development costs and total revenues, including revenues and expenses associated with upgrades and/or options, on a federal income tax basis prepared and certified by a certified public accountant

acceptable to the Board, to enable the Board to make its own determination as to whether the Applicant has complied with the Regulatory Agreement. The Applicant shall provide a copy of the deed and HUD settlement statement for the sale of each unit of the Project. 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.

11. The Affordable Units shall not be segregated from the market-rate units. The exterior of the Affordable Units shall be indistinguishable from the market-rate units. The interior finishes of the Affordable Units shall be consistent with the Standard Features Included in Base Pricing prepared by Berard Martel Architecture, Inc. dated June 22, 2006 submitted to the Board.
12. During construction, the Applicant shall comply with all applicable local, state and federal regulations, guidelines, procedures, and laws not otherwise waived in this Decision.
13. The Applicant, its successors and assigns, shall be responsible for payment of all reasonable costs to review any documents in order to effectuate this Permit.

Traffic:

14. All construction access and vehicular access to the site shall be via the proposed access at Great Road (Route 2A) with the exception of the emergency access option via a gated entrance at Robinson Road, if required for emergency purposes.
15. The gated access at Robinson Road shall comply the Site Plans as approved by the Littleton Fire Department and outlined in the letter by Keith Dunn, Fire Prevention Officer, Littleton Fire Department dated February 22, 2006.
16. The Robinson Road gate shall be:
 - a. Incorporated into the Master Deed of the Unit Owners Association as a permanent condition limiting the use of the Robinson Road access to emergency use only by the Littleton Emergency Response Personnel and their affiliates.
 - b. Said restriction shall not be modified in the future for non-emergency use.
 - c. Said gate is to be installed upon construction of an access way from Robinson Road to prevent construction vehicles from using said access and shall be maintained in good order by the Applicant.
 - d. During times of maintenance to the gate or the emergency access road or snow removal, said gate shall not be left open beyond the required time needed.
17. In the event the gate is broken or stuck open, repairs shall be made promptly.
18. The Development shall contain no more than four hundred eighty-two (482) parking spaces, as shown on the plan.

19. The Applicant shall repair any damage to roads adjacent to the Development that results from the construction and/or maintenance of the Development.

Civil:

20. The Applicant has proposed, and the Board hereby requires, that the following common facilities and services of the Development shall be and shall remain forever private, and that the Town of Littleton shall not have, now or ever, any legal responsibility for operation or maintenance of same:

- a. All roadways and parking areas;
- b. Emergency access gate;
- c. Stormwater management system, including the maintenance of catch basins and detention basins and the like;
- d. Snow plowing;
- e. Landscaping and landscape maintenance;
- f. Trash removal; and
- g. Wastewater treatment plant and disposal system.,

The common facilities shall be maintained in perpetuity by the Unit Owners Association and/or Management Company. The roadway within the Development shall not be dedicated to or accepted by the Town.

21. The Applicant shall establish a Unit Owners Association to maintain and repair all common areas, including the stormwater management system, the wastewater treatment plant, landscaping, and other improvements within the subject property and each owner shall be a member thereof. Such documents shall set forth the obligations of the Unit Owners Association for the operation and maintenance of all such common areas and improvements and shall reference the affordability requirements upon which the Comprehensive Permit is conditioned. Prior to the issuance of any certificate of occupancy, the Applicant shall provide documents establishing such Unit Owners Association to the Board for approval by legal counsel as to form and for verification that such documents are in conformance with this decision and shall certify to the Board's Counsel that same are in compliance with M.G.L. c.183A. The Unit Owners Association shall adopt rules and regulations and a copy shall be provided to the Board.
22. The Applicant shall be responsible for the installation of all aspects of the common facilities and services set forth in Condition #20 above.
23. The Unit Owners Association shall be responsible for the operation, and maintenance of all aspects of the common facilities and services set forth in Condition #20 above. In the event that a management company is engaged, the Applicant or the Unit Owners Association shall provide the Board with a copy of the contract.

