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TOWNSHIP
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TOPSFIELD, MA

**DECISION OF THE TOPSFIELD PLANNING BOARD
ON THE ELDERLY HOUSING SPECIAL PERMIT
AND SITE PLAN REVIEW APPLICATION
OF SARKIS DEVELOPMENT COMPANY
FOR THE PROPERTY AT 470 BOSTON STREET,
TOPSFIELD, MASSACHUSETTS,
KNOWN AS *ROLLING GREEN***

Date: April 18, 2017

PROCEDURAL HISTORY

1. On or about October 20, 2016, Sarkis Development Company ("Applicant") applied to the Town of Topsfield ("Town") Planning Board ("Board") for an Elderly Housing Special Permit pursuant to Section 3.16 of the Topsfield Zoning Bylaws (the "By-Law") to allow Multi-Family Residences for the Elderly with appurtenances and site plan review in conjunction therewith to be located on a 13.24 acre parcel of land at 470 Boston Street (Route 1), Topsfield, Massachusetts, which property is shown as Lot 3, on Topsfield Assessors' Map 7 (the "Site" or the "Property") (the "Application"). The Application was submitted pursuant to the requirements of Section 3.16 and Articles IX of the By-Law and G. L. Chapter 40A. Details of the proposal were contained in the Application and other materials submitted to the Board, which are on file with the Board.
2. Notice of the public hearing scheduled to consider the Application was given in the manner provided in G. L. Chapter 40A, section 11 by publication in the *Salem News* newspaper on December 16, 2016 and December 23, 2016, and by posting such notice in a conspicuous place in the Topsfield Town Hall. Notice was also mailed to the

individuals and agencies required to receive such notice pursuant to the provisions of the aforesaid G. L. Chapter 40A, section 11.

3. A duly advertised public hearing was convened by the Board on January 3, 2017, and was continued with subsequent sessions of the public hearing being held (the "Public Hearing"). The Public Hearing closed on April 18, 2017.
4. The Public Hearing relating to the Application was attended by some interested persons. At the Public Hearing, some members of the public asked questions regarding drainage, screening and other issues, which they requested that the Board carefully consider.
5. In reviewing the Application, the Board took into consideration the fact that the Property is within an Elderly Housing District by the May 2016 action of the Topsfield Town Meeting. The Application was filed on October 26, 2016, well within two years of the Town Meeting vote as required by the provisions of Section 3.16.F.3 of the By-Law.
6. During the hearing process, additional documents were submitted and plans were revised to address issues identified during the hearing and the review process.
7. Josh Rownd, a member of the Board, was absent from the January 3, 2017 session of the public hearing. Prior to any vote being taken by the Board of this filing, he filed a written and signed certification conforming to the requirements of M. G. Laws Chapter 39, §23D that he has examined all evidence and testimony received at the January 3, 2017 hearing session, which included a review of an audio or video recording of the missed session or a full transcription of the tapes. His certification is part of the record of the hearing.

FINDINGS

The Board makes the following specific findings:

1. The Property lies within an Elderly Housing District. See By-Law Section 2.10.B.

2. The Applicant proposes the creation of a condominium form of ownership pursuant to G. L. Chapter 183A (the "Condominium"). The condominium association would be a non-profit corporation (the "Condominium Association"). The master deed and related Condominium Documents would contain the age-restrictive language and a procedure to assure compliance with the age-restriction, including initial proof of age and a periodic review mechanism. That type of ownership and organization meets the requirements of the By-Law. See By-Law Section 3.16.A.1.

3. The proposed development call for 30 townhouse dwelling units with attached garages, a central mailbox station and a common area open pavilion in conformity with the Bylaw (the "Project"). See By-Law Section 3.16.B.

4. The final plans before the Board are comprised of certain conceptual architectural drawings and a set of civil engineering plans, including 51 sheets entitled "*Site Development Plans for Over 55 Residential Development at 470 Boston Street, Topsfield, MA*" dated October 13, 2016, prepared for Owner/Applicant Sarkis Development Company, prepared by Allen & Major Associates, Inc.," with the last revisions and re-issuance having been made on April 10, 2017, (collectively the "Final Plans"). Sheet C-2 *Layout and Materials Plan* shall be recorded with this Decision at the Essex South District Registry.

5. The Project is in harmony with the purposes and intent of the By-Law as set forth therein in that the provision of elderly housing will promote the health, convenience and general welfare of the inhabitants of the Town and in that the final design and layout of the buildings and landscaping will foster the goal of preserving the traditional beauty and dignity of the Town and conserving open space. See By-Law Section 3.16.C.1.a.

The purpose of Section 3.16 of the By-Law is to allow for the creation of elderly housing, including multiple-family residences for the elderly. The By-Law defines "elderly" as one who is at least fifty-five (55) years of age. See By-Law Section 1.75. Rolling Green meets those standards and would create such housing. The facilities and the age-restriction controls and procedures meet both State and Federal standards. The Condominium Documents shall require that one of the residents in each dwelling unit must be a person who is at least fifty-five years old.

Each building shall be of a townhouse design with its own direct access to the outdoors and shall contain two (2) independent dwelling units. The designs of the dwelling units are suited for one story living. Each dwelling unit shall contain a suite of rooms, its own bath and toilet facilities and its own kitchen facility. Consistent with appropriate design for "over-55 housing", the master bedroom, kitchen and basic living accommodations shall be on the first floor. To gain entry to a dwelling, there are not more than five steps.

The cluster concept with limited entry and a screening perimeter of trees and open space provides quiet and security for the occupants. The pavilion, walking trails and open space affords an area for passive recreation and socializing.

6. The Site contains 13.57 acres (Topsfield), which exceeds the minimum lot size requirement of ten acres. See By-Law Section 3.16.C.1.b.

7. The elderly housing shall be owned under a declaration for a condominium (master deed) organized pursuant to G. L. Chapter 183A and restricted to elderly housing See By-Law Section 3.16.C.1.c. All Condominium Documents, including but not limited to the Master Deed and By-laws shall incorporate this Decision and contain all restrictions applicable to this Decision.

8. The housing developed on the Site shall not have more than five (5) units per acre of buildable area. Buildable area is defined in Section 1.11 of the By-Law as that portion of a lot which is composed of ground dry and permeable enough to permit construction of a dwelling and appurtenances thereto including the installation and use of facilities for disposal of sewage. Buildable area shall not include any area within a Flood Plain District as defined in Article VI of the By-Law There are approximately 9.45 acres of buildable area on the Site; so the proposed density is approximately 3.2 unit(s) per buildable acre. See By-Law Section 3.16.C.1.d.

9. All of the buildings, including accessory buildings together cover nine and 1/5 percent (9.2%) of the Site, which is less than thirty (30%) percent of the buildable area (9.45 acres) of the Site. See By-Law Section 3.16.C.1.e.

10. The Site has frontage of 236.39 +/- feet on Boston Street (U.S. Route 1). This is well in excess of the required minimum of fifty feet. See By-Law Section 3.16.C.1.f.

11. Every structure in the Project is well in excess of 30 feet from Boston Street and any other public way. See By-Law Section 3.16.C.1.g.

12. The proposed plan provides that there shall be off-street parking on the Site of not less than six (6), nor more than eight (8), parking spaces for each three (3) elderly dwelling units contained in the development. With 30 units, the minimum number of spaces permitted is 60 spaces and the maximum number allowed is 80 spaces. Parking spaces within a garage shall be counted toward the required number of parking spaces. The Final Plan provides two garage spaces for each of what are described as the A and B style units and one garage space for each of what are described as the C units for a total of 56 garage spaces with the current unit configuration. There are also 18 common parking spaces for a total of 74 spaces. See By-Law Section 3.16.C.1.h.

13. While the Project does not involve a subdivision, the By-Law requires that the Board review the ways in the Project with reference to its subdivision standards. Based upon the testimony before the Board, we have determined that the ways within the development, as proposed, are sufficient to adequately and safely accommodate anticipated vehicular and pedestrian circulation. The proposed ways will provide adequate access to and from all of the dwellings for all purposes. The entranceway design provides for a secondary emergency access way off of Boston Street and a by-pass cut-out in front of Units 1 and 2. This provides alternative access in the event of an emergency. The road layout (width, curvatures and grades) are designed to provide adequate access for all vehicles, including emergency and delivery vehicles and proper drainage. The Town's fire chief, the Town's review consultant and the Applicant's traffic engineer have all opined as to the adequacy of access way. The design incorporates Low Impact Development techniques for stormwater management that do not comply with the Planning Board Subdivision regulations in some instances. See By-Law Section 3.16.C.1.i.

15. The entire Site is of a size and shape to provide a housing site which will be in harmony with the natural terrain and other features of the Site and will preserve the existing rural character of the neighborhood. The proposed design provides a deep setback from Route 1 and vegetated or fenced buffering from the surrounding properties. Extensive open space is being preserved. More than fifty percent (50%) of the Site will remain as open space. The multi-family buildings, as defined in the Zoning By-Law, are two

units each and are in scale with the existing homes along the Route 1 corridor. They shall be located so as to respect the existing topography. Landscaping will break up the building impacts. The design preserves wetland resource areas present on the Site. The proposed density of development conforms to that allowed in the Elderly Housing District. The northerly portion of the Site is open area. Approximately forty-seven percent (47%) of the Site will remain undisturbed. See By-Law Section 3.16.C.1.j.

16. The Site will be supplied with an acceptable water system that is adequate to meet the needs of the units to be constructed on the Site. The Site will be supplied with municipal water from a proposed water main that will be connected to the existing water main in Boston Street. The Topsfield Water Department and Water Commissioners were consulted on the proposal and the specifics of the design. If required, a water connection permit must be obtained prior to construction. See By-Law Section 3.16.C.1.k.

17. All dwellings units must be served by adequate sewage treatment facilities or an on-site sewage disposal system approved by the Board of Health or other appropriate approval agency. The Applicant proposes that the Project be served by three (3) on-site sewage disposal systems utilizing Presby wastewater treatment systems that shall provide treatment to meet the requirements of Title 5 of the State Sanitary Code. All required waste disposal permits would be obtained prior to construction. See By-Law Section 3.16.C.1.l.

