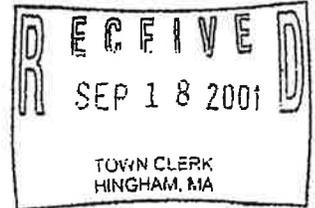


Exhibit J

TOWN OF HINGHAM
BOARD OF APPEALS



IN THE MATTER OF:

APPLICANT
AND PROPERTY OWNER:

Hingham Campus, LLC
c/o Erickson Retirement Communities, LLC
2 Brooksby Village Drive
Peabody, MA 01960

PREMISES:

**409 - 413 Whiting Street
Hingham, MA 02043**

DEED REFERENCE:

Plymouth County Registry of Deeds
Book 2035, Page 368; Book 3856, Page 488; Book 3896,
Page 365; Book 4024, Page 557; Book 14194, Page 241

SUMMARY OF PROCEEDINGS:

This matter came before the Zoning Board of Appeals on the application of Hingham Campus, LLC ("Applicant") for a Comprehensive Permit pursuant to Massachusetts General Laws Chapter 40B for the construction and operation of a continuing care retirement community pursuant to MGL Chapter 93, Section 76 comprised of one thousand seven hundred fifty (1,750) rental apartments with amenities and services for the elderly, together with an extended care center containing one hundred ninety two (192) units providing intensive assisted living services and a three hundred twenty four (324) bed skilled nursing facility, and temporary marketing office facilities. The project, to be known as "Erickson Retirement Community-Hingham Campus" will be situated on approximately one hundred and eight (108) acres of land located off of Whiting Street, adjacent to the Hingham/Weymouth Town line, located in the Residence District C.

The Applicant submitted its initial Application to the Zoning Board of Appeals on November 9, 2000 (the initial application, as modified by the subsequent submissions identified on Exhibit A, the "Application"). Public hearings on the matter were held over the course of several months commencing on December 14, 2000, and thereafter on January 25, 2001 February 15, 2001, March 15, 2001, March 29, 2001, May 10, 2001, June 14, 2001, July 19, 2001 and August 2, 2001.



The public hearings were closed on August 2, 2001, and the Board met for deliberating sessions on August 30, 2001 and September 11, 2001. All public hearings were held at the Town Hall before a panel consisting of Jerry K. Seelen, Chairman, and regular members Stephen J. McLaughlin and Mario Romania, Jr.

In recognition of the magnitude of the Applicant's proposed project, and in anticipation of the complexity of legal issues to be presented, the Zoning Board procured the services of a consultant, Michael Jacobs of MHJ Associates with expertise in Chapter 40B housing projects and subsidized housing programs and the services of another consultant, Horsley & Witten with expertise in engineering and design. The Applicant was similarly represented by consultants including Robert Engler of Stockard, Engler & Brigham, Attorney Joshua Davis of the law firm of Mintz, Levin, Cohn, Ferris Glovsky and Popeo, P.C. and Attorney Jonathan S. Davis of the law firm of Stanton & Davis, as well as employees of Erickson Retirement Communities.

FACTUAL BACKGROUND:

The premises is a former rock, sand and gravel quarry that has not had any reclamation efforts. The premises is primarily upland but also contains some wetland areas. The Applicant is the prospective Buyer of the premises pursuant to a Purchase and Sale Agreement.

THE APPLICANT'S PROPOSAL:

The Applicant's proposed development project (the "Project") is a large-scale continuing care retirement community intended to serve low to moderate income senior citizens. As referenced above, the Project, as designed, is comprised of one thousand seven hundred fifty (1,750) rental apartments with amenities and services for the elderly, together with an extended care center containing one hundred ninety two (192) units providing intensive assisted living services and a three hundred twenty four (324) bed skilled nursing facility. The plans for the Project referenced in the Application, as revised as a result of our hearings, are identified in Exhibit B (the "Project Plans").

The Project is similar in concept to other Erickson retirement communities located in Peabody, Massachusetts, Maryland, and elsewhere. The Erickson concept is based upon a model structured as follows: the senior residents pay a refundable entrance deposit, and on a monthly basis pay a combined rental and service fee. The monthly fee includes both the housing (apartment), heat and electricity, as well as one (1) daily meal, and social and community activities. Each apartment contains full kitchen appliances and the residents can also prepare their own meals. On the other hand, the residents can also elect to take additional prepared meals for an additional charge. Health care services are also available to the residents according to their needs. The more able-bodied residents may receive health care assistance and personal care assistance in their

apartments or in an on-site health office for an additional fee. For those residents who need a greater level of care there are the one hundred ninety two (192) assisted living units, and depending on availability, a resident of an apartment can relocate to an assisted living unit. For those needing continuous skilled nursing care, the Project is designed to include a three hundred twenty four (324) bed skilled nursing facility to serve residents of the community.

The Erickson concept or model provides that the entrance deposit is usually fully refundable, without interest, upon a termination of the residency. However, in the event that a resident becomes ill or requires assisted living or skilled nursing services, and is unable to fund those services, the entrance deposit can be applied towards the payment of those services. Erickson's representatives indicate that the resident would continue to receive those assisted living or skilled nursing services even if the entrance deposit funds were depleted.

The Project is proposed to be in a series of "neighborhoods" in which a group of residential buildings are clustered around or near a central community building which serves as the primary location of meals and activities for that neighborhood. All of the buildings are interconnected with enclosed walkways and residents are able to visit other buildings and use the common facilities located in other buildings and "neighborhoods". Additional services which are expected to be available on-site include: banking, convenience shopping, hair styling and transportation shuttles.

Erickson Retirement Communities is currently operating and building a retirement community based upon this business model in Peabody, Massachusetts which was visited by the members of the Zoning Board of Appeals. The Peabody location was authorized and permitted without utilization of the Chapter 40B permit process.

THE ZONING BOARD'S AUTHORITY AND OBLIGATIONS UNDER CHAPTER 40B:

The Zoning Board of Appeals has noted that this Project would not be permitted under the current provisions of the Hingham Zoning By-Laws. Further, the members of the Board noted that the proposed height of the residential structures (up to seven (7) stories) far exceeds the permitted height of new construction. The Board further noted that the Town does not have any such large scale residential complexes or such multi-storied buildings and that, had the Project been proposed under a request for a Variance, it is very unlikely that a Variance would be granted. However, the Board's scope of review under the Chapter 40B Comprehensive Permit is more constrained and the strict provisions of the current Hingham Zoning By-Laws are not controlling. Rather, in reviewing this application and this Project, the Zoning Board of Appeals is restricted by the provisions of Chapter 40B, the regulations promulgated pursuant thereto, and the guidance of the decisions of the Housing Appeals Committee and the Courts of the Commonwealth. The Zoning Board of Appeals is mindful of the intent of Chapter 40B to favor, foster and support the development of low or moderate income housing in a manner consistent with local needs. The Board is also aware of its authority to impose appropriate conditions and restrictions upon a

comprehensive permit project provided that such conditions and restrictions do not overburden the project such that it becomes uneconomic. The Board is also aware of the mandate that each and every town is expected and obligated to provide ten (10%) percent of its housing stock for low and moderate income residents. Currently, the Town of Hingham, being one of the more affluent communities of the Commonwealth, has only between two (2%) percent and three (3%) percent of its available housing stock affordable to low or moderate income persons and families. Although the Town has a few approved and completed Chapter 40B projects, and more are pending, the number of "affordable" housing units is minimal.

The Zoning Board of Appeals is also keenly aware of the responsibility placed upon the Board by the current market driven development of low and moderate income housing, and the Board's need to fashion appropriate requirements, conditions, and regulatory agreements as recognized by the Housing Appeals Committee ("HAC") in its decision of Stuborn Ltd. Partnership v Barnstable Board of Appeals, HAC No.: 98-01. In Stuborn, the HAC noted that when a local zoning board of appeals is considering Chapter 40B projects funded under the Federal Home Loan Bank of Boston's ("FHLBB") New England Fund ("NEF") the local board is "empowered to shape individual developments to fit their particular circumstances" as the NEF projects do not necessarily adhere to a Federal or State subsidized housing development program with its attendant panoply of regulations, requirements, and restrictions.

