

BR 24317 M 329

LAND DISPOSITION AGREEMENT

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This Agreement ("Agreement") is made and entered into as of the 28th day of February, 1994, by and between the COMMONWEALTH OF MASSACHUSETTS (the "Commonwealth"), acting by and through the Division of Capital Planning and Operations ("DCPO") with a principal office at One Ashburton Place, Boston, Massachusetts 02108, on behalf of the Massachusetts Department of Highways (hereinafter "Seller") and FAIRVIEW REALTY, INC., a Massachusetts corporation with a mailing address at 1475 Massachusetts Avenue, Lexington, Massachusetts 02173 (hereinafter "Buyer").

RECITALS

1. The Massachusetts Department of Highways (the "Highway Department") has determined pursuant to Massachusetts General Laws Chapter 81 that eight (8) parcels of land owned by the Commonwealth of Massachusetts in various locations in Lincoln, Massachusetts, each of which is described separately in Exhibit A attached hereto (collectively, the "Premises") are no longer necessary for state highway purposes:

2. DCPO, acting on behalf of the Commonwealth and the Highway Department, intends to sell the Premises pursuant to and in accordance with Massachusetts General Laws Chapter 7, Sections 40E through 40J:

3. DCPO issued a Request for Proposals on August 24, 1992 (the "RFP"), for acquisition of the Premises and development and sale of the individual lots comprising the Premises (the "Lots") to third party buyers including, without limitation, sale of certain of the Lots to households with incomes of less than 80% of the median income for the Boston Metropolitan Area in accordance with the Local Initiative Program (the "Local Initiative Program") of the Massachusetts Executive Office of Communities and Development ("EOCD") under 760 CMR 45.00 et seq.:

4. Buyer submitted the most satisfactory proposal in response to the RFP, a copy of which is attached hereto as Exhibit B ("Buyer's Proposal");

5. By Provisional Developer Designation, a copy of which is attached hereto as Exhibit C (the "Developer Designation"), DCPO accepted Buyer's Proposal subject to the terms of the Developer Designation; and

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6. Seller and Buyer wish to set forth in this Agreement the terms and conditions of the disposition and acquisition of the Premises.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual undertakings and covenants herein contained, Seller and Buyer hereby agree as follows:

**ARTICLE 1  
COVENANT OF SALE**

**1.1 Covenant of Sale.** Subject to all of the terms, covenants and conditions of this Agreement, Seller hereby agrees to sell, and Buyer hereby agrees to buy, the Premises.

**1.2 Condition of Premises.** Seller and Buyer agree that the Premises shall be conveyed "as is", without any warranties or representations whatsoever from Seller, in the condition in which they exist at the time of conveyance.

**1.3 Title Deed.** The Premises shall be conveyed by a good and sufficient release deed (the "Deed") to Buyer, which Deed shall have been approved as to form by the Massachusetts Attorney General, if required. The Deed shall be subject to (a) the terms and conditions of this Agreement; (b) all liens, encumbrances, easements, agreements and restrictions of record; (c) applicable laws and regulations of any governmental authority in effect as of the time of conveyance; (d) any liens for municipal betterments assessed after the time of conveyance; and (e) such taxes and payments in lieu of taxes, if any, as are not due and payable at the time of conveyance. For title to each of the Lots, see Exhibit A.

**ARTICLE 2  
PURCHASE PRICE**

**2.1 Purchase Price.** The purchase price to be paid for the Premises shall be \$215,000, which amount shall be paid by cash or certified check or checks payable to the Commonwealth of Massachusetts at the time of conveyance.

**2.2 IRS Reporting.** Buyer and Seller hereby agree to execute a separate Designation Agreement in the form attached

as Exhibit D, designating the reporting person pursuant to Section 6045 of the Internal Revenue Code. Seller agrees to provide the reporting person with information substantially in the form of Exhibit A to the Designation Agreement or, if the transaction contemplated by this Agreement is exempt from the reporting requirements of Section 6045, to specify the grounds for the exemption in a form meeting the requirements of Treasury Regulation 1.6045-3T.

**ARTICLE 3  
REPRESENTATIONS AND WARRANTIES OF BUYER**

**3.1 Due Authorization.** Buyer represents and warrants that it has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

**3.2 Loan Commitment.** Buyer represents and warrants that (a) the commitment letter attached hereto as Exhibit E from the Saugus Bank and Trust Company ("Lender") to Buyer whereby Lender has agreed to finance construction of the two single family houses to be constructed on the Premises in accordance with the Local Initiative Program (the "Local Initiative Units") is true and correct and is in full force and effect as of the date hereof, and (b) that Buyer has available to it equity capital which, when combined with the financing to be provided by Lender, is adequate to complete construction of the Local Initiative Units.

**3.3 Statement of Beneficial Interest.** Buyer represents and warrants that there have been no changes in the equity interests in Buyer that would necessitate a change to the Beneficial Interest Disclosure Statement attached hereto as Exhibit F which was previously delivered by Buyer to Seller.

**ARTICLE 4  
THE CLOSING**

**4.1 Time of Closing.** Subject to the terms and conditions of this Agreement, the Deed is to be delivered at 10:00 a.m. on the date five (5) business days after the date of this Agreement, unless extended by mutual agreement of the parties (the "Time of Closing") at the offices of DCPO, One Ashburton Place, Room 1500, Boston, Massachusetts, or at such other place as the Seller may designate by three (3) business days notice to Buyer.

**4.2 Security for Post-Closing Performance.** At the Closing, Buyer shall deliver to Seller a bond, letter of credit or other instrument satisfactory to Seller (the "Security

Instrument") insuring Buyer's performance of its obligations under Section 5.3(d) as to construction and completion of the Local Initiative Units. The Security Instrument shall be in the amount of \$300,000, shall be issued by a surety, bank or other entity approved by Seller and shall be in form acceptable to Seller. The Security Instrument shall be released upon Seller's issuance of a Certificate of Completion under Section 5.3(e) for the last to be completed of the Local Initiative Units.

**4.3 Extension to Perfect Title.** Buyer shall give Seller notice at least seven (7) days before the Time of Closing, designating all defects in title to the Premises existing at the time of such notice, and all defects not so designated shall be deemed to have been waived. If Seller shall be unable to give title or to make conveyance, all as herein stipulated, then Seller shall use reasonable efforts to remove any defects in title, as the case may be, in which event the Time of Closing shall be extended for a period of thirty (30) days.

If at the expiration of the extended time, Seller shall have failed to so remove any defects in title as herein agreed, any payments made under this Agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this Agreement shall be null and void and without recourse to the parties hereto; provided, that Buyer shall have the election, at either the original or extended Time of Closing, to accept such title as Seller can deliver to the Premises and to pay therefor the Purchase Price without deduction, in which case Seller shall convey such title.

**4.4 Closing Costs.** Buyer shall pay the costs of any documentary tax stamps which may be required, and the cost of recording the Deed, this Agreement and any and all other instruments and plans to be recorded therewith.

**4.5 Adjustments.** Seller shall pay all taxes, payments in lieu of taxes and all operating costs of the Premises, if any, allocable to any period before the Time of Closing. Buyer shall pay all taxes, payments in lieu of taxes and operating costs of the Premises allocable to the date on which the Time of Closing occurs and any time thereafter.

**4.6 Recording.** Immediately after the Time of Closing, but not before, this Agreement and the Deed shall be recorded at the Middlesex South Registry of Deeds, this Agreement being recorded immediately prior to the Deed. Buyer shall not record the Deed unless this Agreement is recorded with it. The Deed shall contain a provision to the effect that it incorporates the terms and provisions of this Agreement and any failure to record this Agreement immediately prior to the Deed shall render the Deed null and void.

ARTICLE 5  
BUYER'S POST-CLOSING OBLIGATIONS

**5.1 Lincoln Conservation Commission Trail Easements.**

Prior to conveying any of the Lots to third party buyers, Buyer shall grant to the Town of Lincoln and/or the Lincoln Conservation Commission (the "Conservation Commission") easements over those portions of the Premises necessary for the laying out of a trail system to connect all significant conservation areas within the Town of Lincoln. Drawings showing the approximate location of such trail system on the Premises are attached hereto as Exhibit G and the form of Trail Easement generally used for such easements is attached hereto as Exhibit H.

**5.2 Local Initiative Program Compliance.** Buyer shall construct Local Initiative Units on at least two (2) of the Lots, and market and sell the Lots improved with completed Local Initiative Units (individually or collectively, "Local Initiative Premises"), in compliance with the Local Initiative Program including, without limitation, the Guidelines for such Program promulgated by EOCD (the "Local Initiative Program Guidelines") and the requirements of the Town of Lincoln set forth in its application to EOCD for Local Initiative Program designation of the Premises as approved by EOCD on April 27, 1993. In amplification, and not in limitation of the foregoing, Buyer shall comply with the following requirements of the Local Initiative Program:

(a) **Design Standards.** The Local Initiative Units shall comply with the design standards set forth in the Local Initiative Program Guidelines including, without limitation, requirements as to minimum square footage areas, minimum number of bedrooms, exterior characteristics, fixtures and regulatory compliance.

(b) **Income Levels of Buyers.** Local Initiative Premises shall be sold to households with incomes at or below 80% of the median household income for the Boston Metropolitan Area as established by the U.S. Department of Housing and Urban Development.

(c) **Maximum Sales Prices.** The sales prices of each of the Local Initiative Premises shall not exceed maximum sales prices established by EOCD.

(d) **Use Restrictions.** Restrictions shall be recorded at the Middlesex South Registry of Deeds (which shall be included in, or recorded with, the deeds of each of the Local Initiative Premises to third party buyers) providing that the requirements of clauses (b) and (c) above shall run with the land and be binding on owners of

the Local Initiative Premises for a period to be determined by Seller in consultation with EOCB, the Town of Lincoln and Buyer. Such restrictions shall be in form approved by EOCB.

(e) Marketing and Buyer Selection. The Local Initiative Premises shall be sold in a fair and open manner. To insure the same, a lottery system for selection of qualified buyers shall be established and used by Buyer (with assistance from the Lincoln Housing Partnership and EOCB) to select buyers.

5.3 Other Requirements as to Local Initiative Units. The following additional requirements shall apply regarding the planning and construction of the Local Initiative Units.

(a) Development Sequence; Status Reports. Buyer shall, at Seller's request made from time to time (but no more frequently than monthly), advise Seller of the status of the planning, construction and sale of the Local Initiative Units and the other houses to be built on the Premises (the "Other Improvements").

(b) Permits and Approvals. Buyer shall diligently pursue all federal, state and local permits and approvals for construction of the Local Initiative Units in accordance with this Agreement. At Seller's request, Buyer shall forward to Seller a copy of any such permit or approval. If, notwithstanding Buyer's diligent efforts, Buyer anticipates that it will be unable to obtain all permits and approvals in a timely manner (that permits compliance with the provisions of this Agreement regarding the timing of construction and sale of the Local Initiative Units), Buyer shall notify Seller and Seller shall consider appropriate extensions of such construction and sale requirements.

(c) Approval of Plans and Specifications. The plans and specifications for all Local Initiative Units shall be subject to Seller's approval, which approval shall not be unreasonably withheld or delayed provided that such plans and specifications are consistent with the terms of this Agreement. Seller shall respond to Buyer's request for its approval of the plans and specifications within fourteen (14) days after receipt thereof and any failure to respond within such period shall be deemed an approval of the plans and specifications. If Seller disapproves the plans and specifications, it shall notify Buyer of such disapproval together with a detailed explanation for its determination. Any revisions to the plans and specifications to address Seller's comments and any changes to the approved plans and specifications affecting compliance of the plans and specifications with the terms

of this Agreement shall be subject to Seller's review and approval which shall not be unreasonably withheld or delayed and shall be deemed granted if no notice of disapproval is received by Buyer within ten (10) days (or such shorter period as the parties may agree is reasonable in the circumstances) after Seller's receipt thereof.

(d) Construction. Buyer shall pursue construction of the Local Initiative Units in accordance with the plans and specifications approved in accordance with subsection (c) above in a diligent, good and workmanlike manner and in accordance with the other terms of this Agreement. Buyer shall begin construction of both of the Local Initiative Units within six (6) months after the Time of Closing and shall substantially complete such construction within twelve (12) months thereafter (subject to force majeure extensions as provided in Section 10.3) and in no event later than within eighteen (18) months thereafter (subject to no extensions). The covenants contained in this subsection (d) pertaining to commencement and completion of the Local Initiative Units, shall not apply against the Lender unless the Lender shall elect to complete the Units as permitted in Section 6.3, in which case the extension provisions of that Section shall apply.

(e) Certificates of Completion. Each of the Local Initiative Units shall be deemed completed for the purposes of this Agreement when a Certificate of Completion is issued by Seller. Seller shall have twenty-one (21) days to inspect a Unit after Buyer has notified Seller of completion of such Unit in order to determine whether each such Unit has been completed in accordance with this Agreement and the approved plans and specifications. If Seller determines that a Local Initiative Unit has been so completed, Seller shall issue a Certificate of Completion to Buyer within said 21-day period. Failure of Seller to so respond to Buyer's request for a Certificate of Completion shall be deemed to be the grant of such a Certificate. If Seller determines that such Unit has not been so completed, it shall notify Buyer of such determination setting forth in detail the reasons for its conclusion.

(f) Sale of Local Initiative Premises. Buyer shall pursue marketing and sale of the Local Initiative Premises in accordance with the Local Initiative Guidelines in a prompt and diligent manner and shall use best efforts to sell all of the Local Initiative Premises within eighteen (18) months after the Time of Closing and shall, under any circumstances, sell such Premises within thirty (30) months after the Time of Closing.