18. A notation has been placed on the site plan that the Site may not be subdivided so as to create additional buildable lots. The Condominium master deed shall also contain a statement of this restriction. See By-Law Section 3.16.C.1.m.

19. Elderly dwellings constructed under Section 3.16 of the By-Law shall not be eligible for subsequent conversion to conventional apartments. The proposed development will be a condominium form of ownership with each unit being separately owned; and, as such, will not be converted to conventional apartments. The Condominium Documents shall contain a covenant that the dwelling units shall remain age-restricted and may not be converted to conventional apartment occupancy. See By-Law Section 3.16.C.1.n.

20. The buildings are designed to be reasonably consistent with the appearance of the Town and are complementary in exterior design with each

other and with the existing neighborhood in which the development is located. The proposed town house buildings are designed and situated on the Site, with extensive open space, to complement the character of the surrounding areas. The architectural motif is of a New England flavor and rural in character. Building colors are of muted earth tones. The preservation of open space complements the integration of the architecture to the region. See By-Law Section 3.16.C.1.o.

21. Sufficient security is to be provided to insure completion of the development and continuing compliance upon its completion with the provisions of the approval. A Three-Party Agreement has been proposed as security if dwelling units are being conveyed before all infrastructure work has been completed. The Applicant may select an alternative type of security, including but not limited to those allowed under M. G. Laws Chapter 41, section 81U, subject to the reasonable satisfaction to the Board. See By-Law Section 3.16.C.1.p.

22. Adequate buffering is shown between the elderly housing development and adjoining properties to provide visual and privacy for such adjoining properties. The plan includes landscaping, fencing and other site improvements to accomplish such purposes. The Landscaping Plan indicates the species, height and density of landscaping to provide the necessary buffer zone. Specifically, the development design includes a buffer zone of at least twenty-five feet between the dwellings and adjoining properties and appropriate landscaping and fencing to provide functional visual and privacy for such adjoining properties. The area to the north of the proposed housing is predominantly wetlands and provides an open vegetated expanse from the abutting properties. See By-Law Section 3.16.C.1.q.

23. No building in the Project exceeds two and one-half (2 1/2) stories or thirty-five (35) feet in height. See By-Law Section 3.16.C.1.r.

24. The Applicant has submitted an acceptable eligibility plan that has been reviewed by Town Counsel and the Board which, to the extent allowable by law, gives a preference on the first sale and subsequent sales of for elderly dwelling units within a development first to Topsfield residents, then to immediate family members of Topsfield residents, and then to former residents of Topsfield. See By-Law Section 3.16.C.1.s.

25. The Applicant made simultaneous submissions to the Planning Board for a Special Permit and Site Plan Approval. Site Plan Review was

conducted in conformance with the requirements, rules, and regulations set forth in Article IX of the By-Law, and the regulations adopted thereunder. See By-Law Section 3.16.C.1.t.

26. The Board has determined that the Final Plans meet the standards for granting an elderly housing special permit and site plan approval.

27. The Project promotes the more efficient use of land in harmony with its natural features, watercourses, scenic areas, natural vistas, existing rural character, and similar community assets within the general intent of the Zoning By-Law and the long-range plan of the Town. Major features of the Site are proposed to be preserved. The buildings are being set back a distance from Route 1 to preserve an open vista. Wetlands are being left substantially undisturbed. Surface water quality is being preserved. Vegetation is being left in its natural state. The buildings are low and of a New England character. While they are clustered to preserve substantial open space and minimize impact, they are located and laid out so as to limit their visual impact. See By-Law Section 3.16.E.1.

28. The Project protects adjoining premises against serious detrimental effects by providing inter alia, surface water drainage, sight barriers and preservation of views to the north, light and air. The nearest residences are some distance away from the proposed active uses on the Site. Natural vegetated buffers are being left. Open space is being preserved. The proposed stormwater drainage system meets the ten Massachusetts Department of Environmental Protection Stormwater Management Standards. The usage of the Site by an age-restricted community will not create offensive noise for abutters. The preservation and planting of vegetation and the location of the dwellings with reference to abutting property will provide sight barriers. The set-backs will preserve views, light and air. See By-Law Section 3.16.E.2.

29. The Project provides for convenience and safety of vehicular and pedestrian movement within the Site, and for appropriate location of the driveway openings in relation to traffic on site and Route 1, the adjacent street. See By-Law Section 3.16.E.3. The Fire Chief and the Board's consultant have expressed satisfaction with the driveway layout.

30. The Project provides for adequate methods of disposal of refuse and other wastes. The on-site septic systems are required to meet all applicable Title 5 standards. Approvals must be obtained from the Topsfield Board of Health before construction commences. Each dwelling unit shall keep trash

indoors and place trash outside at the proper time for recycling and pickup, as any other residence in Town. See By-Law Section 3.16.E.4.

31. The Project provides for suitable architectural design and a favorable relationship of structures and open space to the natural landscape, barriers and preservation of views, light and air. The buildings are located on the Site so as to preserve substantial open space. The buildings have a low profile, so as to preserve views, light and air. The buildings are laid out so as to avoid the appearance of row houses. The buildings are of varying designs, angles and textures and are set off with landscaping. The dwellings have favorable views of the open space. See By-Law Section 3.16.E.5.

32. The use requested is listed in the Table of Use Regulations (Article III) as a special permit in the Elderly Housing District.

33. The requested use is not detrimental to the public convenience or welfare. The Site is well buffered from the surrounding area. In fact, creating elderly housing on the Site will not only meet a public need, but will be a use that is not intrusive and will not place an undue burden on the Town services. Open space and the character of the area will be preserved.

34. The requested use will not create undue traffic congestion or unduly impair on-site pedestrian safety. All the traffic from the Site will connect to Boston Street and will not run through a single-family neighborhood. As stated by the traffic engineer, an over-55 project does not generate the level of peak hour traffic as a conventional residential development generates. There will be ample area on Site for pedestrian safety. There is no pedestrian use of Route 1.

35. The requested use will not overload any public water, public drainage, or public sewer system, or any other municipal system to such an extent that the requested use or any development use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety or the general welfare. Drainage and sewer systems are private and shall not impact public systems. The development of the Site will be done in a cautionary manner and will not subject the Town or immediate area to hazards affecting health, safety or the general welfare.

36. The requested use will not impair the integrity or character of the district or adjoining zones, nor be detrimental to the health, safety or welfare. The use is directly consistent with the Elderly Housing District in which the Site is located. The use of the Site for elderly housing will not impair the

integrity or character of the underlying district, or adjoining zones, and will not be detrimental to the health, safety or welfare because of the prudent design of the project and its low-impact design and buffering.

37. The Project proposal meets guidelines and performance standards supplemental to the nine standards for review contained in the By-Law and as are addressed above.

38. The Project has been designed to preserve and complement the visual context of the natural area. The vantage point to determine the visual perspective is from Route 1. The development has been designed so as to lessen its visual impact, preserve open space, preserve existing trees, provide additional landscaping, and provide appropriate screening. The development uses a cluster concept to preserve significant open area. Certain areas are being preserved. Buildings are set back a significant distance from Route 1. Buildings have low profiles. The major driveway connection to Route 1 is in the same area as the existing driveway. The change to the vegetation along Route 1 has been minimized, with the only changes relating to the driveway, Mass Department of Transportation (MassDOT) requirements and drainage controls. Mechanical equipment is being screened from Route 1. The above standards are shown on the Final Plans.

39. The Project meets the following Development Standards: (a) The buildings are set back hundreds of feet from Route 1. Due to extensive wetlands on the northerly side of the Site, and the existing development of adjacent properties, there is no practical alternative means of vehicular access to and from the Site, but from Route 1. The historical driveway connection for the Site has been via Route 1. (b) The layout of the parking and vegetative screening are designed so as to effectively screen the on-site parking from Route 1. (c) There shall be no garbage collection area or dumpsters. Mechanical equipment shall be screened from view from Route 1. (d) Except as is necessary to develop the project as is shown on the Final Plans, all healthy trees over twelve inches in diameter that are within the setback area shall be retained unless they are located within the area of the proposed dwellings, roadway-driveway, or utility areas. (e) The plan calls for strategically situated deciduous and evergreen trees so as to break up the view of buildings. The fact that the buildings are a greater distance from Route 1 than the minimal distance allowed in the By-Law and are low-rise and smaller in scale results in the buildings having a lesser visual impact on Route 1. The Board expressly allows the alterations as are shown on the Final Plans and

allows the grading and screening as is shown on the Final Plans. The Applicant has demonstrated to the Planning Board's satisfaction that the Final Plans satisfy the intent of and conditions of the By-Law.

40. The Board further finds as follows: (a) to the extent possible, the construction has been located behind and integrated with natural elevations and vegetated areas. The location of the buildings as shown on the Final Plans area a sufficient distance from Route 1 to preserve the scenic value of the property. (b) To the extent that it is feasible, the development is integrated into the existing landscape. The location and building configuration integrate the development into the existing landscaping and minimizes environmental impacts. The location and clustering of the buildings and other improvements preserve valuable open space that is northerly of the buildings and preserve wetland resource areas. Vegetation on the Site along Route 1 is being preserved to the extent practicable. (c) The driveway and buildings are appropriately located. (d) The project is designed to complement the visual content of the natural area. The proposed buildings are set-back from Route 1. The Site driveway follows the existing contours and is designed to minimize grade changes. Buildings are low-rise with New England architectural features. Buildings contain fewer units (two unit buildings) rather than longer buildings which the By-Law allows (up to six units per building are allowed) to avoid long building facades.

41. The Project as depicted on the Final Plans meets the requirements and criteria of Section 3.16 of the By-Law and other applicable standards.42. Due to the size and complexity of the project contemplated and in response to an application for an extension filed by the Applicant, pursuant to Section 3.16.F.1 of the By-Law, the Board finds good cause to extend the time to complete construction and/or use as required by and pursuant to Section 5.04.A.6 of the By-Law and G. L. Chapter 40A. The construction of the Infrastructure must be completed within three years. The construction of the exterior of all of the buildings must be completed within five years from the commencement of construction of the Project, unless delayed due to economic conditions. The construction of the exterior of a building must be completed within twelve months from the commencement of construction of that building. The Board reserves the right to grant further extensions of the above-stated deadlines upon request of the Applicant or its successors in title.