A SUMMARY OF THE EVIDENCE AND TESTIMONY PRESENTED TO THE BOARD AND THE BOARD'S APPROACH TO A REVIEW AND DETERMINATION ON THE APPLICATION:

Over the course of the many hearing dates, the Applicant and consultants submitted extensive documentation and testimony regarding the Project. The Zoning Board of Appeals has endeavored to receive and review the documents and testimony within a framework following the criteria which the Applicant must satisfy in order to establish that the Project is within the category of affordable housing for low and/or moderate income persons or families. The criteria which the Board of Appeals has applied in its review are as follows:

1. Has the Project received final written subsidy approval?
2. Will the Project contain housing which is "affordable" to persons or families with income no higher than eighty (80%) percent of the appropriately defined "median income"?
3. Will twenty-five (25%) percent or more of the housing units be priced within the "affordability" criteria?
4. Will the affordable housing units be subject to regulations and restrictions requiring

that the unit remain "affordable" for at least fifteen (15) years?

5. Is there an executed regulatory agreement between the Applicant and the subsidizing agency?
6. Is there an affirmative fair marketing requirement?
7. Is the Applicant a limited dividend organization or entity?

The Zoning Board of Appeals understands that in order for the Project to be approved within the context of Massachusetts General Laws Chapter 40B each of these questions must be answered in the affirmative.

For the sake of continuity and ease of review of the extensive information received, the Board will address each of these criteria in order::

1. Has the Project received Final Written Subsidy Approval?

In other words, have the Project and the Applicant fulfilled the regulatory requirements of the Code of Massachusetts Regulations promulgated pursuant to Chapter 40B and specifically, 760 CMR 31.01(1)(b) that states, "to be eligible...for a comprehensive permit...[t]he Project shall be fundable by a subsidizing agency under a low or moderate income housing subsidy program" and has it fulfilled the requirements of 760 CMR 30.02 that the housing be subsidized by the federal...government under any program to assist the construction of low or moderate income housing"?

The Applicant's documentation submitted in support of the Project contains a letter from Fleet Bank indicating that as a member Bank of the Federal Home Loan Bank of Boston (FHLBB) Fleet Bank has expressed its willingness to finance the Project through FHLBB's New England Fund (NEF).

Although the Zoning Board of Appeals understands that there is not yet a final, written subsidy in the form of a commitment for financing through NEF, the Board conditions the approval of the Comprehensive Permit on the submission to the Board of Appeals of a formal commitment letter from Fleet Bank (or such other member Bank of FHLBB) and executed by the Applicant, indicating the Bank's commitment to provide financing to the Project through the New England Fund, subject to customary conditions imposed by the Bank for such loans, and further indicating the Applicant's acceptance of such customary conditions.

The Board accepts this two-step approach to the submission of the proof of subsidy in the NEF financing context as being a reasonable and appropriate method of complying with this criterion and affording the Applicant and the subsidizing agency/lender an opportunity to obtain more specific information and details of particular application to the proposed Project.

2. Will the Project Contain Housing which is "Affordable" to Persons or Families with Incomes no Higher than Eighty (80%) Percent of the Appropriately Defined "Median Income"?

During the numerous hearing dates, this topic was addressed at great length by the Applicant and its consultants as well as by the Board of Appeals and its consultant. This topic was also a concern of the Planning Board which had submitted its recommendation which the Board of Appeals also took into consideration as permitted by Massachusetts General Laws Chapter 40B, Section 21.

Of particular note in the Board's review of this aspect of the approval criteria is the Applicant's requirement of an "entrance deposit" from its residents and the Board's need to determine the following: (a) whether the requirement of the "entrance deposit" affects the "affordability" of the housing; (b) whether the Applicant's interest free retention of the "entrance deposit" must be factored into the computation of the prospective resident's cost of housing; and (c) if the resident's payment of the "entrance fee" does impact the computation of the resident's housing cost, how should such effect be determined. Sections (b) and (c) above are crucial threshold factors to the review and approval of the Comprehensive Permit request because the resolution of those concerns will have a direct impact on the determination of the "cost" of the housing and the related determination of whether the resident's costs are within the maximum allowable percentages of the appropriate "median income" standard.

The Board has received testimony and has considered these sub-issues (a), (b) and (c) as follows:

(a) Is the Applicant's Requirement of the Payment of a Substantial "Entrance Deposit" Inherently Inconsistent with the Statutory and Regulatory Scheme for the Creation of Affordable Housing?

The amount of the required "entrance deposit" varies depending upon the size and type of the apartment unit. The entrance deposits, as currently set, range from One Hundred Forty Two Thousand (\$142,000.00) Dollars for the smallest studio apartment units to Three Hundred Twenty Six Thousand (\$326,000.00) Dollars for the largest two-bedroom apartment units. The "entrance deposits" may increase over time depending upon inflation and other economic factors.

Upon first glance, one might hastily conclude that a person or family having access to such significant assets does not appear to be the type of person or family who may be in need of

subsidized housing. If one were to assume that subsidized housing programs are intended only to assist the less privileged obtain housing, then one might also conclude that a person or family able to pay an "entrance fee" between One Hundred Forty Two Thousand (\$142,000.00) Dollars to Three Hundred Twenty Six Thousand (\$326,000.00) Dollars has considerable wealth, should not be eligible for subsidized housing, and should be able to afford other unsubsidized housing options. However, the Applicant's development concept and model, and its submission of the Project as a Comprehensive Permit development, is predicated upon the Applicant's belief and interpretation that Chapter 40B is not designed or intended to have such a narrow view or application.

The Applicant's concept focuses on the Statute's goal to provide affordable housing to persons or families of low or moderate income. Under the Applicant's interpretation, the operative word is "income". Therefore, the Applicant asserts that if the income of the person/family does not exceed eighty (80%) percent of the applicable median income, then that person/family should be eligible for subsidized housing opportunity and should not be disqualified from such eligibility merely because the person/family retains some significant amount of assets. The Applicant has also indicated that other Chapter 40B programs permit eligible residents to have assets.

The Applicant asserts that its income based analysis of eligibility for subsidized housing is fully consistent with the letter of the law, as well as the spirit and intent of the law, the regulations, and the New England Fund. The Applicant further asserts that the retirement community which the Applicant desires to serve through the Project is comprised of persons/families who have acquired a moderate level of wealth and assets through a lifetime of work, savings, and investments. According to the Applicant, the majority of the retirement population to be served by the Project currently owns its own home with little or no mortgage debt. The Applicant further states that for most prospective residents to be served by the Project, their homes constitute the majority of their wealth. And the Applicant asserts that while the value of the home may be significant, the actual income available to that retired person/family is fixed or limited and usually below the applicable median income.

Finally, the Applicant asserts that there is a definite public and local need for a secure retirement community designed and dedicated to serving the housing and care needs of seniors of moderate income. The Applicant states that because of their fixed and limited incomes, and their common need for health care services, the residents of the retirement community have a legitimate need to retain their assets for future needs, while at the same time needing an affordable housing option. The Applicant points out that if the resident's retention of a significant asset, or the use of that asset as an "entrance deposit" were to disqualify the resident from eligibility, or disqualify the Project from being deemed "affordable," then the public and local need for market-based retirement communities for moderate income persons/families will not be met.

After considerable review and discussion, the Zoning Board of Appeals has concluded that there is no inherent inconsistency between (a) the concept of a subsidized housing facility designed to serve seniors of moderate income and (b) a retired resident's retention of a moderate level of

assets, or the Applicant's requirement that a resident submit a refundable "entrance deposit" in the amounts proposed by the Applicant.

However, the Zoning Board of Appeals is requiring that the Regulatory Agreement provide that the calculation of income for purposes of determining a prospective resident's eligibility include an imputed return on non-income producing assets other than funds applied to the "entrance deposit". Further, the Zoning Board of Appeals has stated its concern that the requirement of an "entrance deposit" in the amounts established by the Applicant will effectively disqualify those retired persons/families who have sufficient income to pay the fees for housing and the amenities and services offered by the Project, but who have insufficient assets for the "entrance deposit". Therefore, the Zoning Board has imposed a condition that the Applicant establish a fund to be offered to those income-eligible retirees who lack sufficient funds for the "entrance deposit". The intent and purpose of the Zoning Board of Appeals in imposing this requirement is to assure that the Project is able to service the low and moderate income housing needs of an even broader spectrum of the retirement community. The conditions and requirements of this fund are more specifically addressed and explained below, and in the Regulatory Agreement and Monitoring Agreement.