5.4 Requirements Applicable to the Design and Construction of Other Improvements.

(a) Design of Other Improvements. It is the intention of Seller and Buyer that Buyer construct single family houses on at least three of the Lots not improved with Local Initiative Units. Such houses shall be similar in character to other homes in the area and shall be of a design consistent with the neighborhoods in which they are located. In order to assure such consistency, Buyer shall submit to Seller for its review prior to Buyer's submission of an application for a building permit, the plans and specifications for each house to be built by Buyer on the Premises. Seller shall consult with the Town of Lincoln and advise Buyer within twenty-one (21) days of such submittal whether or not Seller or the Town has any concerns regarding the design of such house. Buyer shall, in good faith, work with Seller and the Town of Lincoln to address any such concerns.

(b) Construction of Other Improvements by Buyer and Security Therefor. Prior to commencement of construction of any house on the Premises other than the Local Initiative Units, Buyer shall deliver to Seller a bond, letter of credit or other instrument satisfactory to Seller insuring completion of such construction. The requirement set forth in the immediately preceding sentence shall not apply to construction by third parties on unimproved lots purchased from Buyer. Upon commencement of construction of any of the Other Improvements on the Premises, Buyer shall pursue such construction to completion in a diligent, good and workmanlike manner.

5.5 Other Requirements Applicable to Premises. After conveyance of the Premises from Seller to Buyer and until expiration of this Agreement or Seller's right to exercise default remedies under Section 7.2 hereof, Buyer shall comply with the following requirements:

(a) Maintenance of Premises. Buyer shall at all times keep the Local Initiative Premises in good and safe condition and repair and shall not permit the occurrence of any waste or nuisance. The Local Initiative Units shall comply with all laws, ordinances, codes and regulations applicable thereto.

(b) Hazardous Waste. Buyer shall not release, generate, store or dispose, nor cause to be released, generated, stored, or disposed, on the Premises, any hazardous waste. For purposes of this paragraph, "hazardous waste" shall mean dangerous to health or to the environment, including but not limited to all "hazardous



materials", "hazardous substances" and "oil" as defined in any of the following statutes and their implementing regulations all as amended and supplemented through the date of this Agreement: (a) the Comprehensive Environmental Response, Comprehensive and Liability Act of 1980, 42 U.S.C. s. 9601 et seq, Reauthorization Act of 1986 ("S.A.R.A."); (b) the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C et seq., (c) the Massachusetts Superfund Law, M.G.L. c. 21E et seq.; (d) the Toxic Substances Control Act, 15 U.S.C. s. 2601 et seq.; (e) the Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. s. 136; (f) the Hazardous Materials Transportation Act, 49 U.S.C. ss. 1801-1812; (g) the Federal Water Pollution Control Act, 32 U.S.C. 1251 et seq., and Massachusetts Water Pollution Control Act, M.G.L. c. 21 s. 26 et seq.; (h) the Federal Clean Air Act, 42 U.S.C. s. 7401 et seq.; (i) the Resource Conservation and Recovery Act, 42 U.S.C. s. 6901 et seq.; (j) the Toxic Substances Control Act, 15 U.S.C. ss. 2601-2629; and (k) the Safe Drinking Water Act, 42 U.S.C. ss. 330f-330j. In addition, Buyer shall not use, or cause to be used, any materials containing asbestos, urea-formaldehyde insulation or lead paint or any pesticides containing chlordane or related chemicals on the Premises.

(c) Impositions. No later than ten (10) days before the last date when the same may be paid without interest or penalty, Buyer shall pay and furnish to Seller evidence of payment of all real estate taxes, personal property taxes, sewer rents, water charges and all other municipal and governmental fees, rates, charges, assessments and liens (collectively "Impositions") which now or hereafter are imposed upon the Local Initiative Premises. Buyer may in good faith contest, at its own cost and expense, by proper legal proceedings, the validity or amount of any Imposition, provided that Buyer shall deposit with Seller, as security for the payment of such contested item (if unpaid), an amount in cash or other security satisfactory to Seller at least equal the contested item, and on the further condition that no amount so contested may remain unpaid for such length of time as would permit the Local Initiative Premises to be sold for the nonpayment thereof, or as would permit an action, either of foreclosure or otherwise, to be commenced by the holder of any lien on the Local Initiative Premises created by the item being contested.

(d) Liens and Encumbrances. Buyer shall not allow any liens or encumbrances to exist on the Local Initiative Premises except for those existing at the Time of Closing and mortgages to lenders approved by Seller under Section 6.2.

(e) Insurance Coverage. Buyer shall keep the Local Initiative Premises insured as required by Lender, such insurance to list Seller, as its interest may appear, as an additional insured. Certificates of such insurance shall be delivered to Seller at the Time of Closing and from time to time at Seller's request. All insurance policies shall provide that any cancellation, change or termination thereof shall not be effective with respect to Seller unless thirty (30) days prior notice has been given to Seller that such insurance policies are to be cancelled, changed or terminated.

(f) Seller's Access. Buyer shall assure to the duly authorized representatives of Seller free and unobstructed access to the Local Initiative Premises for inspection thereof to determine the compliance thereof with the terms of this Agreement including, without limitation, this Article 5.

#### ARTICLE 6 TRANSFER AND MORTGAGE OF BUYER'S INTEREST

6.1 Prohibitions Against Transfers. After delivery of the Deed and prior to expiration of this Agreement or Seller's exercise of its default remedies under Section 7.2 hereof, no legal or beneficial interest in the Local Initiative Premises shall be conveyed by Buyer nor shall Buyer transfer, or cause or suffer to be transferred, any interest which would directly or indirectly change the legal or beneficial ownership interests in Buyer or the control of Buyer from that existing on the date hereof, except for (a) transfers of the Local Initiative Premises in accordance with the Local Initiative Program Guidelines and this Agreement, (b) an involuntary transfer in connection with a financing transaction approved by Seller and (c) transfers permitted under Section 6.2 hereof.

6.2 Permitted Mortgages. Notwithstanding any other provisions of this Agreement and until expiration of this Agreement or Seller's exercise of its default remedies under Section 7.2 hereof, Buyer shall have the right to grant to an institutional lender or lenders approved by Seller, a bona fide mortgage of the Local Initiative Premises, which mortgage shall be subject to the terms of this Agreement. Seller hereby approves Lender in accordance with the preceding sentence of this Section 6.2. Any such mortgage shall secure only indebtedness related to acquisition of the Local Initiative Premises and construction of the Local Initiative Units thereon and may not secure or cross-collateralize indebtedness or obligations unrelated to the Local Initiative Premises or the Local Initiative Units. The holder of any such mortgage (including a holder who obtains title to the Local Initiative

Premises and the Local Initiative Units or any portion or portions thereof by foreclosure or action in lieu thereof, but not including a party who obtains title through such holder or any purchaser at a foreclosure sale other than the holder) shall not be obligated by this Agreement to complete the Local Initiative Units or to guarantee such completion, but may proceed in accordance with Section 6.3 below.

**6.3 Rights and Duties of Mortgagee.** If a lender approved by Seller, through the operation of its mortgage, acquires fee simple title to the Local Initiative Premises, or any portion or portions thereof, notwithstanding any agreements to the contrary, such lender may elect to proceed only as set forth in paragraphs (i), (ii) and (iii) below:

(i) Complete the Local Initiative Units, operate and maintain the Local Initiative Premises in accordance with Section 5.5 and sell the Local Initiative Premises, all in accordance with this Agreement, or

(ii) Sell, assign or transfer the Local Initiative Premises to a purchaser, assignee or transferee satisfactory to Seller, which purchaser shall expressly assume all of the covenants, agreements and obligations of Buyer under this Agreement by written instrument satisfactory to Seller and recorded at the Middlesex South Registry of Deeds, or

(iii) Reconvey fee simple title to the Local Initiative Premises by quitclaim deed to Seller for no consideration.

In the event that Lender elects to complete construction of the Local Initiative Units and to sell the Local Initiative Premises pursuant to subsection (a)(i) above or sells, assigns or transfers pursuant to subsection (a)(ii) above, Seller shall extend the time limits set forth herein as Seller, in its sole discretion, deems reasonably necessary to complete such construction and sale in accordance with this Agreement.

#### ARTICLE 7 TERM OF AGREEMENT

**7.1 Merger at Time of Closing.** The delivery of the Deed by Seller and the acceptance and recording thereof by Buyer shall be deemed to be full performance of the conditions and obligations set forth in Sections 1, 2 and 4 of this Agreement.

**7.2 Ongoing Obligations and Expiration Thereof.** Except as set forth in the last sentence of this Section 7.2, this Agreement and all rights and obligations of the parties hereto

shall expire upon recording of the deed conveying title to the last to sell of the Local Initiative Premises (as improved with a Local Initiative Unit) to a third party buyer in accordance with the Local Initiative Program Guidelines and this Agreement. In the event that such sale has not occurred prior to the date thirty (30) months after the Time of Closing, Seller shall have all of the rights and remedies upon default as set forth in Section 9.2 hereof. Notwithstanding the foregoing, Buyer shall comply with the terms of Section 5.4 hereof until all of the Other Improvements to be constructed on the Premises have been completed.

**ARTICLE 8  
INDEMNIFICATION**

**8.1 Indemnification.** Buyer for itself and its successors and assigns undertakes to protect, indemnify and save harmless Seller and its successors and assigns from and against any and all liability, loss or damage that Seller or its successors and assigns may suffer as a result of claims, demands, costs, or judgments against any or all of them as a result of any claims, demands, costs, or judgments which relate to the Premises and are made against Seller or its successors and assigns by any third party, including, without limitation, any governmental authorities, and result in liability for personal injury or property damages arising under any statutory or common law tort theory, including, but not limited to, damages assessed for the maintenance of public or private nuisance. Buyer's liability hereunder shall extend to and include all reasonable costs, expenses, and attorney's fees incurred or sustained by Seller in making any investigation on account of any such claim, demand, loss, liability, cost, charge, suit, order, judgment, or adjudication, in prosecuting or defending any action brought in connection therewith and in obtaining or seeking to obtain release therefrom. Seller shall give Buyer reasonable notice of any claim threatened or made or suit instituted against it which could result in a claim of indemnification hereunder and Buyer shall be given the opportunity to participate in the settlement or defense of any such claim or suit.

**8.2 Reimbursement of Seller for Litigation Costs.** Buyer shall pay all reasonable costs (including attorneys' fees), expenses, judgments, decrees or damages which may be incurred by Seller in any proceeding brought to enforce the obligations of Buyer set forth in this Agreement.

**ARTICLE 9  
DEFAULT**

**9.1 Default Prior to or at Closing.** If either party shall fail or refuse to complete the purchase or accept possession of the Premises upon proper performance by the other party, then the non-defaulting party shall be entitled to seek any and all remedies available to it at law or equity.

**9.2 Default by Buyer after Closing.** If Buyer fails to perform or violates any of the provisions of this Agreement in effect after the Time of Closing within thirty (30) days after notice from Seller specifying such failure or violation, then,

(a) if such failure or violation relates to the Local Initiative Premises, Seller shall have the right, at its option, to cause a reverter of the Local Initiative Premises, levy on the Security Instrument and seek any or all other remedies available to it at law or in equity; and

(b) if such failure or violation relates to portions of the Premises not included within the Local Initiative Premises, Seller shall have the right, at its option, to levy on the security instrument provided under Section 5.4(b) and seek any or all other remedies available to it at law or in equity.

The foregoing remedies are cumulative and Seller shall have the right to seek any one or more of them. In the event that Seller elects to cause a reverter of the Local Initiative Premises, Buyer shall confirm such reversion by promptly providing Seller with a quitclaim deed transferring possession of the Local Initiative Premises with all Improvements completed to date, subject only to mortgages approved by Seller. If Buyer shall fail to provide such quitclaim deed, Seller may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs (including attorneys' fees) by Buyer.

**9.3 Lender's Rights.** If Seller gives Buyer a notice of default under Section 9.2 above, it shall forthwith furnish a copy of such notice to each lender approved by Seller under Section 6.2, provided that such lender has provided Seller with an address to which such notices are to be sent. If Buyer has not cured the default within the 30-day period set forth in Section 9.2, a lender providing notice to Seller within ten (10) days after the expiration of such 30-day period of its intention to cure such default shall have an additional reasonable period of time determined by Seller in which to do so.

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ARTICLE 10  
MISCELLANEOUS PROVISIONS

10.1 Non-Discrimination. Buyer agrees that it shall comply and shall cause all agents, contractors, subcontractors and suppliers to comply with all applicable laws, ordinances, regulations and orders from time to time in effect relating to nondiscrimination, equal employment opportunity, contract compliance and affirmative action in its activities under this Agreement.

10.2 Notices. All notices, consents, approvals, authorizations and certifications required hereunder shall be in writing and shall be sent by registered or certified mail, return receipt requested, hand delivery or overnight courier service, to the parties at the following addresses:

Buyer: Fairview Realty, Inc.  
1475 Massachusetts Avenue  
Lexington, MA 02173

Seller: Commissioner  
Division of Capital Planning & Operations  
One Ashburton Place, Room 1505  
Boston, MA 02108

Copy to: Office of the General Counsel  
Division of Capital Planning & Operations  
One Ashburton Place, Room 1505  
Boston, MA 02108

and, in the case of either party, to such other address as shall be designated by written notice given to the other party in accordance with this section.

10.3 Force Majeure. For the purpose of any provision of this Agreement (except as may be otherwise provided for therein), neither Seller nor Buyer, as the case may be, shall be considered in breach of or in default in its obligations hereunder in the event of unavoidable delay in the performance of such obligations due to acts of God, fire, flood or other casualties, it being the purpose and intent of this provision that in the event of any such delay, the time for performance of the obligations of such party shall be extended for the period of the delay; provided, that the party seeking the benefit of this Section shall, within 72 hours after such party knows or should have known of any such delay, have first notified the other party in writing stating the cause or causes thereof and requested an extension for the period of the delay.

