



TOWN OF WINCHESTER
OFFICE OF THE TOWN CLERK

TOWN HALL
WINCHESTER, MASSACHUSETTS 01890
(617) 721-7130, 721-7131
FAX: (617) 756-0505

Carolyn Ward, CMC
Town Clerk

Annual Town Meeting
April 22, 1996
Adjourned Session June 17, 1996

ARTICLE 16

VOTE #1

VOTED, that the Board of Selectmen be authorized to purchase approximately 45.05 acres of land in Winchester more fully described in "Winning Farm Metes and Bounds" attached hereto as Exhibit "A", for \$1,200,000 from Winning Home Inc. upon such terms and conditions as are set forth in the Option Agreement dated April 29, 1996, as amended, between Town of Winchester and Winning Home Inc. and upon such other terms and conditions as the Board of Selectmen deem to be in the best interest of the town; that \$1,200,000 be appropriated for this purpose; and that to meet this appropriation, \$230,000 shall be transferred from the Conservation Fund and the Treasurer, with the approval of the Board of Selectmen, be authorized to borrow \$970,000 under Mass General Laws Ch. 44, Section 7(3).

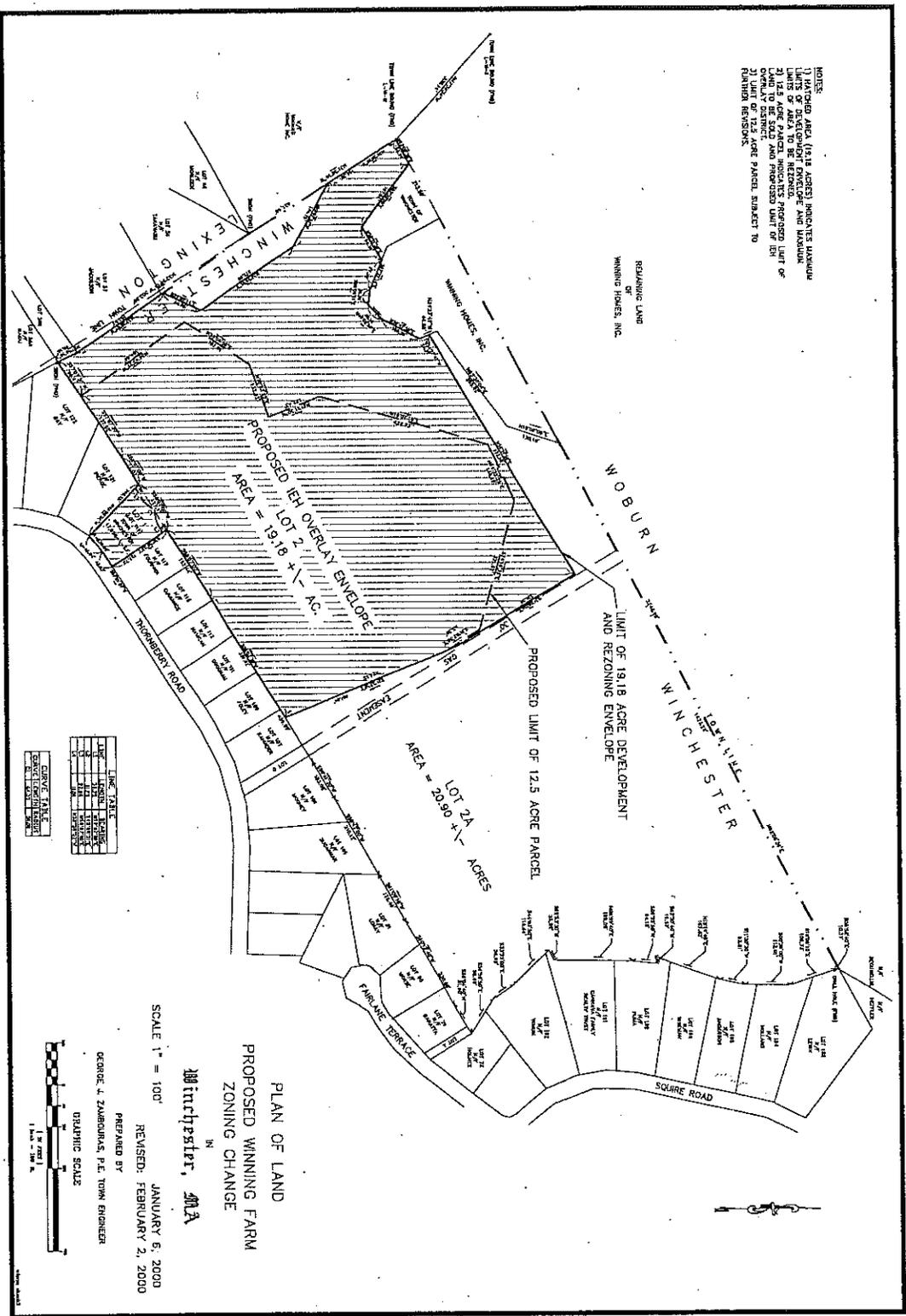
Standing vote (2/3 vote required for passage): Yes - 137; No - 0

VOTE #2

VOTED, that the Town ratify and confirm the Option Agreement referred to below and to raise and appropriate the sum of \$300,000 to fund the third of three payments payable under an Option Agreement between the Town of Winchester and Winning Home, Inc., dated April 29, 1996, as amended, for the acquisition of Winning Farm, a parcel of land consisting of approximately forty five and five one hundredth (45.05) acres in Winchester, provided that:

- (a) The initial installment of \$230,000 payable under said Option Agreement shall be paid from funds of the Winchester Conservation Commission;
- (b) The second installment of \$670,000 payable under said Option Agreement, together with interest (not to exceed \$72,750) payable under said Option Agreement, shall be paid from the Housing Fund of the Board of Selectmen; and
- (c) Similar amounts will be paid if payments under the terms of the Option Agreement are accelerated by the Town.