(b) Is the Applicant's Requirement of, and Interest-Free Retention of, the "Entrance Deposit" Factored in the Computation of the Resident's Monthly Costs?

The answer to this question is an unequivocal "yes". The Applicant recognizes that its receipt and interest-free retention of the resident's refundable "entrance deposit" effectively deprives the resident of the opportunity to invest those funds for the benefit of the resident and to generate additional income. Therefore, there is a "lost opportunity cost" to the resident that is essentially an additional component of the costs to be paid by residents of the Project for housing and the amenities and services provided by the Project.

Because the "lost opportunity cost" effectively reduces the income of the resident, the value of the "lost opportunity" must be computed and included in the income-based eligibility standard for this subsidized housing.

(c) How will the "Lost Opportunity Cost" be Calculated for Inclusion in the Costs Paid by Residents?

The Board has received substantial evidence and testimony concerning the method by which the "lost opportunity costs" should be computed. The Applicant initially suggested a "passbook savings" rate of interest. However, the Board of Appeals has rejected that proposal as being lower than what a reasonably prudent investor could obtain in the financial markets for a secure investment opportunity. Accordingly, the Board of Appeals has considered the use of a higher rate of interest more common to the so-called Certificates of Deposit (CD) rate of interest.

In recognition that the CD rates vary with the length of the term of deposit, the Board has settled upon an average of a short-term CD rate and a longer term CD rate. The Board's intention and purpose in setting this imputed rate of interest is to assure that over time the "lost opportunity cost" component of the housing costs will reasonably reflect existing market conditions.

The Applicant has expressed its concern that the incorporation of a floating rate of interest will have a degree of volatility that may adversely affect the financial structure and concept of the Project and thereby impact its "financiability". In other words, if the imputed "lost opportunity costs" increase due to interest rate fluctuations, then the Applicant would be forced to reduce other housing costs (i.e. the monthly fees) in order to keep the combined costs within the subsidy's required sixty (60%) percent of eighty (80%) percent of the median income. The Applicant states that the operating company, Hingham Village, LLC, a 501(c)(3) entity, would not be able to withstand the economic impact of such a loss of revenue resulting from an increase in the imported cost of the "lost opportunity". Accordingly, in response to this concern, the Zoning Board has determined that a fixed interest rate of five percent (5%) is an appropriate means of accounting for "lost opportunity cost", being consistent with the effort to achieve overall affordability in the Project, with the likely investment choices and spending requirements (e.g., health care and personal care costs) of the age group interested in the Project and with the approaches taken in other Chapter 40B programs.

3. Will Twenty Five (25%) Percent or More of the Housing Units be Priced Within the Affordability Criteria?

The Project will dedicate twenty-seven and 7/10 (27.7%) percent of the units as housing for persons/families with income no higher than eighty (80%) percent of the HUD-determined median income for the PMSA applicable to the Project.

As more fully described in the Regulatory Agreement, the monthly fee for housing and the amenities and services provided by the Project will be limited to sixty percent (60%) (seventy five percent (75%) in the event that a unit is to be occupied by a second or third person in order to account for the additional costs of providing services to that person) of eighty (80%) percent of the median income. Because the Project is not simply and solely providing housing but also providing services and amenities designed to help the age group the Project serves, the Board concludes that a greater portion of a resident's income should be available for use to pay Project costs than might be the case if the Project were merely an apartment building. The Board reaches this conclusion after examining the level of services provided and evaluating them relative to the services and fees approved for assisted living facilities under Chapter 40B.

The affordable units will be comprised of the studio units, one-bedroom units and smaller two-bedroom units and shall be located throughout the Project. Individual units will not be designated for "affordable", rather, the Applicant and the Board envision that "affordable units"

will be designated according to the income of the current resident(s).

4. Will the Affordable Housing Units be Subject to Regulations and Restrictions Requiring that the Units Remain "Affordable" for at least Fifteen (15) Years?

The approval of the Comprehensive Permit is conditioned upon a minimum of twenty-seven and 7/10 (27.7%) percent of the units remaining "affordable" in perpetuity. This condition will be more particularly set forth and described in the Regulatory Agreement which shall be a part of the Comprehensive Permit.

5. Will there be a Regulatory Agreement Between the Applicant and the Subsidizing Agency?

The approval of the Comprehensive Permit is conditioned upon the creation and execution of a Regulatory Agreement substantially in the form attached as Exhibit E. As a further condition, the Applicant is to make a report to the Board within 90 days of the date of this decision that it has met with the Monitoring Agent contemplated by the Regulatory Agreement, agreed to a fee for the Monitoring Agent and reviewed with the Monitoring Agent the form of the Regulatory Agreement for purposes of working out any details remaining so that it is ready for execution by the Town, the Monitoring Agent and the Applicant.

6. Is there an Affirmative Marketing Requirement?

The approval of the Comprehensive Permit is conditioned upon the existence of an Affirmative Marketing Plan which shall be incorporated in the Regulatory Agreement.

7. Is the Applicant a Limited Dividend Organization or Entity?

The Applicant's proposal is that the land shall be owned by that Applicant (which, by signing the Regulatory Agreement is deemed a limited dividend entity) and that the facility shall be operated by a second entity, Hingham Village LLC, a 501(c)(3) non-profit entity.

CREATION OF ENTRANCE DEPOSIT SUBSIDY FUND:

The Zoning Board of Appeals has conditioned the approval of the Comprehensive Permit upon the Applicant's creation of a fund, or other source of money, to assist income-eligible prospective residents who lack sufficient assets to tender the entrance deposit requirements. Based upon the Applicant's business concept and model, the "affordable" units will be occupied by persons/families who are both income eligible and who have sold a home and/or have sufficient assets to pay the "entrance deposit". The Board of Appeals has consistently indicated that if this Project is truly designed and intended to assist senior citizens of low to moderate income, then the

Project must include a provision to prevent the exclusion of those persons/families who are income-eligible but who lack sufficient funds for the "entrance deposit". To that end, the Board of Appeals imposes a condition and requirement that for each proposed residential building (of which there are currently fourteen (14) proposed) the Applicant will provide and establish an Entrance Deposit Subsidy Fund of Four Hundred Thousand (\$400,000.00) Dollars which shall be available to subsidize those prospective residents who are income-eligible, but lack sufficient assets for the required entrance deposit. Any unused portion of the Four Hundred Thousand (\$400,000.00) Dollar fund for any building shall be held open and available to prospective tenants of future residential buildings. In the aggregate, the total Entrance Deposit Subsidy Fund shall initially be Five Million Six Hundred Thousand (\$5,600,000.00) Dollars and shall be adjusted on an annual basis to reflect the same percentage change as has occurred in the past year the Monthly Rent and Services Fee for the Affordable Units (as defined in the Regulatory Agreement).

Also, in the event that the proposed number of Units shall be changed, then the amount of the Entrance Deposit Subsidy shall be modified proportionately.

The details of the creation, maintenance and use of this Entrance Deposit Subsidy Fund shall be set forth in the Regulatory Agreement and the Monitoring Agreement.

LISTING OF CONDITIONS AND ADDENDA TO DECISION:

The following attached addenda are to be considered part of this decision:

- Exhibit A - Description of Application
- Exhibit B - List of Project Plans
- Exhibit C - List of Waivers of Local Laws requested by the Applicant
- Exhibit D - List of Conditions
- Exhibit E - Form of Regulatory Agreement

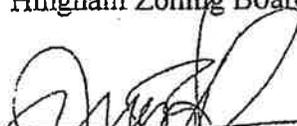
DECISION AND VOTE:

On September 11, 2001, the Zoning Board of Appeals approved by unanimous vote the Application for a comprehensive permit under the provisions of General Laws Chapter 40B to permit the construction and operation of the Project in accordance with the Application and subject to the terms, provisions and conditions of this written decision.

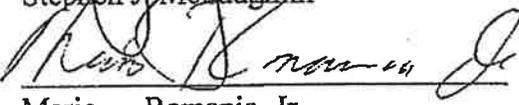
This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk, that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.