**10.4 Integration.** This Agreement embodies the entire agreement between Seller and Buyer with respect to the transaction contemplated hereby, and all prior agreements, understandings or statements, oral or written, including, without limitation, the RFP, Buyer's proposal and the Developer Designation, are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, amended or discharged except by an instrument signed by the party against whom the enforcement of such waiver, amendment or discharge is sought, and then only to the extent set forth in such instrument. All references to this Agreement shall include all Exhibits hereto. In the event of inconsistencies between this Agreement and the Exhibits, this Agreement shall govern.

**10.5 Rights Cumulative.** The respective rights and remedies of Seller and Buyer provided by this Agreement or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times, of any other rights or remedies. The failure of Seller to assert a default in any instance shall not constitute a waiver of its rights to assert a default in connection with any other occurrence constituting a default under this Agreement.

**10.6 Invalidity.** If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the requirements of applicable laws.

**10.7 Titles.** The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

**10.8 Seller's Staff and Officers Barred from Interest.** No member, official or employee of Seller shall have any interest, direct or indirect, in this Agreement or in Buyer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she, directly or indirectly, is interested. No member, official or employee of Seller shall be personally liable to Buyer or any successor in interest in the event of any default or breach by Seller or for any amount which may become due to Buyer or to its successor or on any obligations under this Agreement.

**10.9 No Broker.** Buyer covenants that it has not employed or retained any company or person (other than a full-time bona fide employee working for the Buyer) to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person (other than such an employee) any gift, contribution, fee, commission, percentage, or brokerage fee,

contingent upon or resulting from the execution of this Agreement. Buyer agrees to indemnify and hold Seller harmless from and against any loss, cost, damage or expense arising out of any claim for a commission by any person or firm with whom Buyer has dealt.

**10.10 Seller's Approvals.** Any request for Seller's approval or other action under this Agreement, where the failure to respond is considered a deemed approval or exercise of the action, shall be conspicuously labeled (on the envelope and on the cover page of the transmittal) in capitalized boldface text with the words "IMMEDIATE ATTENTION REQUIRED; DEEMED APPROVAL AFTER \_\_\_ DAYS".

**10.11 Successors and Assigns.** The provisions of this Agreement shall be binding upon, and shall inure to the benefit of the successors and assigns of the Buyer and any public body succeeding to the interests of the Seller subject, however, to the provisions of Section 7.2.

**10.12 Time of Essence.** Time is of the essence of this Agreement and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by them.

**10.13 Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts. This Agreement is to be construed as a Massachusetts contract and is to take effect as a sealed instrument.



BK 24317 Pt. 345

EXECUTED as a sealed instrument as of the day and year first above written.

BUYER:

FAIRVIEW REALTY, INC.

By:

  
Name: Cynthia L. Tucci  
Title: Vice President/Treasurer  
Duly Authorized

SELLER:

COMMONWEALTH OF MASSACHUSETTS  
acting by and through the  
Division of Capital Planning  
and Operations

  
Lark Jurev Palermo,  
Commissioner

BR 24317M 346

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 4, 1993

Then personally appeared the above-named Cynthia,  
Inc. of Fair View Realty, Inc. and acknowledged  
the foregoing instrument to be the free act and deed of Fair  
View Realty, Inc. before me.

Anda P. Pitey  
Notary Public  
My Commission expires:  
My Commission Expires Mar. 2, 1995

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Jan 11, 1994

Then personally appeared the above-named Lark Jurev  
Palermo and acknowledged the foregoing instrument to be her  
free act and deed as Commissioner of the Division of Capital  
Planning and Operations before me.

Ronald L. Brodeur  
Notary Public  
My Commission expires: 5/4/95

The undersigned certifies under the penalties of perjury  
that I have fully complied with the provisions of sections  
40F1/2 and 40H of Chapter 7 of the General Laws in connection  
with the property described herein.

Lark Jurev Palermo  
Lark Jurev Palermo, Commissioner  
Division of Capital Planning and  
Operations

Jan. 11, 1994  
Date

24317-347

LAND DISPOSITION AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF MASSACHUSETTS  
AND  
FAIR VIEW REALTY, INC.

EXHIBIT A

Eight (8) parcels of land with the improvements thereon located in Lincoln, Middlesex County, Massachusetts bounded and described as follows:

Parcel 1A (Massachusetts Department of Highways Parcel "G")

A parcel of land formerly owned by Edith H. Derderian bounded southwesterly by Old Concord Turnpike 125.0 feet; northwesterly in part by land now or formerly of Bruce R. and Eleanor L. Fillmore and in part by land now or formerly of Sorensen a total of 165.0 feet; northeasterly 125.0 feet, southeasterly 165.0 feet all by land now or formerly of said Sorensen. Containing about 20,619 square feet. For title, see Middlesex South Deeds, Book 12198, Page 575 and Plan No. 467 of 1972.

Parcel 1B (Massachusetts Department of Highways Parcel "FF")

A parcel of land formerly owned by Bruce R. and Eleanor L. Fillmore bounded southwesterly by the 1858 County Layout on Old Concord Turnpike a total of about 125 feet; westerly by land now or formerly of John W. Barber, Jr. and Mary E. Barber about 358 feet; northeasterly by land now or formerly of Norma Schroeder a total of about 322 feet; and southeasterly by land now or formerly of Edith Derderian about 146 feet. Containing about .92 acres. For title, see Middlesex South Deeds, Book 12307, Page 365 and Plan No. 1262 of 1972.

Parcel 2 (Massachusetts Department of Highways Parcel "BB")

A parcel of land formerly owned by Hayden Mason and Jean C. Mason bounded southeasterly, in part by Lincoln Street (also known as Lexington Road) and in part by Mill Street a total of 248.31 feet; southwesterly, in part by land now or formerly of James and Dorothy M. Olivieri and in part by land now or formerly of Frank and James Panetta, a total of 180.23 feet; northwesterly, in part by land now or formerly of Frank and James Panetta and in part by land now or formerly of the City of Cambridge a total of 92.24 feet; again northwesterly by land now or formerly of the City of Cambridge 76.34 feet; and northeasterly and easterly by land

24317M348

now or formerly of Leo Bertolami 165.17 feet and 95 feet, respectively. Containing about 48,740 feet. For title, see Middlesex South Deeds, Book 12744, Page 422 and Plan No. 1440 of 1974.

Parcel 3 (Massachusetts Department of Highways Parcel "H")

A parcel of land formerly owned by John F. and Ethel A. Cook bounded northwesterly by Bedford Road about 134 feet; northeasterly and southeasterly by land now or formerly of Louis, Fred and Charles Ricci about 261 feet and about 134 feet, respectively; and southwesterly by land now or formerly of Robert C. and Betty Larson about 261 feet. Containing about 1.0 acres. For title, see Middlesex South Deeds, Book 12198, Page 578 and Plan No. 468 of 1972.

Parcel 4 (Massachusetts Department of Highways Parcel "A")

A parcel of land formerly owned by Alfred B. and Rita F. Farbish located on the westerly side of Bedford Road bounded by the line described as follows: beginning at the point of junction of the westerly street line of said Bedford Road and the dividing line between land of said Farbish and land now or formerly of Richard J. Dickie and extending thence, leaving said street line North 66°39'35" West 254.93 feet by land now or formerly of said Richard J. Dickie; thence North 23°20'25" East, 160.00 feet by land now or formerly of C. Robert Armstrong; thence South 66°39'35" East 255.00 feet by land now or formerly of Vernon P. Welch to a point again on the westerly street line of Bedford Road; thence following said street line South 23°20'25" West, 149.92 feet; thence by a curve to the right of 695.93 feet radius 10.08 feet to the point of beginning. Containing about 40,800 square feet. For title, see Middlesex South Deeds, Book 11574, Page 605 and Plan No. 1018 of 1968.

Parcel 5 (Massachusetts Department of Highways Parcel "C")

A parcel of land formerly owned by Patricia C. Phinney bounded westerly and northwesterly by Sunnyside Land 148.69 feet and 78.23 feet respectively; northeasterly by land now or formerly of George and G. Kornfeld 250.76 feet; southeasterly and northeasterly by land now or formerly of the Estate of Fritz Cunnert 61.00 feet and 105.00 feet, respectively; and southerly by land now or formerly of Arthur and Evelyn Sabbag 362.00 feet. Containing about 1.04 acres. For title, see Middlesex South Deeds, Book 11750, Page 337 and Plan No. 1087 of 1969.

Parcel 6 (Massachusetts Department of Highways Parcel "P")

A parcel of land formerly owned by Aldo G. and F. Claire Maselli, bounded easterly by Brooks Road about 120 feet; southerly by land now or formerly of Steven Shih Ting and Yi Chao M. Lo about 343 feet; westerly by land now or formerly of Edward F. and Doreen W. Bowman about 134 feet; and northerly, in part by land of said Bowman and in part by land now or formerly of Constance H. Flannery, a total of about 346 feet. Containing about 42,200 square feet. For title, see Middlesex South Deeds, Book 12337, Page 552 and Plan No. 1500 of 1972.

Parcel 7 (Massachusetts Department of Highways Parcel "R")

A parcel of land formerly owned by Charles L. and Iasme J. Chiotelis bounded easterly by Brooks Road about 120 feet; southerly by land now or formerly of Estate of Edward H. Rogers, Alfred P. and George E. Rogers, Trustees, a total of about 394 feet; westerly by land now or formerly of Louis R. and Ruth M. Sartori about 135 feet; northeasterly, southeasterly, northeasterly and northwesterly and northeasterly all by land now or formerly of Steven Shih Ting and Yi Chao M. Lo about 149 feet, about 20 feet, about 125 feet, about 40 feet and about 125 feet, respectively. Containing about 1.0 acres. For title, see Middlesex South Deeds, Book 12794, Page 623 and Plan No. 393 of 1975.

The above land has been determined by the Board of Commissioners of the Department of Highways (formerly known as the Department of Public Works) of the Commonwealth to be no longer necessary for state highway purposes.

The above land is subject to the restriction that no access be permitted onto Massachusetts Department of Highways Routes 2 and 2A.

349-6.27

*Exhibit B*

**PROPOSAL TO PURCHASE PROPERTY in  
LINCOLN, MASSACHUSETTS from  
THE COMMONWEALTH OF MASSACHUSETTS**

**Proposal Cover Sheet**

The undersigned proposed to purchase state-owned parcels of land in the Town of Lincoln, Middlesex County, identified as Lots 1-7.

**I. Submitted by:**

Cynthia Tocci  
Fairview Realty  
1475 Mass Ave. #463  
Lexington, MA 02173  
(617) 729-6452 (617) 242-0080 (617) 861-6888

  
Cynthia L. Tocci

October 5, 1992

**II. The proposed purchase price for the properties is:**

\$200,000.00 (Two Hundred Thousand Dollars and 00/100)

**III. Unit Mix :**

3 (Three) Affordable Units  
4 (Four) Market Rate Units

**Estimated Sale Prices :**

Affordable Units :	\$ 89,000.00
	\$ 89,000.00
	\$ 89,000.00
Market Rate Units:	\$ 469,000.00
	\$ 469,000.00
	\$ 479,000.00
	<u>\$ 479,000.00</u>
	\$ 2,163,000.00

## DEVELOPMENT TEAM : MEMBERS AND EXPERIENCE

### I. Development Team Principals :

#### Developer :

Daniel C. Tocci  
Fairview Realty  
Federal I D. #04-2385382  
3 Turning Mill Road, Lexington, MA 02173  
(617) 729-5452

#### Developer :

Cynthia Tocci  
Fairview Realty  
Federal I D. #04-2385382  
1475 Mass Ave #463, Lexington, MA 02173  
(617) 861-6888

#### Contractor :

Daniel C. Tocci  
Tocci Brothers Construction  
Federal I.D. #016-58-8952  
3 Turning Mill Road, Lexington, MA 02173  
(617) 729-5452

#### Engineer :

David Earl Beatty, P.E  
3 Mount Vernon Street, Reading, MA 01867  
(617) 944-4845

#### Attorney :

Michael A J Tocci, Esq  
23 Appletree Lane, Lexington, MA 02173  
(617) 862-4870

#### Marketing :

Cynthia Tocci  
Fairview Realty  
Federal I.D. #04-2385382  
1475 Mass Ave #463, Lexington, MA 02173  
(617) 729-5957

## Team Experience - Developer and Contractor

### Fairview Realty/Tocci Brothers Construction : Developer & Contractor

	<u>Example #1</u>	<u>Example #2</u>
Project Name :	Single Family Residential	Single Family Residential
Location :	Independence Road Pepperell, Mass	High Street Winchester, Mass
Number of Units :	Three SFR Homes	Five SFR Homes
State Subsidiary :	none	none
Type of Construction :	Wood frame	Wood frame
Sales or Rental :	Sales	Sales
Total Development Cost :	\$250,000.00 per home	\$500,000.00 per home
Date of Completion :	June 1991	Under Construction

**Fairview Realty, established in 1988 by Daniel Tocci and Cynthia Tocci, is a real estate firm dealing primarily in developing and marketing fine single family homes.**

**Tocci Brothers is an emerging developer/contractor in Middlesex County. (Daniel C. Tocci, d.b.a.). Established in 1986, it is primarily in development and construction of top quality single family homes. Please refer to Section 1, Part IV on Pages 7-9 for a synopsis of those projects which Fairview Realty and Tocci Brothers have jointly developed.**

**C. Tocci Enterprises, Inc., Cynthia Tocci, President, is a real estate management company. See Section 4, Page 12 for a resume of C. Tocci Enterprises, Inc. projects.**



**SECTION 1**

**III. Disclosure Statement Concerning Beneficial Interest**

Developer : Fairview Realty, Inc.