After careful consideration of the Final Plans (along with previous plans) and materials submitted during the hearing, and after due consideration of the comments of others, and based on its findings and deliberations, on April 18, 2017, the Board votes (by a ____ - ____ vote) to approve the Project, issue this site plan review approval and issue this elderly housing special permit, with and subject to the conditions stated below (the "Special Permit"). The decision of the Board to issue the above-referenced special permit and site plan approval is made pursuant to Section 3.16 and Article IX of the By-Law, and G. L. Chapter 40A section 11. This Special Permit runs with the land.

The Board waives those provisions of the Rules and Regulations Governing the of Subdivision of Land as are stated on the list of waivers that are attached hereto and marked **Exhibit A** so that the ways and infrastructure as are shown on the Final Plans are approved. The Board finds that the waivers granted are all of the waivers required for the project as proposed. Such waivers are not inconsistent with the intent and purpose of the Subdivision Control Law as the proposed ways provides safe and adequate access to the buildings and is in the public interest to allow a low impact development and to provide elderly housing with extensive open space.

CONDITIONS

The Board imposes the following conditions as part of this Special Permit and site plan approval:

1. Other Permits and Approvals: Before construction is commenced on the Site, the Applicant shall obtain a septic system permit from the Topsfield Board of Health, Orders of Conditions under the State Wetlands Protection Act and local wetland bylaws, Highway Access Permit to the extent required, and any other applicable permits and approvals required to commence such work on the project.
2. Conformity: The Applicant shall submit to the Building Inspector detailed construction and infrastructure Plans consistent with this permit and showing the location of all structures on the lots and the location of septic systems. If the Building Inspector determines that the

Plans are not in substantial compliance with the conditions of this permit, the Applicant shall apply to the Board for an amendment. The Applicant shall pay the appropriate administrative fees established by the Board. Except as provided herein, the Plans shall not be substantially changed without an amendment to this decision, after notice and hearing required by law. If, the Building Inspector is unable to determine whether the plans are in substantial compliance with the conditions of this permit, the Building Inspector shall refer the question to the Planning Board for a determination. Except as provided herein, the Applicant shall construct the Project in accordance with these plans and the Final Plan.

3. Permitted Building Changes: The exterior construction materials may be changed provided the general appearances of the buildings are of natural or synthetic hardwood board and does not change. Decks and patios shown on the plans may be modified to be sunrooms or enclosed porches. Other changes made be made to the configuration of the building provided the footprint does not change and the basic architectural design of the buildings do not change. The applicant has submitted three basic styles for the units, designated as style A, B and C. The plans show the proposed distribution of those three styles. The styles of units may be changed from one of those types to a smaller type. For example, the developer may choose to construct a B unit in place of an A unit, but may not construct an A unit in place of a B unit. Nevertheless, no more than 16 total A units shall be constructed and no fewer than four total C units shall be constructed. The buildings shall not be closer together than as is shown on the approved plans. The developer may select and change fuels and the source or energy for the development and the units.

4. Bedroom Limitations: Each of Condominium units shall have no more than two bedrooms, as the term "bedroom" is defined in the State Environmental Code 310 CMR 15.002. Neither the Applicant nor any future owner shall design, construct, finish or use either "attic" or "basement" space as bedrooms as those terms are defined in the State Building Code 780 CMR 202.0. No habitable space not indicated on the Architectural Plans as a bedroom shall be converted to a bedroom. These prohibitions shall be specified in all purchase and sale agreements for Condominium units in the Project and each unit deed shall contain the following recitation:

Pursuant to 310 CMR 15.00 Title 5 and as a condition of the Elderly Housing Special Permit granted pursuant to M.G.L. Chapter 40A and Section 3.16 of the Topsfield Zoning Bylaw, no habitable space not indicated on the Architectural Plans as a bedroom shall be converted to a bedroom and the number of bedrooms in the unit shall be limited to a maximum of two.

5. Construction Hours: The hours of operation for any construction activities onsite shall be between 7:00 a.m. and dusk, but not earlier than 5:00 p.m., Monday through Saturdays. Non-noise producing construction activities shall be allowed onsite on Sundays and on Holidays as recognized by the Commonwealth of Massachusetts.
6. Initial Construction: For the efficient development of the Site, site grading, earth movement and the installation of foundations of units 1 through 16, with wooden covers on the foundations for safety reasons, may be installed before the roadway has been built.
7. Access during Construction: The Applicant shall ensure safe and convenient vehicular access to the Site during the entire duration of the construction of the project. The Board and its representatives shall be permitted access to the Site to observe and inspect the Site and construction progress until such time as the Project has been completed.

The construction of ways, underground utilities and other improvements shall be inspected by the Planning Board or its agent at the expense of the Applicant in accordance with the provisions of Article 6 of the Topsfield Planning Board Rules and Regulations Governing the Subdivision of Land.

8. Connection to Route 1: The Final Plans as approved show a driveway connection to Route 1 with an alternative emergency access from Route 1, which affords adequate emergency equipment access to and from the Site. The alternative emergency equipment access shall be completed prior to the issuance of the first occupancy permit after the model unit. If the MassHighway does not approve the emergency access design, the Applicant must submit any reconfigured driveway connection design to the Planning Board for it to make a determination whether such connection provides safe and adequate vehicular access to and from the Site. No site work can commence until approval of any modification to the connection to Route 1 shown on the plan has been received from the Board.

9. Monthly Reports: While there is on-going construction on the Site, the Applicant shall submit monthly reports to the Board by a qualified person at the Applicant's expense, reasonably acceptable to and approved by the Board, and independent of the general site contractor. The reports shall evidence compliance of the construction with the Plans as follows:

- a) Erosion control devices, clearing, site preparation and rough grading;
- b) Installation of water system;
- c) Installation of septic system;
- d) Installation of drainage system (copies of reports submitted to the Conservation Commission shall satisfy this requirement);
- e) Subgrade preparation and subbase construction of the ways;
- f) Binder course installation of the ways;
- g) Final surfacing of the ways and installation of the berms, sidewalks, street lighting, finish grading, loam/seed, and landscaping.

10. Condominium Documents: The final master deed, Condominium association documents and Condominium bylaws ("Condominium Documents") are subject to the approval of Town Counsel at the Applicant's expense as to compliance with this decision and the Bylaw. Prior to the time when the first dwelling unit is conveyed to a purchaser, the Applicant shall record the approved Condominium Documents at the Essex South Registry of Deeds ("Registry"). The Applicant's attorney shall submit to Town Counsel a certification that the Condominium complies with the requirements of G.L. c. 183A, as amended. The Condominium Documents shall specifically require that that the Condominium Association shall be responsible for the maintenance and repair of the ways serving the Site, the storm water management systems, the detention ponds, the sewerage systems, and other common amenities and services.

11. Covenant: In order to assure the completion of the common driveway, drainage facilities and utilities, including water, septic system,

electricity, telephone, cable and gas, if any, (all collectively called "Infrastructure") shown on the Final Plans, the Applicant shall execute a Covenant in the form set forth as **Exhibit B** to this Decision (the "Covenant") and shall record that Covenant at the Essex South Registry of Deeds, at its sole cost and expense, prior to engaging in any activity on the Site. When the work covered by the Covenant has been completed or when a three-party agreement satisfactory to the Board has been provided, the Board shall issue a Release of Covenant in the form set forth as **Exhibit C** to this Decision (the "Covenant Release"). The Board shall also issue partial releases of the Covenant as to particular dwelling unit(s) if either (a) the Infrastructure that services the dwelling unit(s) is substantially completed; or (b) if a three-party agreement has been provided to secure the completion of the Infrastructure that services that dwelling unit(s).

12. **Three-Party Agreement:** Building permits may be issued for dwelling units, but no certificate of occupancy shall issue for a dwelling unit (other than for two sales model units that will not be used for overnight occupancy) unless either (a) all of the Infrastructure that services that dwelling unit has been substantially completed; or (b) the Applicant and its bank execute a three-party agreement substantially in the form set forth as **Exhibit D** to this Decision (the "Three-Party Agreement") with a construction cost line-item schedule as to work covered by that Three-Party Agreement with line items or an alternative security mechanism reasonably acceptable to the Board with sufficient security to insure completion of the Infrastructure for that dwelling unit(s). Once the Three-Party Agreement has been accepted by the Board, the Board shall issue a Covenant Release as to the dwelling unit(s) covered by the Three-Party Agreement. As the work covered by a Three-Party Agreement progresses, the Board shall release funds held for the completed work. When all of the work covered by a Three-Party Agreement has been completed, the Three-Party Agreement shall be terminated and the bank released. Other forms of security as allowed by G.L. c. 41 s. 81U may be provided.
13. **Certificate of Occupancy:** Once the connections from Route 1 to a dwelling unit has been completed to binder course, and the emergency access way is completed to its specified finish course, and there are permanent utility connections to that dwelling unit with an operating

septic system servicing that dwelling unit and the Applicant has provided the Board with the Three-Party Agreement or alternative completion security reasonably acceptable to the Board as to the finishing of that Infrastructure, the Applicant may obtain a certificate of occupancy for that dwelling unit and may convey individual dwelling units in accordance with the Local Preference Plan.

14. Commencement and Completion of Work: Due to the size and complexity of the project contemplated and authorized by this Special Permit, and in response to an application for an extension filed by the Applicant, pursuant to Section 3.16.F.1 of the By-Law, the Board finds good cause to extend the time to complete construction and/or use as required by and pursuant to Section 5.04.A.6 of the By-Law and G. L. Chapter 40A. The construction of the Infrastructure must be completed within three years. The construction of the exterior of all of the buildings must be completed within five years from the commencement of construction of the Project, unless delayed due to economic conditions. The construction of the exterior of a building must be completed within twelve months from the commencement of construction of that building. The Board reserves the right to grant further extensions of the above-stated deadlines upon request of the Applicant or its successors in title.

Areas of the Site that have been disturbed and on which construction is not proceeding shall be stabilized with grass or other vegetation. Any area within the jurisdiction of the Topsfield Conservation Commission will be stabilized pursuant to the Order of Conditions and if none is required, grass or other vegetation.