24. The Applicant shall not expand the paved sections of the Development beyond that which is depicted in the Plans.
25. The Applicant shall be responsible for the installation, of all aspects of the stormwater management facility.
26. The Unit Owners Association shall be responsible for the operation, and maintenance of all aspects of the stormwater management facility. At such time, the operation and maintenance of the stormwater management facility within the development shall be the responsibility of a Unit Owners Association contract with a management company; a copy of such contract shall be provided to the Board.
27. In the event that the Applicant, its successors, or agent fails to maintain the stormwater management system or wastewater disposal system in accordance with engineering or manufacturing guidelines for operation and maintenance or in any manner which fails to safeguard public health and safety or in the event the Applicant, its successors, or agent fails to properly maintain the roadway and Robinson Road Gate mechanism for safe and adequate emergency vehicle access/egress as determined by the Littleton Fire Department, Police Department or Highway Department, the Town may, but need not, conduct such emergency maintenance or repairs, and the Applicant shall convey any easement necessary to implement such intervention.. In the event the Town undertakes any maintenance or repairs, the Applicant shall promptly reimburse the Town for all reasonable expenses associated therewith. If the Applicant fails to so reimburse the Town, the Town may place a lien on the Development or on any or all of the units therein to secure such payment.
28. The Applicant shall assure that the proper covenants are included in the Unit Owners Association's documents as well as the deeds to each of the units to address the following:
 - a. There shall be no additions beyond the largest building envelope as shown on the Architectural Plans and in no case shall any point on two buildings be closer than eleven feet (11').
 - b. Garages shall not be converted for habitable use.
 - c. All units that do not have garages but do have the option for a garage shall be built according to a standard design and specifications, subject to Board approval.
 - d. An alternative to road salt and sand shall be used for de-icing in the winter.
 - e. No disposal of yard and landscaping waste shall be permitted in the surrounding wooded areas on the site.
 - f. Trash barrels shall be stored inside the garages except on collection day.
 - g. Water conservation measures shall be implemented insofar as care and maintenance of the landscaped areas.

- h. There shall be a prohibition on the enclosing of decks/patios except for screening that has been approved by the Board. There shall be a standard design and standard specifications for any such screening.
 - i. There shall be a prohibition on the addition of sheds or other outdoor enclosures unless approved by the Board.
- 29. Prior to the construction of the stormwater management system, its final design shall be approved by the Board or its agent. Prior to such construction, the Applicant's registered professional engineer shall prepare guidelines for the operation and maintenance of the stormwater management system, subject to the approval of the Board, for incorporation by reference in the documents of the Unit Owners Association. Prior to the time at which the Applicant turns over the operation and maintenance of the stormwater management system to the Unit Owners Association, the Applicant shall provide the Board with proof that an appropriate budget has been established and funded to maintain the stormwater management system as set forth in such guidelines, and that a contract has been entered into with a suitable entity to perform such maintenance for a period of not less than five years. In the event that the Applicant fails to maintain the stormwater management in accordance with such guidelines for operation and maintenance, the Town may make emergency repairs to the system at the sole expense of the Applicant. The Applicant shall convey any easement necessary to implement such repairs, which shall be approved as to form by the Board's legal counsel. In the event that the Applicant fails to reimburse the Town for such repairs, the Town may place a lien against the Condominium Association and its assets.
- 30. The Applicant shall be responsible for all permits and fees as required under the Town of Littleton Rules, Regulations, By-Laws, and orders.
- 31. Prior to the issuance of a building permit and construction, the Applicant shall prepare a set of Final Site Design Plans, said documents shall be approved by the Board to confirm that they include final working drawings and specifications prepared in accord with standard engineering practice that fully incorporate all requirements of the Conditions of Approval as set forth herein. The working drawings shall be endorsed by the Board prior to inception of construction. The Applicant shall pay reasonable peer review fees to facilitate review of the Final Site Design Plans by the Board's professional engineer prior to endorsement.
- 32. Prior to the issuance of a building permit, the Applicant shall obtain requisite approvals from agencies and authorities having jurisdiction and shall submit written copies of permits and licenses to the Board including the following:
 - a. A Final Order of Conditions under *Massachusetts Wetlands Protection Act (M.G.L. Ch 131 s 40)*.
 - b. Proof that a general application under the general NPDES Permit has been submitted to the EPA.
 - c. Massachusetts Highway Department Permit to Access State Highway.