I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest (including the amount of their beneficial interest accurate to within one-tenth percent) in the proposed project are listed below.

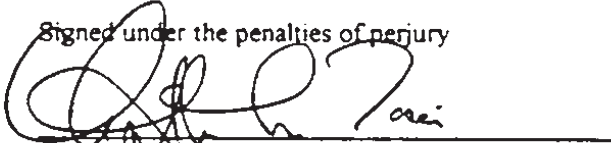
**NAMES AND RESIDENCES OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:**

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
Cynthia L. Tocci	1475 Mass Ave #463, Lexington	50%
Daniel C. Tocci	3 Turning Mill Road, Lexington	50%

The undersigned also acknowledged and states that none of the above listed individuals is an official elected to public office in the Commonwealth of Massachusetts, nor is an employee of the State Division of Capital Planning and Operations

I hereby state, under the penalties of perjury, that the names and addresses of all the firms and personal corporation employing attorneys, real estate brokers, architects, engineers, planners, and surveyors, and all other agents who have acted on behalf of any of the foregoing with respect to this proposal are listed in Section I.

Signed under the penalties of perjury

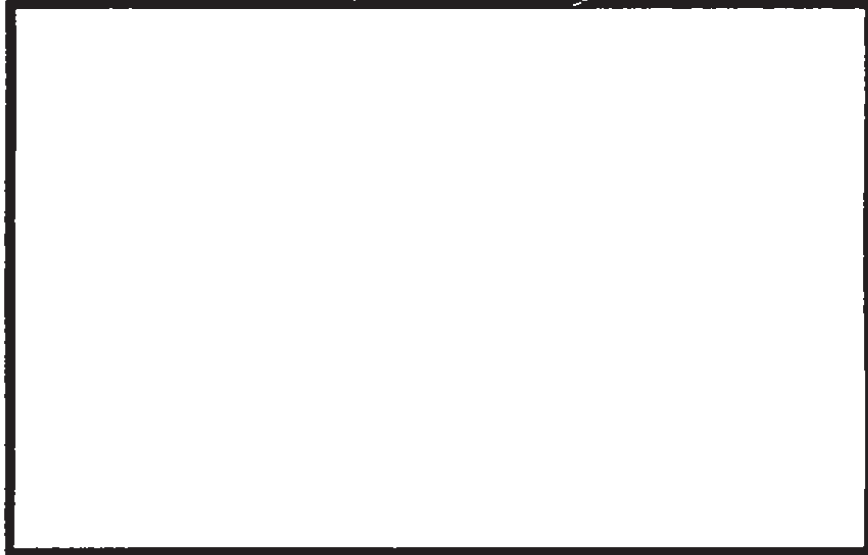


Cynthia L. Tocci  
October 5, 1992

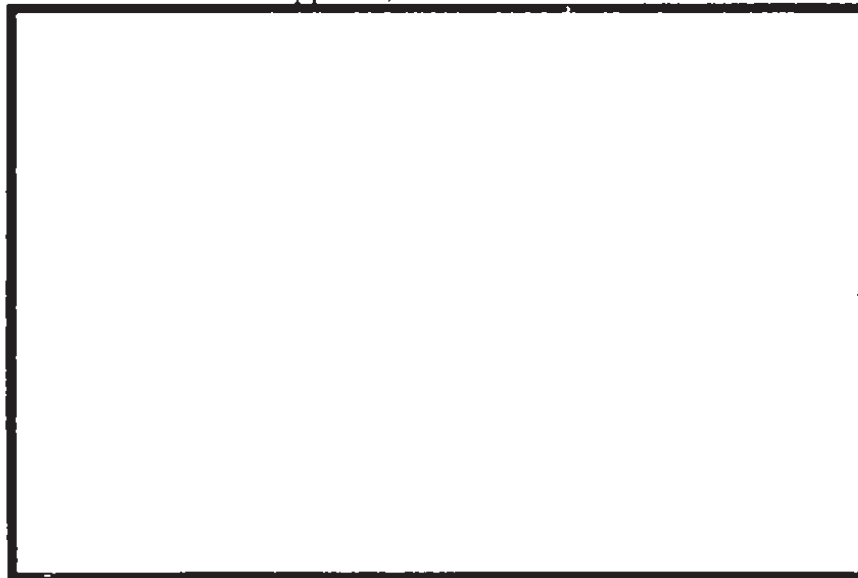
**SECTION I**  
**DEVELOPMENT TEAM : MEMBERS AND EXPERIENCE**

**IV. Synopsis of Fairview Realty & Tocci Brothers Construction Previous Projects**

10 Independence Road  
Pepperell, Massachusetts



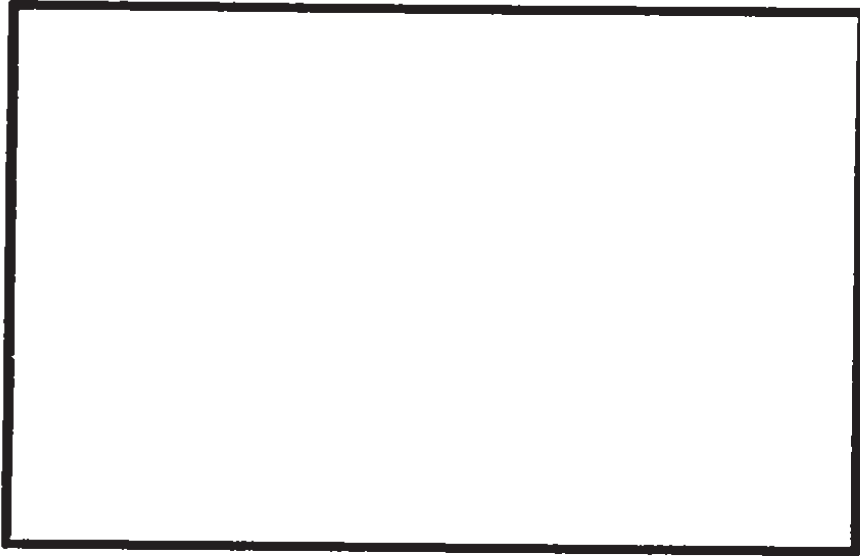
12 Independence Road  
Pepperell, Massachusetts



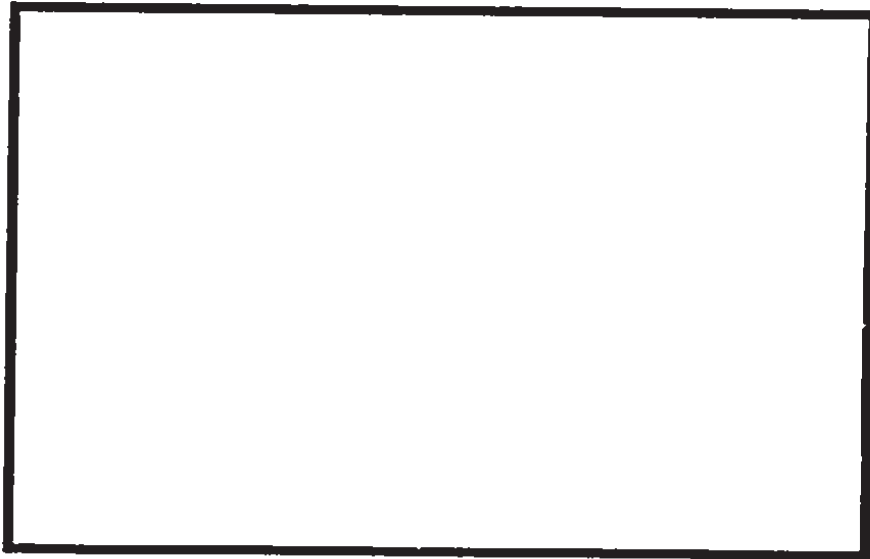
**SECTION I**  
**DEVELOPMENT TEAM : MEMBERS AND EXPERIENCE**

**IV. Synopsis of Fairview Realty & Tocci Brothers Construction Previous Projects**

14 Independence Road  
Pepperell, Massachusetts



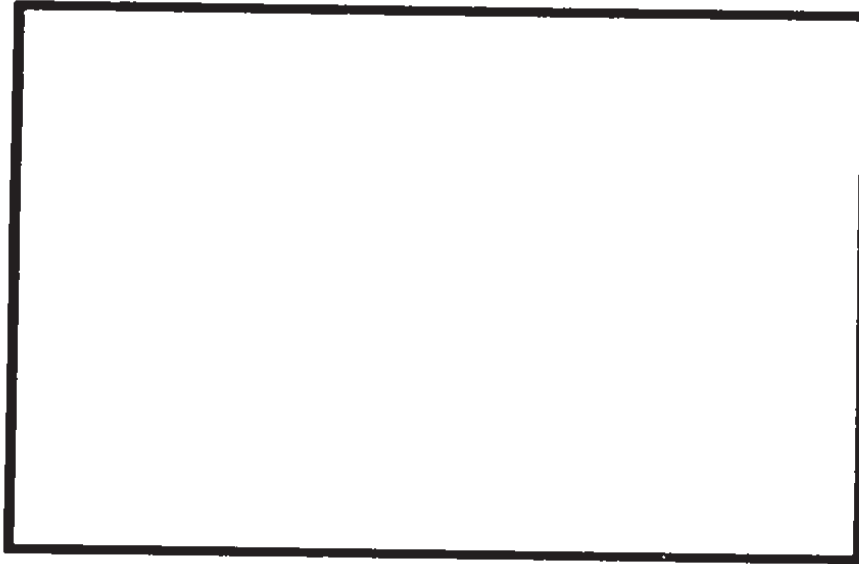
Lot 8, High Street  
Winchester, Massachusetts



BR 24317 Pt. 356

**SECTION I**  
**DEVELOPMENT TEAM : MEMBERS AND EXPERIENCE**

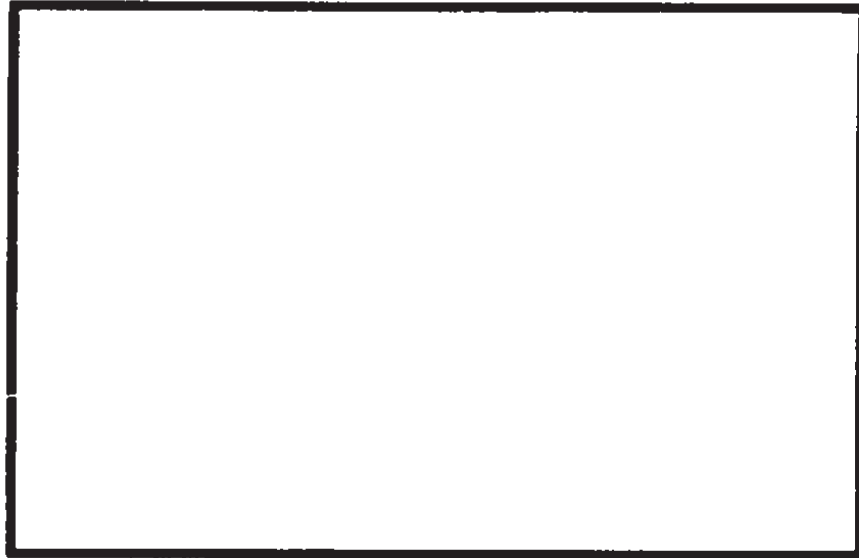
**IV. Synopsis of Fairview Realty & Tocci Brothers Construction Previous Projects  
Lot 8 High Street, Winchester, Massachusetts**



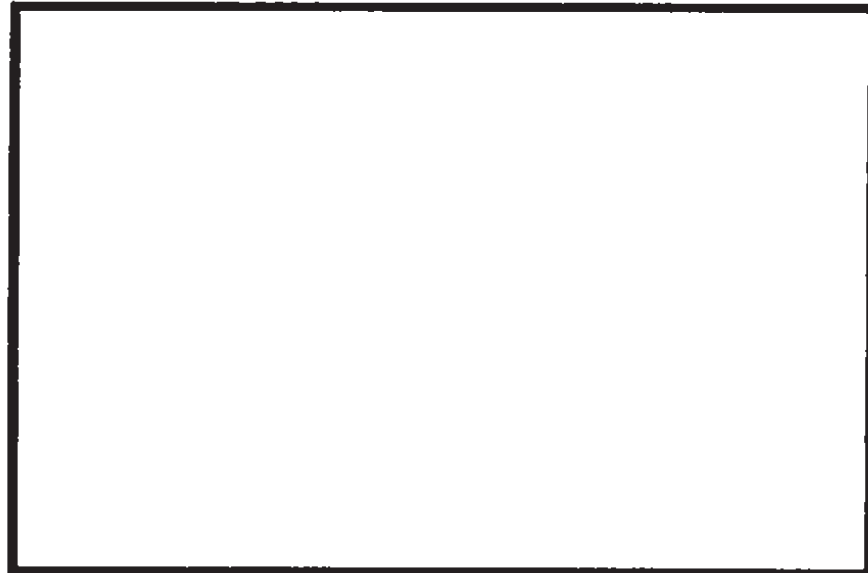
**SECTION I**  
**DEVELOPMENT TEAM : MEMBERS AND EXPERIENCE**

**IV. Synopsis of Fairview Realty & Tocci Brothers Construction Previous Projects**

Millwork Detail  
12 Independence Road, Pepperell, Massachusetts



Finish Work on Front Entry  
Lot 8, High Street, Winchester, Massachusetts



**SECTION 2 : DEVELOPMENT PROGRAM**

**I. Project Information**

**A. Construction Type :**

- New Construction Yes
- Stick Built Yes
- Modular Manufactured No
- Exterior Finish (type) Market Value : Cedar Clapboard  
Affordable : Vinyl Siding
- Fuel Source for Heat Gas when available (else Oil)
- Parking 2 Spaces : Garage
- Unfinished Basement Yes

**B. Unit Summary :**

	<u># of</u> <u>Units</u>	<u># of</u> <u>Bdrms</u>	<u># of</u> <u>Baths</u>	<u>Livable</u> <u>Sq. Ft.</u>	<u>Sales</u> <u>Price</u>
Affordable Units	3	4	2 ½	1,349	\$ 89,000.00
Market Units	2	4	2 ½	2,480	\$ 469,000.00
Market Units	2	4	3	2,568	\$ 479,000.00

**C. Tax Rate :**

Local Tax Rate utilized in this analysis : \$10.96 per \$1,000.00

## FORM 2 : DEVELOPMENT PROGRAM

## D. Basis for Sales Prices of the Affordable Units :

All Units have same sale price, different interest rates have been used to reflect potential changes in market conditions.