15. Amendment: The Board reserves the right, in so far as consistent with state law, to further review and amend this decision for good cause and based upon any information that comes before the Board as a result of the Applicant's future need to acquire permits from any local, State or federal authority which information affects the plans submitted with the project and approved by the Board. If Mass DOT requires changes made to on-site portions of the driveway or emergency way to Route 1, the Board may approve those changes at a public meeting,
16. Project Change: If, between the date that this decision is filed with the Office of the Town Clerk and the completion of the Project, the

Applicant desires to change any details of the Project, as set forth in the plans referred to in this Decision, or as required by the terms of this Decision, except as otherwise allowed herein, the Applicant shall promptly inform the Board in writing of the change requested. If requested by the Applicant, or if so determined by the Board, a public hearing shall be held. The requested change may be approved by the Board, without a hearing, in the event that the requested change is determined by the Board to be of insignificant impact upon the Project or the neighboring area.

17. Addresses: The property address of each building in the Project shall be established to the satisfaction of the Fire and Police Departments.
18. Maintenance of Septic Systems: Prior to the issuance of any certificate of occupancy, the Applicant shall deliver to the Board of Health a copy of the maintenance contract for the septic systems and a copy of the Condominium budget showing line items for the cost of the contract as well as the establishment of a Condominium reserve fund.
19. O&M Drainage System: The Condominium Association shall pay fees, if any, incurred by the Planning Board in monitoring compliance with the Operation and Maintenance Plan as to the drainage system. This condition continues in perpetuity. The Condominium Documents shall reflect this obligation. If at any time, maintenance of the drainage facilities does not comply with the provisions hereof, then the Planning Board may provide written notice thereof to the Condominium Association specifying the nature of the non-compliance (a "Default Notice"). The Condominium Association shall remedy the default not later than thirty (30) days following receipt of the Default Notice, or such longer period of time as may reasonably be required to so remedy the non-compliance provided the Condominium Association commences the cure within the aforesaid thirty (30) day period and diligently prosecutes the cure to completion in the sole discretion of the Board. If the Condominium Association fails to cure such default as aforesaid, then the Town may take any and all necessary action to assure proper compliance and may assess against the Condominium Association all costs incurred by the Town, including attorneys' fees and costs, for such purpose. Any such assessment not paid within thirty (30) days after demand therefore shall bear interest from the date of demand at the rate established by law for interest upon money judgments, and the Town may bring an action at law to collect such

assessment, and there shall be added to the amount of such assessment in such event, all costs incurred by the Town for such collection, including attorneys' fees.

20. Ways Remain Private: The Condominium Association shall not seek to have any roads or driveways which are located on the Rolling Green Land accepted by the Town as public ways. There shall be no on-street parking of vehicles on the entrance way between Route 1 and the looped portion of the way and no on-street parking on the portions of the looped way in the areas so designated on sheet C-2 of the Final Plan.
21. Local Preference Plan: The Applicant shall adhere to the terms of the Local Preference Plan as has been approved by the Board in order to implement the provisions of Section 3.16.C.1.s of the Bylaw. The Local Preference Plan is attached to this decision and is marked Exhibit E. The Master Deed shall expressly reference the Local Preference Plan.
22. Recording Charges: The Applicant shall be responsible for recording costs as to documents required to be recorded by the Special Permit.
23. Open Space Management: The Condominium Documents shall contain a management plan as to the management and maintenance of the common area and open space on the Site that is satisfactory to the Board. The Condominium Association shall be responsible for the management and maintenance of the common area and open space on the Site consistent with the Open Space Management Plan.
24. Elderly Use: Each building shall contain two (2) independent dwelling units consisting of a suite of rooms, its own bath and toilet facilities and its own kitchen. At the time of occupancy, in each such dwelling unit, one of the residents must be a person who is fifty-five (55) years of age or over, except as provided in the approved master plan regarding the death or disability of the occupant over 55-years old. No dwelling unit shall be resided in by more than three people. The Condominium Documents shall be recorded senior to any liens on the premises to protect the enforceability of this restriction and number of occupants in the event of a foreclosure, bankruptcy, refinance or sale. This restriction shall survive termination of the Condominium.

25. Snow Removal and Storage; Ice: The Town has no obligation to plow snow from the ways in the Site. The Condominium Association shall see that snow is plowed from the ways in a timely manner so as to maintain adequate access to the dwelling units and parking. Snow shall not be stockpiled in a manner that interferes with the functioning of the drainage system. The use of rock salt is to be reduced to the amount of salt that is necessary for public safety and in accordance with any Order of Conditions issued for the Project. There shall be full compliance with the Snow Storage Plan, Sheet C-7, filed with the Board. Snow will be stockpiled on the site until there is not enough space. As necessary, the snow will be removed and disposed of off-site. It will be the responsibility of the snow removal contractor to properly dispose of transported snow according to the Massachusetts DEP, Bureau of Resource Protection – Snow Disposal Guideline #BRPG01-01, governing the proper disposal of snow. It will be the responsibility of the snow removal contractor to follow these guidelines and all applicable laws and regulations. Snow shall not be plowed into wetlands.
26. Sprinkler System: Each unit shall have an operational fire suppression sprinkler system conforming to the standards of NFPA 13D. The Condominium Documents shall require the Condominium Association to maintain and monitor those systems.

ENVIRONMENTAL MATTERS

27. Orders of Conditions: The Applicant shall comply with the Order of Conditions issued by the Topsfield Conservation Commission issued as to the Project, as it may be modified by the Conservation Commission. Any violation of the Orders of Conditions shall also be a violation of this Special Permit.
28. Septic Systems: The Applicant shall comply with the Septic Permit issued by the Topsfield Board of Health. Any violation of the Septic Permit shall also be a violation of this Special Permit. Prior to the issuance of any certificate of occupancy, the Applicant shall deliver to the Board of Health a copy of the maintenance contract for the septic system and a copy of the Condominium budget showing line items for the cost of the contract as well as the establishment of a Condominium reserve fund.

29. Landscaping: The Applicant shall supply landscaping in the areas and of the type as is shown on the plans submitted by the Applicant and entitled "Residential Development, 470 Boston Street (Route 1), Topsfield, MA; Scale: 1"=30'; dated 10/13/2017; revised to 3/16/17; Brown/Sardina, Landscape Architecture; Planting Plan L-1" and "Plant List and seeding Plan" (both referred to collectively as the "Landscaping Plan"). Further, the applicant shall establish landscaping in front of the buildings on the Site substantially like that shown on the Landscaping Plan.
30. Restoration Bond: Before construction commences on the Site the Applicant shall provide a bond in the amount of \$10,000 to secure the stabilization and revegetation of disturbed areas of the Site in the event the Project is not completed in accordance with this Special Permit. Said bond will be either a cash bond or tri-partite agreement as described in M.G. Laws Chapter 41, Section 81U. The amount of the security shall be reduced as portions of the Site are completed.

The invalidation of any one or more of the provisions of this Decision by judgment or court order shall in no way affect any other provision hereof, which shall remain in force and effect. Any ongoing conditions provided for in this Decision will remain in perpetuity. Titles for captions used at the beginning of each paragraph or part of this Decision are included as a matter of convenience, and are not to be construed or considered as a part of this Decision. No termination of this Decision and no modification, or instrument purporting to modify any condition, term or provision of this Decision shall be valid unless it is approved in writing by the Planning Board and recorded at the Essex South Registry of Deeds. This Decision is made in and shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

There has been full compliance with the statutory requirements for the issuance of this Special Permit and site plan approval. This Decision will be filed with the Topsfield Town Clerk and Planning Board. Any person aggrieved by the Decision of the Board has the right to appeal to the Land Court or Superior Court within twenty (20) days from the date of filing of this Decision with the Town Clerk under Section 17 of the M.G. Laws, Chapter 40(A). Notice of such an appeal with a copy of the complaint must also be filed with the Topsfield Town Clerk within said twenty days, all as provided in said Section 17.

TOPSFIELD PLANNING BOARD

Matthew J. Morrison

J. Allen
Conrad
C. Jack Ford

Blaine M.

Being more than a majority of the
Planning Board

EXHIBIT A

Section	Heading	Compliant	Waiver Required	Not Applicable	Finding / Action Taken
Table Of Contents				X	
Article 1	Purpose & Authority			X	Article does not specify requirements for construction of roads and ways. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
Article 2	Definitions			X	Article does not specify requirements for construction of roads and ways. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
Article 3	General			X	See Article 3.4 below, all others from Article 3 do not specify requirements for construction of roads and ways. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
3.4	Time for Completion	X	X		The time for completion is expressly covered by section 3.16.F.1. Due to the size of the project, the Board has granted additional time to the applicant to complete the project.

Article 4	Procedure for Submission and Approval of Plans			X	Article does not specify requirements for construction of roads and ways. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
Article 5	Design and Construction Standards			X	Heading only, See itemized sections below
5.1	Streets			X	Heading only
5.1.1	Location			X	Heading only
5.1.1.a		X			The Board finds the Final Plans are compliant with the provisions of this section.
5.1.1.b		X			The Board finds the Final Plans are compliant with the provisions of this section.
5.1.1.c		X			The Board finds the Final Plans are compliant with the provisions of this section.
5.1.1.d		X			The Board finds the Final Plans are compliant with the provisions of this section.
5.1.2	Cross Sections		X		The Board finds the ways are consistent with the purposes of Low Impact Development Guidelines. The Board finds the design of the ways provide for safe vehicular travel. The cross sections as shown on the plans are sufficient to provide safe and adequate access to all dwellings and for emergency vehicles. A waiver from this section and from Table 1 is hereby granted to permit construction as shown on the Final Plan.