NOTES:
 1. THE SHADY AREA (19.18 ACRES) REPRESENTS MAXIMUM LIMIT OF DEVELOPMENT ENVELOPE AND MAXIMUM LIMIT OF AREA TO BE REZONED. PROPOSED LOT 2, 12.5 ACRES, IS A SPECIAL PROPOSED LOT OF LOT 2, OVERLAY DISTRICT. PROPOSED LOT 2 IS A SPECIAL PROPOSED PARCEL SUBJECT TO PLANNING BOARD ACTION.



PLAN OF LAND
 PROPOSED WINNING FARM
 ZONING CHANGE
 IN
 Winchester, MA

SCALE 1" = 100'
 JANUARY 6, 2000
 REVISED: FEBRUARY 2, 2000

PREPARED BY
 GEORGE T. ZAMBONAS, P.E. TOWN ENGINEER
 GRAPHIC SCALE



| DATE | DESCRIPTION |
|--------|-------------|
| 1/6/00 | PREPARED |
| 2/2/00 | REVISED |



TOWN OF WINCHESTER
OFFICE OF THE TOWN CLERK

71 MT. VERNON STREET
WINCHESTER, MASSACHUSETTS 01890
TEL (781) 721-7130 FAX (781) 721-1153
E-MAIL cward@ci.winchesterma.us

Special Town Meeting
February 10, 2000

Carolyn Ward, Town Clerk
Christine A. Cullen, Asst. Town Clerk

ARTICLE 1

VOTED, that the Selectmen are authorized to sell not more than 12.5 acres of land to Robert Salter and Richard Salter d/b/a/ The Salter Group or their nominee, in accordance with the terms and conditions set forth in the Purchase and Sale Agreement between the Salter Group and the Town dated January 3, 2000, the RFP dated November 20, 1998 and the Salter Group's responses thereto, and such other terms and conditions as determined to be in the best interests of the Town.

The land to be sold is more fully depicted on a Plan of Land dated January 6, 2000, revised February 2, 2000, entitled "Proposed Winning Farm Zoning Change" prepared by George J. Zambouras, Town Engineer, as said plan may be further amended by the Town.

Standing Vote: YES - 128; NO - 39

I certify that the foregoing is a true account
of the action taken under Article 1 of the
Special Town Meeting of February 10,
2000.

ATTEST:

Carolyn Ward
Town Clerk

QUITCLAIM DEED

The Board of Selectmen of the Town of Winchester, (the "Grantor"), for consideration paid of One Million Five Hundred Thousand Dollars and no cents (\$1,500,000.00) and other good and valuable consideration as set forth in the Operating Agreement between the Grantor and the Grantee to be recorded herewith grants to Winning Farm LLC, a Massachusetts limited liability company, having an address at P.O. Box 490, Winchester, Massachusetts 01890 (the "Grantee")

with *Quitclaim Covenants*

The land in Winchester, Massachusetts more particularly described as follows:

See Exhibit "A" attached hereto and incorporated herein

Being a portion of the premises conveyed to the Town of Winchester by deed of Winning Home, Inc. A/K/A Winning Home dated February 20, 1997 and recorded in Middlesex South District Deeds Registered Land Section, Book 01168, Page 146. See also Deed at unregistered portion of said land in Book 27117, Page 532 confirmed by 1999 Deed recorded in Book 30552, Page 602 in Middlesex South Deeds.

There has been full compliance in this conveyance with the provisions of M.G.L. ch. 44 §63A.

For Grantor's authority see Vote of the Town of Winchester Special Town Meeting Article 1, February 10, 2000 and Vote of 2005 Fall Annual Meeting, Article 12 at the adjourned session November 14, 2005 true copies of which are attached hereto and recorded herewith.

Witness our hands and seal this 27th day of March, 2006.

The Board of Selectmen of the Town of Winchester:

COPY

Karl P. Fryzel,
Chairman

James A. Johnson, III

Charles E. Nurnberger

Thomas R. Howley

Brian O'Connor

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

March 27, 2006

Then personally appeared before me the above-named Charles E. Nurnberger as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.

Notary Public

My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

March 27, 2006

Then personally appeared before me the above-named Thomas R. Howley as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.

Notary Public

My Commission Expires: November 9, 2012.

EXHIBIT "A"

PARCEL ONE: Lots 2 and 3 as shown on a plan entitled "Plan of Land Located in Winchester, Massachusetts (Middlesex County) prepared for Winning Farm, LLC dated February 28, 2001" by Kevin E. Danahy, Professional Land Surveyors, Meridian Associates, Inc.

PARCEL TWO: That certain parcel of land situate in Winchester in the County of Middlesex and said Commonwealth, bounded and described as follows:

SOUTHEASTERLY by Thornberry Road, ninety-two and 87/100 feet;
SOUTHWESTERLY by lot 121 as shown on plan hereinafter mentioned one hundred sixty-nine and 15/100 feet;
NORTHWESTERLY by land now or formerly of Winning Home Corporation, one hundred twenty-seven and 97/100 feet; and
NORTHEASTERLY by lot 117 on said plan, one hundred fifty-seven and 73/100 feet.

Said parcel is shown as lot 119 on said plan. (Sheet 4)

All of said boundaries are determined by the Court to be located as shown on a subdivision plan, as approved by the Court, filed in the land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book 612, Page 164, with Certificate 96514.

The above described land is subject to and has the benefit of, the terms of four stipulations with Charles H. Coulter et ux, one by George R. Menchin et al, Document 222952, one by Frank Lyman, Jr., Document 222953, one by Lillian M. Grace, Document 222954 and one by Amelia G. Wheeler et al, Document 222955 in so far as the same are applicable.

There is appurtenant to the above described land the right to use the streets as shown on said plan in common with others entitled thereto, set forth in Document 373208.

The above described land is subject to the reservation as to right of way and easements more particularly set forth in said Document 373208.



Town of Winchester
OFFICE OF THE TOWN CLERK
Town Hall 71 Mt. Vernon Street Winchester, MA 01890
Phone 781-721-7130 Fax 781-721-1153 E-Mail cward@ci.winchester.ma.us

Carolyn Ward, Town Clerk

Fall Annual Town Meeting
November 7, 2005
Adjourned Session November 14, 2005

ARTICLE 12

VOTED to approve a second amendment to the Purchase and Sales Agreement dated January 3, 2000 between the Board of Selectmen as Seller and Winning Farm LLC as Buyer in order to permit Winning Farm LLC to pursue as an alternative project an eight-eight unit development with no more than thirty-five units devoted to assisted living and other such conditions as summarized in a document on file in the office of the Town Clerk entitled Summary of Second Amendment to the Winning Farm Purchase and Sales Agreement.

Standing Vote: YES – 110; NO – 24

I certify that the foregoing is a true account of the action taken under Article 12 of the Fall Annual Town Meeting of November 7, 2005 at the Adjourned Session November 14, 2005.

ATTEST:


Carolyn Ward
Town Clerk

**WINNING FARM
OPERATING AGREEMENT**

This Operating Agreement (the "Agreement") is made this ____ day of _____, 2006 by and among the Town of Winchester, ("the Town") acting through its Board of Selectmen, and Winning Farm LLC, a Massachusetts limited liability company, having an address at P.O. Box 490, Winchester, Massachusetts 01890, and its successors and assigns ("Project Sponsor").

WITNESSETH:

WHEREAS, the Project Sponsor intends to construct an assisted living and elderly housing development known as "The Village At Winning Farm" (the "Project") at a 12.5 acre site on Thornberry Road in the Town of Winchester, more particularly described in Exhibit A attached hereto and made a part thereof (the "Site");

WHEREAS, the Town intends to have 20% of the units (the "Units") be "affordable" (the "Affordable Units") within the meaning of G.L.c. 40B to persons or households with incomes at or below 50% of the regional median household income so as to allow 100% of the Units to be counted towards the affordable housing stock under G.L.c. 40B.

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, the Town and the Project Sponsor hereby agree and covenant as follows:

A. Plans and Specifications

The Project Sponsor agrees to construct the Project in accordance with plans and specifications submitted to and on file with the Zoning Board of Appeal for the Town of Winchester for either the 145 unit or 88 unit project.

B. Development Controls

1. Massachusetts Order of Conditions Under the Wetlands Protection Act, M.G.L.c. 131, § 40. The Project shall be constructed in accordance with any applicable Order of Conditions issued under the Massachusetts Wetlands Protection Act, as the same may be modified, amended, or reissued from time to time by the appropriate governmental authority.

2. Winchester Order of Conditions Under the Winchester Wetlands By-Law. The Project shall be constructed in accordance with any applicable Order of Conditions issued under the Winchester Wetlands By-Law, as the same may be modified, amended, or reissued from time to time by the Winchester Conservation Commission.

3. Massachusetts Sewer Connection Permit, M.G.L.c. 131, § 43(2). The Project shall be constructed in accordance with any applicable Massachusetts Sewer Connection Permit issued under the Massachusetts Clean Water Act, as the same may be modified, amended, or reissued from time to time by the Massachusetts Department of Environmental Protection (DEP).

4. Subdivision Approval under the Subdivision Control Law. The project shall be constructed in accordance with any applicable subdivision approval issued by the Winchester Planning Board as the same may be modified, amended or reissued from time to time by the Planning Board.

5. Funding of Public Infrastructure. Consistent with the procedures set forth in G.L. c. 41 §81K et seq. (the Subdivision Control Act), in connection with construction of the Project, the Project Sponsor shall construct, pay for construction of, or bond or otherwise financially assure the construction of to the satisfaction of the Board of Selectmen, the following public amenities, up to the amounts listed below:

| | | | |
|-------|---|---|---------------------|
| (i) | Off-site sewerage pump station | - | \$150,000.00 |
| (ii) | New water supply pipes | - | \$100,000.00 |
| (iii) | Sidewalks and curbing at entrance | - | \$ 50,000.00 |
| (iv) | Conservation Shelter | | \$ 20,000.00 |
| (v) | Walking trails, driveway, and public parking to above Conservation Area | | \$ 60,000.00 |
| | | | <u>\$380,000.00</u> |

With respect to item (i) above, improvements to the off-site sewerage pump station shall include:

- (i) Review and replacement of worn out or outdated electronic controls at the Thornberry Road Station and the Squire Road Station
- (ii) Incorporation of telemetric alarms at the Thornberry Road Station and the Squire Road Station
- (iii) Incorporation of emergency power connection at the Thornberry Road Station and the Squire Road Station
- (iv) Furnishing of a portable standby generator

In the event the cost of these improvements is less than \$150,000.00, the Project Sponsor shall contribute the difference between the costs and \$150,000.00 to the Town's inflow and infiltration program.

In addition, if approved by the Traffic Advisory Committee, the Project Sponsor shall in connection with construction of the Project construct, pay for construction of, or bond or otherwise financially assure the construction of to the satisfaction of the Board of Selectmen, the following roadway safety improvements:

- (i) Installation of speed limit signs along Thornberry Road;
- (ii) Installation of signs limiting parking along one side of Thornberry Road; and
- (iii) Installation of signs and appropriate pavement markings for a three-way stop intersection where the Site driveway meets Thornberry Road.

6. Conservation Shelter. Prior to issuance of a permanent certificate of occupancy for the Project, the Project Sponsor shall post a bond with the Town in an amount not less than 150% of the estimated cost for completion of the Conservation Shelter, unfinished roadways, drives, and utilities (such as water, sewer, drainage, electricity, streetlights, gas, fire alarms, and the like), exterior grading, and parking areas. Upon completion of the Project, the Project Conservation Shelter and associated parking area, together with the right to inspect and repair water, sewer, and other utilities serving the Conservation Shelter. The Project Sponsor shall retain primary responsibility for maintenance of the Conservation Shelter and associated parking area and utilities.

7. In the event that the Project Sponsor selects the 88 unit development, the Project Sponsor shall pay over to the Town an additional sum of One Hundred Fifty Thousand (\$150,000.00) Dollars to be applied to the Housing Fund. Said funds to be paid by the project sponsor upon the issuance of a building permit or one year after the closing which ever event shall first occur.

8. The Project shall be constructed in accordance with any applicable decision of the Winchester Zoning Board of Appeal as the same may be modified, amended, or reissued from time to time by said Board.

C. Low and Moderate Income Housing

The Project Sponsor agrees to provide 20% of the Units to persons whose annual income is no more than 50% of the Boston Area median income as determined by the Department of Housing and Urban Development (the "Eligible Income"). The monthly rental rates for the Affordable Units may increase by the same percentage as the increase in Eligible Income. The Project Sponsor further agrees to provide Affordable Units in perpetuity.

D. Miscellaneous Conditions

1. The Project Sponsor shall convey to the Conservation Commission a Conservation Easement over the areas identified in the permits previously described in Section B, Development Controls. The Project Sponsor will pay all fees relating to the recording of such easement.

2. As set forth in the schedule attached as Exhibit B the initial ownership shall be is vested in Winning Farm, LLC and the initial management entity shall be Winning Farm, Inc. Neither ownership nor management of the proposed development may be leased,

alienated, or transferred without the express written permission of the Board of Selectmen; said permission may be withheld in the Selectmen's sole discretion.

3. In the event of the occurrence of a material default by the Project Sponsor, the Board of Selectmen may cancel this agreement, if in the Selectmen's opinion such cancellation is required by the public good, in which event the site will revert to the Town.

4. In the event that the 88 unit project is selected by the Project Sponsor, the Project Sponsor further agrees to abide by the terms and conditions outlined in the Stay of Litigation and Noninterference Agreement attached hereto and incorporated herein as Exhibit C.

E. Miscellaneous Terms

1. Within 10 days after the Project Sponsor takes title to the Site, the Project Sponsor shall cause this Agreement to be recorded with the Middlesex South Registry of Deeds. Upon recording and/or filing as applicable, the Project Sponsor shall immediately transmit to the Town evidence of such recording and/or filing.

2. 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.

3. This Agreement shall not be modified without the written approval of the Board of Selectmen. If necessary to respond to unanticipated field conditions or other changed circumstances, the Board of Selectmen may approve modifications of this Agreement as necessary to allow the Project to be completed in a reasonable manner, provided the Board determines that the interests of the Town as set forth in this Agreement are adequately protected.

4. 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:

Town of Winchester:

Attn: Melvin Kleckner
Town Manager
71 Mount Vernon Street
Winchester, MA 01890

Copy to:

Town Counsel
Wade M. Welch, Esq.
Welch & Donohoe, LLP
655 Summer St., Suite 203
Boston, MA 02210

Project Sponsor:

Winning Farm LLC
c/o Mr. Richard Salter & Mr. Robert Salter
P.O. Box 490
Winchester, MA 01890

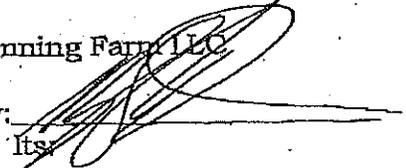
Copy To:

Lawrence Murray, Esq.
Murray & Quill, P.C.
165 Washington Street
Winchester, MA 01890

5. Successors and Assigns: 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 the Town and the Town shall be deemed to be the holder of the affordable housing restriction created by this Agreement. The Town has determined that the acquiring of such affordable housing restriction is in the public interest.

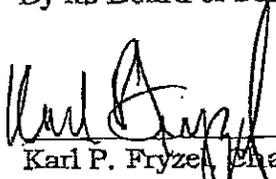
Executed as a sealed instrument as of the date first above written.

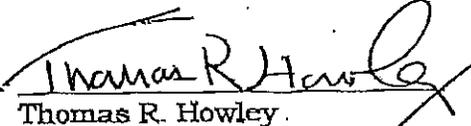
Winning Farm LLC

By: 

Its

Town of Winchester,
By its Board of Selectmen:


Karl P. Fryzel, Chairman


Thomas R. Howley


James A. Johnson, III


Charles E. Nurnberger

Brian P. O'Connor

Attachments: Exhibit A – Legal Property Description
Exhibit B – Schedule of Current Ownership and Management
Exhibit C – Stay of Litigation and Noninterference Agreement

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss. March , 2006

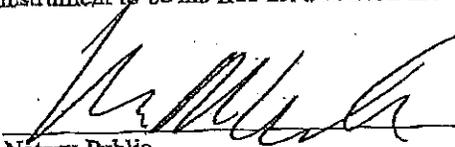
Then personally appeared before me the above-named _____ as
of the _____ [Project Sponsor], and acknowledged the foregoing
instrument to be his/her free act and deed and the free act and deed of _____

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss. March 23, 2006

Then personally appeared before me the above-named Karl P. Fryzel as Selectmen of the
Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of
the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and
deed of said Town of Winchester.



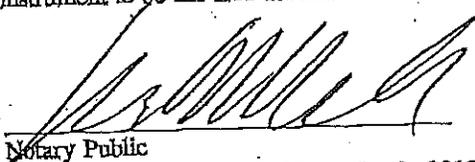
Notary Public
My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

March 23, 2006

Then personally appeared before me the above-named James A. Johnson, III as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.



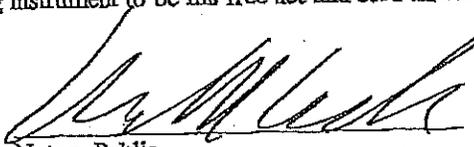
Notary Public
My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

March 23, 2006

Then personally appeared before me the above-named Charles E. Nurnberger as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.



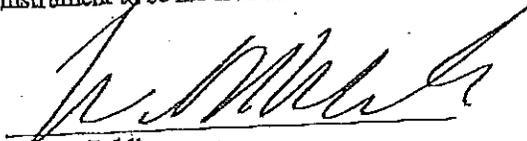
Notary Public
My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

March 23, 2006

COUNTY OF Middlesex, ss.

Then personally appeared before me the above-named Thomas R. Howley as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.



Notary Public
My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

March 23, 2006

COUNTY OF Middlesex, ss.

Then personally appeared before me the above-named Brian O'Connor as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.

Notary Public
My Commission Expires: November 9, 2012

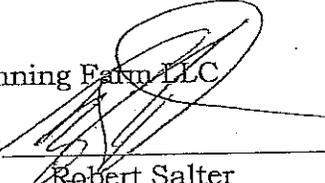
**AMENDMENT TO
WINNING FARM
OPERATING AGREEMENT**

The Town of Winchester, acting through its Board of Selectmen and Winning Farm LLC, a Massachusetts Limited Liability Company having an address of P.O. Box 490 Winchester, Massachusetts 01890 representing all of the parties to a certain Operating Agreement, dated March 13, 2006 recorded with the Middlesex South Registry of Deeds on July 12, 2006 at Book 47794, Page 298, do hereby amend said agreement in the following manner:

1. Section B, subparagraph 5 shall be amended by deleting in the first paragraph of said section, subsection (i). The remaining subsections of the first paragraph of subparagraph 5 shall be renumbered accordingly.
2. The sum of the four remaining items shall be deleted and the figure of "\$230,000.00" shall be substituted therein.
3. The second paragraph of Section B, subparagraph 5 shall be deleted in its entirety together with all numbered subsections and the following language shall be added in its place, "The Project Sponsor shall, prior to the issuance of the first Certificate of Occupancy for the Project, contribute to the Town the sum of \$150,000.00 pursuant to the revisions of General Laws Chapter 44, Section 53A. No Certificate of Occupancy shall be issued until such contribution has been received by the Town Treasurer."

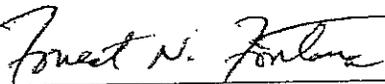
Executed as a sealed instrument this 28th day of April, 2011.

Winning Farm LLC

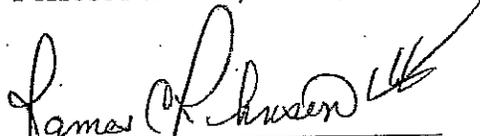
By: 

Robert Salter
Its: Manager

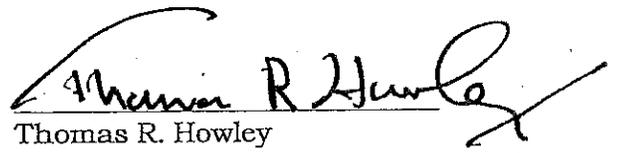
Town of Winchester,
By its Board of Selectmen:



Forrest Fontana, Chairman



James A. Johnson, III


Thomas R. Howley


Douglas Marmon

Roger Berman

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, SS

On this ____ day of _____, 2011, before me, the undersigned notary public, personally appeared the above-named **Richard Salter** as Manager of Winning Farm LLC who proved to me through satisfactory evidence of identification, which was/were [] Mass. driver's license(s) or [] _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free and deed and the free act and deed of Winning Farm LLC.

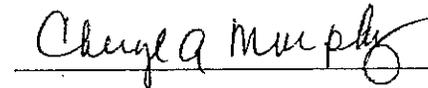
Notary Public
My Commission Expires

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, SS

On this 28th day of April, 2011, before me, the undersigned notary public, personally appeared the above-named **Forrest Fontana** as Selectman of the Town of Winchester who proved to me through satisfactory evidence of identification, which was/were [] Mass. driver's license(s) or [] _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free and deed and the free act and deed of said Town of Winchester.

Cheryl A. Murphy
Notary Public
My Commission Expires
October 12, 2012



Notary Public
My Commission Expires

Thomas R. Howley

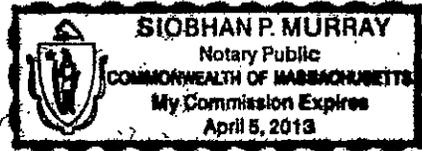
Douglas Marmon

Roger Berman

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, SS

On this 28th day of April, 2011, before me, the undersigned notary public, personally appeared the above-named **Robert Salter** as Manager of Winning Farm LLC who proved to me through satisfactory evidence of identification, which was/were [] Mass. driver's license(s) or [] _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free and deed and the free act and deed of Winning Farm LLC.



Siobhan P. Murray
Siobhan P. Murray
Notary Public
My Commission Expires 4/5/13

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, SS

On this ___ day of _____, 2011, before me, the undersigned notary public, personally appeared the above-named **Forrest Fontana** as Selectman of the Town of Winchester who proved to me through satisfactory evidence of identification, which was/were [] Mass. driver's license(s) or [] _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free and deed and the free act and deed of said Town of Winchester.

Notary Public
My Commission Expires

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, SS

On this 28th day of April, 2011, before me, the undersigned notary public, personally appeared the above-named James A. Johnson, III as Selectman of the Town of Winchester who proved to me through satisfactory evidence of identification, which was/were [] Mass. driver's license(s) or [] _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free and deed and the free act and deed of said Town of Winchester.

Cheryl A. Murphy
Notary Public
My Commission Expires
October 12, 2012

Cheryl A. Murphy

Notary Public
My Commission Expires

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, SS

On this 28th day of April, 2011, before me, the undersigned notary public, personally appeared the above-named Thomas R. Howley as Selectman of the Town of Winchester who proved to me through satisfactory evidence of identification, which was/were [] Mass. driver's license(s) or [] _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free and deed and the free act and deed of said Town of Winchester.

Cheryl A. Murphy
Notary Public
My Commission Expires
October 12, 2012

Cheryl A. Murphy

Notary Public
My Commission Expires

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, SS

On this 28th day of April, 2011, before me, the undersigned notary public, personally appeared the above-named Douglas Marmon as Selectman of the Town of Winchester who proved to me through satisfactory evidence of identification, which was/were [] Mass. driver's license(s) or [] _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as his free and deed and the free act and deed of said Town of Winchester.

Cheryl A. Murphy
Notary Public
My Commission Expires
October 12, 2012

Cheryl A. Murphy

Notary Public
My Commission Expires

WINNING FARM
REGULATORY AGREEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this ___ day of _____, 2006 by and among the Town of Winchester, ("the Town") acting through its Board of Selectmen, and Winning Farm LLC, A Massachusetts limited liability company, having an address at P.O. Box 490, Winchester, Massachusetts 01890, and its successors and assigns ("Project Sponsor").

WITNESSETH:

WHEREAS, the Project Sponsor intends to construct an Independent Elderly housing development known as "The Village At Winning Farm" at a 12.5 acre site on Thornberry Road in the Town of Winchester, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site");

WHEREAS, the Town of Winchester intends to have 20% of the units (the "Units") be "affordable" (the "Affordable Units") within the meaning of G.L.c. 40B to persons or households with incomes at or below 50% of the regional median household income so as to allow 100% of the Units to be counted towards the Town's "affordable housing stock under G.L.c. 40B.

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, the Town, 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 Town (the "Plans and Specifications"). In addition, the interior and exterior of all Affordable Units must be indistinguishable from other comparable market rate Units in the Project as more fully shown in the Plans and Specifications.

Affordable units shall be rented to households whose incomes fall at or below the 50% median income as described above. All advertisements of the affordable units shall be made available to the Town.

2. Throughout the term of this Agreement, the Project Sponsor shall annually determine the income of each tenant of an Affordable Unit. This determination shall be certified to the Monitoring Agent designated by the Board of Selectmen, if any, and the Board of Selectmen on an annual basis. Any Affordable Unit occupied by a certified household at the commencement of occupancy shall be deemed an Affordable Unit so long as (i) such unit continues to be rent restricted and (ii) the tenant's income does not exceed the maximum income levels as determined by DHCD. If the tenant's income exceeds DHCD's maximum income levels at the time of the annual income determination, his/her unit shall be deemed an

Affordable Unit until the next available unit which is not an Affordable Unit is rented, which Project Sponsor shall make a good faith effort to do. If this event occurs, then the next available market rate unit, upon turnover, would be rented and subsequently treated as an affordable unit under this Agreement.

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. The Project must also comply with all applicable local codes, ordinances and by-laws.

3. (a). Throughout the term of this Agreement, each Affordable Unit for rental will be rented for no more than the maximum rental rates permitted by DHCD regulations to qualify for eligibility under G.L.c. 40B to an Eligible Tenant. An Eligible Tenant is a tenant who satisfies the criteria set forth in the definition of independent elderly housing in the Zoning By-Law of the Town of Winchester and in the DHCD Regulations. The Maximum Income for this project may be increased from time to time as the Maximum Income provided in the Guidelines is increased. To the extent not in conflict with Chapter 40B and the rules and regulations promulgated thereunder, an eligible tenant must also be appropriate for the facility and have the proper care and need requirements as well as proper evidences of tenant's ability to meet the financial obligation to the facility.

(b). If the Maximum Incomes provided in the Guidelines are increased, the Maximum Rents herein may be increased proportionately, but only after proper notice to the Town and with the prior approval of the Town. In order to obtain the approval and provide proper notice, the project sponsor shall be responsible for providing the Town new household income data for the region as published by DHCD. Upon submission to the Town of the new income data and notice of the increase in the baseline incomes and corresponding rents for the affordable units, the Town shall review and approve such an increase for the coming year or until new information is provided. The town's period for review and approval or disapproval shall not exceed 30 days.

4. Twenty percent (20%) of the units will be "Affordable Units" within the meaning of G.L.c. 40B as it may be further amended or revised in perpetuity so that 100% of the units shall be counted toward the Town's affordable housing stock under Chapter 40B.

5. Within ten days after the Project Sponsor takes the title to the site, the Project Sponsor shall cause this Agreement to be recorded with the Middlesex South Registry of Deeds and/or if the Project consists in whole or in part of registered land, to be filed with the Registry District of the Land Court for the County where the Project is located. Upon recording and/or filing as applicable, the Project Sponsor shall immediately transmit to the Town evidence of such recording and/or filing.

6. A Monitoring Agent may be appointed by the Town, and if so appointed, shall monitor the compliance of the Project with the Affordability Requirement and assist the Board of Selectmen with review of the following requirements of the Project Sponsor:

- (a) Receipt of annual reports from the Project Sponsor, within 90 days after the end of each calendar year, with respect to compliance of the Project with the Affordability Requirements, which reports shall include copies of tenant income certifications. It is understood that these reports are exempt from disclosure as public records by G.L. c.4 § 7, clause 26 (c).
- (b) Preparation annually of a report (the "Annual Compliance Report") within 120 days after the end of each fiscal year of the Project to the Monitoring Agent on the compliance (1) of the Project Sponsor with reporting requirements, (2) of the Project with the Affordability Requirement. The Annual Compliance Report shall indicate the extent of noncompliance with the relevant reporting and/or substantive requirements, describe efforts being made by the Project Sponsor to remedy such noncompliance and, if appropriate, recommend possible enforcement action against the Owner.

The Monitoring Agent shall provide periodic monitoring on its own initiative in order to insure to the extent practicable the compliance of the Project and the Project Sponsor with the Affordability Requirement. The services hereinafter shall not include any construction period monitoring. The services hereinafter shall include follow-up discussions with the Project Sponsor after an event of noncompliance.

The Project Sponsor shall deliver to the Town or, if so, designated, to the Monitoring Agent the reports described above within specified times.

- (a) The Monitoring Agent shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without negligence.
- (b) The Project Sponsor agrees to indemnify and hold harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its relationship with the Project under this Agreement except with respect to any such damages, costs or liabilities arising from improper or inadequate performance by Monitoring Agent hereinafter or otherwise from the negligence or willful misconduct of the Monitoring Agent.

7. In order to provide both the Town and the Project Sponsor with the maximum flexibility in the rental of the affordable units to eligible tenants with due regard to rental rates, income distribution, unit distribution and the preference for Winchester residents, the Project Sponsor agrees to notify the Town if it is unable to rent an available unit to a tenant which meets the applicable income guidelines.

In the event that the Town is so notified, the Town reserves the right, but not the obligation, to provide a rent subsidy to the Project Sponsor from the Selectmen's Housing Trust Fund or other available funding source to provide immediate housing to an otherwise eligible tenant.

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

- (a) The Project Sponsor (i) is a "For Profit" legal entity 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) 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 to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

9. Except for rental of Units to Eligible Tenants, as permitted by the terms of this Agreement, Project Sponsor will not sell, transfer, lease, mortgage, exchange or place a lien on the Project without prior written consent of the Board of Selectmen. Said consent may be withheld in the Selectmen's sole discretion. Any mortgage permissible under the prior sentence requires the Project Sponsor to provide thirty days prior notice to the Board of Selectmen, unless this time period is waived in writing by the Board of Selectmen.

10. 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.

11. 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.

12. Successors and Assigns:

(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 the Town and the Town shall be deemed to be the holder of the affordable housing restriction

created by this Agreement. The Town 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 the Project is acquired by foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives the Town not less than one hundred twenty (120) days prior written notice of the mortgagee's intention to foreclose upon the Project or to accept an instrument in lieu of foreclosure, or if the Project Sponsor does not obtain all necessary permits for the construction of the project. If this Agreement terminates because of a foreclosure or the acceptance of an instrument in lieu of foreclosure as set forth in clause (a) of this paragraph, then any purchaser at foreclosure auctions or subsequent purchaser including such mortgagee or an affiliate of such mortgagee takes title subject to the terms, obligations, duties and restrictions imposed herein.

(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 the Town 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 Town and 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 Rental Restrictions contained in any Deed Riders which may encumber the Affordable Units at the Project pursuant to the requirements of this Agreement or DHCD Regulations 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 Rental Restrictions shall be for the benefit of the Town and the Town shall be deemed to be the holder of the affordable housing restriction created by the Rental Restrictions in each of the Deed Riders.

13. The Project Sponsor agrees to submit any information, documents, or certifications requested by the Town which the Town shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor with the terms of this Agreement.

14. (a) The Project Sponsor covenants and agrees to give the Town written notice of any default, violation or breach of the obligations of the Project Sponsor hereunder, within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If the Town becomes aware of a default, violation, or breach of obligations of the Project Sponsor without receiving a Default Notice from Project Sponsor, the Town shall give a notice of such default, breach or violation to the offending party. If any such default, violation, or

breach is not cured to the satisfaction of the Town within thirty (30) days after the giving of the Default notice by the Town, or if no Default Notice is given, then within thirty (30) days after the giving of the Town Default Notice, then at the Town's option, and without further notice, the Town may either terminate this Agreement, or the Town may apply to any state or federal court for specific performance of this Agreement, or the Town 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 the Town 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 14 (a), then the Affordable Units and any other Units at the Project which have been included in the Subsidized Housing Inventory compiled pursuant to Chapter 40B shall from the date of such termination at the Town's option continue to be deemed Affordable Housing.

15. 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

16. Affirmative Marketing: The Project Sponsor shall not discriminate on the basis of race, creed, color, sex, handicap, marital status, sexual orientation, national origin or any other basis prohibited by law in the selection of the tenants for the Affordable Housing Units. The Project Sponsor agrees to adopt a preference for Winchester residents to the full extent permitted by law, regulations or DHCD Guidelines, and such local preference will remain in effect during the life of the Project. The Project Sponsor agrees to maintain for at least five (5) years following the rental of the Affordable Units, a record of all newspaper ads, outreach letters, translations, leaflets and any other outreach efforts, which may be inspected by the Town.

17. Dispute Resolution: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled before a dispute resolution service recognized under the standards of practice then in effect for the Massachusetts Superior Court, in accordance with Supreme Judicial Court Rule 1:10, Uniform Rules on Dispute Resolution. In the event that the dispute cannot be settled by dispute resolution, then the Town may apply to any court for specific performance of this Agreement or an injunction against any violation of this Agreement, or for such other relief as may be appropriate.

18. Miscellaneous Terms

- (a) 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.
- (b) This Agreement shall not be modified without the written approval of the Board of Selectmen. If necessary to respond to unanticipated senior health care issues

or other changed circumstances, the Board of Selectmen may approve modifications of this Agreement as necessary to allow the Project to be completed in a reasonable manner or the intent of this agreement to be fulfilled, provided the Board determines that the interests of the Town as set forth in this Agreement are adequately protected.

(c) 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:

(d) This agreement is senior to any mortgage now or hereafter encumbering the property. The Project Sponsor and any lender to the Project Sponsor holding a mortgage on the property understands and agrees that in the event of foreclosure of the mortgage and the exercise of the Power of Sale therein, the property will be sold subject to the restrictions imposed hereby.

Town of Winchester:

Attn: Melvin Kleckner
Town Manager
71 Mount Vernon Street
Winchester, MA 01890

Copy to:

Town Counsel
Wade M. Welch, Esq.
Welch & Donohoe, LLP
655 Summer St., Suite 203
Boston, MA 02210

Project Sponsor:

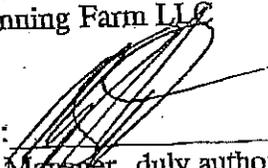
Winning Farm LLC
c/o Mr. Richard Salter & Mr. Robert Salter
P.O. Box 490
Winchester, MA 01890

Copy To:

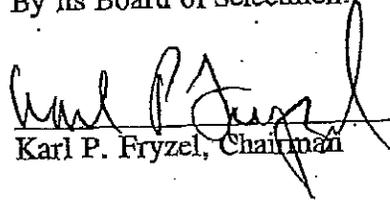
Lawrence Murray, Esq.
Murray & Quill, P.C.
165 Washington Street
Winchester, MA 01890

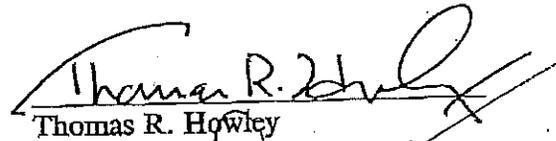
Executed as a sealed instrument as of the date first above written.

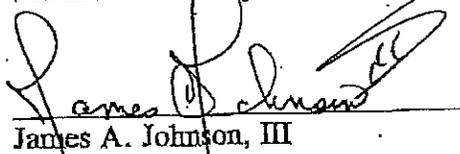
Project Sponsor
Winning Farm LLC

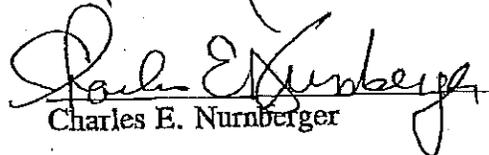
By: 
its Manager, duly authorized

Town of Winchester,
By its Board of Selectmen:


Karl P. Fryzel, Chairman


Thomas R. Howley


James A. Johnson, III


Charles E. Nurnberger

Brian P. O'Connor

COMMONWEALTH OF MASSACHUSETTS

March , 2006

COUNTY OF Middlesex, ss.

Then personally appeared before me the above-named _____ as
of the _____ [Project Sponsor], and acknowledged the
foregoing instrument to be his/her free act and deed and the free act and deed of
_____.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

March 27, 2006

COUNTY OF Middlesex, ss.

Then personally appeared before me the above-named Karl P. Fryzel as Selectmen of the
Town of Winchester proved to me through satisfactory evidence of identification, which was my personal
knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed
and the free act and deed of said Town of Winchester.



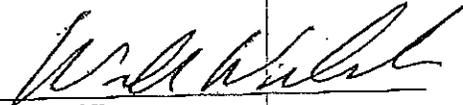
Notary Public
My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

March 27, 2006

Then personally appeared before me the above-named James A. Johnson, III as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.

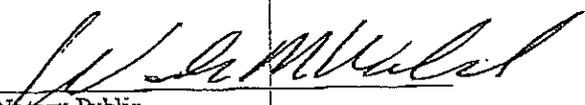

Notary Public
My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

March 27, 2006

Then personally appeared before me the above-named Charles E. Nurnberger as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.


Notary Public
My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

March 27, 2006

Then personally appeared before me the above-named Thomas R. Howley as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.



Notary Public

My Commission Expires: November 9, 2012

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex, ss.

March 27, 2006

Then personally appeared before me the above-named Brian O'Connor as Selectmen of the Town of Winchester proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said Town of Winchester.

Notary Public

My Commission Expires: November 9, 2012