Any person aggrieved by this decision is advised that any appeal must be filed within the time limits and in accordance with the provisions set forth in Massachusetts General Laws Chapter 40A and/or Chapter 40B as the case may be.

Hingham Zoning Board of Appeals


Jerry K. Sechen, Chair


Stephen J. McLaughlin


Mario Romania, Jr.

Dated as of: September 11, 2001

EXHIBIT A

DESCRIPTION OF APPLICATION

Comprehensive Permit Application for Hingham Campus, An Erickson Retirement Community, submitted by Hingham Campus LLC dated November 6, 2000, including:

Application and Request for Findings of Fact;

- Section 1: Project Data Summary
- Section 2: Applicant Status
- Section 3: Site Approval Letter
- Section 4: Development Team
- Section 5: Site Control
- Section 6: Plans and Drawings, all dated November 6, 2000 including:
 - Figure A – Locus Plan
 - Figure B – Off-Site Utility Improvements
 - Cover Sheet
 - Sheet A-1 – Typical Building Plans, Sections and Elevations
 - Sheet A-2 - Typical Marketing Trailer plan and elevation
 - Sheet C-1 – Existing Conditions Plan
 - Sheet C-2 – Layout and Grading Plan
 - Sheet C-2 – Utility and Drainage Plan
 - Sheet L-1 – Site Plan
 - Sheet L-2 – Signage
 - Sheet L-3 – Typical Courtyard
 - Marketing Center Site – Option A
 - Marketing Center Site – Option B
- Section 7: Subsidized Housing Inventory
- Section 8: Engineering Report
- Section 9: List of Exceptions
- Section 10: Traffic Study
- Section 11: Landscape Narrative and Master Plan Plant List

Supplemented by:

1. Typical Unit Plans (19 sheets) submitted March 2, 2001
2. Supplement to Permit Application regarding Water and Sewer dated May 29, 2001
3. Revised Layout and Grading Plan dated 7/30/01
4. Revised Building Tabulation dated 7/30/01

EXHIBIT B

LIST OF PROJECT PLANS

1. Sheet A-1 – Typical Building Plans, Sections and Elevations, prepared by Steffian Bradley Associates, Inc, dated November 6, 2000
2. Sheet A-2 - Typical Marketing Trailer plan and elevation prepared by Steffian Bradley Associates, Inc, dated November 6, 2000
3. Sheet C-1 – Existing Conditions Plan, prepared by Daylor Consulting Group, dated November 6, 2000
4. Sheet C-2 – Revised Layout and Grading Plan, prepared by Daylor Consulting Group, dated July 30, 2001
5. Revised Building Tabulation dated July 30, 2001, prepared by Erickson Retirement Communities
6. Sheet C-3 – Utility and Drainage Plan, prepared by Daylor Consulting Group, dated November 6, 2000
7. Sheet L-1 – Site Plan, prepared by Carol R. Johnson Associates, dated November 6, 2000
8. Sheet L-2 – Signage, prepared by Carol R. Johnson Associates, dated November 6, 2000
9. Sheet L-3 – Typical Courtyard, prepared by Carol R. Johnson Associates, dated November 6, 2000
10. Marketing Center Site – Option A, prepared by Carol R. Johnson Associates, dated November 6, 2000
11. Marketing Center Site – Option B, prepared by Carol R. Johnson Associates, dated November 6, 2000
12. Typical Unit Plans (19 pages) submitted March 2, 2001 in a memo dated February 15, 2001

EXHIBIT C

LIST OF WAIVERS OF THE ZONING BY-LAW AND OTHER LOCAL LAND USE REQUIREMENTS REQUESTED

The Applicant requests the following exceptions under the Massachusetts Comprehensive Permit Law for Erickson Retirement Communities – Hingham Campus project:

Town of Hingham Zoning By-Law

- | | |
|---|---|
| I-C.1 (pg. 1.1) | Permits shall be issued that do not comply in all respects with the Hingham Zoning By-Law, and, applications for permits may not, in every case, be accompanied by accurately drawn plans for that permit, but may rely on other appropriate documentation. |
| I-F.2 (pg. 1.5) | States that “applicant is not entitled to a Special Permit or a Special Permit with site plan review.” ERC will be entitled to a Comprehensive Permit. |
| I-H | Requires site plan review by Planning Board. |
| I-I.3.b, c, d and g
(pg. 1.7) | Submittal Requirements – ERC will provide typical drawings (accurately drawn) instead of scaled and dimensioned plans for all items noted |
| III-A.3.8 (pg. 3.4) | Zoning Ordinance requires the issuance of a Special Permit with Site Plan Review for a nursing home, rest home, convalescent home or congregate living facility in a Residential zone. |
| III-A.4.10 (pg. 3.6) | With respect to the temporary marketing offices, Zoning Ordinance does not allow business offices in a residential zone. |
| IV-A Schedule of
Dimensional Requirements
(pg. 4) | For Residence District C, max. height per zoning is 2_ stories; ERC will construct to max. height of 6_ stories with peaked roof |
| IV-C.4. (pg. 4.6) | Zoning allows no more than one dwelling located upon a single lot; ERC will be building multiple buildings on a consolidated lot as part of a Congregate Living Facility |
| V-A.2. (pg. 5) | Off-Street Parking requirements for Congregate or Assisted Living Facility are 1 space/living unit = 2250 spaces; ERC will provide 1.1 spaces per independent living unit, or 1925 spaces |
| V-A.3 Table of Parking
Dimensions (pg. 5.2) | Zoning calls for Standard Parking Spaces of 18 feet <u>with</u> overhang; ERC Standard Parking Spaces provide 18 feet <u>without</u> overhang |
| V-A.4. (pg. 5.2) | 1”=40’ plans will be provided with final design plans, not the |

preliminary plans submitted with the Comprehensive Permit Application

Town of Hingham Zoning By-Law (continued)

V-B Signs (pg. 5.4) Zoning Ordinance allows, either by right or Special Permit, a sign of up to 20 sq. ft., with max. 6' height and 15' setback. ERC will build two permanent signs at the main entrance, up to 40 sq. ft. each, up to 6' tall above the ground, as shown on the plans. ERC will build two temporary signs, for use during the sales and build-out period, up to 40 sq. ft. each and height of 10 ft. above the ground, as shown on the plans.

Town of Hingham Wetlands By-Law and Regulations

To the extent that the Town of Hingham Wetlands By-law is more stringent than the definitions, requirements and performance standards of the Massachusetts Wetlands Protection Act (MWPA)(MGL 131 § 40) and its Regulations (310 CMR 10.00), ERC will conform only to the MWPA and its Regulations.

Part I, 10.02(2)(b) (pg. 2) Only Bordering Vegetated Wetlands and Bank are determined to have 100-foot buffer zones under the MWPA

Part I, 10.04 – Buffer Zone definition (pg. 10) (same as above – only BVW and Bank will be considered to have buffer zone, consistent with the MWPA and its Regulations)

Part I, 10.12.1 and 2 (pg. 25) Selected structure setbacks will meet a 25' minimum distance, as shown on the plans, instead of the 50' required in the By-law. Other buildings will comply with the 50' setback.

Part I, 10.12.4. (pg. 25) Selected pavement setbacks will meet a 15' distance, as noted on the plans, instead of the 25' required in the By-law

Part I, 10.12.5. (pg. 25) Selected grading setbacks will meet a 10' distance, as noted on the plans, instead of the 20' required in the By-law

Performance Standards (pg. 26) ERC project design will be consistent with the performance standards of the MWPA and its Regulations

EXHIBIT D

LIST OF CONDITIONS

All terms used herein and not expressly defined shall have the meaning ascribed to them in the decision and the Regulatory Agreement.