5.1.3	Alignment, Grade, Dead End and Intersections		X		The Board finds the alignment, grade, dead end length and angle of intersections to be consistent with the purposes of the Low Impact Development Guidelines. The Board finds the alignment of the roadway, the grades and intersections are appropriate and adequate and that the length of the travelled way is sufficient. The Board grants waivers from the standards shown on Table 1 to allow the ways as shown on the Final Plans.
5.1.4	Dead End Streets			X	Heading only
5.1.4.a			X		The regulations require that a dead-end street or dead-end interior drive shall not extend more than 650 feet. The Board finds the length of the travelled way, in conjunction with the emergency access as shown on the Final Plans provides sufficient, adequate and safe access. The Board hereby grants waivers to the dead-end drive limitation to allow the roadway to be as shown on the Final Plan. .
5.1.4.b				X	The Board finds the language in this section is for purpose of definition only and waivers do not apply.

5.1.4.c		X			<p>The Highway Superintendent and Fire Chief have submitted written approval of the design of the ways within the development, and the Town's engineering consultant concurred. The Board finds that the design includes an adequate and sufficient alternative means of emergency access well into the site. The Board finds that the looped configuration of roadway provides alternative access to the majority of the development. The Board hereby waives the requirements of Section 5.1.4.a and to the extent that it may apply, 5.1.4.b, as provided under this section.</p>
5.1.5	Site and Earthwork			X	Heading Only
5.1.5.a		X			<p>The Board finds this section is providing specification for earthen materials. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.</p>
5.1.5.b		X			<p>The Board finds the construction of the roads and ways shall be compliant with this section.</p>
5.1.5.c		X			<p>The Board finds the construction of the roads and ways shall be compliant with this section.</p>
5.1.5.d				X	<p>The Board finds this section to apply to roads and ways constructed within a right of way and not to private site drives and thus no waiver is required.</p>
5.1.5.e		X			<p>The Board finds the Final Plans complies with this section.</p>

5.1.5.f		X				The Board finds the Final Plans complies with this section.
5.1.5.g		X				The Board finds the Final Plans complies with this section.
5.1.5.h		X				The Board finds the Final Plans complies with this section.
5.1.6	Pavement Structure				X	Heading Only
5.1.6.a		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.1.6.b		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.1.6.c		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.1.6.d	Binder Course	X				The Board finds the Final Plans are compliant with the provisions of this section.
5.1.6.e	Surface Course	X				The Board finds the Final Plans are compliant with the provisions of this section.
5.1.7	Driveways				X	Heading Only
5.1.7.a		X			X	The Board finds that the Main Site Drive is compliant with the provisions of this section. The Board finds that the provisions of this section do not apply to the individual unit driveways accessed from the site driveway. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.

5.1.7.b		X		X	The Board finds that the Main Site Drive is compliant with the provisions of this section. The Board finds that the provisions of this section do not apply to the individual unit driveways accessed from the site driveway. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.2	Shoulders			X	The Board finds the inclusion of shoulders where shown on the Plans to be consistent with the purposed of Low Impact Development Guidelines. The Board finds the provisions of this section do not apply to the development as the roads and ways are not to be a public way. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.3	Curbing		X		The Board finds that due to the alignment and radii of the proposed ways within the development, granite curbing is not necessary at all intersections. A waiver is hereby granted to permit construction as shown on the Final Plans.
5.4	Sidewalks			X	Heading only
5.4.1		X			The Board finds the Final Plans are compliant with the provisions of this section.

5.4.2				X		The Board finds that the sidewalks as shown on the Final Plans are consistent with the purposes of the Low Impact Development Guidelines. Furthermore, the Board finds that a sidewalk on both sides of the road is not warranted by the density of the development. The Board finds that sidewalks connecting to Route 1 are not warranted as there is no pedestrian destination and no sidewalks are present on Route 1 to tie into. A waiver is hereby granted to permit construction as shown on the Final Plans.
5.4.3	Bituminous Concrete Sidewalks Shall:				X	Heading only
5.4.3.a		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.4.3.b		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.4.3.c		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.4.4					X	The Board finds the proposed development is not a Type II Subdivision and therefore the provisions of this section do not apply. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.4.5	Cement Concrete				X	Heading only

	Sidewalks Shall:				
5.4.5.a				X	The Board finds the proposed development is not a Type II Subdivision and therefore the provisions of this section do not apply. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.4.5.b				X	The Board finds the proposed development is not a Type II Subdivision and therefore the provisions of this section do not apply. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.4.5.c				X	The Board finds the proposed development is not a Type II Subdivision and therefore the provisions of this section do not apply. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.4.5.d				X	The Board finds the proposed development is not a Type II Subdivision and therefore the provisions of this section do not apply. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.

5.4.5.e					X	The Board finds the proposed development is not a Type II Subdivision and therefore the provisions of this section do not apply. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.4.5.f					X	The Board finds the proposed development is not a Type II Subdivision and therefore the provisions of this section do not apply. To the extent any portion of this Section may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.5	Grass Strips				X	Heading Only
5.5.1				X		In accordance with Low Impact Development Guidelines, the Board finds that grass strips are not warranted in all locations where there are sidewalks proposed. A waiver is hereby granted to permit construction as shown on the Final Plans.
5.5.2			X			The Board finds the Final Plans are compliant with the provisions of this section where grass strips are shown.

5.5.3		X			In accordance with Low Impact Development Guidelines, the Board finds that grass strips are not warranted in all locations where there are sidewalks proposed. The Board finds tree planting as shown on the plans is approved by the Tree Warden. To the extent the provisions of this section apply, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.5.4		X			In accordance with Low Impact Development Guidelines, the Board finds that grass strips are not warranted in all locations where there are sidewalks proposed. The Board finds the Plans are compliant where grass strips are shown. To the extent the provisions of this section apply, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.6	Side Slopes	X			The Board finds the Final Plans are compliant with the provisions of this section.
5.7	Street Name Signs	X			The Board finds the Final Plans are compliant with the provisions of this section.
5.8	Bridges	X			The Board finds the Final Plans are compliant with the provisions of this section. No bridges are shown on the Plans.
5.9	Underground Utility Systems	X			The Board finds the Final Plans are compliant with the provisions of this section.

5.10	Street Lighting	X				The Board finds the street lighting as shown on the Final Plans are sufficient, adequate and will not adversely affect nearby properties. The lighting as shown on the plan is approved.
5.11	Fire Alarm and Police Call Boxes				X	The Board finds that suitable emergency and security provisions as called for in this Decision are more appropriate than Fire Alarm and Police Call Boxes. To the extent that the provisions of this Section apply, a waiver is hereby granted.
5.12	Utilities				X	Heading Only
5.12.1	General				X	Heading Only
5.12.1.a		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.1.b		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.1.c		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.1.d		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.1.e		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.1.f		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.1.g		X				The Board finds the Final Plans are compliant with the provisions of this section.

5.12.1.h		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.1.i		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.1.j		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.2	Water				X	Heading Only
5.12.2.a		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.2.b		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.2.c		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.2.d		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.2.e		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.2.f		X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.2.g		X				The Board finds the Final Plans are compliant with the provisions of this section. Any on-site system would need to conform to this section.
5.12.3	Drainage				X	Heading Only

5.12.3.a			X		The methods of construction and quality of materials used have been reviewed by the Highway Superintendent and the peer review consultant and found to be satisfactory. The system and roadway shall remain private and its maintenance is not the Town's responsibility. The Board hereby grants a waiver from this Section to permit construction as shown on the Final Plans.
5.12.3.b		X			The drainage design and accompanying Drainage Report with calculations included therein have been reviewed by the peer review consultant and found to be in full compliance with DEP & the Local Stormwater Management by laws. Any provision imposing another standard is hereby waived.
5.12.3.c		X			The drainage design and accompanying Drainage Report with calculations included therein have been reviewed by the peer review consultant and found to be in compliance with the provisions of this Section.
5.12.3.d		X			The drainage design and accompanying Drainage Report with calculations included therein have been reviewed by the peer review consultant and found to be in compliance with the provisions of this Section.
5.12.3.e			X		The sizing and spacing and quality of materials used have been reviewed by the Highway Superintendent and by the peer review consultant and found to be satisfactory. The Board hereby grants a waiver from this Section to permit construction as shown on the Final Plans. The Final Plans show the use of HDPE pipe, which the Board finds acceptable.

5.12.3.f	X				The design of the drainage system including the methods of construction, quality of materials, and the sizing and spacing of its components have been reviewed by the Highway Superintendent and the peer review consultant and found to be satisfactory and consistent with the purposes of the Low Impact Development Guidelines and the provisions of this Section. To the extent that any provisions of this section may apply, the Board hereby grants a waiver to permit construction as shown on the Final Plans.
5.12.3.g	X				The Board finds the Final Plans are compliant with the provisions of this Section and that no off site drainage connections are proposed.
5.12.3.h				X	The Board finds there is no public drainage system within 300' of the development that warrants a connection. To the extent that any provisions of this Section may apply, a waiver is hereby granted.
5.12.3.i	X				The Board finds the Final Plans are compliant with the provisions of this section.
5.12.3.j	X				The Board finds the Final Plans do not include any construction within an open stream channel and thus the Plans are compliant with the provisions of this section.
5.12.3.k	X				The Board finds the Final Plans are compliant with the provisions of this section.

5.12.3.1		X			The Board finds the Final Plans are compliant with the provisions of this section.
5.12.3.m		X			The design of the drainage system including the methods of construction, quality of materials, and the sizing and spacing of its components have been reviewed by the Highway Superintendent and the peer review consultant and found to be satisfactory. The system shall remain private and its maintenance is not the Town's responsibility. To the extent that any provisions of this Section may apply, the Board hereby grants a waiver to permit construction as shown on the Plans.
5.12.3.n		X			The Board finds the Final Plans are compliant with the provisions of this section.
5.12.3.n(1)		X			The Board finds the Final Plans are compliant with the provisions of this section.
5.12.3.n(2)		X			The Board finds the Final Plans are compliant with the provisions of this section.
5.12.4	Sanitary			X	Heading Only
5.12.4.a		X			The Board finds there is no public sewerage system available and as such, the Final Plans are compliant with the provisions of this Section.
5.12.4.b				X	The Board finds this section does not specify requirements for construction of roads and ways and therefore does not apply. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans. [See Zoning By-Law Section 3.16,C.1.i]

5.12.5	Other Utilities	X			The Board finds the Final Plans are compliant with the provisions of this section.
5.13	Easement			X	Heading Only
5.13.1				X	Easements for utilities as shown on the Plans have been reviewed by the Highway Superintendent and Water Department and found to be located where necessary and of sufficient width. To the extent that any provisions of this Section may apply and require other than as shown on the Final Plan, the Board hereby grants a waiver.
5.13.2				X	The Board finds this section does not specify requirements for construction of roads and ways and therefor does not apply. See Zoning By-Law Section 3.16.C.1.i. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.13.3				X	The Board finds this section does not specify requirements for construction of roads and ways and therefor does not apply. See Zoning By-Law Section 3.16.C.1.i. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.13.4				X	Whereas the roads and ways within the development are to remain private ways without a right of way delineated, the Board finds the provisions of this Section do not apply. There is no "temporary" turn around. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.