33. Should a report on hazardous substances (21E Report) otherwise be required for this project, the Applicant shall furnish copies to the Board and to the Littleton Board of Health. Any required project design modifications or use limitations shall be incorporated subject to approval by the Board.
34. Temporary or permanent signage and sign illumination shall conform to requirements of the Zoning Bylaws and shall be subject to approval by the Board or its agent Building Commissioner prior to the issuance of an occupancy permit.
35. Prior to the issuance of any building permit, the Applicant shall submit the following final engineered plans and/or documents for approval by the Board or its agent, who shall be the Littleton Building Commissioner. The Applicant shall submit copies of the same to the Board's Engineer and the Building Commissioner who may provide comments thereon to the Board.
 - a. Landscaping, screening and planting plan, which to the extent possible shall meet the requirements of the By-laws, be drawn by a registered Landscape Architect and shall include but not be limited to, species, location and sizes of plantings and planting details for all trees and/or other plantings. All proposed plantings shall be naturally native to the area and be considered low maintenance vegetation. Implementation of the Landscaping Plan shall be done in a timely manner and shall be incorporated as part of the construction schedule.;
 - b. Detailed grading and drainage plan;
 - c. Erosion control plan;
 - d. Final phasing plan;
 - e. Final utilities plan including water, gas, electric, telephone, and cable;
 - f. Final signage plan, in accordance with the requirements of the Littleton Zoning Bylaw, if signs are located on the Development;
 - g. Final stormwater management plan;
 - h. Final site plan, to include a list of furnishings, equipment, etc., to be installed or provided including but not limited to:
 - 1) A mail kiosk;
 - 2) A open air pavilion with several picnic tables;
 - 3) A radio controlled emergency service alarm at the pavilion;
 - 4) A school bus stop at Great Road entrance; and
 - 5) Perimeter walking trail(s) open to public;
 - i. Wastewater disposal system;
 - j. Final architectural plan and outline specifications;

- k. Draft Builder's Warranty; and
 - l. Final letter of review from Dr. Chang verifying the resolution of any final engineering issues raised in his letter dated January 19, 2006.
- 36. If a household or households requiring handicap access modifications is selected in the lottery for the initial sales of the twenty-seven (27) Affordable Units, the Applicant shall make such reasonable modifications at the Applicant's expense.
- 37. In the preparation of the final engineered plans set forth in Condition #35 above, the Applicant shall incorporate the following matters:
 - a. Design and install the stormwater management system consistent with the DEP Stormwater Management Policy;
 - b. Wherever practicable, existing trees and vegetation shall be preserved. New trees and shrubs shall be installed to provide shade and screening as indicated on the sheet L1.0 as listed on Exhibit B. Additionally, all disturbed areas on the Property shall, at a minimum, be loamed and seeded. Landscaping shall be completed in substantial compliance with the landscape plan included in the Site Plans.
- 38. The construction process shall conform to requirements of the following:
 - a. A detailed Construction Phasing Plan, and Construction Schedule, which shall include installation of landscaping as approved by the Board.
 - b. Applicable local, state and federal laws and regulations regarding noise, vibration, dust and sedimentation, use and interference with town roads.
 - c. During construction the Applicant shall comply with all local, state, and federal regulations regarding noise, vibration, dust and use, and interference with blocking town roads. The Applicant shall at all times use reasonable means to minimize inconvenience to residents in the general area. Construction shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m. Construction shall not commence on any Saturday before 8:00 a.m. and shall not continue beyond 4:00 p.m. There shall be no construction on any Sunday or on any state or federal legal holiday except with prior written permission of the Littleton Police Chief. Additionally, construction vehicles and/or equipment shall not be started or operated prior to or after the times stated herein. For this condition, construction activities shall be defined as: start-up of equipment or machinery, delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; demolition of existing structures; removal of stumps and debris; and the erection of new structures.

