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LOCAL INITIATIVE PROGRAM  
REGULATORY AGREEMENT  
AND  
DECLARATION OF RESTRICTIVE COVENANTS  
FOR  
OWNERSHIP PROJECT  
The Village at Concord Road (Caesar Jones Way, Bedford)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this 31<sup>st</sup> day of May 2005 by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), pursuant to Chapter 204 of the Acts of 1996, the Town of Bedford ("the Municipality"), and Elderberry Limited Partnership II, a Massachusetts limited partnership, having an address at 110 Great Road, Bedford, Massachusetts, and its successors and assigns ("Project Sponsor").

WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low or Moderate Income housing Provisions issued in April 1989, regulations have been promulgated at 760 CMR 45.00 (the "Regulations") which establish the Local Initiative Program ("LIP");

WHEREAS, the Project Sponsor intends to construct a housing development known as The Village at Concord Road at a 6.3 acre site on Concord Road in the Municipality, more specifically known and numbered as 268, 268A, and 268B Concord Road, Bedford, Middlesex County (the "Project");

WHEREAS, such Project is to consist of a total number of 8 detached single-family dwellings (the "Units") and 2 of the Units (specifically as described in Exhibit B attached hereto and made a part hereof) will be sold at prices specified in this Agreement to persons or households with incomes at or below eighty percent (80%) of the regional median household income (the "Low or Moderate Income Units");

WHEREAS, the Project shall also consist of a total of 12 duplex dwellings for rent and 3 of such dwellings shall be rented at specified rents to Eligible Tenants pursuant to a "Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Rental Project recorded herewith;

WHEREAS, the Chief Elected Official of the Municipality (as that term is defined in the Regulations) and the Project Sponsor have made application to DHCD to certify that the Project is a valid Comprehensive Permit Project (as that term is defined in the Regulations) within the LIP Program and therefore that the Project Sponsor was qualified to apply to the

Lots 2 + 8 Caesar Jones Way, Bedford

Municipality's Zoning Board of Appeals (as that term is defined in the Regulations) for a comprehensive permit pursuant to the Act (the "Comprehensive Permit"),; and

WHEREAS, in partial consideration of the execution of this Agreement, DHCD has issued its final approval of the Project within the LIP Program and has given and will give technical and other assistance to the Project; and

WHEREAS, the Project Sponsor has received a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals of the Municipality in accordance with Chapter 40B, Sections 20-23, of the Massachusetts General Laws (the "Act"), which permit is recorded in the Middlesex County South District Registry of Deeds in Book 35765 at Page 184 with amendments recorded in Book 39613 at page 27 and Book 43990 at page 451.

WHEREAS, the parties recognize that Affirmative Fair Marketing (outreach and other marketing efforts to minority households that satisfy the requirements of applicable fair housing laws and regulations, and in accordance with the Marketing Plan approved by DHCD) is an important precondition for initial sales and resales of Affordable Units.

WHEREAS, the parties recognize that the Municipality has an interest in preserving affordability of the Affordable Units and may offer valuable services in administration, monitoring and enforcement .

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, DHCD, the Municipality, and the Project Sponsor hereby agree and covenant as follows:

1. The Project Sponsor agrees to construct the Project in accordance with plans and specifications approved by the Municipality and DHCD (the "Plans and Specifications") and in accordance with all terms and conditions of the Comprehensive Permit. In addition, both Low or Moderate Income Units to be constructed as part of the Project must be indistinguishable from other Units in the Project from the exterior, except as allowed for variations such as porches or decks, and must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and washer/dryer hookup, all as more fully shown in the Plans and Specifications. Consistent with DHCD Guidelines, both Low and Moderate Income Units shall be two bedroom units containing approximately 1,900 square feet.

The Project must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped, if applicable. Except to the extent that the Project is exempted from such compliance by the Comprehensive Permit, the Project must also comply with all applicable local codes, ordinances and by-laws.

2. Each Low or Moderate Income Unit will be sold for no more than the price set forth in Exhibit B attached hereto and made a part hereof to an Eligible Purchaser. An Eligible Purchaser is a Family whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U. S. Department of Housing and Urban Development. A "Family" shall mean two or more persons who will live regularly in the Low or Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship; or an individual. The "Area" is defined as the Boston MSA/PMSA.

3. Upon issuance of a building permit for the project, the Project will be included in the Subsidized Housing Inventory as that term is described in 760 CMR 31.04(1). Of the eight, detached, single-family units, only the two Low or Moderate Income Units will be counted as Subsidized Housing Units for the purposes of the Act.

4. (a) At the time of sale of each Low or Moderate Income Unit by the Project Sponsor, the Project Sponsor shall execute and shall as a condition of the sale cause the purchaser of the Low or Moderate Income Unit to execute a Deed Rider in the form of Exhibit C attached hereto and made a part hereof (the "Deed Rider"). Such Deed Rider shall be attached to and made a part of the deed from the Project Sponsor to the Unit Purchaser. Each such Deed Rider shall require the Unit Purchaser at the time he desires to sell the Low or Moderate Income Unit to offer the Low or Moderate Income Unit to the Municipality and to DHCD at a discounted purchase price more particularly described therein. The Municipality, a designee of the Municipality (a Trust or other Not-for-Profit entity whose primary purpose is the promotion and preservation of affordable housing (the "Designee") and DHCD shall have the option upon terms more particularly described in the Deed Rider to either purchase the Low or Moderate Income Unit or to find an Eligible Purchaser. The Deed Rider shall require the Unit Purchaser and the Eligible Purchaser to execute at the time of resale a similar Deed Rider which will be attached and made a part of the deed from the Unit Purchaser to the Eligible Purchaser, so that the affordability of the Low or Moderate Income unit will be preserved each time that subsequent resales of the Low or Moderate Income unit occur. (The various requirements and restrictions regarding resale of a Low or Moderate Income Unit contained in the Deed Rider are hereinafter referred to as the "Resale Restrictions"). If upon the initial resale or any subsequent resale of a Low or Moderate Income Unit, the Municipality, its Designee and DHCD are unable to find an Eligible Purchaser for the Low or Moderate Income Unit, and the Municipality, its Designee and DHCD each elect not to exercise its right to purchase the Low or Moderate Income Unit, then the then current owner of the Low or Moderate Income Unit shall have the right to sell the Low or Moderate Income Unit to any person, regardless of his income and at fair market value, free of any future Resale Restrictions, provided that the difference between the actual resale price and the discounted purchase price for which the Municipality, its Designee, DHCD or an Eligible Purchaser could have purchased the Low or Moderate Income Unit (the "Windfall Amount") shall be paid by the then current owner of the Low or Moderate Income Unit to the Municipality. The Municipality agrees that all sums constituting Windfall Amounts from the sale of Low or Moderate Income Units shall be transferred to the Municipality's Affordable Housing Fund or a non-profit organization designated by the Municipality. The Municipality agrees that in the