5.14	Monuments			X	Heading Only
5.14.1				X	Whereas the roads and ways within the development are to remain private ways without a right of way delineated, the Board finds the provisions of this Section do not apply. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.14.2				X	Whereas the roads and ways within the development are to remain private ways without a right of way delineated, the Board finds the provisions of this Section do not apply. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.14.3				X	Whereas the roads and ways within the development are to remain private ways without a right of way delineated, the Board finds the provisions of this Section do not apply. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.
5.15	Retaining Walls	X			The Board finds no retaining walls associated with the roads and ways are included in the Final Plans and therefor the Plans are compliant with the provisions of this Section. See Zoning By-Law Section 3.16.C.1.i.
5.16	Fencing	X			The Board finds that fencing as shown on the Final Plans is sufficient and provides adequate safety. Thus the Board finds the Plans are compliant with the provisions of this Section.

5.17	Guard Rails	X			Based on review and comment from Highway Superintendent and peer review consultant, the Board finds that guard rails as shown on the Plans are sufficient and provide adequate safety. Thus the Board finds the Final Plans are compliant with the provisions of this Section.
5.18	Open Spaces			X	The Board finds this section does not specify requirements for construction of roads and ways and therefor does not apply. Walking trails as shown of the plans are to remain private. See Zoning By-Law Section 3.16.C.1.i. To the extent any portion of this Article may be applicable, a waiver is hereby granted from the provisions of this Section.
5.19	Protection of Natural Features	X			The Board finds the Final Plans are compliant with the provisions of this Section.
5.20	Tree Planting			X	Heading only
5.20.1				X	The Board finds the provisions of this section do not apply to the development as the roads and ways are not to be a public way and that no lots are created by the development. See Zoning By-Law Section 3.16.C.1.i. The Board further finds that the tree planting as shown on the Final Plans are sufficient and provide a suitable aesthetic quality/ appropriate natural setting; and are consistent with the purposed of the Low Impact Development Guidelines. To the extent any portion of this Article may be applicable, a waiver is hereby granted to permit construction as shown on the Final Plans.

5.20.2			X	To the extent this provision is even applicable, the Board finds that it is not consistent with good land use planning or the potential occupants or abutters for the Board to require that any deciduous trees be clear of any branches from the approved grade level to a point seven feet (7') above ground level; and waives this requirement.
5.20.3		X		The Board finds the Final Plans are compliant with the provisions of this Section.
5.20.4		X		The Board finds the Final Plans are compliant with the provisions of this Section.
5.21		X		This Decision includes a condition requiring such As-Built Plans to be submitted as called for in the Section.
5.22		X		The Board finds the Final Plans are compliant with the provisions of this Section.
Article 6	Administration	X		The Board finds the proposed development shall comply with this Article.
Article 7	Effective Date and Repealer		X	The Board finds this Article does apply directly to the construction of roads and ways and thus no waiver is applicable. See Zoning By-Law Section 3.16.C.1.i

EXHIBIT B

TOWN OF TOPSFIELD, MASSACHUSETTS,
PLANNING BOARD COVENANT
ROLLING GREEN

KNOW ALL MEN BY THESE PRESENTS

That, whereas the undersigned, _____, having offices at _____, is the owner in fee simple by virtue of the deed recorded in Book ___, Page ___ with the Essex South Registry of Deeds and has submitted an application dated _____, 2016, to the Topsfield Planning Board for site plan and special permit approval for the construction of (i) 30 dwelling units to be used as multiple-family residences for the elderly pursuant to the Topsfield Zoning Bylaw, Article III, Section 3.16 , and (ii) related amenities to be located on the land known as 470 Boston Street, Topsfield, Massachusetts, (the "Land") more particularly described in Schedule A thereto (collectively, the "Development"), and has requested the Board to approve such Development without requiring a performance bond.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the Topsfield Planning Board approving said Development without requiring a performance bond, the undersigned covenants and agrees with the Town of Topsfield as follows:

1. The undersigned will not convey any dwelling unit in the Development until construction of the driveways, septic system, water line, utilities and drainage facilities has been substantially completed to service that dwelling unit in the manner specified in the Final Plans for the Development as defined in the Decision of the Topsfield Planning Board on the Elderly Housing Special Permit and Site Plan Review Application of Sarkis Development Company for the Property at 470 Boylston Street, Topsfield, Massachusetts known as Rolling Green and dated _____, and in accordance with the covenants, conditions, agreements, terms and provisions thereof, or adequate security in the form of a three-party agreement has been provided to the Town, in a form and amount reasonably acceptable to the Planning Board.

2. This agreement shall be recorded prior to the issuance of any

building permit and shall be binding upon the executors, administrators, devisees, heirs, successors and assigns of the undersigned and shall inure to the benefit of the Topsfield Planning Board and the successors in office of said Board. The Topsfield Planning Board and successors in office shall have the right and power to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations hereof.

3. This agreement shall constitute a covenant running with the Land included in the aforesaid Development and shall operate as restrictions upon said Land. This covenant shall take effect upon the recordation of the Special Permit decision relating to the Development. This Covenant shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

4. It is understood and agreed that dwelling units within the Development may be released from the foregoing conditions upon the recording of a partial release executed by a majority of the Topsfield Planning Board and enumerating the specific units to be so released when the work is done or adequate security has been provided to the Town.

5. The undersigned represents and covenants that the undersigned is the owner in fee simple of the Land and that there are no mortgages of record or otherwise on any of said Land, except those who have executed an assent to this covenant.

IN WITNESS WHEREOF the undersigned, applicant as aforesaid, does hereunto set its hand and seal this ____ day of _____ 2017.

COMMONWEALTH OF MASSACHUSETTS

County of Essex

On this ____ day of _____, 2017 before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was a driver’s license with a photographic identification, to be the person whose name is signed on the preceding or attached document, and who swore and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of _____.

Notary Public
My commission expires:

EXHIBIT C

RELEASE OF COVENANT

KNOW ALL MEN BY THESE PRESENTS

That, _____, executed a Covenant with the Topsfield Planning Board regarding the construction of the driveways, septic system, water line and drainage facilities in the Elderly Housing Development known as Rolling Green on the land known as 470 Boston Street, Topsfield, Massachusetts, which Covenant is recorded at the Essex South District Registry of Deeds at Book _____, Page _____; and whereas, there has been either substantial completion of the driveways, septic system, water line and drainage facilities that service the below listed dwelling units in the manner specified in the approved plans (as referred to in the Decision as "Final Plans" or any valid modification and/or amendment thereto) for the Development or Topsfield Rolling Green, LLC has provided a three-party agreement to secure the completion of the driveways, septic system, water line and drainage facilities that service the below listed dwelling units, the Planning Board does hereby release the following dwelling units from the Covenant:

Dwelling Units being released:

_____, and being a portion of the Rolling Green Project as shown on a plan entitled _____ which was recorded with the Essex South Registry of Deeds on _____ Plan Book ____ of 2017, pages _____, to which reference may be made for a more particular description, are hereby released from the terms, provisions and conditions as to sale and building thereon as set forth in an (title of Planning Board Decision) dated March __, 2017 and recorded with the Essex South Registry of Deeds in Book _____, Page _____. The above noted addresses comprise only a portion of all buildings to be constructed.

IN WITNESS WHEREOF the Topsfield Planning Board, does hereunto set its hand and seal this ____ day of _____ 201____.

TOPSFIELD PLANNING BOARD

Being a Majority of the
Planning Board

COMMONWEALTH OF MASSACHUSETTS

County of Essex

On this ____ day of _____, 201____, before me, the undersigned notary public, personally appeared _____,

_____,
being a majority of the Topsfield Planning Board, proved to me through satisfactory evidence of identification, which was a governmentally issued identification with a photograph, to be the persons whose names are signed on the preceding or attached document, and who acknowledged to me that they signed it voluntarily for its stated purpose on behalf of the Topsfield Planning Board.

Notary Public
My commission expires:

EXHIBIT D

Three-Party Agreement

In consideration of the mutual promises contained herein by and between _____, having an address of _____, (hereinafter referred to as the "Developer"), and _____ Bank, a banking corporation, duly organized and existing under the law, and having a usual place of business at _____ (hereinafter referred to as the "Bank"), and the Planning Board of the Town of Topsfield, Massachusetts (hereinafter referred to as the "Board").

WITNESSETH:

WHEREAS, the Developer is building a residential development of up to 30 townhouse style dwelling units to be part of a condominium created under MGL Chapter 183A and to be known as Rolling Green Condominium pursuant to an elderly housing special permit recorded at the Essex South District Registry of Deeds ("Registry") at Book _____, Page _____, and site plan review and other approvals (collectively called "Approvals") as issued by the Board (hereinafter referred to as the "Project") on the property known as 470 Boston Street, Topsfield, MA, comprised of 13.24 acres of land, more or less, in Topsfield, as is further described in the deed to the Developer recorded at Registry Book _____, Page _____ (the "Property"); and

WHEREAS, the Developer has executed and delivered to the Bank a Promissory Note in the amount of \$ _____ (hereinafter referred to as the "Note"), said Note being secured by a first mortgage on the Property dated _____, 201____, and recorded with Essex South Registry of Deeds, Book _____, Page _____.