- d. Upon completion of each phase of the Project, the Applicant shall provide an as-built survey of all site work, including utilities, building improvements and land grading to the Board. The as-built surveys shall comply with the Town of Littleton requirements for such surveys.
39. The Board of Health's permit for wastewater disposal and or the DEP's permit, if any, shall be made a part of this Comprehensive Permit. If there is any inconsistency between the plan of record for this permit and the plans as may be approved by said agencies, the Applicant shall submit an amended plan to the Littleton Zoning Board of Appeals for approval. Said amended plan shall be accompanied by a letter setting forth any and all changes from the submitted plan of record and shall include revised drainage calculations, if applicable. A final "Construction Record" Plan of the Wastewater disposal system locating all underground components shall be submitted to the Board on completion.
40. Prior to the issuance of any certificate of occupancy, the Applicant shall demonstrate to the satisfaction of the Board or its designee (which shall be the DEP-CRO and/or the Littleton Board of Health), that there is a maintenance contract for the Development's wastewater disposal system for the initial two (2) year operating period. The Unit Owners Association shall provide proof of the maintenance contract for operating periods beyond year two, as required by DEP, or if DEP does not establish a time period, then every two (2) years.
41. Prior to issuance of a Certificate of Occupancy, the Applicant shall submit to the Board for the Board's review and approval, an Operation and Maintenance Plan for the site; said plan shall include but not be limited to:
 - a. the stormwater system;
 - b. driveway, road and sidewalk maintenance and repair;
 - c. landscaping maintenance, including but not limited to annual sweeping of the common parking and paved areas; and
 - d. signage maintenance and repair.
42. The Applicant and its successors shall maintain the landscaping within the common areas in perpetuity. Any dead vegetation shall be removed immediately and replaced in accordance with the specifications on said plan.
43. The Applicant shall not cause or allow the expansion of the Development beyond that which is depicted in the Final Project Plans.
44. Approval by the Fire Chief of the number and arrangement of the fire hydrants, as well as directional or building signage to assist in identifying units, shall be a prerequisite to the issuance of a building permit.

45. All fire lanes and parking areas shall be kept clear at all times, and all snow shall be removed from these areas to ensure access by fire trucks and other public safety vehicles. Fire lanes shall be posted as such; vehicles parked in such fire lanes shall be towed at the owner's expense. All signage shall be maintained in good order.

General:

46. The Building Commissioner shall be deemed to be the primary review agent for all plans pursuant to this agreement. If the Building Commissioner determines outside consultant review is necessary the Applicant shall promptly pay the reasonable fee of the consulting engineers ,the Board's legal counsel and Chapter 40B Advisor, if necessary, as listed under Condition #13, for review of the plans or documents described herein.
47. Inspections during the construction phase shall be conducted by the Town of Littleton Building Department staff and/or appropriate Town Agencies.
48. Prior to any earth removal, the Applicant shall comply with all requirements of all relevant Town bylaws and zoning bylaws in conformity with this decision.
49. The Applicant is required to comply with all applicable state building and fire codes in the Construction and design of the project.
50. The Applicant shall obtain all necessary permits from the Board of Health, Building Department, Water Department, Highway Department and/or the Conservation Commission, consistent with this decision.
51. No certificate of occupancy for any unit in any specific phase shall be issued until (a) the improvements specified in this decision and set forth on the Plans of record are constructed and installed so as to adequately serve said unit; and (b) there is substantial completion of the landscaping as set forth on the Plans; or (c) adequate security has been provided, reasonably acceptable to the Board of Appeals, to ensure such completion of (a) and/or (b), above in any specific phase. Any such performance guarantee shall be governed by the subdivision rules and regulations of the Planning Board and shall be approved as to form by the Board's legal counsel for such phase.
52. In determining the amount of the bond or surety, the Board shall be guided by the following formula in setting the sum of the security:
 - a. the Board's estimate of the cost to complete the work in any specific phase; plus
 - b. a fifteen percent (15%) margin for error;
53. All performance bonds required per phase shall contain the following provision:

If the Applicant shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified in all the covenants, agreements, terms and provisions set forth in the Comprehensive Permit Decision dated July 12, 2006 with all Exhibits attached thereto, then this obligation shall be

satisfied; otherwise, this obligation shall remain in full force and effect and the aforesaid sum shall be paid to the Town of Littleton as liquidated damages.