event that it or its Designee purchases a Low or Moderate Income Unit pursuant to its right to do so contained in the Deed Rider then in effect with respect to such Low or Moderate Income Unit, that the Municipality or its Designee, as the case may be, shall within six (6) months of its acceptance of a deed of such Low or Moderate Income Unit, either (i) sell the Low or Moderate Income Unit to an Eligible Purchaser at the same price for which it purchased the Low or Moderate Income Unit plus any expenses incurred during its period of ownership, such expenses to be approved by DHCD, subject to a Deed Rider satisfactory in form and substance to DHCD and the recording of an Eligible Purchaser Certificate satisfactory in form and substance to DHCD, the method for selecting such Eligible Purchaser to be approved by DHCD or (ii) rent the Low or Moderate Income Unit to a person who meets the income guidelines of the LIP Program, upon terms and conditions satisfactory to DHCD and otherwise in conformity with the requirements of the LIP Program. If the Municipality fails to sell or rent the Low or Moderate income unit as provided herein within said six (6) month period, or if at any time after the initial rental of the Low or Moderate Income Unit by the Municipality as provided herein the Low or Moderate Income Unit becomes vacant and remains vacant for more than ninety (90) days, then such Low or Moderate Income Unit shall cease to be counted as a Subsidized Housing Unit, and shall no longer be included in the Subsidized Housing Inventory until such time as the Low or Moderate Income Unit is sold or rented to an Eligible Purchaser or family meeting the income guidelines and after written notice of same to DHCD.

(b) Each Low or Moderate Income Unit will remain a Subsidized Housing Unit and continue to be included in the Subsidized Housing Inventory for as long as the following three conditions are met: (1) this Agreement remains in full force and effect and neither the Municipality nor the Project Sponsor are in default hereunder; (2) the Project and Low or Moderate Income Unit each continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) either (i) a Deed Rider binding the then current owner of the Low or Moderate Income Unit to comply with the Resale Restrictions is in full force and effect and the then current owner of the Low or Moderate Income Unit is either in compliance with the terms of the Deed Rider, or the Municipality is in the process of taking such steps as may be required by DHCD to enforce the then current owner's compliance with the terms of the Deed Rider or (ii) the Low or Moderate Income Unit is owned by the Municipality and the Municipality is in compliance with the terms and conditions of the last preceding paragraph, or (iii) the Low or Moderate Income Unit is owned by DHCD.

5. The Project Sponsor agrees that the aggregate profit from the Project which shall be payable to Project Sponsor or to the partners, shareholders or other owners of Project Sponsor or the Project shall not exceed twenty percent (20%) of total development costs of the project, which development costs have been approved by the Municipality and by DHCD (the "Allowable Profit"). Upon issuance of a final Certificate of Occupancy for the Project or upon the issuance of final Certificates of Occupancy for all of the Units, the Project Sponsor shall deliver to the Municipality and to DHCD an itemized statement of total development costs together with a statement of gross income from the Project received by the Project Sponsor to date in form satisfactory to the Municipality and DHCD (the "Certified Cost and Income Statement") prepared and certified by a certified public accountant satisfactory to the

Municipality and to DHCD. If all units at the Project have not been sold as of the date the Certified Cost and Income Statement is delivered to the Municipality and to DHCD, the Project sponsor shall at least once every ninety (90) days thereafter until such time as all of the Units are sold, deliver to the Municipality and to DHCD an updated Certified Cost and Income Statement. All profits from the Project in excess of the Allowable Profit (the "Excess Profit") shall be paid by the Project Sponsor to the Municipality. The Municipality agrees that all amounts constituting Excess profit shall be transferred to the Municipality's Affordable Housing Fund or a non-profit organization designated by the Municipality. For so long as the Project Sponsor complies with the requirements of this Section 5, the Project Sponsor shall be deemed to be a limited dividend organization within the meaning of the Act.

6. The Municipality agrees that upon the receipt by the Municipality of any Windfall Amount, Excess Profit, or any amount paid to the Municipality pursuant to the provisions of Section 1, Section 3, or Section 4 of the Deed Rider (the "Additional Windfall Amounts"), the Municipality shall deposit any and all such Windfall Amounts, Excess Profit, or Additional Windfall Amounts into a Municipal Affordable Housing Trust Fund as provided by MGL Chapter 44 Section 55C.

7. DHCD has approved a marketing plan (the "Marketing Plan") for the Low or Moderate Income Units. Such Marketing Plan describes the buyer selection process for the Low or Moderate Income Units and sets forth a plan for affirmative marketing of Low or Moderate Income Units to minority households as more particularly described in the Regulations and Guidelines. The Marketing Plan may, and does, also include a preference for local residents for up to seventy percent (70%) of the Low or Moderate Income Units, subject to all provisions of the Regulations and Guidelines. The Marketing Plan must comply with the Regulations and Guidelines and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of *NAACP, Boston Chapter v. Kemp*. **As the Project is located in the Boston Standard Metropolitan Statistical Area, the Project Sponsor must list all Low or Moderate Income Units with the City of Boston's MetroList (Metropolitan Housing Opportunity Clearing Center), at Boston City Hall, P.O. Box 5996, Boston, MA 02114-5996 (617-635-3321).** All costs of carrying out the Marketing Plan shall be paid by the Project Sponsor. A failure to comply with the Marketing Plan by the Project Sponsor or by the Municipality shall be deemed to be a default of this Agreement. The Project Sponsor agrees to maintain for at least five years following the sale of the last Low or Moderate Income Unit, a record of all newspaper ads, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Project Sponsor or the Municipality. The Project Sponsor and the Municipality agree that if at any time prior to or during the process of marketing the Low or Moderate Income Units, DHCD determines that the Project Sponsor, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Project Sponsor or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

8. Neither the Project Sponsor nor the Municipality shall discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin, or any other basis prohibited by law in the selection of buyers for the Units; and the Project Sponsor shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

9. (a) The Project Sponsor agrees to comply and to cause the Project to comply with all requirements of the Comprehensive Permit, the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Elected Official or a specifically named agent of the Chief Elected Official of the municipality shall have access during normal business hours and upon 48 hours notice to all books and records of the Project Sponsor and the Project in order to monitor the Project Sponsor's compliance with the terms of this Agreement.