NOW, THEREFORE, in order to secure the completion of the private roads and ways within the Property, storm drainage controls, the installation of water services and utilities (gas, electric and septic system) to service the dwellings to be built on the Property ("Infrastructure") as are shown on the plans that have been approved by the Board, the Developer, the Bank as the lender, and the Board hereby agree to the following:

1. Retainage: In consideration of the release contained hereinbelow, the Developer and Bank hereby agree that the Bank is hereby withholding from the Developer the sum of \$ _____ ("Funds"), from the Note, said sum to be retained by the Bank to secure the proper completion of the Infrastructure in accordance with the Approvals. The dollar amount assigned to each component or segment of the Infrastructure is stated on Exhibit "A" attached hereto and by this reference specifically incorporated herein. During the term of this Agreement the Bank shall retain the Funds unless reduced by the terms of this

Agreement. The Bank agrees that it shall not disburse any of the Funds retained hereunder as security without the express prior written permission from the Board to release said funds.

2. Release of Funds: When work or portions of work on the Infrastructure has been achieved and approved by the Board, an appropriate portion of the sums so held under this Agreement shall be released by the Bank to the Developer. Recognizing that the release of Funds is important to enable the Developer to pay for such work, the approval by the Board shall not be unreasonably denied or delayed. When a release of a portion of the Funds has been approved, the Board, acting through its Chairman or other designee, shall provide a written statement to the Bank forthwith stating the amount of the Funds that may be released. The Developer shall pay for inspections necessary to determine whether work has been done so that Funds may be released to the Developer.

The Bank shall have the right to rely on such certification and permission from the Chairman of the Board without further inquiry. The Bank's liability hereunder shall be reduced as payments are made in accordance with such certification and the Bank's liability shall then be limited to undisbursed Funds. The Bank shall be released from its obligations under this Agreement once it has disbursed all Funds pursuant to authorization from the Board.

3. Board's Access to Funds: In the event that the Infrastructure is not completed in accordance with the Approvals and related plans and the Developer fails to correct material deficiencies within a reasonable time after notice of the deficiency has been given to the Developer, any Funds then held by the Bank under this Agreement shall be made available to the Board for completion of said Infrastructure. It is agreed that unreleased Funds shall be made available to the Board within thirty (30) days from the receipt by the Bank of a demand letter from the Board to the Bank requesting same. Upon delivery of the aforesaid amount to the Town of Topsfield, the Bank shall be discharged of its liability relative to said monies held pursuant to this Agreement and this Agreement shall be null and void with respect to the Bank. The Board shall have recourse against the undisbursed Funds notwithstanding any transfer of title, assignment, bankruptcy by or against the Developer, subject only to contrary court order. The Developer agrees to such a release arrangement.
4. Release: In consideration of the security provided in this Agreement, the Board releases the Property and Project from only those covenants contained in the Approvals and any other covenants and restrictions that would prohibit the issuance of building permits, the issuance of certificates of occupancy and the sale and conveyance of units in Rolling Green Condominium, provided that, other than for two model units, before a certificate of

occupancy is issued for a dwelling unit there shall be an operational, Board of Health approved septic system serving that dwelling unit and permanent water and utility connections to that dwelling unit and safe driveway access (completed to binder course of pavement) between that dwelling unit and Boston Road.

5. Bound: This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.
6. Amendments and Assignments: No amendment to or assignment of this Agreement shall be effective unless agreed upon in writing by all parties to this Agreement.
7. Notices: All notices and other communications required or permitted hereunder shall be in writing and mailed postage prepaid by registered or certified mail or delivered by hand, as follows:

In the case notice to the Board to: Planning Board
 Town Hall
 8 West Common St
 Topsfield, MA

In the case notice to the Developer to:

In the case notice to the Bank to:

[The balance of this page is blank. The next pages are the signature pages.]

IN WITNESS WHEREOF, _____ has caused this agreement to be signed and sealed by _____, its _____, duly authorized on this ____ day of _____, 201____.

By _____

COMMONWEALTH OF MASSACHUSETTS

County of Essex

On this ____ day of _____, 201__ before me, the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which was a driver's license with a photographic identification, to be the person whose name is signed on the preceding or attached document, and who swore and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of _____

Notary Public
My commission expires:

IN WITNESS WHEREOF, the Topsfield Planning Board has caused this agreement to be signed and sealed on this ____ day of _____, 201__.

Being a majority
of the Topsfield
Planning Board

COMMONWEALTH OF MASSACHUSETTS

County of Essex

On this ____ day of _____, 201__ before me, the undersigned notary public, personally appeared _____, as Members of the Topsfield Planning Board proved to me through satisfactory evidence of identification, which are driver's licenses with a photographic identification, to be the persons whose names are signed on the preceding or attached document, and who swore and acknowledged to me that they signed it voluntarily for its stated purpose on behalf of the Topsfield Planning Board.

Notary Public
My commission expires:

EXHIBIT E
LOCAL PREFERENCE PLAN

This Plan is made by and is binding on _____ ("Developer").

WITNESSETH:

WHEREAS, the Developer is the owner of a certain parcel of land located at 470 Boston Street, Topsfield, Massachusetts more particularly described in Schedule A attached hereto (the "Property"), which Property is currently located within an Elderly Housing District, which is an overlay district pursuant to the Zoning By-Law for the Town of Topsfield in effect as of the date hereof (the "Zoning By-Law"); and

WHEREAS, the Developer desires to construct within the Property a thirty (30) unit, elder housing development in the condominium form of ownership to be known as "Rolling Green" (the "Condominium") pursuant to those provisions of the Zoning By-Law relating to the Elderly Housing District; and

WHEREAS, pursuant to the provisions of the Zoning By-Law relating to the Elderly Housing District, the Developer must obtain a special permit from the Planning Board (the "Special Permit") prior to its construction of any such development; and

WHEREAS, Section 3.16 C.1.s. of the Zoning By-Law provides that one of the standards and criteria which must be met as a condition to the issuance of the Special Permit is that a plan be prepared which shall, to the extent allowable by law, give a preference for elderly dwelling units within a development first to Topsfield residents, then to immediate family members of Topsfield residents, and then to former residents; and

WHEREAS, it is the intention of the Developer that this instrument shall set forth the local preference plan (the "Plan") so as to satisfy said Special Permit criteria.

NOW THEREFORE, the Developer does hereby establish the following preference eligibility plan pursuant to Section 3.16 C.1.s. of the Zoning By-Law, which plan shall be binding on the Developer and thereafter on owners of the Condominium units from time to time:

LOCAL PREFERENCE ELIGIBILITY PLAN

The purpose of the Plan is to give a defined preference to Topsfield residents and certain other qualified persons over the general public by giving them the opportunity to purchase units being

sold for the first time in Rolling Green ahead of the general public. Rolling Green may be initially marketed and sold in phases; that is, a group of units may be marketed for sale before other units will be available for purchase and this Plan anticipates that fact. The selection of the units for marketing and the time table for the marketing is solely at the discretion of the Developer. The procedure and preference are described below.

1. PREFERRED PERSONS: Residents of Topsfield shall be given a preference (as described below) over other persons as to the purchase of new units in Rolling Green. To the extent that new units remain available, second preference shall be given to immediate family members of residents of Topsfield. To the extent that new units still remain available, third preference shall be given to former residents of Topsfield. As used in this Plan, "immediate family members of residents of Topsfield" shall mean a person who is a parent, grandparent, child, or sibling of one who currently resides in the Town of Topsfield. Residents of Topsfield and immediate family members of Topsfield residents and former residents of Topsfield are sometimes collectively called "Preferred Persons" and separately called "Preferred Person".

2. PREFERENCES AS TO THE INITIAL SALE OF UNITS BY THE DEVELOPER: There are three preferences being given by this Plan with reference to the initial sale of units in Rolling Green. First, when the Developer is prepared to receive non-binding reservation agreements as to sale of potential units (divided into tranches) in the Condominium, seventy percent (70%) of those units in a given tranche in Rolling Green shall be made available for reservation by Preferred Persons on terms acceptable to the Developer during a 45-day Reservation Preference Period (defined below) as to those units. Second, when the Developer is prepared to sign binding purchase and sale agreements as to units in Rolling Green, seventy percent (70%) of those units in Rolling Green (excluding those units that are sold to an individual who already has a reservation agreement and who has elected to purchase) shall be made available for the exclusive purchase by Preferred Persons on terms acceptable to the Developer during a 45-day "Purchase Preference Period" (defined below) as to those units. Third, if at any time the Developer receives simultaneously two identical offers for an unsold unit; one from a Preferred Person and one from a person who is not a Preferred Person, the Developer shall give preference to the Preferred Person, but only if the Preferred Person's offer is acceptable to the Developer.

3. THE PROCESS AS TO INITIAL SALES:

A. Reservation Period: The Developer may establish a marketing program by which interested and qualified persons sign a non-binding reservation agreement reflecting that person's interest in acquiring a unit in Rolling Green together with the payment of a refundable deposit to be held in escrow pursuant to the terms of the reservation

agreement. Such non-binding reservation program may be structured by the Developer, at its option, so that an interested person puts his or her name on a list (the "Reservation List") to acquire a unit generally (without reference to a particular unit) or the program may be structured so that a person selects a style of unit, but not a specific unit by number or the program may be structured so that a person reserves a specific unit. If and when the Developer is prepared to receive non-binding reservation agreements from interested parties who wish to be placed on a list as a potential purchaser of a group of units (i.e. a tranche) in Rolling Green, the Developer shall send letters stating that fact to the Topsfield Planning Board, Board of Selectmen and Council on Aging. The letter shall identify units on which the Developer is prepared to receive non-binding reservation agreements. To provide adequate time for the Council on Aging to place a notice in its monthly newsletter ("Senior Scoop") as to this reservation arrangement, the notice letter to the Council on Aging shall be delivered to the Council Office sufficiently before the start of the Reservation Preference Period so that the Council can include notice of the local preference in its newsletter that is circulated before the start of the Reservation Preference Period.