1. The Comprehensive Permit is granted based on the Application and no use and no other improvements substantially different from those contemplated by the Project Plans shall be deemed permitted by virtue of the granting of the comprehensive permit. Items 4 and 5 of Exhibit B attached to the decision identify the number of stories of each building of the Project.
2. The Comprehensive Permit shall run with the land.
3. The Comprehensive Permit shall become void in the event the Applicant does not obtain a building permit in connection with the Project within three years of the date hereof (not including such time required to pursue or await the determination of an appeal from the grant hereof), except for good cause.
4. The Applicant shall not be permitted to receive a building permit (other than for the marketing center and associated infrastructure) until such time as the Applicant has executed and delivered a regulatory agreement substantially in the form attached hereto as Exhibit E (the "Regulatory Agreement") with the lending institution, the Town and the Monitoring Agent. The Board of Appeals acknowledges that the form of regulatory agreement may be revised with respect to the details of reporting and similar requirements regarding the methods of achieving and monitoring compliance with substantive goals, based upon review of the form by the parties.
5. Potable water will be provided to the Project using water purchased from the Taunton River Desalinization Plant to be constructed by Bluestone Energy Services. Prior to the issuance of a building permit for the first building (other than the marketing center and associated infrastructure), the Applicant shall provide the Planning Board and the Board of Appeals with copies of the agreements under which potable water will be provided to the Project (with economic terms redacted therefrom at the Applicant's election), along with any plans depicting any lines and connections to be located within Hingham, such plans to be consistent with the requirement/guidelines of the Department of Public Works. The Applicant shall reimburse the Town for all reasonable costs associated with a third party review of these plans by a qualified professional consultant.
6. The Project will be served by a private wastewater treatment plant discharging into subsurface distribution fields, all designed to meet permit requirements of the Massachusetts Department of Environmental Protection for private wastewater treatment facilities. If discharge will be off-site, the Applicant will provide copies of the completed easement to the Board of

Appeals and the Planning Board. In the event the Applicant determines that a private wastewater treatment plant and leaching fields are not feasible then the Applicant shall give notice of such determination to the Board of Appeals and the Planning Board. In such event, the Project may use a private sewer line on an exclusive basis to connect through the Town of Weymouth to the MWRA public sewer system served by the Deer Island Wastewater Treatment Plant. Prior to the issuance of a building permit for the first building (other than the marketing center), the Applicant shall provide the Planning Board for comment to the Board of Appeals with copies of the agreements under which sewer service will be provided for the Project (with economic terms redacted therefrom at the Applicant's election) and engineering plans depicting any lines and connections to be located within Hingham, such plans to be consistent with good engineering practices. In the event a connection to the MWRA public sewer system is used, the Board of Selectmen will have responsibility for making filings in connection therewith on behalf of the Town consistent with this Comprehensive Permit approval. In the event the Town wishes to hire a third party consultant to assist it in reviewing the plans, the Applicant shall reimburse such Board for the reasonable cost of such consultant, and such consultant shall provide all appropriate Boards with the results of its review. The Applicant will fund any entrance or user fee charged the Town as a result of connection of the Project to the MWRA public sewer system.

7. The Applicant will use diligent efforts, at the applicant's sole cost and expense, to design, permit and construct all of the following off-site traffic improvements, subject to approval by the Town of Hingham and the Massachusetts Highway Department ("Mass Highway"):

a. *Whiting Street at Proposed Site Drive*

Install a traffic signal at the entrance to the Project.

b. *Whiting Street at Cushing Street*

Widen Whiting Street southeast bound to provide an exclusive right-turn lane, widen Cushing Street northbound to provide an exclusive left-turn lane and update existing traffic signal control with new controller retiming.

c. *Derby Street at Whiting Street and Gardner Street*

Re-time the existing traffic signal to improve the Level of Service during the weekday evening peak hour.

In the case that such improvements are not initially warranted by Mass Highway standards, the Town may, from time to time, request that the Applicant submit the appropriate permit application(s) to Mass Highway. If requested by the Town, the Town shall be a co-applicant with the applicant in order that the Town will have standing and opportunity to present such evidence as the Town may deem fit to support such application(s).

8. Simultaneously with the filing of a Notice of Intent with the Hingham

Conservation Commission, the Applicant shall forward to the Planning Board for comment a copy of the drainage plans and calculations referenced in the Notice of Intent, including site design, stormwater modeling and site specific details. Future drainage plans shall directly respond to and take into account all of the specific comments included in the Review of Preliminary Drainage Design narrative for the Proposed Erickson Retirement Community, dated June 6, 2001, by Horsley & Witten.

9. Eight weeks prior to making application for the first building permit for each neighborhood, the applicant will provide the Planning Board and the Board of Appeals with detailed site plan drawings ("Neighborhood Site Plans") for review. In reviewing each set of Neighborhood Site plans, the Board of Appeals and the Planning Board shall consider (a) whether the improvements shown on the Neighborhood Site Plans are designed and located substantially as shown on the Comprehensive Permit Plans and (b) whether the Neighborhood Site Plans have been prepared in accordance with all local regulations not specifically waived, with good engineering practices and show improvements in substantial compliance with industry standards and to provide adequate screening to visibility from Whiting Street. Based on such review, the Planning Board will make a report to the Board of Appeals as to the compliance of the Neighborhood Site Plans with such standards and any recommended changes to such Plans.

The format of all Neighborhood Site Plans submitted to the Planning Board for review shall be prepared in accordance with the requirements for the submittal of Definitive Plans as outlined in Section 3C(2) of the Hingham Planning Board Rules and Regulations and such submittals shall be accompanied by a complete list of variations from the Planning Board Rules and Regulations.

In the event the Planning Board hires a third party consultant to assist it in reviewing the plans, the Applicant shall reimburse the Planning Board for the reasonable cost of such consultant in connection with each Neighborhood Site Plan Review.

10. At the time of the submission by the Applicant of the Neighborhood Site Plan containing the extended care center known as "Renaissance Gardens," the fire lane shall be extended beyond what is shown on the Proposed Development Plans to provide fire access to the entire extended care center building, or as otherwise reasonably required by Building and Fire officials at that time.

11. The Applicant shall deliver to the Board of Appeals a fully executed copy of a commitment from Fleet Bank to provide financing to be used for the Project through the New England Fund subject to conditions customarily required by banks and other lending institutions (but with economic terms redacted).

12. This decision shall be recorded at the Plymouth County Registry of Deeds. Recording information shall be submitted to the Building Commissioner and Board of Appeals

with the application for a building permit.

13. Subject to the provisions of the Regulatory Agreement, the Affordable Units shall be disbursed throughout the Project and shall be indistinguishable from the exterior from the other Units.
14. The waivers from local law requested and granted are listed in Exhibit C attached to the decision and incorporated by reference. All other Town by-laws and regulations remain in full force and effect.
15. The Project shall comply with all applicable state and federal regulations including but not limited to the State Building code, State sanitary Code, Architectural Access Board Regulations and Plumbing, Electrical and Fire Codes.
16. The Project's stormwater management system shall comply with the DEP Stormwater Management Guidelines. Eight weeks prior to issuance of a building permit, a Stormwater Management report, including drainage calculations, catch basin and manhole inverts, shall be submitted to the Board of Appeals for review and comment by the Board's consulting engineer.
17. Thirty days prior to the application for a building permit, the Applicant shall submit for the Board's review and comment a construction mitigation plan that shall include, but not be limited to, measures to control erosion and sedimentation, tree and brush clearing, grading and general site mitigation measures.
18. Subject to the provisions of 10. above, the Board reserves the right to review proposed modifications to the Project Plans and/or Neighborhood Site Plans without rehearing, provided that in the Board's sole opinion the change is minor, i.e. neither material nor substantial. If the Building Commissioner determines that plans submitted for the building permit differ from the plans approved by the Board, he shall forward the plans to the Board for review. Alternatively, the Applicant may make requests for minor modifications in writing to the Board, with any necessary supporting materials, for consideration at a public meeting of the threshold questions of materiality or substantiality. Any modifications the Zoning Board determines to be more than minor shall be the subject of proper application, notice and public hearing.
19. The obligation to provide the Affordable Units shall continue in perpetuity. To the extent permitted by law, residents of the Town of Hingham are to be granted a local preference for the Affordable Units. In no case shall local preference be granted for more than fifty percent (50%) of the Affordable Units.