54. The applicant shall donate two thousand dollars (\$2,000.00) to a Town entity designated by the Board, for each of the eighty-one (81) market-rate units developed. The donations shall be used to help fund the Town's affordable housing efforts. Such donation shall be funded upon the sale and closing of each market-rate unit

55. Construction authorized by this Decision shall commence within two (2) years of the date of filing of this Decision with the Littleton Town Clerk. The project shall be completed within five (5) years of the date of filing of this Decision with the Town Clerk, except that the Board may grant an extension of time for completion upon showing of good cause by the Applicant. These periods shall be tolled in the event an appeal is taken from this Decision. Failure to exercise these rights within the stated time period or without extension shall cause this permit to lapse. In the event of a lapse, this Decision may be re-established only after notice and a new hearing.

56. If there is any dispute about whether the Project plans are being implemented in accordance with this Decision, the disputants shall present their concerns to the Board or its designee, the Littleton Building Commissioner, for resolution. If there is any dispute relative to any decision of the Monitoring Agent, relative to the cost and revenues of the Applicant, the disputants shall present their concerns to the Board, or its designee, for resolution. The Department of Housing and Community Development will be the final arbiter on disputes relating to decisions of the Monitoring Agent.

57. The Applicant has requested, and the Board has granted, the waivers from local rules set forth in **Exhibit C** hereto.

- a. Said **Exhibit C** is hereby incorporated by reference in this Decision.
- b. To the extent the plans are silent on a particular issue, the appropriate Town by-law shall apply.
- c. In the event the Applicant, the Board's consulting engineer or Agent determines, in the final design of the Project, that additional waivers, not previously requested and listed in **Exhibit C** are required, the Applicant shall be required to request such additional waivers in writing from the Board.
- d. The Board may grant such additional waivers in accordance with applicable rules and regulations.
- e. No fees of any kind are waived for either the market-rate or Affordable Units.

58. The Applicant shall provide annual financial reports no later than July 1 of each year regarding the Project to the Board for its review. Such reports shall be generated in accordance with Generally Accepted Accounting Principles (GAAP) and reviewed by a Certified Public Accountant (CPA), at Applicant's expense.

59. The development of the Affordable Units shall be proportional to the development of the market-rate units such that one Affordable Unit must be constructed for every three market-rate units constructed. Therefore, building permits shall be issued in a ratio of 1:3 such that for each Affordable Unit building permit there shall be issued three market-rate unit building permits. Also, therefore, certificates of occupancy shall be issued in a ratio of 1:3 such that for each Affordable Unit certificate of occupancy issued only three market-rate unit certificates of occupancy will be issued. Prior to the issuance of the certificate of occupancy for the last three market-rate dwelling units, the Applicant shall complete construction and obtain the certificate of occupancy for the last Affordable Unit.
60. A working capital reserve of \$50,000 for the wastewater treatment plant and associated leaching fields shall be established by the Applicant for the benefit of the Unit Owners Association and language shall be provided within the Condominium Master Deed to provide for collecting additional funds as part of the condominium fee to fund future septic system improvements and maintenance.
61. The Phasing Plan, dated May 3, 2006 , is hereby incorporated into this decision.
62. If any provision of this Decision or portion of such provision or the application thereof to any person or circumstances is for any reason held invalid or unenforceable, the remainder of this Decision (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.
63. The terms, provisions and conditionals of this Decision shall burden and benefit the successors and assigns of the Town and the Applicant with the same effect as if mentioned in each instance where the Town or the Applicant is named or referred to.
64. Any and all references to the "Applicant" herein shall include any successors or assigns of the Applicant including, but not limited to, any Unit Owners Association created relative to the Development.

RECORD OF VOTE

The following members of the Littleton Zoning Board of Appeals vote to grant a Comprehensive Permit subject to the above-stated terms:

Raymond Cornish
Raymond Cornish

Bradford Miller
Bradford Miller

R.A. Galloni
R.A. Galloni

William Farnsworth
William Farnsworth

Filed with the Littleton Town Clerk on July 26, 2006.