(b) Throughout the term of this Agreement, the Chief Elected Official shall annually certify in writing to DHCD that each of the Low or Moderate Income Units continues to be occupied by a person who was an Eligible Purchaser at the time of purchase; that any Low or Moderate Income Units which have been resold during the year have been resold in compliance with all of the terms and provisions of the Deed Rider then in effect with respect to each such Low or Moderate Income Unit, and in compliance with the Regulations and Guidelines and this Agreement; and that the Project and the Low or Moderate Income Units have otherwise been maintained in a manner consistent with the Regulations and Guidelines, this Agreement, and the Deed Rider then in effect with respect to each Low or Moderate Income Unit.

10. Upon execution, the Project Sponsor shall immediately cause this Agreement and any amendments hereto to be recorded with the Middlesex County South District Registry of Deeds ( hereinafter the "Registry of Deeds"), and the Project Sponsor shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Project Sponsor shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

11. The Project Sponsor hereby represents, covenants and warrants as follows:

- (a) The Project Sponsor (i) is a limited partnership duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.
- (b) The execution and performance of this Agreement by the Project Sponsor (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body,

and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Project Sponsor is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

- (c) The Project Sponsor will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project, or other permitted encumbrances, including mortgages referred in paragraph 19, below).
- (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Sponsor, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

12. Except for sales of Units to home buyers as permitted by the terms of this Agreement, Project Sponsor will not sell, transfer, lease or exchange the Project without the prior written consent of DHCD and the Municipality.

13. Until such time as decisions regarding repair of damage due to fire or other casualty, or restoration after taking by eminent domain, shall be made by the neighborhood association or trust not controlled by the Project Sponsor, Project Sponsor agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Sponsor will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Agreement, subject to the approval of the Project's lenders.

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

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

DHCD: Department of Housing and Community Development  
Attention: Local Initiative Program Director

100 Cambridge St., 3rd Floor  
Boston, MA 02114

Municipality: Town of Bedford  
Town Hall  
10 Mudge Way  
Bedford, MA 01730  
Attn: Office of the Selectmen

Project Sponsor: Elderberry Limited Partnership II  
Pamela J. Brown, Esq.  
110 Great Road  
Bedford, MA 01730

16. (a) This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. This Agreement is made for the benefit of DHCD, and DHCD shall be deemed to be the holder of the affordable housing restriction created by this Agreement. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement shall be perpetual, provided however, that this Agreement shall terminate if (a) at any time hereafter there is no Low or Moderate Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions, and there is no Low or Moderate Income Unit at the Project which is owned by the Municipality or DHCD as provided in Section 4 hereof, or (b) the Project is acquired by foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives DHCD and the Municipality not less than sixty (60) days prior written notice of the mortgagee's intention to foreclose upon the Project or to accept an instrument in lieu of foreclosure, or (c) if at any time the Comprehensive Permit is revoked and all applicable appeal periods with respect to such revocation have expired. If this Agreement terminates because of a foreclosure or the acceptance of an instrument in lieu of foreclosure as set forth in clause (b) of this paragraph, the Municipality agrees that if at the time of such termination there is one or more Low or Moderate Income Unit at the Project which is then subject to a Deed Rider containing the Resale Restrictions or there is one or more Low or Moderate Income Unit at the Project which is owned by the Municipality, its Designee or DHCD as provided in Section 4 hereof, the Municipality shall enter into a new Regulatory Agreement with DHCD with respect to such Low or Moderate Income Units which shall be satisfactory in form and substance to DHCD.

(b) The Project Sponsor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Project Sponsor's successors in title, (ii) are not merely personal covenants of the Project Sponsor, and (iii) shall bind the Project Sponsor, its successors and assigns and enure to the benefit of DHCD and its successors and



assigns for the term of the Agreement. Project Sponsor hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(c) The Resale Restrictions contained in each of the Deed Riders which are to encumber each of the Low or Moderate Income Units at the Project pursuant to the requirements of this Agreement shall also constitute an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c. 184, §§ 26, 31, 32, and 33. Such Resale Restrictions shall be for the benefit of both DHCD and the Municipality and both DHCD and the Municipality shall be deemed to be the holder of the affordable housing restriction created by the Resale Restrictions in each of the Deed Riders. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. To the extent that the Municipality is the holder of the Resale Restrictions to be contained in each of the Deed Riders, the Director of DHCD by the execution of this Agreement hereby approves such Resale Restrictions in each of the Deed Riders for the Low or Moderate Income Units of the Project as required by the provisions of G.L. c. 184, § 32.

17. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement. The Municipality agrees to pass this requirement on to any Designee it may appoint to act on its behalf with respect to this agreement.

18. (a) The Project Sponsor and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Project Sponsor or the Municipality or its Designee hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Project Sponsor or the Municipality or its Designee hereunder without receiving a Default Notice from Project Sponsor or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD within thirty (30) days after the giving of the Default notice by the Project Sponsor or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement.

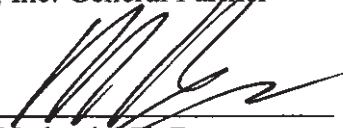
(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 18, then the Low or Moderate Income Units and any other Units at the Project

which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed Low or Moderate Income housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory.

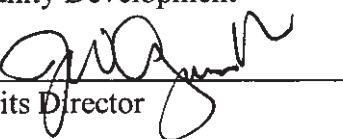
19. The Project Sponsor represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed the Consent to Regulatory Agreement attached hereto and made a part hereof.

Executed as a sealed instrument as of the date first above written.

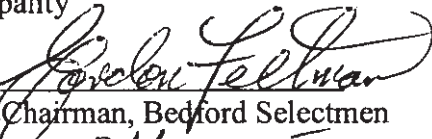
Project Sponsor Elderberry Limited Partnership, II  
Panake, Inc. General Partner

By:   
Nathaniel K. Brown  
its President

Department of Housing and  
Community Development

By:   
its Director

Municipality

By:   
Chairman, Bedford Selectmen  
3 May 2005

Attachments: Exhibit A - Legal Property Description

Exhibit B - Prices & Location of Low or Moderate Income Units

Exhibit C - Deed Rider

Consent forms signed by any and all mortgagees whose mortgages are recorded prior to this  
Regulatory Agreement must be attached to this Regulatory Agreement.