In addition, at that time the Developer shall prepare on its form an announcement sheet for the local access cable station, mail a news release to the Town web-master and the Tri-Town Transcript, the Village Reporter and The Salem News or alternatively a similar regional publication (those newspapers are collectively referred to herein as the "Target Newspapers") and shall place an advertisement in each of the Target Newspapers stating that fact. Each such advertisement shall describe the condominium and its location, the units involved in the tranche and contact information as to how to reach the Developer or the Developer's agent, and shall identify what group of people have a preference, the 45-day exclusive preference period and the preference sequencing and shall invite Preferred Persons to contact the Developer to coordinate the execution of a non-binding reservation agreement for a unit on the conditions established by the Developer as to the identified units. The period of forty-five (45) days from the date the last advertisement described above has appeared in the Target Newspapers and at least thirty days after the Town has received the above-described letters from the Developer is called the "Reservation Preference Period" as to the units identified in the letters and advertisement and for which the Developer is receiving non-binding reservation agreements. If the initial non-binding reservation program is not for all 30 units in Rolling Green, then when the Developer initiates a program to receive non-binding reservation agreement for a new group of units, it shall send new letters to the Topsfield Planning Board, Board of Selectmen Town web-master, local access cable television (on their form) and Council on Aging identifying those additional units and it shall send a news release and publish new advertisements in each of the Target Newspapers as to those new units and there shall be a 45-day Reservation Preference Period as to those units.

B. Purchase Preference Period: When the Developer is prepared to market for sale a group of units in Rolling Green (which may be prior to the time when the Developer acquires the property and prior to the issuance of governmental permits and approvals and may be pre-construction and which may be in phases), the Developer shall send letters stating that fact to the Topsfield Planning Board, Board of Selectmen, Town web-master, local access cable television (on their form) and Council on Aging. The letter shall identify which units are then being offered for sale. For informational purposes only, the letter to the Planning Board and Board of Selectmen shall also identify those units that have been sold to individuals who originally participated in the non-binding reservation program as described in section A above and who have subsequently signed binding purchase and sale agreement. To provide adequate time for the Council on Aging to place a notice in its monthly newsletter ("Senior Scoop") as to this purchase preference arrangement, the notice letter to the Council on Aging shall be delivered to the Council Office sufficiently before the start of the Purchase Preference Period, so that the Council can include notice of the local preference in its newsletter that is circulated before the start of the Purchase Preference Period.

In addition, at that time the Developer shall mail a news release to the Target Newspapers and shall place an advertisement in the Target Newspapers stating what unsold units are then being made available for sale. Units that have already been sold by binding agreement to individuals who participated in the reservation program need not be listed in the advertisement. Each advertisement shall describe the condominium and its location, the units then being marketed (i.e. the tranche) and contact information as to how to reach the Developer or the Developer's agent, and shall identify what group of people have a preference, the 45-day exclusive preference period and the preference sequencing and shall invite Preferred Persons to contact the Developer to coordinate making an offer to purchase the then marketed units. The period of forty-five (45) days from the date the last advertisement described above appeared in the Target Newspapers and at least thirty day after the Town has received the above-described letters from the Developer is called the "Purchase Preference Period" as to the unsold units identified in the letters and advertisement as being then available for sale and being first marketed. When the Developer initiates the marketing of a new group of units, it shall send new letters to the Topsfield Planning Board, Board of Selectmen, the Town web-master, the local access cable television station (on their form) and Council on Aging identifying those additional units and it shall send a news release and publish a new advertisement in each of the Target Newspapers as to those new units, and there shall be a 45-day "Purchase Preference Period" as to those units.

C. Simultaneous Offers: If the Developer receives two identical offers simultaneously for a unit; one from a Preferred Person and one from a person who is not a Preferred

Person, the Developer shall give preference to the Preferred Person, but only if the Preferred Person's offer is acceptable to the Developer. If the Developer receives two identical offers simultaneously for a unit; both from a Preferred Person, the Developer shall give preference to the first offer on final terms acceptable to the Developer. As used in this paragraph, offers shall be deemed to be made "simultaneously" if those offers have overlapping times for the Developer to accept or reject them and the Developer has not accepted one offer before the other offer is received. It is customary for an offer to give the offeree up to 48 hours to accept an offer or the offer shall expire.

4. **THE NATURE OF THE PREFERENCE:** This Plan is intended to give a preference in competing as to the purchase of units in the Condominium by Preferred Persons. Preference does not mean a preference as to the terms of any transaction. This Plan does not give anyone an individual option right or the right to special purchase prices, terms, or conditions. After the expiration of an exclusive preference period as to a group of units (i.e. a tranche), the Developer may sell and convey those unsold units at any time to persons who are not Preferred Persons.
5. **PREFERENCE AS TO THE RESALE OF UNITS:** To assure that preference is given to Preferred Persons as to a resale of units (after the initial sale of a unit by the Developer), the By-Laws of the condominium association shall contain the following provisions (the "Restriction Provisions"):

The Board of Directors of the condominium association acting on its own behalf, or through a designated manager, shall have the right and power and shall be responsible for overseeing these Restriction Provisions. The Board of Directors or any manager to which such responsibility may be delegated, shall maintain a waiting list of all Preferred Persons desiring to become a unit owner (the "Entrance Priority List"), which list shall contain the name and address and other contact information as to a Preferred Person (defined below) on the list and the name of the person who is over 55 years old who would reside in a unit. The Board of Directors may further prescribe policies and procedures to facilitate compliance with this Bylaw and the sale and conveyance of units. The Board of Directors shall provide a copy of the Entrance Priority List to each unit owner upon request.

After the Declarant relinquishes control of the Board of Directors, at least once during each calendar year the Board of Directors shall announce and hold a local preference open enrollment period (the "Local Enrollment Period") consisting of a forty-five (45) day period in which applications for priority listing will be accepted by the Board of Directors. Notice of the Local Enrollment Period shall be mailed in advance to the Topsfield Planning Board, Board of Selectmen and Council on Aging and posted in the

Topsfield Town Hall, if the Town allows such posting. All applicants who apply during any such Local Enrollment Period shall be considered as a group and shall be assigned positions on the Entrance Priority List in accordance with the following priorities: First, residents of Topsfield and certain other persons as described below shall be given a preference over other persons as to the purchase of units in Rolling Green. Second, to the extent a unit remains available, second preference shall be given to immediate family members of Topsfield residents. Third, to the extent that units still remain available, third preference shall be given to former residents of Topsfield. As used in herein, "immediate family members of Topsfield residents" shall mean a person who is a parent, grandparent, child, or sibling of one who currently resides in the Town of Topsfield; and "Preferred Persons" shall mean residents of Topsfield and immediate family members of Topsfield residents and former residents of Topsfield.

During periods other than a Local Enrollment Period, Preferred Persons who apply will be placed on the Entrance Priority List on a first come first served basis. Once a person has been assigned a position on the Entrance Priority List, such position will not be downgraded notwithstanding future Local Enrollment Periods.

In the event there are no persons on the Entrance Priority List at the time a unit owner wishes to sell his unit or no person on the Entrance Priority List makes an offer on terms acceptable to the selling unit owner, then such unit owner may sell said unit to a person who is not a Preferred Person. The failure by the Board of Director to comply with the requirements of this Bylaw shall not affect the validity of a sale and conveyance of a unit.

This Bylaw provision shall not be revoked or modified except with the consent of the Topsfield Planning Board.

- 6. TITLE/LIABILITY:** The title to units shall not be deemed encumbered by this Plan. No person who purchases a unit from the Developer need obtain any certification or release of that unit from this Plan from the Town. This Plan shall not be construed in a manner to require the Developer to breach an existing contract or to be subjected to higher broker's commission or other costs and expenses.
- 7. PROOF OF COMPLIANCE:** The Developer shall prepare and for three years hereafter shall maintain a separate file that shall contain a copy of the required news release, newspaper advertisements and the notification letters to the Town and the names and addresses of each "Preferred Person" who has entered into a reservation agreement or has made a written offer to purchase a unit as to the initial sale of units. The Planning Board and Board of Selectmen may obtain a copy of that file annually upon written request or may require that the Developer submit an annual report to those Boards, upon their

requests, of the history of offers received from "Preferred Persons" during such time as the Developer holds units for sale in the Condominium, whether accepted or rejected. The Planning Board and Board of Selectmen may also require the Developer to provide an annual affidavit that it has complied with the requirements of this Plan.

8. **ACCEPTABILITY OF OFFERS:** It is within the sole discretion of the Developer to determine whether an offer from any person is on terms acceptable to the Developer and that right is not affected by this Plan. Many factors can affect the Developer's determination, including, but in no way limited to, the purchase price, additional conditions contained in the offer, the credit history of the offeror, extras and changes being requested or proposed, amount of loan financing needed, timing, proof of age-qualifying occupancy, brokerage commissions, the offeror's need to sell a current dwelling to qualify, etc.
9. **ENFORCEMENT:** If there is a breach of this Plan, the Planning Board or Inspector of Buildings shall issue a notice of non-compliance to the non-complying party, requiring that party to cure that violation within 30 days. The Town may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Plan. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of these covenants and restrictions, either to restrain violation or to recover damages. If it is determined by a court that a party has breached this Plan, the Town shall be entitled to recover in a judgment against that party the Town's reasonable attorney's fees and costs that it incurs in any action to enforce this Plan. A violation of this Plan shall not affect the validity of the transfer of title to any unit, but shall give the Town a cause of action against the person violating this Plan. This Plan is established as a condition of a special permit grant and does not create a private or individual right of action by an individual.
10. **BREACH:** In the event that the Developer breaches this Plan and does not cure such breach within 30 days after notice has been sent by the Town, in addition to the enforcement rights described in Section 8 the Developer shall pay damages to the Town of \$1,000.00 for each infraction.
11. **BINDING EFFECT:** This Plan shall be binding on the Developer.
12. **SEVERABILITY:** Invalidation of any of the provisions of this Plan by court judgment or order shall not affect any of the other provisions, which shall remain in full force and effect. No term or provision of this Plan shall be effective to the extent such term or provision would cause a loss of qualification of the Condominium for the sale of mortgages on the individual units in the secondary mortgage market or would violate the

rules, regulations and guidelines of the Federal National Mortgages Association, Federal Home Loan Bank or successor institutions thereto.

- 13. PLANNING BOARD APPROVAL REQUIRED:** No modification of any condition, term or provision of this Plan shall be valid unless it approved by the Planning Board as evidenced by the signature of the Chairman of the Planning Board appearing thereon.

IN WITNESS WHEREOF, _____ hereto has set its hand,
under seal, on _____, 2017.

BY: _____

4.7.17