<u>ASSUMPTIONS</u>	<u>UNIT 1</u>	<u>UNIT 2</u>	<u>UNIT 3</u>
Projected Sales Price	\$ 89,000.00	\$ 89,000.00	\$ 89,000.00
Income of Buyer	38,000.00	38,000.00	38,000.00
Family Size	4	4	4
Down Payment	4,450.00	4,450.00	4,450.00
Mortgage Amount	84,550.00	84,550.00	84,550.00
Mortgage Interest Rate	8.0%	8.5%	9.0%
Mortgage Term	30 years	30 years	30 years
Annual Household Expenses:			
• Principal & Interest	620.60	650.19	673.02
• Real Estate Taxes	81.29	81.29	81.29
• Insurance	37.08	37.08	37.08
Total :	738.97	768.56	791.39
30% of Income	950.00	950.00	950.00

855<sup>00</sup>  
73663. mortgage

## FORM 2 : DEVELOPMENT PROGRAM

### II. Amenities

Special Amenities to be included in all units :

- 2 Car Garage
- Disposal
- Washer Dryer Hookups
- Dishwasher
- Cable TV. (where available)
- Full Unfinished Basement
- Fireplace(s)
- Hardwood Floors and/or Wall to Wall Carpet
- Landscaped Yards
- Paved Driveways
- Vinyl or Aluminum Clad Thermal pane Windows

### III. Development Schedule

We project to start development of all seven homes simultaneously, with the following projected schedule :

- Marketing start : January 1993
- Permits granted : March 1993
- Construction start : March 1993
- 100% Complete : December 1993
- Initial Occupancy : December 1993



## FORM 3 : DEVELOPMENT COST (PRO FORMA) INFORMATION

I. Development Costs		
Development Items	Total Costs	Per Unit Costs
Site Acquisition	\$200,000.00	\$28,571.43
Hard Costs:		
a. Site Prep	\$91,000.00	\$13,000.00
b. Landscaping	\$35,000.00	\$5,000.00
c. Residential Construction	\$1,000,000.00	\$142,857.14
d. Subtotal Hard Costs	\$1,126,000.00	\$160,857.14
e. Contingency (8%)	\$90,080.00	\$12,868.57
f. Total Hard Costs	\$1,216,080.00	\$173,725.71
Soft Costs:		
g. Permits/Surveys	\$20,000.00	\$2,857.14
h. Architectural	\$15,000.00	\$2,142.86
i. Engineering	\$20,000.00	\$2,857.14
j. Legal	\$15,000.00	\$2,142.86
k. Insurance	\$30,000.00	\$4,285.71
l. Security	\$5,000.00	\$714.29
m. Developer's Fee	\$50,000.00	\$7,142.86
n. Construction Manager Fee	\$50,000.00	\$7,142.86
o. Property Manager Fee	\$20,000.00	\$2,857.14
p. Construction Interest	\$36,000.00	\$5,142.86
q. Financing/Application Fees	\$10,000.00	\$1,428.57
r. Utilities	\$5,000.00	\$714.29
s. Maintenance (unsold units)	\$4,000.00	\$571.43
t. Accounting	\$2,000.00	\$285.71
u. Marketing	\$2,000.00	\$285.71
v. Commissions (6%)	\$124,440.00	\$17,777.14
w. Subtotal Soft Costs	\$408,440.00	\$58,348.57
x. Contingency (6%)	\$24,506.40	\$3,500.91
y. Total Soft Costs	\$432,946.40	\$61,849.49
<b>Total Development Costs</b>	<b>\$1,649,026.40</b>	<b>\$235,575.20</b>
II. Profit Analysis		
Source :		
a. Affordable Unit Projected Sales	\$267,000.00	
b. Market Sales	\$1,896,000.00	
c. Total Sales plus Grants	\$2,163,000.00	
Uses :		
d. Total Development Costs	\$1,649,026.40	
e. Total Profit	\$513,973.60	
f. Developer's Profit	34.20%	
Cost Analysis :		
Total Building Square Footage	14,103	
Construction Costs Per Square Foot	\$70.91	
Hard Costs Per Square Foot	\$86.23	
Total Development Costs Per Square Foot	\$116.93	
Sales Price Per Square Foot	\$153.37	

## SECTION 4 FINANCIAL RESOURCES AND FINANCING PLAN

**Developer : Fairview Realty**

### I. Corporate Structure :

Fairview Realty, Inc., incorporated in 1988, is a real estate development and management firm. Its two principals, Daniel C. Tocci and Cynthia L. Tocci are brother and sister who each maintain a 50% interest in the company.

Daniel C. Tocci is also the Proprietor of Tocci Brothers Construction, a Construction Company founded in 1986.

Cynthia L. Tocci is also President of C. Tocci Enterprises, Inc., a real estate management firm. Ms. Tocci maintains 100% interest in this company.

C. Tocci Enterprises, Inc. is primarily a real estate management firm. Its projects include the management of :

- Charlestown Commerce Center, a 400,000 sf warehouse/industrial park in Charlestown, Mass. Services include : supervision of tenants, marketing, accounting, construction buildout, maintenance, and the installation of a sprinkler system and other major renovations required to bring two 100 year old buildings into building code compliance.
- The Commons Condominiums, a 40 unit Townhouse condominium project in Taunton, Mass. Services include : completion of construction, marketing, supervising rentals, condominium association management, accounting and maintenance.
- The Briar Hill Condominiums, a 144 unit condominium project in Malden, Mass. Services include : completion of construction, marketing, bank work-out, supervising rentals, condominium association management, accounting and maintenance.
- Winter Reservoir Properties, a 40,000 sf retail/office park in Waltham, Mass. Services include : accounting, maintenance, tenant management, lease management, renovation and improvement supervision.

**SECTION 4  
FINANCIAL RESOURCES AND FINANCING PLAN**

**Developer : Fairview Realty**

**II. Financial Statements :**

Forwarded under separate cover to Joan McCallion, Deputy Director, of the Office of Real Estate Management.

**III. Sources and Uses of Funds :**

We have submitted proposals to Saugus Bank and Trust requesting 100% financing on this project. We have indicated to Saugus Bank that we will be signing personal guarantees pledging our personal assets as equity collateral for this loan. Please refer to the attached Letter of Intent from Saugus Bank and Trust on Page 17.

**IV. Construction Financing Status :**

- a. Loan Amount Required : \$1,200,000.00
- b. Legal Names of Borrowers : Fairview Realty, Inc.  
Federal I.D. #04-2385382  
Daniel C. Tocci  
Social Security #016-58-8952  
Cynthia L. Tocci  
Social Security # 022500238
- c. Construction Lender : Saugus Bank and Trust  
Contact : Jeff Buckley  
P.O. Box 1191  
Saugus, MA 01906  
(617) 233-0400

**SECTION 4  
FINANCIAL RESOURCES AND FINANCING PLAN**

**Developer : Fairview Realty**

**V. Proponent Equity Commitment:**

See attached Letter of Intent from Saugus Bank (Page 17) and the personal financial statements submitted to Ms. Joan McCallion.

**VI. Bank References:**

Saugus Bank & Trust	Jeff Buckley	Saugus, MA	(617)233-0400
BayBank/Middlesex	Richard Marinelli	Burlington, MA	(617)273-1700

**VII. Credit History :**

Real Estate Loans Paid :

<u>Project</u>	<u>Lender</u>	<u>Amount</u>	<u>Terms</u>	<u>Date Opened</u>	<u>Amount Paid</u>
Independence Road, Pepperell, Mass	BayBank/Middlesex	\$500,000 00	Int Only Prime+1	3/88	in full

All other projects, custom built.

Real Estate Loans Outstanding:

None.

**VII. Legal Information:**

Neither of the principals nor any firm which they had an interest in at any time defaulted on a loan or were adjudged bankrupt at any time.

BayBank  
7 New England Executive Park  
Burlington, MA 01803  
(617) 273 1700

BK 24317 PT 365

**BayBank**

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Letter of Reference

October 5, 1992

To Whom It May Concern :

Tocci Brothers Construction has been and is currently a valued customer of our bank. We have in the past had a very satisfactory lender relationship with Tocci Brothers with reference to a three-home single family project which they developed in Pepperell, Mass

All work was completed in a satisfactory manner, with high quality construction standards, and repayment of debt was done in a timely manner.

Sincerely,



Richard Marinelli  
Vice President, Commercial Lending  
BayBanks/Middlesex

**SECTION 4  
FINANCIAL RESOURCES AND FINANCING PLAN**

**Developer : Fairview Realty**

**IX. Credit Reference Authorization : Developer**

Cynthia L. Tocci, Principal  
Social Security #022-50-0238  
1475 Mass. Ave. #463  
Lexington, MA 02173  
(617) 861-6888

I hereby give my consent to have the Division of Capital Planning and Operations and its assigned credit bureau(s) obtain any and all information regarding my employment, checking and/or savings accounts, credit obligations, and all other credit matters which it may require in connection with my proposal and ability to finance it. This form may be reproduced and that copy shall be as effective as the original consent which I have signed.

I am aware that the assigned credit bureaus may call me to clarify information obtained from my credit history in order to expedite the review of my proposal. I can be reached at the following telephone numbers during the day:

(617) 242-0080      from 9.00am to 5.00pm      Monday through Friday

October 4, 1992

\_\_\_\_\_  
Cynthia L. Tocci

For DCPO use only:

I hereby certify this to be a true and correct copy of the original.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

**SECTION 4  
FINANCIAL RESOURCES AND FINANCING PLAN**

**Developer : Fairview Realty**

**IX. Credit Reference Authorization : Developer**

Daniel C. Tocci, Principal  
Social Security #016-58-8952  
3 Turning Mill Road  
Lexington, MA 02173  
(617) 862-5929

I hereby give my consent to have the Division of Capital Planning and Operations and its assigned credit bureau(s) obtain any and all information regarding my employment, checking and/or savings accounts, credit obligations, and all other credit matters which it may require in connection with my proposal and ability to finance it. This form may be reproduced and that copy shall be as effective as the original consent which I have signed.

I am aware that the assigned credit bureaus may call me to clarify information obtained from my credit history in order to expedite the review of my proposal. I can be reached at the following telephone numbers during the day.

(617) 729-5929 from 9:00am to 5:00pm Monday through Friday

October 4, 1992

\_\_\_\_\_  
Daniel C. Tocci

For DCPO use only:

I hereby certify this to be a true and correct copy of the original.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name and title

## SECTION 5 : CONSTRUCTION SPECIFICATIONS

### Affordable Homes:

It is our intention to place the affordable housing homes on the following lots:

Lot 1 : Old Concord Turnpike

Lot 2 : Mill Street

Lot 3 : Bedford Road

However, this is not definite as it is dependent on local approvals and community cooperation.