© DHCD When used in the Local Initiative Program, this form may not be modified without the  
written approval of the Department of Housing and Community Development.

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss.

On this 3 day of May, 2005 before me, the undersigned notary public, personally appeared Nathaniel K. Brown, proved to me through satisfactory evidence of identification, which were Massachusetts Drivers License, to be the person whose name is signed on the preceding document, as President of the Panake, Inc., General Partner for Elderberry Limited Partnership II [Project Sponsor], and acknowledged to me that he/she signed it voluntarily for its stated purpose.



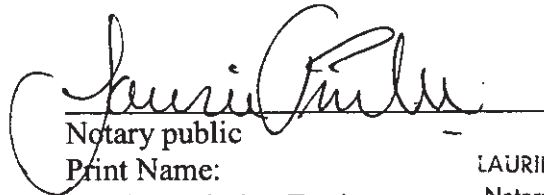
Notary Public

My Commission Expires: 1/28/12

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK, ss.

On this 13<sup>th</sup> day of May, 2005, before me, the undersigned notary public, personally appeared Jane Wallis Gumble, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding document, as Director for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Notary public  
Print Name:

My Commission Expires:

LAURIE TICKLE  
Notary Public  
Commission Expires  
December 15, 2005

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss.

On this 3RD day of MAY, 2005, before me, the undersigned notary public, personally appeared GORDON FELTMAN, proved to me through satisfactory evidence of identification, which were PERSONALLY KNOWN TO ME, to be the person whose name is signed on the preceding document, as Chairman of the Board of Selectmen for the Town of Bedford, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

*Georgia V. Wood*  
Notary Public  
Print Name: GEORGIA V. WOOD  
My Commission Expires: 7-31-09



CONSENT TO REGULATORY AGREEMENT  
OWNERSHIP PROJECT

Re: Village at Concord Road  
Bedford, MA  
Elderberry Limited Partnership II (Project Sponsor)

The Undersigned being the holder of a mortgage on the above described Project recorded with the Registry of Deeds in Book 39716 at Page 43, 74, and 101, respectively, hereby consents to the execution and recording of this Agreement and to the terms and conditions hereof.

EAGLE BANK  
(name of lender)

By: Douglas R. Shaw  
its Vice President

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

On this 9th day of May, 2005, before me, the undersigned notary public, personally appeared Douglas R. Shaw, proved to me through satisfactory evidence of identification, which were driver's license, to be the person whose name is signed on the preceding document, as Vice President of Eagle Bank, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

MARGINAL REFERENCE REQUESTED  
BOOK 39716 PAGE 43

MARGINAL REFERENCE REQUESTED  
BOOK 39716 PAGE 74

MARGINAL REFERENCE REQUESTED  
BOOK 39716 PAGE 101

Jennie Panico  
Notary Public  
Print Name: JENNIE PANICO  
My Commission Expires: 7/19/07

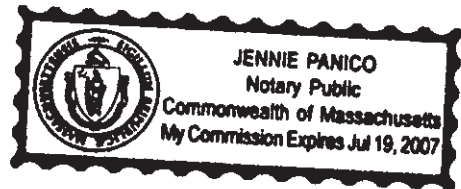


EXHIBIT A  
Property Description

Re: The Village at Concord Road: Bedford  
Elderberry Limited Partnership II, Project Sponsor

Lots 1-8 including the buildings thereon situated in Bedford, Middlesex County, Massachusetts, with rights to use the roadway known as Caesar Jones Way, a way intended to become a public way, as shown on a plan entitled "The Village at Concord Road in Bedford, Massachusetts (Middlesex County), November 6, 2001 revised February 7, 2002, Prepared For: Elderberry Limited Partnership II" prepared by the BSC Group and recorded with the Middlesex County South District Registry of Deeds as Plan No. 529 of 2003 in Book 39613 at Page 20.

## EXHIBIT B

Re: The Village at Concord Road  
(Project Name)

Bedford  
(City/Town)

Elderberry Limited Partnership II  
(Project Sponsor)

Maximum Selling Prices for Low or Moderate Income Units

One bedroom units	\$ _____
Two bedroom units	<u>\$160,000</u>
Three bedroom units	\$ _____
Four bedroom units	\$ _____

If the Maximum Selling Prices provided in chapter five of the Local Initiative Program Guidelines for Communities are increased, the Maximum Selling Prices provided herein may be increased proportionately, but only with the prior approval of the municipality and DHCD.

Location of Low or Moderate Income Units

The housing units which are Low or Moderate Income Units are those designated as lot numbers 2 & 8 on:

- a plan of land entitled "The Village at Concord Road in Bedford, Massachusetts (Middlesex County)", November 6, 2001 revised February 7, 2002, Prepared For: Elderberry Limited Partnership II" by the BSC Group and recorded with the Middlesex County South District Registry of Deeds as Plan No. 529 of 2003 in Book 39613 at Page 20.



EXHIBIT C  
FORM OF DEED RIDER



LOCAL INITIATIVE PROGRAM

DEED RIDER  
For  
Ownership Project

*Two Low or Moderate Income Units (Single Family Residences)*  
**In The Village at Concord Road (Caesar Jones Way, Bedford)**

(annexed to and made part of that certain deed (the "Deed")  
from Elderberry Limited Partnership II, Panake, Inc., General Manager ("Grantor")  
to \_\_\_\_\_ ("Grantee")  
dated \_\_\_\_\_, 2005

WITNESSETH

WHEREAS, pursuant to M.G. L. c. 40B, §§20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April, 1989, regulations have been promulgated at 760 CMR 45.00 et seq. (the "Regulations") which establish the Local Initiative Program ("LIP");

WHEREAS, the Department of Housing and Community Development, the "Successor Agency" to the Executive Office of Communities and Development of the Commonwealth of Massachusetts, duly organized and existing pursuant to Chapter 204 of the Acts of 1996, administers the LIP Program on behalf of the Commonwealth;

WHEREAS, it is the purpose of the LIP Program to give cities and towns greater flexibility in their efforts to provide affordable housing to households having low and moderate incomes.