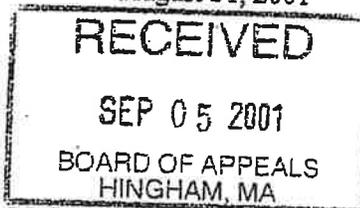
20. The final versions of the Regulatory Agreement and Monitoring Agreement shall be submitted to the Board for review and comment by counsel.
21. The Project shall comply at all times with the Regulatory Agreement.
22. In accordance with the terms of the New England Fund program, the Applicant's dividend shall be limited to 10% as more fully articulated in the Regulatory Agreement.
23. Construction work at the site and deliveries to the site shall be limited to the hours of Monday through Friday, 7:00 a.m. to 5:00 p.m. and 7:30 a.m. to 5:00 p.m. on Saturdays. In no event shall construction personnel be present on-site prior to 7:00 a.m. Monday – Friday or 7:30 a.m. on Saturday. Unless approved by the Building Commissioner, no construction activities which involve the use of heavy equipment or which are otherwise noisy shall be conducted on Saturdays. No construction work shall be permitted on Sundays.
24. All construction traffic shall enter and leave the site from Old Ward Street, leaving the main entrance available for use by residents and staff.
25. All staging areas including paring areas for construction labor shall be on site. No parking on Town ways in the vicinity of the site shall be permitted by any person associated with the construction of the Project.
26. All permanent on-site utilities servicing the Project shall be installed underground. The Applicant shall install fire hydrants to be located in consultation with the Hingham Fire Department.
27. With the application for a building permit, the Applicant shall submit:
 - a. a code analysis of the final construction plans,
 - b. a construction schedule for site work, drainage, roadways and utilities, and
 - c. evidence of receipt of all necessary permits from DEP.
28. Prior to the start of construction the Applicant shall engage the services of a qualified professional engineer to provide certification at the completion of work that the Project has been built in accordance with the approved plans. Prior to the start of construction, the Applicant will inform the Zoning Administrator of the name, business address and telephone number of the engineer retained. The engineer shall perform site inspections at his/her own discretion through the construction process to enable accurate final certification to the Board of the Project's compliance with this decision. The engineer will be made available at reasonable times with adequate notice for consultation with the Board.

29. Prior to the start of construction, the Applicant shall schedule a pre-construction walk with the Conservation Officer, Building Commissioner and/or Zoning Administrator to set the limit-of-work line.
30. The sufficiency of completion of a unit or building for occupancy shall be determined by the Building Commissioner in his sole discretion.
31. At the completion of the Project the Applicant shall submit as-built site and building plans stamped by the appropriate qualified professional.
32. Prior to the removal of topsoil and prior to major earthwork, the Applicant shall install erosion and sediment control devices and so notify the Town's Building Commissioner and Conservation Officer.
33. Unless otherwise directed by the Conservation Commission or its agent, detention basin vegetation shall be stabilized prior to stormwater discharge to the basins.
34. The terms and provisions of this decision shall bind, burden and benefit the successors and assigns of the Applicant with the same effect as if the same were mentioned in each instance where the Applicant is referred to or named.
35. The Applicant shall not refuse to provide medical or personal care services provided to other residents to a resident of an Affordable Unit solely because such resident has insufficient funds to pay for such services.
36. The Applicant shall keep the accessway between the emergency secondary access gate and Old Ward Street plowed and accessible by emergency vehicles.
37. The Applicant shall use best efforts to accomplish the matters described in the letter from the Applicant to the Board dated August 31, 2001, a copy of which is attached hereto.
38. Each of the foregoing conditions and limitations is, in and of itself, material to the Board's decision regarding the Application. Accordingly, if any of the conditions is found by a court of competent jurisdiction to be void or unenforceable, the remaining conditions shall remain unaffected and in full force and effect and the Applicant agrees that it will accept a reasonable substitute for such void or unenforceable condition which is consistent with the intent of such condition.



August 31, 2001

Mr. Jerry Seelan, Chairman
Zoning Board of Appeals
210 Central Street
Hingham, Massachusetts 02043



Re: MGL Chapter 40B application of Hingham Campus, LLC filed November 8, 2000

Dear Mr. Chairman:

The following is our response to the list of negotiation items we received August 30, 2001. We believe that we can accommodate in some form, most of the items requested.

1. Design and construct a River Walk

Erickson will provide an easement to the town and a woodchip path along the Plymouth River on our property, with the intention of connecting to other paths in the area, subject to approval of the Hingham Conservation Commission. Unfortunately, extending the public path system from the Plymouth River path up along Wetland F is inconsistent with the concept of a secure, gated community for seniors.

1a. Set back the perimeter fence at River for public access and animal migration

Erickson will provide a nominal hundred-foot setback for this purpose as part of the easement agreement above. Final location of the fence line can be established following identification of pathway location. Gaps under the fence to accommodate wildlife will be provided in the "greenways" associated with the intermittent stream channels. This can be done in an area that is accessible to wildlife, yet inhospitable to human trespassers.

2. Reserve area between Rt. 53 and main drive and first cluster as green space; raze all buildings (except gate house.)

Erickson will raze all existing structures on the property. Area in question will remain green space, with the possible exception of small landscape structures like gazebos or a shed for resident gardens.

Mr. Jerry Seelan
August 29, 2001
Page 2

3. On site sewerage treatment plant to be located between Old Ward and RB 3.2

Erickson will relocate this facility but would rather relocate it to the other side of the campus in the vicinity of the ECC, which we think would serve your purposes just as well.

4. Add parking deck to Neighborhood 3 to reduce surface parking area and move Neighborhood 3 back from Whiting Street

Erickson will provide this parking deck and reduce the surface parking area in neighborhood 3 as long as it is technically feasible and does not affect the programmatic and age restricting requirements of the community.

5. Child Day Care Center provisions on site

Erickson will provide on site child day care for its employees if there is enough interest and it is economically feasible. Erickson has studied the feasibility of an on-site child care facility for its employees at another campus on a number of occasions and there has never been enough interest on the part of employees to make it feasible. There are two main reasons for this: our employees overwhelmingly use relatives for day care rather than private third party providers; and many will be coming on public transportation and will not deem it feasible to bring their children to work, preferring to leave them in day care near their homes.

6. Transportation for employees and residents

Erickson will provide transportation services to and from local public transportation depots at shift changes.

7. Fund traffic report study after Neighborhood 2

Erickson will fund a traffic study after the build out of neighborhood 2 with the intent of substantiating a warrant for a traffic light at the entrance. Off-site mitigation improvements associated with this project will be determined by MHD through the MEPA and Section 61 finds process, as is done on every other large-scale project in the Commonwealth.

8. Source all irrigation from ponds; recharge rate? Depth? Daily Requirement?

Erickson will use the on-site ponds for irrigation. From a review of Conservation Commission records, the North and South quarries are at least 34 and 23 feet deep,

Mr. Jerry Seelan
August 29, 2001
Page 3

respectively, and hold an estimated combined total of 13 million gallons of water. Our hydrogeologist consultant reported that sufficient water is available from the quarries to support up to 100,000 gpd of irrigation and MEP cooling tower water. Our anticipated maximum irrigation and MEP summer withdrawals fall below that figure.

9. Separate construction entrance from resident entrance

Erickson will provide a separate construction entrance off Old Ward Street.

10. Offer Nino's hook-up to Bluestone

Erickson will offer Nino's a hook-up to Bluestone at Nino's expense, as long as there is no adverse effect on Erickson's agreement with Bluestone.

11. Provide educational programs to seniors and offer tutoring in schools

Erickson will work with the Council on Aging to provide educational programs for the town's seniors and will work with the school system to provide a volunteer tutoring program.

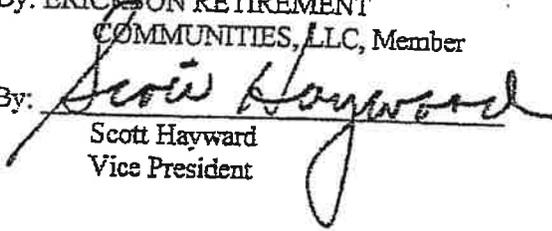
We look forward to meeting with the Board to discuss these items.

Thank you.