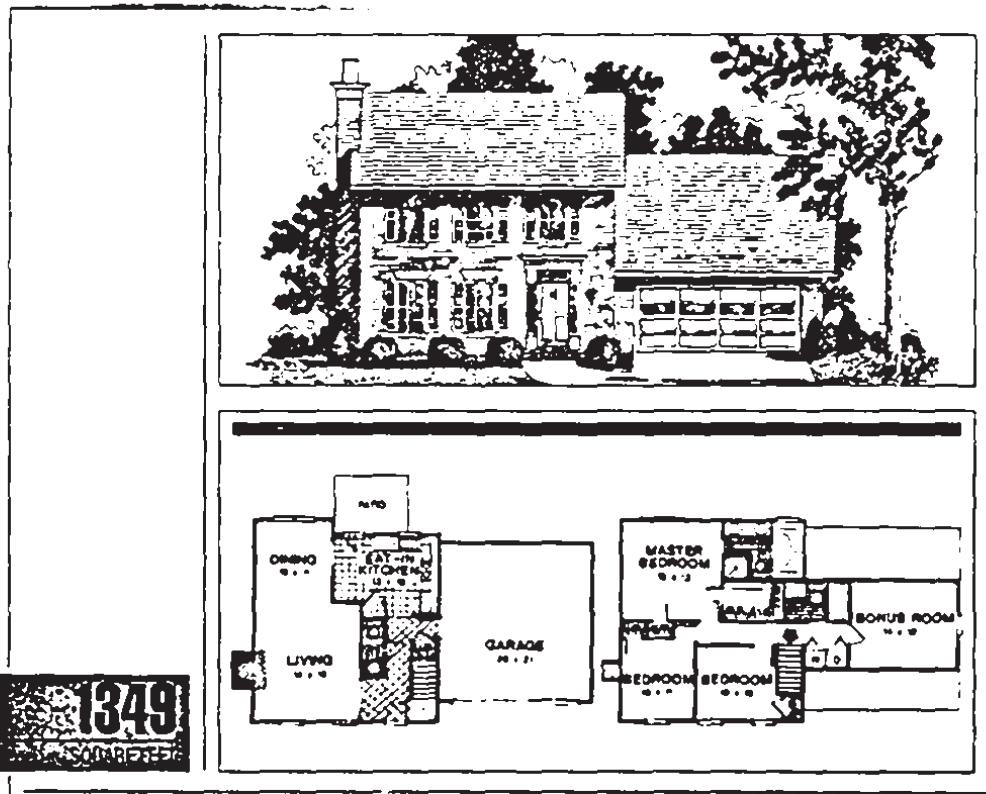
All three homes will be of the size and style detailed below with the following features:

- 1,349 square feet gross living area
- First Floor : 645 sf
- Second Floor : 704 sf
- 3 Bedrooms plus one bonus room (additional bedroom)
- 2 1/2 baths
- Poured concrete foundations
- Full, unfinished basements
- Landscaped lots
- Paved driveways
- Two car garages
- 2x4 exterior wall framing
- 1/2" Plywood wall sheathing
- Exterior wall material : Vinyl siding
- 2x10 Roof framing
- Interior Walls : Blueboard Skimcoat
- Interior Casing/Trim : 2 1/2" colonial
- Interior Finish : Paint
- Flooring : Carpet and Vinyl
- Exterior Deck : 8'x 10' Pressure Treated
- 1/2" Roof Sheathing
- Roof : Fiberglas Architect Shingles
- Interior Wall Framing : 2x4
- Wall Insulation Level : R-11
- Roof Insulation Level : R-24
- Windows : Vinyl Clad Thermal pane
- Exteriors : Solid Wood 6-Panel
- Gas Heating where available, else oil, Forced Hot Water, 2 zones
- Cooking Range : Gas when available, else electric
- Range Hood
- Washer & Dryer Hook ups
- Disposal
- Dishwasher



### SECTION 5 : CONSTRUCTION SPECIFICATIONS

#### Affordable Home Floor Plan and Diagram



## SECTION 5 : CONSTRUCTION SPECIFICATIONS

Market Value Home 1 :

It is our intention to place Federal style homes on the following lots:

Lot 4 : Bedford Road

Lot 6 : Brooks Road

This is not definite as it is dependent on local approvals and market demands.

Both homes will be of the size and style detailed below with the following features:

- 2,460 square feet gross living area
- First Floor : 1,206 sf
- Second Floor : 1,254 sf
- 4 Bedrooms
- 2 1/2 baths
- Paved driveways
- Two car garages
- 2x6 exterior wall framing
- 1/2" Plywood wall sheathing
- Exterior wall material : Cedar Clapboard
- 2x10 Roof framing
- Interior Walls : Blueboard Skimcoat
- Interior Casing/Trim : 3 1/2" colonial
- Interior Finish : Paint
- Flooring : Ceramic Tile, Hardwood and Carpet
- Exterior Deck : 8'x10' Pressure Treated
- 1/2" Roof Sheathing
- Roof : Fiberglas Architect Shingles
- Interior Wall Framing : 2x4
- Wall Insulation Level : R-19
- Roof Insulation Level : R-24
- Windows : Vinyl Clad Thermal pane
- Exteriors : Solid Wood 6-Panel
- Gas Heating where available, else oil, Forced Hot Water, 3-4 zones
- Cooking Range : Gas when available, else electric
- Range Hood w/microwave
- Washer & Dryer Hook ups
- Disposal
- Dishwasher

# SECTION 5 : CONSTRUCTION SPECIFICATIONS

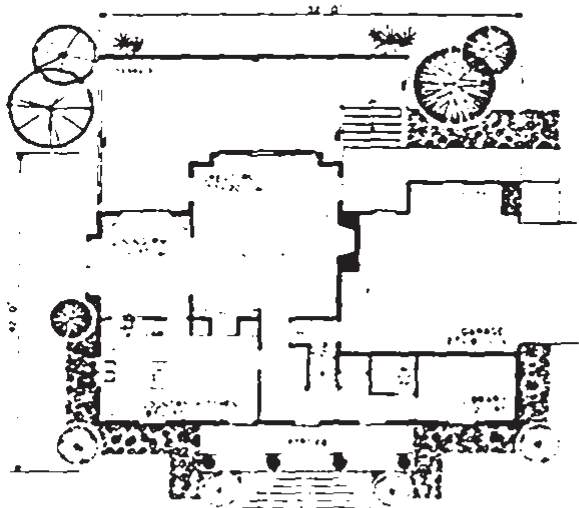
DK 24317-371

## Market Value Home I Floor Plan and Diagram



**Design T62668** 1,206 Sq. Ft. - First Floor  
1,254 Sq. Ft. - Second Floor; 47,915 Cu. Ft.

● This elegant exterior houses a very livable plan. Every bit of space has been put to good use. The front country kitchen is a good place to begin. It is efficiently planned with its island cook top, built-ins and pass-thru to the dining room. The large great room will be the center of all family activities. Quiet times can be enjoyed in the front library. Study the second floor sleeping areas.



## SECTION 5 : CONSTRUCTION SPECIFICATIONS

Market Value Home 2:

It is our intention to place Federal style homes on the following lots:

Lot 5 : Sunnyside Lane

Lot 7: Brooks Road

This is not definite as it is dependent on local approvals and market demands

Both homes will be of the size and style detailed below with the following features:

- 2,568 square feet gross living area
- First Floor : 1,184 sf
- Second Floor : 1,384 sf
- 4 Bedrooms
- 3 baths
- Paved driveways
- Two car garages
- 2x6 exterior wall framing
- 1/2" Plywood wall sheathing
- Exterior wall material : Cedar Clapboard
- 2x10 Roof framing
- Interior Walls : Blueboard Skimcoat
- Interior Casing/Trim : 3 1/2" colonial
- Interior Finish : Paint
- Flooring : Ceramic Tile, Hardwood and Carpet
- Exterior Deck : 8'x10' Pressure Treated
- 1/2" Roof Sheathing
- Roof : Fiberglas Architect Shingles
- Interior Wall Framing : 2x4
- Wall Insulation Level : R-19
- Roof Insulation Level : R-24
- Windows : Vinyl Clad Thermal pane
- Exteriors : Solid Wood 6-Panel
- Gas Heating where available, else oil, Forced Hot Water, 3-4 zones
- Cooking Range : Gas when available, else electric
- Range Hood w/microwave
- Washer & Dryer Hook ups
- Disposal
- Dishwasher

BK 24317 PT. 373

## SECTION 5 : CONSTRUCTION SPECIFICATIONS

### Market Value Home II Floor Plan and Diagram

**2568**  
SQUARE FEET



**BOILER  
TOP  
SILVER**

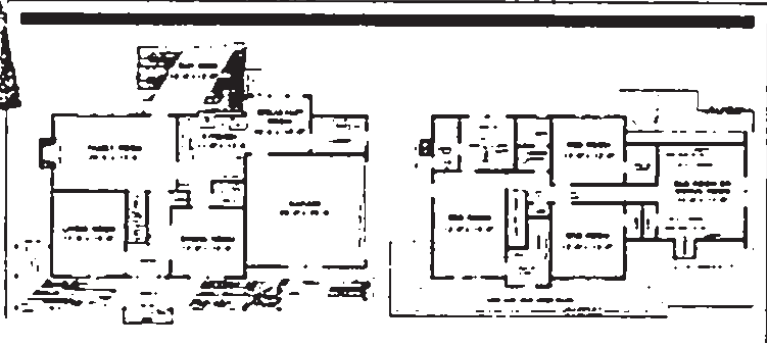


EXHIBIT c

BR 24317 PG 374

**PROVISIONAL DEVELOPER DESIGNATION**

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**HOUSING DEVELOPMENT  
LINCOLN, MASSACHUSETTS**

December 22, 1992

Office of Real Estate Management  
Division of Capital Planning & Operations  
100 Cambridge Street, Room 1611  
Boston, MA 02202

BK 24317 pt. 375

PROVISIONAL DEVELOPER DESIGNATION  
LINCOLN HOUSING DEVELOPMENT  
DECEMBER 22, 1992

WHEREAS, the Division of Capital Planning & Operations (DCPO) controls seven scattered lots of residentially zoned land in Lincoln; and

WHEREAS, DCPO has requested proposals for the purchase of this land on behalf of the Massachusetts Highway Department; and

WHEREAS, four proposals were submitted in response to the RFP and were reviewed by DCPO; and the proposal submitted by Fairview Realty offered the highest price to be paid to the Commonwealth among similar proposals, and

WHEREAS, a deposit of \$10,000 has been received from Fairview Realty.

NOW THEREFORE, THE COMMISSIONER HEREBY DECLARES:

That Fairview Realty, Inc. be, and hereby is, provisionally designated to develop the lots in Lincoln in conformance with a Land Disposition Agreement which shall be executed between Fairview Realty and DCPO on behalf of MHD, and which will provide for payment, at closing, of the agreed upon purchase price of \$215,000 based on development of two (2) affordable units, and four (4) market rate units to be developed on the lots, and assuming that one lot is unbuildable.

This provisional designation is contingent upon the following:

- 1) Delivery to DCPO of a commitment for conventional financing adequate to develop the project as proposed by Fairview Realty within 60 days of agreement to this provisional designation.
- 2) Within 30 days of execution of this provisional designation, Fairview Realty shall submit a budget, schedule and summary of responsibilities for the project construction and permitting satisfactory to DCPO; and established performance measures and milestones for the development; and
- 3) Within 90 days of execution of this provisional designation, Fairview Realty shall submit a development plan including permit applications.
- 4) DCPO's receipt and acceptance of a satisfactory independent appraisal.

If these conditions are not satisfied, this provisional designation will expire and the second place bidder will be provisionally designated as the developer.

The executed Land Disposition Agreement shall serve as DCPO's formal and final designation.

ACCEPTED AND AGREED:

FAIRVIEW REALTY, INC.

BY:   
Cynthia L. Tocci, Principal

BY:   
Daniel C. Tocci, Principal

DATE: December 31, 1992

COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF CAPITAL PLANNING  
& OPERATIONS

BY:   
Kevin M. Smith, Commissioner

DATE: 1/21/93

BR 24317 P. 376

EXHIBIT D

DESIGNATION AGREEMENT UNDER SECTION 6045 OF THE INTERNAL REVENUE CODE ("IRC")

RE: Land Disposition Agreement dated as of 2.28.94 between the Commonwealth of Massachusetts, through its Division of Capital Planning and Operations, as Seller ("Transferor") and Built Form, Inc. as Buyer ("Transferee") for the sale of the Premises located at 14 Lincoln, Massachusetts ("Land Disposition Agreement").

Pursuant to the reporting requirements of Section 6045 of the IRC, the parties to the Land Disposition Agreement hereby designate David M. Stein, attorney for the Transferee, as the reporting person. Transferor agrees to provide the reporting person with information substantially in the form of the attached Exhibit A, or if the transaction contemplated in the Land Disposition Agreement is exempt from the reporting requirements of Section 6045, with a certification to that effect, specifying the grounds for the exemption, which certification shall meet the requirements of Treasury Regulation 1.6045-3T.

Dated as of the 28 day of February, 1994.

Carol Deen Vice President, Fairview Realty, Inc.  
BUYER/TRANSFEREE  
Address: 1475 Mass Ave #463, Lexington MA 02173

David M. Stein Attorney for Commonwealth of Massachusetts, Division of Capital Planning & Operations  
SELLER/TRANSFEROR  
Address: 141 Tremont St, Boston, MA

Designation as reporting person accepted:

[Signature]  
Address: Roche, Center + Dr. Belmont

Date: 2.28.94

[TO BE EXECUTED IN TRIPLICATE; REPORTING PERSON TO KEEP A COPY OF THIS DESIGNATION AGREEMENT FOR FOUR YEARS FROM THE DATE OF THE CLOSING.]



EXHIBIT A TO DESIGNATION AGREEMENT

REAL ESTATE TRANSACTION REPORTING INFORMATION SHEET  
1992 TRANSACTIONS

\_\_\_\_\_ is required by Section 6045 of the Internal Revenue code of 1986 and Temp. Reg. Section 1.6045-3T to report certain real estate transactions to the Internal Revenue service. In order to comply with these requirements, \_\_\_\_\_ requests that you supply the information listed below.

In addition, the law requires you to provide \_\_\_\_\_ with your correct taxpayer identification number. If you do not provide \_\_\_\_\_ with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

1. Transferor Name: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Federal ID No.: \_\_\_\_\_
4. % of ownership: \_\_\_\_\_
5. Are any co-owners husband and wife?  yes  no  
(Indicate names if more than two sellers)
6. Date of Closing: \_\_\_\_\_
7. Gross Proceeds: \_\_\_\_\_
8. Address or legal description: \_\_\_\_\_
9. Was property Seller's principal residence?  yes  no
10. Did the Seller receive property (other than cash or notes) or services as part of the purchase price?  yes  no

Under penalties of perjury, I (we) certify that the above information supplied by me (us) is correct.

\_\_\_\_\_  
Seller Date:

\_\_\_\_\_  
Seller Date:

NOTE: IF TRANSFEROR IS A NOMINEE TRUST, MUST OBTAIN NAMES AND FEDERAL ID NUMBERS OF BENEFICIARIES OF THE TRUST.

 THIS FORM NEED NOT BE COMPLETED IF TRANSFEROR IS A CORPORATION OR A GOVERNMENT AGENCY. PREPARE ONE FORM FOR EACH TRANSFEROR.