WHEREAS, the Town of Bedford (the "Municipality") acting by and through its Chief Elected Official (as that term is defined in the Regulations) has elected to participate in the LIP Program:

WHEREAS, DHCD has determined that the rights and restrictions granted herein to DHCD and to the Municipality serve the public's interest in the creation and retention of affordable housing for persons and families of low and moderate income and in the restricting of the resale price of property in order to assure its affordability by future low and moderate income purchasers;

WHEREAS, pursuant to the LIP Program, eligible purchasers such as the Grantee are given the opportunity to purchase certain property at a discount of the property's appraised fair market value if the purchaser agrees to convey the property on resale to an eligible purchaser located by the Municipality or DHCD, to the Municipality, to a designee of the Municipality (the "Designee"), or to DHCD for a "Maximum Resale Price" as more fully provided herein;

WHEREAS, in order to make it most likely that an income-eligible purchaser who can afford to buy the Property can be located when the Grantee desires to sell, the Maximum Resale Price is limited by the percentage change in area median income, as more fully provided herein;

WHEREAS, the Grantor and the Grantee are participating in the LIP Program, and in accordance with the LIP Program the Grantor is conveying that certain real property more particularly described in the Deed ("Property") to the Grantee at a consideration which is less than the appraised value of the Property; and

WHEREAS, the Property was developed by the Grantor under a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals of the Municipality under Chapter 40B, Sections 20-23, of the Massachusetts General Laws (the "Act"), which permit includes certain restrictions and obligations and is recorded in the Middlesex County South District Registry of Deeds in Book 35765 at Page 184 with amendments recorded in Book 39613 at page 27 and Book 43990 at page 451;

NOW THEREFORE, as further consideration from the Grantee to the Grantor, DHCD and the Municipality for the conveyance of the Property at a discount in accordance with the LIP Program, the Grantee, his heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are hereby imposed for the benefit of, and shall be enforceable by, the Grantor's assignees and designees, the Director of the Department of Housing and Community Development, or its successors, assigns, agents and designees ("Director") and the Municipality, acting by and through its Chief Elected Official.

1. Right of First Refusal: (a) When the Grantee or any successor in title to the Grantee shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Grantee shall notify the Director and the Municipality in writing of the Grantee's intention to so convey the property ("Notice"). Within thirty (30) days of the giving of the Notice by the Grantee, the Municipality shall notify the Grantee in writing (with a copy to the Director) as to whether the Municipality or its Designee (a Trust or other Not-for-Profit entity whose primary purpose is the promotion and preservation of affordable housing) is proceeding to locate an eligible purchaser of the Property or the Municipality or its Designee shall exercise its right of first refusal to purchase the Property (the Municipality's Notice.) If the Municipality's Notice states that the Municipality or its Designee is not proceeding to locate an eligible purchaser and that neither the Municipality nor its Designee shall exercise its right of first refusal to purchase the Property, or if the Municipality fails to give the Municipality's Notice within said thirty (30) days then, and only under such circumstances, the Director may, at any time from the thirty first (31st) day after the giving of the Notice to and including the fortieth (40th) day after

the giving of the Notice, notify the Grantee in writing (with a copy to the Municipality) as to whether the Director is proceeding to locate an eligible purchaser of the Property or whether the Director shall exercise its right of first refusal, to purchase the Property (the "Director's Notice".) For the purpose of this Deed Rider, an "eligible purchaser" shall mean a purchaser who satisfies the criteria set forth in the LIP Program guidelines in effect at the time the Municipality, its Designee or the Director locates such purchaser, and who, if located by the Municipality or its Designee, is ready and willing to purchase the Property within one hundred twenty (120) days after the Grantee gives the Notice, or who, if located by the Director, is ready and willing to purchase the Property between ) days and one hundred thirty-five (135) days after the Grantee gives the Notice.

(b) In the event that (i) the Municipality's Notice states that the Municipality and its Designee do not intend to proceed to locate an eligible purchaser and that neither the Municipality nor its Designee intends to exercise its right of first refusal to purchase the Property, or the Municipality fails to give the Municipality's Notice within the time period specified above and (ii) the Director's Notice states that the Director does not intend to proceed to locate an eligible purchaser and that the Director does not intend to exercise its right of first refusal to purchase the Property, or the Director fails to give the Director's Notice within the time period specified above, the Grantee may convey the Property to any third party at fair market value, free of all restrictions set forth herein, provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the third party which exceeds the Maximum Resale Price shall be immediately and directly paid to the Municipality. Upon receipt of this excess amount, if any, the Municipality, acting by and through its Chief Elected Official, and the Director or the Director's designee shall issue to the third party a certificate in recordable form (the "Compliance Certificate") indicating the Municipality's receipt of the excess amount, if applicable, or indicating that no excess amount is payable, and stating that the Municipality (or any Designee of the Municipality) and the Director have each elected not to exercise its right of first refusal hereunder and that all rights, restrictions, agreements and covenants set forth in this Deed Rider shall be henceforth null and void. This Compliance Certificate is to be recorded in the Registry of Deeds and such Compliance Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such excess amount, if any, has been paid to the Municipality, or that no excess amount is payable, and that the rights, restrictions, agreements and covenants set forth herein are null and void. The sale price to a third party shall be subject to DHCD's approval, with due consideration given to the value set forth in an appraisal of the fair market value of the Property (assuming the Property is free of all restrictions set forth herein) acceptable to the Director and the Municipality prepared by a real estate appraiser acceptable to the Director and the Municipality and qualified to appraise property for secondary mortgage markets and recognized as utilizing acceptable professional appraisal standards in Massachusetts. DHCD's approval of the sale price shall be evidenced by its issuance of this Compliance Certificate.

(c) In the event the Municipality or its designee, within said thirty (30) day period, notifies the Grantee that the Municipality or its Designee is proceeding to locate an Eligible

Purchaser or that the Municipality or its Designee shall exercise the Municipality's right of first refusal to purchase the Property, the Municipality or its Designee may locate an eligible purchaser, who shall purchase the Property at the Maximum Resale Price subject to Deed Rider satisfactory in form and substance to DHCD, within one hundred twenty (120) days of the date that the Notice is given or the Municipality or its Designee may purchase the Property itself at the Maximum Resale Price within one hundred twenty (120) days of the date that the Notice is given. If the Municipality and its Designee shall fail to locate an eligible purchaser who purchases the Property within one hundred twenty (120) days of the date that the Notice is given, and if the Municipality or its Designee fails to purchase the Property itself within said period, then, and only in such circumstances the Director, without any additional notice to the Grantee, may between one hundred twenty one (121) days of the date that the Notice is given and one hundred thirty-five (135) days of the date that the Notice is given, purchase the Property itself at the Maximum Resale Price, or locate an eligible purchaser, who shall between one hundred twenty-one (121) days and one hundred thirty-five (135) days of the date that the Notice is given purchase the Property at the Maximum Resale Price, subject to a Deed Rider satisfactory in form and substance to DHCD. If more than one eligible purchaser is located by the Municipality or its Designee, the Municipality (or its Designee) shall conduct a lottery or other like procedure approved by DHCD to determine which eligible purchaser shall be entitled to the conveyance of the Property. If more than one eligible purchaser is located by the Director, the Director shall conduct a lottery or other like procedure in the Director's sole discretion to determine which eligible purchaser shall be entitled to the conveyance of the Property.

(d) If an eligible purchaser is selected to purchase the Property, or if the Municipality, the Municipality's Designee or the Director elects to purchase the Property, the Property shall be conveyed by the Grantee to such eligible purchaser or to the Municipality, the Designee or the Director as the case may be, by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed (ii) any lien for municipal betterments assessed after the date of the Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the Deed from the Grantor to Grantee, (v) a Regulatory Agreement among DHCD, the Municipality and Elderberry Limited Partnership II, the Project Sponsor dated \_\_\_\_\_ and recorded with the Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_, (the "Regulatory Agreement") or any successor regulatory agreement entered into between DHCD and the Municipality pursuant to the provisions of Section 16 of the Regulatory Agreement, (vi) Rules and Regulations of the neighborhood association and other obligations included in the Comprehensive Permit, (vii) such additional easements, restrictions, covenants and agreements of record as the Municipality and the Director consent to, such consent not to be unreasonably withheld or delayed, and (viii) in the event that the Property is conveyed to an eligible purchaser, a Deed Rider satisfactory in form and substance to DHCD which the Grantee hereby agrees to annex to said deed.

(e) Said deed shall be delivered and the purchase price paid (the "Closing") at the Registry of Deeds in the County where the Property is located, or at the option of the eligible purchaser (or the Municipality, its Designee or the Director, as the case may be, if the Municipality, its designee or the Director is purchasing the Property), exercised by written notice to the Grantee at least five (5) days prior to the delivery of the deed, at such other place as the eligible purchaser (or the Municipality, its Designee or the Director, as the case may be, if the Municipality, its Designee or the Director is purchasing the Property) may designate in said notice. The Closing shall occur at such time and on such date as shall be specified in a written notice from the eligible purchaser (or the Municipality or the Designee or the Director, as the case may be, if the Municipality or the Designee or the Director is purchasing the Property) to the Grantee, which date shall be the least five (5) days after the date on which such notice is given, and if the eligible purchaser is located by the Municipality or the Designee, or if the Municipality or its Designee is purchasing the Property no later than one hundred twenty (120) days after the Notice is given by the Grantee, or if the eligible purchaser is located by the Director, or if the Director is purchasing the Property, no earlier than one hundred twenty one days (121) days after the Notice is given by the Grantee and no later than one hundred thirty five (135) days after the Notice is given by the Grantee.

(f) To enable Grantee to make conveyance as herein provided, Grantee may if he so desires at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests; all instruments so procured to be recorded simultaneously with the delivery of said deed.

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

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

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

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

- (i) pay over or assign to the eligible purchaser or the Municipality or the Designee or the Director as the case may be, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonable expended by the Grantee for the partial restoration, or
- (ii) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the eligible purchaser or to the Municipality or the Designee or the Director, as the case may be, a credit against the purchase price, on delivery of the deed, equal to said amounts so retained by the holder of the said mortgage less any amounts reasonable expended by the Grantee for any partial restoration.

(j) If the Municipality or its Designee fails to locate an eligible purchaser who purchases the Property within one hundred twenty (120) days after the Notice is given, and the Municipality or its Designee does not purchase the Property during said period, and the Director fails to locate an eligible purchaser who purchases the Property between one hundred twenty-one (121) days and one hundred thirty-five (135) days after the Notice is given, and the Director does not purchase the Property within said period, then following expiration of one hundred thirty-five (135) days after the Notice is given by Grantee, the Grantee may convey the Property to any third party at fair market value, free and clear of all rights and restrictions contained herein, including, but not limited to the Maximum Resale Price, provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the third party which exceeds the Maximum Resale Price shall be immediately and directly paid to the Municipality. Upon receipt of this excess amount, if any, the Municipality and the Director shall issue to the third party a Compliance Certificate in recordable form indicating the Municipality's receipt of the excess amount, if any, and indicating that the Municipality, a Designee of the Municipality, if any, and the Director have each elected not to exercise its right to locate an eligible purchaser and its right of first refusal hereunder and that all rights, restrictions, agreements and covenants contained herein are henceforth null and void. This Compliance Certificate is to be recorded in the Registry of Deeds and such Compliance Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such excess amount, if any, has been paid to the Municipality and that the rights, restrictions, agreements and covenants set forth herein are null and void. The sale price to a third party shall be subject to DHCD's approval, with due consideration given to the value set forth an appraisal of the fair market value of the Property

(assuming the Property is free of all restrictions set forth herein) acceptable to the Director and the Municipality prepared by a real estate appraiser acceptable to the Director and the Municipality and qualified to appraise property for secondary mortgage markets and recognized as utilizing acceptable professional appraisal standards in Massachusetts. DHCD's approval of the sale price shall be evidenced by its issuance of this Compliance Certificate.

2. **Resale and Transfer Restrictions:** The Maximum Resale Price for the Property shall be calculated by multiplying the Area Median Income ("AMI") for the Boston Standard Metropolitan Statistical Area, adjusted for household size, as reported by the U.S. Department of Housing and Urban Development ("HUD") as of the time of the Notice, by the Resale Price Multiplier. The **Resale Price Multiplier for the Property is 1.937** which was established by DHCD at the time of the initial sale by the Grantor to an eligible purchaser (the Grantee) by dividing the initial sales price by the AMI then in effect. Except as otherwise stated herein, the Property or any interest, therein shall not at any time be sold by the Grantee, the Grantee's successors and assigns, and no attempted sale shall be valid, unless:

(a) the aggregate value of all consideration and payments of every kind given or paid by the eligible purchaser (as located and defined in accordance with Section 1 above) or the Municipality or a Designee of the Municipality or the Director, as the case may be, to the then owner of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and (i) if the Property is conveyed to an eligible purchaser, unless a certificate (the "Eligible Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Director or the Director's designee and the Municipality acting by and through its Chief Elected Official which Eligible Purchaser Certificate refers to the Property, the Grantee, the eligible purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the eligible purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the eligible purchaser which new Deed Rider the Eligible Purchaser Certificate certifies is satisfactory in form and substance to DHCD and the Municipality; (ii) if the Property is conveyed to the Municipality unless a Certificate (the "Municipal Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Director or the Director's designee and by the Municipality, acting by and through its Chief Elected Official, which Municipal Purchaser Certificate refers to the Property, the Grantee, the Municipality, and the Maximum Resale Price for the Property and states that the proposed conveyance, sale or transfer of the Property to the Municipality is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider; or

(b) pursuant to Sections 1(b) or 1(f), any amount in excess of the Maximum Resale Price which is paid to the Grantee by a purchaser who is permitted to buy the Property pursuant to Sections 1(b) or 1(f), is paid by the Grantee to the Municipality or the Municipality's designee, and the Director or the Director's designee and the Municipality acting by and through its Chief Elected Official, execute and deliver a Compliance Certificate as described in Section 1(b) or 1(f) for recording with the Registry of Deeds.



(c) Any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate or an Eligible Purchaser Certificate or a Municipal Purchaser Certificate referring to the Property as conclusive evidence of the matters stated therein and may record such Certificate in connection with conveyance of the Property, provided, in the case of an Eligible Purchaser Certificate and a Municipal Purchaser Certificate the consideration recited in the deed or other instrument conveying the Property upon such resale shall not be greater than the consideration stated in the Eligible Purchaser Certificate or the Municipal Purchaser Certificate as the case may be. If the Property is conveyed to the Director, the acceptance by the Director of a deed of the Property from the Grantee and the recording of such deed shall be deemed conclusive evidence that all rights, restrictions, covenants and agreements set forth in this Deed Rider have been complied with and no certificate to that effect shall be necessary to establish the validity of such conveyance. If the Property is conveyed to the Municipality, any future sale of the Property by the Municipality shall be subject to the provisions of Section 4 of the Regulatory Agreement.

(d) Within ten (10) days of the closing of the conveyance of the Property from Grantor to Grantee, the Grantee shall deliver to the Municipality and to the Director a true and certified copy of the Deed of the Property, together with information as to the place of recording thereof in the public records. Failure of the Grantee, or Grantee's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance.

(e) In the event the Municipality's Designee is the purchaser, the Designee will, in cooperation with the Municipality, continue to attempt to locate an eligible purchaser for an additional period of six months, after which it, the Municipality and DHCD will confer and agree on the method of disposition of the Property in a manner otherwise in accordance with the provisions of this Deed Rider.

(f) The Grantee understands and agrees that nothing in this Deed Rider or the Regulatory Agreement in any way constitutes a promise or guarantee by DHCD or the Municipality that the Grantee shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

3. Restrictions Against Leasing and Junior Encumbrances: The Property shall not be leased, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Director and the Municipality, provided, however, that this provision shall not apply to a first mortgage granted in connection with this conveyance. Any rents, profits, or proceeds from any transaction described in the last preceding sentence which transaction has not received the prior written consent of the Director and the Municipality shall be paid to and be the property of the Municipality. In the event that the Director and the Municipality in the exercise of their absolute discretion consent to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction which exceed the carrying costs of the Property as determined

by DHCD and the Municipality in their sole discretion shall be paid to and be the property of the Municipality.

4. Rights of Mortgagees: (a) Notwithstanding anything herein to the contrary, but subject to the next succeeding paragraph hereof, if the holder of record (other than the Grantor or any person related to the Grantor by blood, adoption, or marriage, or any entity in which the Grantor has a financial interest) of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns (other than the Grantor, or any person related to the Grantor by blood, adoption or marriage, or any entity in which the Grantor has a financial interest) (hereinafter the "Holder") shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, **provided** that the Holder has given DHCD and the Municipality not less than (60) days prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure ("the Foreclosure Notice") notwithstanding any provision of the Holder's loan documents to the contrary, and **provided further** that the principal amount secured by such mortgage did not exceed one hundred percent (100%) of the Maximum Resale Price calculated at the time of the granting of the mortgage, the rights and restrictions contained herein shall not apply to such holder upon such acquisition of the Property, any purchaser (other than the Grantor or any person related to the Grantor by blood, adoption or marriage, or any entity in which the Grantor has a financial interest) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Grantor or any person related to the Grantor by blood, adoption or marriage, or any entity in which the Grantor has a financial interest) of the Property from such holder, and such Property shall thereupon and thereafter be free from all such rights and restrictions.

. The Foreclosure Notice shall set forth the nature of the default causing the Holder to seek to acquire the Property (the "Default") and offering DHCD and the Municipality an opportunity to cure the Default for a period of sixty (60) days commencing on the date of the Foreclosure Notice (the "Cure Period"). During the Cure Period, DHCD or the Municipality may, in lieu of curing the Default, propose to the Holder any reasonable alternatives to foreclosure or similar remedies which would retain the long-term affordability of the Property to Eligible Purchasers, and the Holder shall consider all such alternatives in good faith. If DHCD or the Municipality shall cure the Default, the entity curing the default shall give notice (the "Default Cure Notice") to the Grantee and to the Director and/or the Municipality, as the case may be, in accordance with Section 1 of this Deed Rider, stating that the Default has been cured and that the Property is for sale. The provisions of said Section 1 shall apply to such sale, and all time periods set forth in Section 1 shall be calculated from the date of the Default Cure Notice.

(b) In the event such Holder, conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Property is sold for a price in excess of the greater of (i) the sum of the outstanding principal balance of the note secured by such mortgage plus all

future advances, accrued interest and all reasonable costs and expenses which the holder is entitled to recover pursuant to the terms of the mortgage and (ii) the Maximum Resale Price applicable on the date of the sale, such excess shall be paid to the Municipality in consideration of the loss of the value and benefit of the rights and restrictions herein contained held by the Director and the Municipality and released by the Director and the Municipality pursuant to this section in connection with such proceeding (provided, that in the event that such excess shall be so paid to the Municipality by such holder, the Municipality shall thereafter indemnify such holder against loss or damage to such holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to the Municipality in accordance herewith, provided that such holder shall give the Municipality prompt notice of any such claim and shall not object to intervention by the Municipality in any proceeding relating thereto.)

The Maximum Resale Price shall be determined as set forth above in this Deed Rider. To the extent the Grantee possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Grantee hereby assigns its interest in such amount to said holder for payment to the Municipality.

5. Death of Grantee: Subject to the right of any grantee as a surviving joint tenant with right of survivorship or tenant by the entirety, in the event of the death of the Grantee, the Grantee's executor or administrator or special administrator, as the case may be, shall, within the earlier of thirty (30) days after such death or fifteen (15) days after the appointment of the executor, administrator or special administrator, as the case may be, notify the Director and the Municipality of the name(s) and address(es) of the beneficiary(ies) (whether one or more, the "**Beneficiary**") entitled to the Property under will of the Grantee or, if the Grantee leaves no will, by the laws of intestacy and stating whether such Beneficiary desires to make the Property his or her primary residence. If the Beneficiary desires to make the Property his or her primary residence, then within thirty (30) days after giving such notice, such executor, administrator or special administrator, as the case may be, shall provide the Director and the Municipality with such evidence as the Director shall require that the Beneficiary qualifies as an Eligible Purchaser. If within said thirty (30) days, the Beneficiary is found, to the satisfaction of the Director, to be an Eligible Purchaser, then the Beneficiary shall be deemed to be the Grantee under this Deed Restriction and all provisions of this Deed Restriction shall continue in full force and effect as though the Beneficiary were the original Grantee. However, if the executor, administrator or special administrator, as the case may be, does not provide timely notice of Beneficiary's desire to make the Property his or her primary residence and/or it is not shown in timely manner that the Beneficiary is an Eligible Purchaser, then such failure to provide notice and/or proof of eligibility shall constitute a breach of the restrictive covenants contained herein and notice to the Director and the Municipality that the Property is for sale. The provisions of Section 1 entitled "Right of First Refusal" shall apply and the Beneficiary shall be deemed to be the Grantee under said provisions. For purposes of this Section 5, all time limitations set forth in Section 1 shall be calculated from the date on which the above-described thirty (30) day period shall have expired.

6. Covenants to Run With the Property: (a) The Grantor and the Grantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant and assign to the Municipality, the Municipality's agents, successors, designees and assigns and to the Director, the Director's agents, successors, designees and assigns the right of first refusal to purchase the Property as set forth herein, and the right to enforce the rights and restrictions, covenants and agreements set forth in this Deed Rider. The Grantor and the Grantee hereby grant to the Municipality and to the Director the right to enter upon the Property for the purpose of enforcing any and all of the restrictions, covenants and agreements herein contained, and to enforce the Municipality's and the Director's rights of first refusal to purchase the Property and the rights of the Municipality and the Director to designate a purchaser of the Property as set forth herein, and of taking all actions with respect to the Property which the Municipality or the Director may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the restrictions, covenants and agreements and to enforce the Municipality's and the Director's rights of first refusal to purchase the Property and the rights of the Municipality and the Director to designate a purchaser of the Property set forth herein. The rights hereby granted to the Municipality and the Director shall be in addition to and not in limitation of any other rights and remedies available to the Grantor or the Municipality or the Director for enforcement of the restrictions, rights, covenants and agreements set forth in this Deed Rider. It is intended and agreed that all of the agreements, covenants, rights and restrictions set forth above shall be deemed to be covenants running with the Property and shall be binding upon and enforceable against the Grantee, the Grantee's successors and assigns and any party holding title to the Property, for the benefit of and enforceable by the Municipality, the Municipality's agents, successors, designees and assigns and the Director, the Director's agents, successors, designees and assigns for a period which is the shortest of (i) perpetuity, or (ii) upon the recording of a Compliance Certificate or (iii) upon the recording of an Eligible Purchaser Certificate and a new Deed Rider executed by the eligible purchaser referenced in the Eligible Purchaser Certificate, which new Deed Rider the Eligible Purchaser Certificate certifies is in form and substance satisfactory to DHCD and the Municipality or (iv) upon the conveyance of the Property to the Municipality and the recording of a Municipal Purchaser Certificate as set forth herein or (v) upon the conveyance of the Property to the Director in accordance with the terms hereof.

(b) This Deed Rider and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be an affordable housing restriction as that term is defined in M.G.L. c. 184, § 31 and as that term is used in M.G.L. c. 184, §§ 26, 31, 32, and 33.

(c) The Grantee intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Deed Rider and the covenants, agreements, rights and restrictions contained herein shall be and are covenants running with the land, encumbering the Property for the term of this Deed Rider, and are binding upon the Grantee's successors in title, (ii) are not merely personal covenants of the Grantee, and (iii) shall bind the Grantee, its successors and assigns and enure to the benefit of the Municipality and the Director and their successors

and assigns for the term of the Deed Rider. Grantee hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(d) Without limitation on any other rights or remedies of the Grantor, the Municipality, and the Director, their agents, successors, designees and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Deed Rider, shall, to the maximum extent permitted by law, be voidable by the Municipality, the Municipality's agents, successors, designees and assigns or by the Director, the Director's agents, successors, designees or assigns by suit in equity to enforce such rights, restrictions, covenants, and agreements.

6. Notice: Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or such other addresses as may be specified by any party by such notice.

Municipality: Town of Bedford

Town Hall  
10 Mudge Way  
Bedford, MA 01730  
Attn: Office of the Selectmen

DHCD:

Department of Housing and Community Development  
Att'n: LIP Director  
100 Cambridge Street, 3rd Floor  
Boston, MA 02114

Grantor:

Elderberry Limited Partnership II  
c/o Pamela J. Brown  
110 The Great Road  
Bedford, MA 01730

Grantee:

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

7. Further Assurances: The Grantee agrees from time to time, as may be reasonably required by the Municipality or the Director, to furnish the Municipality and the Director with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and all other information pertaining to the Property or the Grantee's eligibility for and conformance with the requirements of the LIP Program.

8. Waiver: Nothing contained herein shall limit the rights of the Director to release or waive, from time to time, in whole or in part, any of the rights, restrictions, covenants or agreements contained herein with respect to the Property. Any such release or waiver must be made in writing and must be executed by the Director or his/her designee.

9. Severability: If any provisions hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law.

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

Grantor: Elderberry Limited Partnership II,  
Panake, Inc., General Partner

\_\_\_\_\_  
By: Nathaniel K. Brown  
Its President

Grantee:

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

\_\_\_\_\_  
Name

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

\_\_\_\_\_  
Name

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned notary public, personally appeared Nathaniel K. Brown, President, Panake, Inc. proved to me through satisfactory evidence of identification, which were Mass. Drivers License, to be the person whose name is signed on the preceding document [Grantor], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_, ss. \_\_\_\_\_, 200\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document [Grantee], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public  
My commission expires:

  
Attest. Middlesex S. Register

© DHCD When used in the Local Initiative Program, this form may not be modified without the written approval of the Department of Housing and Community Development.