Sincerely,

HINGHAM CAMPUS, LLC

By: ERICKSON RETIREMENT
COMMUNITIES, LLC, Member

By: 
Scott Hayward
Vice President

cc: Jon Davis, Esq.
Josh Davis, Esq.
Ms. Mary Jeannette Schultz

EXHIBIT E

REGULATORY AGREEMENT

This Regulatory Agreement (this "Agreement") is made this _____ day of _____ 200_ by Hingham Campus, LLC, a Maryland limited liability company having an address at _____ c/o Erickson Retirement Communities, 701 Maiden Choice Lane, Baltimore, Maryland 21228 ("Developer"), Fleet Bank, N.A. (the "member bank"), a member institution of the Federal Home Loan Bank of Boston (FHLBB), with an address at 100 Federal Street, Boston, Massachusetts 02110, _____, with an address at _____ ("Monitoring Agent") and the Town of Hingham ("Municipality"), with an address at _____.

BACKGROUND:

A. WHEREAS the Developer intends to construct a continuing care retirement community pursuant to MGL Chapter 93, Section 76 (the "CCRC Statute") consisting of approximately 1,750 apartments (the "Units") in a series of residential buildings and, ancillary thereto, approximately 512 health care beds in a dedicated extended care center known as "Renaissance Gardens", all on an approximately 100 acre site on Whiting Street in Hingham, Massachusetts, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

B. WHEREAS the Developer has received a Comprehensive Permit (the "Comprehensive Permit") for the Project from the Zoning Board of Appeals for the Municipality under Chapter 40B of the Massachusetts General Laws, with permit is recorded at the Registry of Deeds in Book _____ Page _____;

C. WHEREAS the Comprehensive Permit has specified that 27.7% of the Units in the Project will be affordable Units (the "Affordable Units") for occupancy by households ("Qualifying Households") earning no more than eighty percent (80%) of the median income, by household size, for the Primary Metropolitan Statistical Area (eighty percent (80%) of such median income, the "Base Income") as published from time to time by the Department of Housing and Community Development or successor agency ("DHCD"), and the Project will continue to include Affordable Units in perpetuity, at which time this Agreement will terminate. A Unit will be considered an Affordable Unit if it is occupied or unoccupied and affordable by a Qualifying Household;

D. WHEREAS the Units are offered to residents under a residence and care agreement that, in accordance with the CCRC Statute, provides for an initial refundable entrance fee ("Entrance Fee") and monthly payments comprised of a rental component and fees for utilities, food and supportive services ("Monthly Payment");

E. WHEREAS the Project is being financed by a construction loan from the member bank with proceeds from an advance under the FHLBB's New England Fund ("NEF") and the NEF requires the Developer to provide the number of Affordable Units described above;

F. WHEREAS the Monitoring Agent has agreed to monitor compliance of the Project with the Affordability Requirement set forth in Section 2 below and compliance of the Developer with the Limited Dividend Requirement, set forth in Section 3 below.

NOW THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer, the member bank and the Monitoring Agent hereby agree and covenant as follows:

1. Unit Distribution. The distribution of the Affordable Units by unit size shall result in approximately 27.7% of the studio, one-bedroom and small two-bedroom Units available as Affordable Units. In the event Qualified Households choose one unit size over another as a matter of personal choice, the resulting distribution of Affordable Units will be acceptable under this Agreement. Because the Project will be constructed over time in a series of buildings, the percentage and distribution of Affordable Units may not be in compliance at any given time during the construction period. In such event, the Developer shall not be considered to be in default of this Agreement so long as the Developer has (a) provided the Monitoring Agent with a plan reasonably acceptable to the Monitoring Agent which outlines how the percentage and distribution of Affordable Units will be achieved as the Project is built out, (b) provided the Monitoring Agent with data reasonably satisfactory to the Monitoring Agent that the demand for Affordable Units is greater for a particular unit size or sizes than for others and (c) made available Affordable Units for which the fund described in Section 13 hereof is to be applied against payment of the Entrance Fee in accordance with a plan established in accordance with said Section 13.

2. Affordability. The Monthly Rent and Services Fee (as defined below) for the Affordable Units shall not exceed 60% of the gross income of a household at Base Income (75% in the event that a unit is to be occupied by a second or third person in order to account for the additional costs of providing services to that person)("Monthly Payment Maximum"), in each case calculated as follows:

0 Bedroom Unit	1 person household
1 Bedroom Unit	1.5 person household
2 Bedroom Unit	3 person household.

"Monthly Rent and Services Fee" means the sum of (a) the Monthly Payment and (b) one twelfth (1/12) of five percent (5%) of the Entrance Deposit made by the resident of the particular Affordable Unit.

Throughout the term of this Agreement, on a periodic basis and in a manner satisfactory to the member bank and the Monitoring Agent, the Developer shall determine the income of the household as a Qualifying Household eligible to occupy an Affordable Unit. The Developer shall determine such income at the time such household first occupies the

Affordable Unit and the income determined at that time shall be presumed to be the Qualifying Household's income for the remainder of the Qualifying Household's occupancy of the Affordable Unit. For purposes of determining whether a household's income exceeds Base Income (and therefore is not a Qualifying Household), the household's income shall be calculated as the sum of (i) such household's actual income from income-producing assets and entitlements (such as pension and social security amounts) and (ii) an imputed income of 5% per year from all non-income producing assets owned by the household (other than the Entrance Fee).

3. Dividend Limitation. Developer agrees that throughout the term of this Agreement distribution of income from operations to the Developer or to the partners, shareholders, or other owners of Developer or of the Project shall not exceed ten percent (10%) of Imputed Equity per year, as determined from audited financial statements provided to the member bank and the Monitoring Agent (the "Allowable Profit"). "Allowable Profit" shall not include any amounts distributed as a result of a sale, financing or other capital event relating to the Project or its ownership. "Imputed Equity" in the Project shall be the difference between the amount provided by third party debt financing sources to the Project and the total cost of the Project, including a Developer's Risk Allowance ("DRA") equal to twenty-five percent (25%) of the total project cost net of DRA (if the Project is owned by a Limited Partnership which has utilized the sale of Low Income Housing Tax Credits to raise equity, then the DRA shall be equal to the allowable Developer Fee under the Low Income Housing Tax Credit Program in Massachusetts). Distributions of the Allowable Profit not made in any one year may be deferred and made in subsequent years. From time to time but not more frequently than once every five year period, the Developer may increase the Imputed Equity by an amount equal to the difference between the total cost of the Project and the current appraised value of the Project, as determined by a third party appraiser and approved by the Monitoring Agent, plus an amount equal to the amount of the loan that has been amortized. Proceeds of any refinancing, or insurance or condemnation proceeds, or from the sale of any of Developer's assets shall be excluded from the determination of the Allowable Profit. Upon issuance of a final Certificate of Occupancy for all of the Units in the Project, the Developer shall deliver to the member bank and to the Monitoring Agent an itemized statement prepared on an federal income tax basis of total development costs together with a statement of gross income from the Project received by the Developer to date, prepared and certified by an independent Certified Public Accountant according to generally accepted accounting principles and also certified by the Developer ("Certified Cost and Income Statement"). If all Units in the Project have not been rented as of the date the Certified Cost and Income Statement is delivered to the Bank, the Developer shall at least once every ninety (90) days thereafter, until such time as at least 95% of the Units are rented, deliver to the member bank and to the Monitoring Agent an updated Certified Cost and Income Statement. After 95% of the Units in the Project have been rented, the Developer shall, on a periodic basis satisfactory to the member bank and to the Monitoring Agent, deliver to the member bank and to the Monitoring Agent an itemized statement of income and expenditures in form satisfactory to the member bank and Monitoring Agent. All profits from the Project in excess of the Allowable Profit shall be used to increase the balance of the Subsidy Loan Fund (as defined in Section 13 below).

4. Affirmative Marketing. The Developer shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin or any other basis prohibited by law in the selection of the residents for the Affordable Units (provided, however, that the Project will be "age-restricted" as permitted by law). The Developer shall affirmatively market at its own expense the Affordable Units to minority households through direct outreach efforts to local churches, social service and civic organizations as well as local and area-wide newsprint media where minority households are most likely to be contacted using an affirmative marketing plan satisfactory to the Monitoring Agent and the Town. This outreach effort must continue for a period of at least 60 days prior to the selection of residents for the Affordable Units. The Developer agrees to adopt a preference for local resident households to the extent the same is permitted by law. The Developer agrees to maintain for at least five (5) years following the rental of the Affordable Units, a record of all newspaper ads, outreach letters, translations, leaflets and any other outreach efforts, which may be inspected by the member bank or the Municipality.