BK 24317 PC 378

exhibit E



February 28, 1994

Fairview Realty, Inc.  
1475 Massachusetts Avenue  
Unit 463  
Lexington, MA 02173

Daniel C. Tocci  
3 Turning Hill Road  
Lexington, MA 02173

Cynthia L. Tocci  
1475 Massachusetts Avenue  
Unit 463  
Lexington, MA 02173

RE: Seven (7) lot acquisition and construction of two (2) low and moderate income houses in Lincoln, MA.

Dear Mr. and Ms. Tocci:

I am pleased to inform you that at a meeting of the Executive Committee of Saugus Bank and Trust Company held on April 6, 1993 your application for a \$375,000.00 acquisition/construction loan in connection with the above referenced property was approved.

Please note that it is the understanding of the Executive Committee that the proceeds of the Construction Loan will be disbursed pursuant to the terms of a Construction Loan Agreement relative to the construction to be performed on the Subject Property.

The terms of the Loan committed hereby are as follows:

- 1.) **BORROWER:** Fairview Realty, Inc.  
1475 Massachusetts Avenue Unit #463  
Lexington, MA 02173  
(hereinafter referred to as the "Borrower").
- 2.) **AMOUNT OF COMMITMENT:** \$375,000.00  
  
\$200,000.00 Letter of Credit
- 3.) **TERMS OF LOANS:**
  - 1.) Term: The loan shall be due and payable twelve (12) months from the date of initial disbursement.
  - 2.) Rate: The note will call for interest to accrue and be payable monthly in arrears on funds advanced



FAIRVIEW REALTY, INC.  
FEBRUARY 28, 1994  
PAGE 2

and outstanding at a rate equal to the aggregate of the Bank's annual Prime Rate as of the date of closing of the Loan plus three (3%) percent per annum. Interest will be computed on a 360 day year for the actual number of days elapsed.

3.) Payments: Interest only on the principal amount disbursed and outstanding shall be due and payable monthly. All outstanding principal and accrued and unpaid interest will be due and payable on the Maturity Date.

As the funds are received on the first four (4) lots sold they will be applied as follows:

A.) \$200,000 will be placed into a savings account and pledged towards the outstanding Letter of Credit.

B.) \$175,000 will be used to paydown the loan leaving only the construction proceeds to be advanced.

C.) The remaining funds received will be applied in a mutually acceptable manner agreed to by the Bank and the Borrower.

4.) Bank fees/Commitment Fee: The Borrower will pay any fees for appraisals and related work by outside parties contracted by the Bank. In addition, an application and credit fee of \$250.00 shall be payable with the acceptance of this commitment letter. Further, a non-refundable commitment fee of one (1%) percent of the Loan (\$7,500.00) will be due at the closing of the Loan. Unless otherwise provided, all fees are to be paid in advance unless other arrangements have been made. There will also be a two (2) point fee (\$4,000.00) on the \$200,000.00 Letter of Credit.

*Successor Bank and Trust  
2/24/94*

*CA [Signature] V.P.*

*Daniel C. Toza President*

*[Signature] Individually*

*Daniel C. Toza, Individually*



FAIRVIEW REALTY, INC.  
 FEBRUARY 28, 1994  
 PAGE 3

- 4.) SECURITY: The Loan shall be secured by a valid first mortgage and Security Agreement providing good and clear record and marketable fee simple title in the Subject Property together with any improvements thereon. The Security Agreement will provide a first lien on all furniture, fixtures, equipment, and appliances whether now-owned or hereafter acquired and used in or incidental to the operation of the Subject Property. The final legal description of the Subject Property must be approved by the Bank and its counsel.
- 5.) OTHER  
 The Borrower will pledge a Saugus Bank and Trust savings account in the amount of \$25,000.00 for the servicing of the debt.
- 6.) USE OF FUNDS:
- |   |              |
|---|--------------|
| Purchase price (7 lots)                                     | \$215,000.00 |
| Engineering, permits and soil tests                         | 20,000.00    |
| Construction of (2) 1,500 sq. ft.<br>low and moderate homes | 200,000.00   |
| Miscellaneous   | 15,000.00    |
|   | -----        |
|   | \$450,000.00 |
| Less Borrowers' down payment                                | 75,000.00    |
|   | -----        |
| LOAN AMOUNT   | \$375,000.00 |
- 7.) GUARANTEES: Daniel C. Tocci and Cynthia L. Tocci shall execute a guaranty unconditionally guaranteeing the payment and performance of the Loan. To further secure the guarantees the Bank will receive junior mortgages on the guarantors personal residences
- 8.) LOAN DOCUMENTS: The Borrower shall execute and deliver all documents, instruments, assignments and estoppels as the Bank and Bank's counsel deem necessary for the transaction.
- 9.) CONDITION PRECEDENT: At least seven (7) days prior to the closing of the Loan, the Borrower shall furnish the Bank the following, at the Borrower's expense, which shall constitute conditions precedent to closing the Loan, in addition to any other documents required herein:

24317#381



FAIRVIEW REALTY, INC.  
FEBRUARY 28, 1994  
PAGE 4

A.) Hazard Insurance. Until the Loan is paid in full, the Borrower shall obtain and maintain in effect insurance coverage on the Subject Property as follows:

1.) During the period of construction, an original builder's risk insurance policy or policies in a format and written by an insuring company or companies satisfactory to the Bank. Coverage included within the policy or policies insuring the Subject Property shall not be less than the encompassed by "Fire, Extended Coverage and Vandalism and Malicious Mischief" perils broadened to include the so-called "All Risk of Physical loss". The original policy or policies or a certificate of insurance containing a mortgage clause naming the Bank as mortgagee shall be supplied to the Bank.

B.) Legal Opinions. Legal opinion by Borrowers' attorney as to the following:

- 1.) The Borrowers' are existing under the laws of the jurisdiction of its formation, with adequate power to enter into the Loan and for the Trustees to execute the Loan documents;
- 2.) the Borrowers' have obtained all permits, licenses, and other government approvals necessary for the development of the Subject Property;
- 3.) there is no outstanding or threatened litigation, administrative, or other proceedings, the outcome of which could materially and adversely affect the Borrowers or Guarantors;
- 4.) such other matters as Bank may reasonable require; and



FAIRVIEW REALTY, INC.  
FEBRUARY 28, 1994  
PAGE 5

5.) additional legal opinions from law firms satisfactory to the Bank covering any and all matters which the Bank in its sole discretion deems necessary, including, but not limited to, questions of title insurance interest, usury, zoning, environmental laws and regulations, and other federal, state, county, and municipal laws, rules, and regulations applicable to the Subject Property.

C.) Plans and Specifications: A complete set of plans and specifications, which plans must be reviewed and approved by the Bank prior to closing. Said plans must be approved by all local, state and federal regulatory authorities having jurisdiction over the Subject Property and the improvements to be constructed thereon.

D.) The Bank may require any other documentation that it deems necessary and reasonable to carry out the provisions and intent of this Commitment.

10.) CONSTRUCTION  
LOAN AGREEMENT:

The Borrower agrees to execute a Construction Loan Agreement to be executed contemporaneously with the Construction Loan note. The Construction Loan Agreement will provide, among other things, for the manner in which funds will be advanced under the Construction Loan. Provided record title is clear, advances are to be made monthly upon receipt of itemized requisitions. The Bank further reserves the right to limit advances so that the unadvanced loan proceeds will at all times be sufficient in the opinion of the Bank to meet all direct and indirect construction and related costs necessary to the completion of the construction. All construction will be subject to inspection by and approval of the Bank. All costs incurred by the Bank in connection with the processing of requisitions including, but not limited to, inspection fees (\$200.00 per inspection), title updates, title insurance endorsements, appraisals, and related work by outside parties contracted by the Bank, are to be paid by the Borrower in advance or as billed.



FAIRVIEW REALTY, INC.  
FEBRUARY 28, 1994  
PAGE 6

- 11.) **APPRAISALS:** This commitment is subject to the Bank's satisfactory appraisal of all properties, provided as security. The Bank reserves the right to withdraw this commitment letter in the event that any property is appraised at a value less than the value stated in the Borrower's loan application. The cost of all appraisals will be paid by the Borrower.
- 12.) **SATISFACTORY TITLE:** The making of the Loan shall be conditional upon title examinations of the Subject Property, which examinations shall evidence title satisfactory for mortgage purposes in the opinion of the Bank's counsel.
- 13.) **LEGAL FEES:** All legal fees, costs and charges will be paid by the Borrower, expressly including any and all legal fees, costs or charges that might result, directly or indirectly, in future litigation relating to the present transaction. A retainer equal to \$200.00 or one-third of one percent of the amount of the Loan, whichever is greater, is to be paid to Bank counsel as a retainer for legal services with the acceptance of this commitment letter by the Borrower.
- 14.) **BANK'S COUNSEL:** Roche, Carens & DeGicomo, 605 Broadway, Saugus, Ma, Attorney David Stern 617-233-4074
- 15.) **SUBSEQUENT FINANCING:** The Borrower shall not sell, mortgage, encumber or suffer the imposition of a lien of any sort against the Subject Property without the express written consent of the Bank. The entire principal balance owing under the Loan documents shall become due and payable immediately upon the sale or conveyance of the Subject Property.
- 16.) **GOVERNING LAW:** This agreement is delivered and intended to be performed in the Commonwealth of Massachusetts and shall be construed in accordance with the laws of the Commonwealth.



FAIRVIEW REALTY, INC.  
FEBRUARY 24, 1994  
PAGE 7

- 17.) **AMENDMENT:** This agreement can only be amended by an instrument in writing, signed by both the Bank and the Borrower.
- 18.) **BROKERS:** It is hereby acknowledged that no mortgage broker or real estate broker is responsible for or involved in the Loan contemplated by this commitment letter or the issuance of the commitment letter. By accepting this commitment and signing below, the Borrowers hereby agree to hold the Bank harmless against any claims for commissions from any real estate or mortgage broker or any other person.
- 19.) **ASSIGNMENT:** This commitment letter and the obligations of the Borrower hereunder are not assignable by the Borrower.
- 20.) **PERSONAL LIABILITY:** This commitment letter is issued on the condition that none of the Bank's depositors, incorporators, trustees nor any of its officers or agents shall be liable personally hereunder or for any actions taken with respect to this commitment or any loan granted pursuant hereto.
- 21.) **ACCEPTANCE:** This commitment letter will expire if not signed, accepted and presented to the Bank within ten (10) business days from the date hereof.
- 22.) **EXPIRATION:** This commitment letter will expire if the closing contemplated herein does not take place within sixty (60) days from the Borrower's acceptance of this commitment letter.
- 23.) **PREPAYMENT:** The loan may be prepaid in full or in part without penalty. Any prepayments shall be applied first to any late charges and accrued and unpaid interest, in such order and then to principal.
- 24.) **SURVIVAL OF TERMS:** The terms, conditions and provisions of this commitment letter shall survive the execution, acknowledgment and delivery of any and all documents as may be required to consummate this agreement and shall





FAIRVIEW REALTY, INC.  
 FEBRUARY 28, 1994  
 PAGE 8

remain in full force and effect as long as the Borrower is indebted to the Bank as a result of this commitment letter. In the event certain terms in the documents executed by the Borrower at the closing of the transaction contemplated herein differ from the terms of this commitment letter, then the terms contained in said documents shall control.

25.) **BANK'S REVIEW OF DOCUMENTS:**

All Loan documents including, but not limited to, copies of insurance policies, required borrowing authorities and updated financial statements must be submitted to the undersigned lending officer at the Bank by Bank counsel at least twenty four hours prior to the scheduled closing. The Loan will not be closed until the Bank has reviewed and approved all pertinent documents.

26.) **EXPENSES:**

Whether or not the Loan closes, the Borrower agrees to pay all costs incidental to the contemplated Loan transaction including, without limitation, fees and expenses of Bank's counsel and title insurance premiums and plot plan expenses. Counsel engaged by the Bank has been retained solely to protect the interest of the Bank. The Bank understands that the Borrower will retain its own counsel to represent its interest.

27.) **ACKNOWLEDGMENT:**

Please acknowledge receipt and acceptance of this commitment letter by signing and returning the enclosed copy. By acceptance of this commitment letter, the Borrower acknowledges that this commitment letter has been issued at a time when the Bank has not completed a full business, credit and legal analysis of the Borrower and the transaction contemplated by this commitment letter. As a result of further investigation and analysis by the Bank and the Bank's counsel, information which the Bank and the Borrower are not now aware of may be revealed and/or certain other impediments to



FAIRVIEW REALTY, INC.  
FEBRUARY 28, 1994  
PAGE 9

closing may come to the Bank's attention. While the Bank's and the Borrower's mutual efforts will be directed toward the closing of this transaction, the Bank by require that the transaction be restructured or otherwise modified. The Bank will be the sole judge of what is an impediment and whether the impediment is so serious as to preclude closing.

SAUGUS BANK AND TRUST COMPANY

BY: [Signature]  
JEFF F. BUCKLEY  
VICE PRESIDENT

The undersigned hereby accepts this commitment and agrees to the terms and conditions hereof.

FAIRVIEW REALTY, INC.

DATE: 2/28/94

BY: [Signature] President  
DANIEL C. TOCCI *Daniel C. Tocci Individually*

BY: [Signature]  
CYNTHIA L. TOCCI *the President*

[Signature] Individually

EXHIBIT F**III. Disclosure Statement Concerning Beneficial Interest**

Developer : Fairview Realty, Inc.

I hereby state, under the penalties of perjury, that the true names and addresses of all persons who have or will have a direct or indirect beneficial interest (including the amount of their beneficial interest accurate to within one-tenth percent) in the proposed project are listed below.

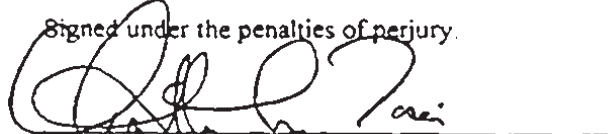
**NAMES AND RESIDENCES OF ALL PERSONS WITH SAID BENEFICIAL INTEREST:**

<u>Name</u>	<u>Address</u>	<u>Percentage Interest</u>
Cynthia L. Tocci	1475 Mass. Ave. #463, Lexington	50%
Daniel C. Tocci	3 Turning Mill Road, Lexington	50%

The undersigned also acknowledged and states that none of the above listed individuals is an official elected to public office in the Commonwealth of Massachusetts, nor is an employee of the State Division of Capital Planning and Operations.

I hereby state, under the penalties of perjury, that the names and addresses of all the firms and personal corporation employing attorneys, real estate brokers, architects, engineers, planners, and surveyors, and all other agents who have acted on behalf of any of the foregoing with respect to this proposal are listed in Section I.

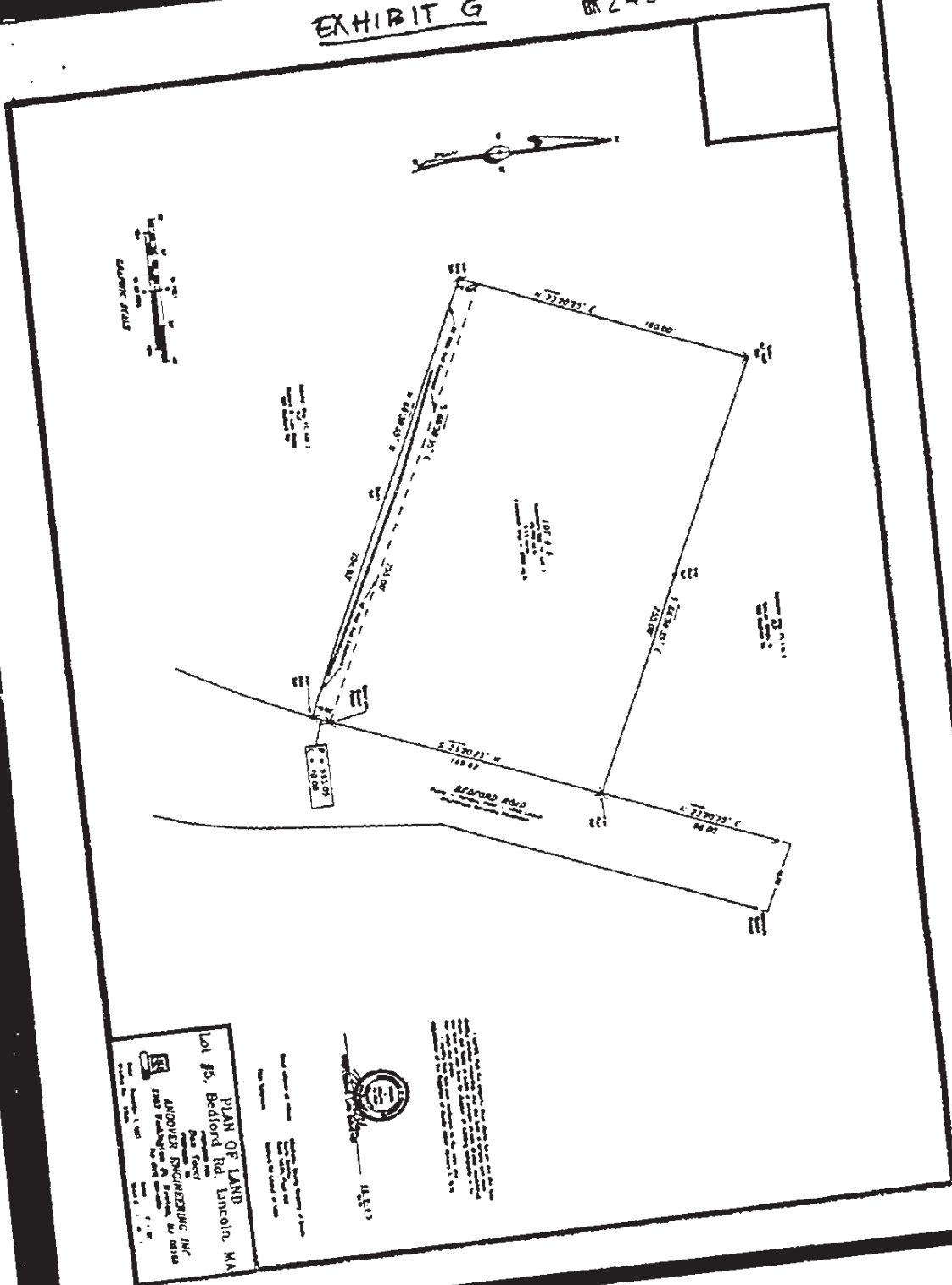
Signed under the penalties of perjury.



Cynthia L. Tocci  
October 5, 1992

EXHIBIT G

BR24317<sup>W</sup>388

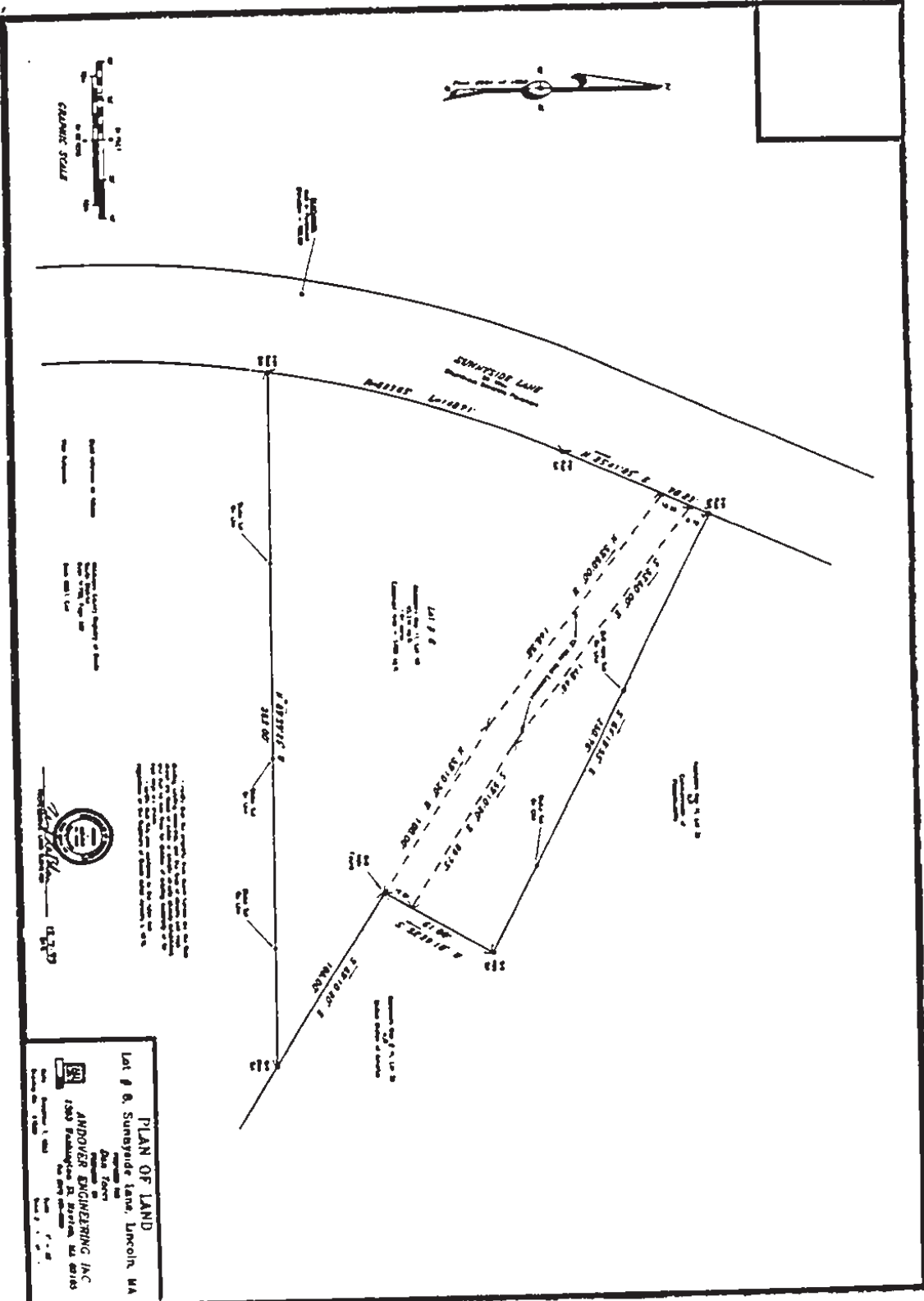


PLAN OF LAND  
101 1/2, Bedford Rd, Lincoln, MA  
ANDOVER ENGINEERING INC.  
1400 Franklin St, Andover, MA 01810  
1987



1987

BK 24317 P 389



FAIR VIEW REALTY, INC of Lexington, Massachusetts, Middlesex County, Massachusetts, (together with its heirs, successors and assigns being hereinafter called "Grantor"), hereby grants to the TOWN OF LINCOLN, a Massachusetts municipal corporation ("Grantee"), having its address at Lincoln Road, Lincoln, Mass 01773, with QUITCLAIM COVENANTS, a perpetual, non-exclusive easement to use, and to permit members of the public to use, the land in Lincoln, Massachusetts, described below as the "Conservation Trail" for passage thereover on foot, on skis or snow shoes, by horse and by non-motorized bicycle. No motorized vehicles of any sort shall be allowed to use the Conservation Trail except in an emergency or for the purpose of constructing, maintaining and repairing the Conservation Trail

The easement granted by this instrument is made as a gift under the Conservation Commission Act, M.G.L. c. 40, §8c, such easement shall be dedicated to conservation purposes in accordance with that Act, and the Conservation Commission of the Grantee shall have administrative control over such easement

Grantee is hereby authorized to enter on the Conservation Trail to construct, repair, replace and maintain the Conservation Trail, including construction of retaining walls, bridges and a planked trail surface where appropriate, provided (1) that no hard paving, such as macadam, will be used and (2) that Grantee may not fill wet areas or remove trees greater than six (6") inches in diameter measured on foot above the ground without the prior written consent of Grantor, which will not be unreasonably withheld

Grantee agrees to post and maintain notices to users that the Conservation Trail extends through private land by permission of the owner, that users must stay on the Conservation Trail, and that users should pass through quietly

Pursuant to M.G.L. c. 21 §17C, Grantor is not liable to any member of the public who uses the Conservation Trail for injuries to person or property sustained by such person while on the Conservation Trail in the absence of willful, wanton or reckless conduct by the Grantor.

The "Conservation Trail" is a strip of land TEN (10) feet wide as shown on a plan entitled "Bedford Road Lot 4 Conservation Trail Easement" dated \_\_\_\_\_ to be recorded herewith, and further described in metes and bounds as follows:

- Beginning at a point on the Southeastern most point of said parcel
- From thence following a bearing of N 66° 39' 35" W a distance of 254.93 feet.
- Thence turning and following a bearing of N 23° 20' 25" E a distance of 10'.
- Thence turning and following a bearing of S 66° 39' 35" E a distance of ±254.93 feet.
- Thence turning and following a bearing of S 23° 20' 25" W a distance of 10' to the point of beginning

For Grantor's title sec deed dated \_\_\_\_\_ from \_\_\_\_\_ to Grantee, recorded with said Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_.

It is intended that the easement herein described shall be created pursuant to Massachusetts General Laws Chapter 184, Sections 31 through 33 and that this easement shall be construed so as to comply with said provisions of law. The Grantee shall have the right at any time or times to take any reasonable action which, in its judgment is appropriate to assure its right to enforce or assign this easement, including, without limitation, the right to have said easement approved by the Selectmen of the Town of Lincoln and the Secretary of the Executive Office of Environmental Affairs or similar agency of the Commonwealth of Massachusetts and the right to record and re-record at the sole expense of Grantee notice of this easement with the appropriate Registry of Deeds. This easement shall be valid and enforceable however whether or not such approvals are secured and whether or not it meets the requirements of Massachusetts General Laws Chapter 184, Sections 31 through 33.

This Easement shall not effect the use of the property with regards to zoning, specifically relating to side yard, set back or rear yard requirements. Grantor and its successors, heirs and assigns shall retain the right to utilize this space for any subsurface utility work that may become necessary.

No documentary stamps need to be affixed to this instrument

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 1993

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss

\_\_\_\_\_, 1993

Then personally appeared before me the above named \_\_\_\_\_ and acknowledged the foregoing to be his/her free act and deed

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

BK 24317 Pt 391

APPROVALS

A. The Town of Lincoln

The undersigned, the Clerk of the Board of Selectmen of the Town of Lincoln, hereby certifies that the foregoing trail easement was duly approved as being in the public interest, pursuant to Massachusetts General Laws, Chapter 184, Section 32, by the Selectmen at a meeting held on \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Clerk of the Board of Selectmen, Town of Lincoln

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss \_\_\_\_\_, 1993

Then personally appeared before me the above named \_\_\_\_\_ and acknowledged the foregoing to be his/her free act and deed

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

B. The Commonwealth of Massachusetts

The undersigned Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that the foregoing trail easement has been approved as being in the public interest by the Secretary pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Date: \_\_\_\_\_  
\_\_\_\_\_  
Secretary, Executive Office of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss \_\_\_\_\_, 1993

Then personally appeared before me the above named \_\_\_\_\_ and acknowledged the foregoing to be his/her free act and deed

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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