5. Recording. Upon execution hereof, the Developer shall immediately cause this Agreement to be recorded with the Plymouth County Registry of Deeds. Upon recording and/or filing, as applicable, the Developer shall immediately transmit to the member bank, the Town and the Monitoring Agent evidence of such recording and/or filing.

6. Representations. The Developer hereby represents, covenants and warrants as follows:

- (a) The Developer (i) is a limited liability company duly organized under the laws of the State of Maryland and is qualified to transact business under the laws of the Commonwealth of Massachusetts, (ii) has the power and authority to own properties and assets and to carry on its business as now being conducted, and (iii) has full legal right, power and authority to execute and deliver this Agreement. The Project will be leased to a not-for-profit entity that will operate the Project.
- (b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Developer is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the Project free and clear of any lien or encumbrance, subject to the encumbrances created pursuant to this Agreement, any loan documents relating to the Project, or other permitted encumbrances.

7. Governing Law/Amendments/Severability. This Agreement shall be governed by the laws of The Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

8. Monitoring Agent. (a) Monitoring Agent shall monitor the compliance of the Project with the Affordability Requirement and the compliance of the Developer with the Limited Dividend Requirement based on and in accordance with the following:

(i) Receipt of reports from the Developer, on a periodic basis satisfactory to the member bank and to the Monitoring Agent, with respect to compliance of the Project with the Affordability Requirements, which reports shall include copies of initial resident income certifications.

(ii) Receipt of annual audited financial reports for the Developer, within 120 days after the end of each fiscal year of the Developer;

(iii) Review of (x) the adequacy and completeness of the annual reports and annual financial statements and (y) the substantive compliance of the Project with the Affordability Requirement and of the Developer with the Limited Dividend Requirement.

(iv) Preparation of a report (the "Compliance Report") on a periodic basis satisfactory to the member bank and to the Monitoring Agent to the member bank and the zoning enforcement officer of the Municipality on the compliance (x) of the Developer with reporting requirements, (y) of the Project with the Affordability Requirement and (z) of the Developer with the Limited Dividend Requirement. The Compliance Report shall indicate the extent of noncompliance with the relevant reporting and/or substantive requirements, describe efforts being made by the Developer to remedy such noncompliance and, if appropriate, recommend possible enforcement action against the Owner.

The Monitoring Agent shall provide reasonable supplemental monitoring on its own initiative in order to ensure to the extent practicable the compliance of the Project and the Developer with the Affordability Requirement and the Limited Dividend Requirement. The services to be provided under this Agreement shall not include any construction period monitoring. The services herein under shall include follow-up discussions with the Developer after an event of noncompliance.

The Developer shall deliver to the Monitoring Agent the reports described in (i) and (ii) above within the specified times.

(b) The Monitoring Agent shall receive _____ from the Developer upon completion of its monitoring tasks for the year in question. The member bank shall have no responsibility for payment of any fee to the Monitoring Agent herein under. (Or such other arrangement mutually acceptable to Monitoring Agent and Developer.)

(c) The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement.

(d) The Developer agrees to indemnify and hold harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its relationship with the Project under this Agreement.

9. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

Developer:

Member Bank:

Monitoring Agent:

Municipality:

10. Term. The term of this Agreement shall be perpetual.

11. Successors and Assigns. The Developer intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project and are binding upon the Developer's successors in title, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer, its successors and assigns for the term of this Agreement. Developer hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

12. Default. If any default, violation or breach by the Developer is not cured to the satisfaction of the member bank within thirty (30) days after notice to the Developer thereof, then the member bank may send notification to the Municipality's Zoning Enforcement Officer and any other mortgagee that the Developer is in violation of the terms and conditions hereof. The Municipality may exercise any legal remedy available to it with respect to the default. The Developer shall pay all costs and expenses, including legal fees, incurred by the member bank or the Municipality in enforcing this Agreement and Developer hereby agrees that the member bank and the Municipality shall have the right to place a lien on the Project to secure payment of any such costs and expenses. The member bank and/or the Municipality may perfect such lien on the Project by recording a certificate setting forth the amount of the costs and expenses due and owing in the Plymouth County Registry of Deeds. A purchaser of the Project or any portion thereof shall be liable for the payment of any unpaid costs and expenses which were the subject of a perfected lien prior to the purchaser's acquisition of the Project or portion thereof.

13. Entrance Deposit Subsidy. The Developer shall enable otherwise eligible Qualifying Households that are unable to fund the entrance deposits for the Affordable Units ("Asset-deficient Qualifying Households") by the following means:

(a) The Developer shall provide loans ("Entrance Deposit Loans") to Asset-Deficient Qualifying Households up to Five Million Six Hundred Thousand Dollars (\$5,600,000) outstanding at any one time, such amount to be adjusted on the first day of each year by the percentage change in the Monthly Rent and Services Fee for the Affordable Units in the calendar year just ended ("Entrance Deposit Loan Fund"). In the event that the proposed number of Units shall be changed, then the amount of the Entrance Deposit Loan Fund shall be modified proportionately.

(b) Unless approved by the Municipality, no more than Four Hundred Thousand Dollars (\$400,000) of the Entrance Deposit Loan Fund shall be loaned for Affordable Units in any one residential building, provided, however, that in the event less than Four Hundred Thousand Dollars (\$400,000) is loaned for Affordable Units in any one residential building, the difference between Four Hundred Thousand Dollars (\$400,000) and the amount loaned shall be carried forward to the next residential building constructed. The Four Hundred Thousand Dollar (\$400,000) amount for each new building shall be adjust as of the first day of each calendar year in the same manner as the Entrance Deposit Loan Fund.

(c) The Entrance Deposit Loans will be due and payable at the time at which the entrance deposits would be refundable to the Asset-Deficient Qualifying Households. The Entrance Deposit Loans shall bear interest at the Developer's cost of funds, provided, however, that monthly payments of such interest shall be in amounts which, when added to the Monthly Rent and Services Fee, do not exceed the Monthly Payment Maximum.

(d) In consultation with the Monitoring Agent, the Developer shall institute a program to administer the making of Entrance Deposit Loans (including the conduct of marketing and the use of lotteries) in a manner intended to render the Project as attractive as a potential living and health care option to Asset-Deficient Qualifying Households as to other Qualifying Households.

(e) Upon substantial full occupancy of the Affordable Units in the first four residential buildings (discounting roll-over vacancies) and upon such occupancy of eight residential buildings, twelve residential buildings and fourteen residential buildings, the Developer and the Municipality, in consultation with the Monitoring Agent, shall assess the need to (a) carry forward unloaned portions of the Entrance Deposit Loan Fund from building to building and (b) maintain the amount of the Entrance Deposit Loan Fund. In the event the experience of the Project indicates that the amount of the carry forward or of the Entrance Deposit Loan Fund exceeds the amount reasonably required to serve those Asset-Deficient Qualifying Households which are interested in the Project and provided that the Monitoring Agent is reasonably satisfied that the Developer has instituted a program for the making of Entrance Deposit Loans which addresses the purposes described in (d) above, those amounts shall be reduced to levels required to serve such Asset-Deficient Qualifying Households, as determined by the Hingham Zoning Board of Appeals.

14. Mortgagee's Consent. The Developer represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed a consent to this Agreement that shall be executed herewith.

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

DEVELOPER

By: _____

MEMBER BANK:

By: _____

MONITORING AGENT:

By: _____

MUNICIPALITY:
TOWN OF HINGHAM

By: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2001

Then personally appeared the above-named _____, the _____ of _____ and acknowledge the foregoing instrument to be the free act and deed of _____, before me.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2001

Then personally appeared the above-named _____, the _____ of _____ and acknowledge the foregoing instrument to be the free act and deed of _____, before me.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 2001

Then personally appeared the above-named _____, the _____ of _____ and acknowledge the foregoing instrument to be the free act and deed of _____, before me.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, 2001

Then personally appeared the above-named _____, the _____ of _____ and acknowledge the foregoing instrument to be the free act and deed of _____, before me.

Notary Public

My Commission Expires: