

DRAFT 7-5-2005 (Pending Approval of Wells Board of Selectmen)

DECLARATION OF AFFORDABLE AND ELDERLY HOUSING COVENANTS

THIS DECLARATION OF AFFORDABLE AND ELDERLY HOUSING COVENANTS (the “Declaration”) is executed as of this ____ day of _____, 2005, by Forest Village Condominium North, LLC, a Maine limited liability company (the “Declarant”), in favor of the Town of Wells, a Maine municipal corporation, acting by and through its duly authorized Board of Selectmen (the “Town”).

RECITAL PROVISIONS

WHEREAS, Declarant is the owner of the real estate situated in the Town of Wells, County of York and State of Maine, which is more particularly described in Exhibit A, attached hereto and made a part hereof (the “Real Estate”);

WHEREAS, Declarant is relying on and using the exemption for affordable elderly housing as more particularly described in the Residential Growth Management Ordinance, Chapter 175, Residential Growth Management of the Code of the Town of Wells, approved and adopted by the Town on or about April 11, 2003, at a duly noticed and convened Town Meeting, with an effective date of July 1, 2003 (the “Ordinance”);

WHEREAS, Declarant submits the Real Estate to the Declaration for purposes of complying with provisions relating to Elderly Housing and Affordable Housing, and the exemptions therefore, as set forth in Section 175-6(B)(6) of the Ordinance; and

WHEREAS, Declarant deems it desirable, for the purpose of providing “Affordable Housing” and “Elderly Housing” (as hereinafter defined), to subject the Real Estate to certain covenants and restrictions, each and all to the extent herein provided, for the benefit of the Real Estate;

NOW THEREFORE, in consideration of the foregoing covenants and other consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant for itself, its successors and assigns, hereby agrees and commits to the following:

1. **Declarations.** Declarant hereby declares that the Real Estate is and shall be subject to the Covenants and Restrictions hereinafter set forth, all of which are declared to be in furtherance of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value of the Real Estate and further for the purpose of compliance with the Ordinance.

2. **Definitions.** The following terms shall have the following meanings as used in this Declaration, unless the context otherwise requires:

a. Affordable Housing. The term “Affordable Housing” shall mean decent, safe and sanitary Units for a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development (“HUD”). A Unit is “affordable” to a household if the Unit's expected sales price is reasonably anticipated to result in monthly housing costs (including mortgage principal and interest payments, mortgage insurance costs, homeowners' insurance costs, real estate taxes, and basic utility and energy costs) that do not exceed 33% of the household's gross monthly income. A renter-occupied Unit is “affordable” to a household if the unit's monthly housing costs (including rent and basic utility and energy costs) do not exceed 28% to 33% of the household's gross monthly income.

b. Affordable Housing Unit. “Affordable Housing Unit” shall mean a Unit that qualifies as Affordable Housing and, in accordance with the terms and conditions of this Declaration shall consist of no less than twenty (20) percent of the Units in the Condominium. The Declarant reserves the right to locate an Affordable Housing Unit anywhere in the Condominium. Excluding any physical improvement to or enhancements for a Unit as contracted with by the purchaser of a Unit, Affordable Housing Units shall be substantially similar to other Units in accordance with the Ordinance and any additional requirements imposed by the Town as a condition to the issuance of a certificate of occupancy.

c. Association. “Association” shall mean the Unit owners’ association for the Condominium organized as required by Title 33 M. R. S. A. § 1603-101.

d. Condominium. “Condominium” shall mean the Village Condominium at the Forest and otherwise shall mean any portion of the Real Estate designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions under a declaration (as defined in Title 33 M. R. S. A. § 1601-103(10)), or an amendment to a declaration (as so defined), duly recorded pursuant to the Maine Condominium Act, 33 M. R. S. A. §§ 1601-101 *et seq.*

e. Condominium Completion Date. “Condominium Completion Date” shall mean the date that the Town issues a certificate of occupancy for the last Unit in the Condominium.

f. Elderly Housing. “Elderly Housing” means Units, the occupancy of which is restricted in perpetuity from the date that the last of the Units is transferred by Declarant to persons 55 years of age or older or, an elderly family whose head or spouse is 55 years of age or older, or, in the case of Units financed wholly or partially with state or federal funds, Units occupied solely by elderly persons or elderly families or handicapped persons as defined in the funding program in perpetuity, provided the number of Units available for occupancy by handicapped persons who are not Elderly shall be the minimum needed to establish eligibility for the federal or state program and that the program has received the approval of the HUD as one designed and operated to assist elderly persons.

g. Unit. “Unit” shall mean a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in the declaration of the

Condominium.

3. Restrictions. The following covenants and restrictions on the use and enjoyment of the Real Estate (the “Covenants and Restrictions”) shall be in addition to any other covenants and restrictions affecting the Real Estate, and all such covenants and restrictions are for the benefit and protection of the Town and the Association, and shall run with the Real Estate and be binding on any future owners of the Real Estate and inure to the benefit of and be enforceable by the Town. Declarant covenants and agrees that from the date of this instrument, for perpetuity, to cause the Real Estate, and all the Units thereon, to be used as Elderly Housing by Elderly Persons and further covenants and agrees that, in addition to the foregoing, twenty (20) percent of these Units shall be used as Affordable Housing.

4. Compliance with and Enforcement of Restrictions. The Covenants and Restrictions set forth in this Declaration may be enforced by the Town, the Declarant, the Association and by any Unit owner. The Town, the Declarant, the Association and any Unit owner shall be entitled to injunctive or other equitable relief against any violation or attempted violation of any Covenants and Restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof. No part of this Declaration may be construed to impose on the Town an obligation to enforce any provision hereunder, it being acknowledged that the decision to enforce any provision and the extent of the action taken by the Town, if any, is entirely within the Town’s sole and absolute discretion.

a. The Declarant, its designee and its successors and assigns and the Association, its designee and its successors and assigns have the right and duty to take reasonable measures to assure ongoing compliance with the Covenants and Restrictions. Such measures may include a requirement that owners of Units and members of the owner’s household, at the time of the transfer of a Unit, certify all sources of income and/or their ages, as applicable. Such a certification shall be in substantial conformity with the form attached hereto as Exhibit B-1 or B-2, as applicable. Annually, on or about June 1, true and conforming copies of such certifications for all Units that have been transferred for the preceding 12-month period shall be provided to the Town.

5. Purchaser Qualifications for Affordable Housing Units. The initial purchase price for an Affordable Housing Unit shall, for all transfers of Units occurring on or before July 1, 2006, be \$158,483. Thereafter, the purchase price shall be the greater of \$158,483 and the purchase price as calculated in accordance with the Ordinance and documented as attached hereto, using the then current income limits as published by HUD and such other data acceptable to the Town. Housing expense shall include condominium and/or homeowner association fees. Such calculation shall be made by the Declarant, the Association and the Town as applicable in their respective sole and absolute discretion. Any person, both at the time of initial purchase and any subsequent sale thereafter, wishing to purchase one of the Affordable Housing Units shall submit an application to the Declarant in the form prescribed by the Declarant, in substantial conformity with Exhibit B-1, attached hereto. The application shall include, without limitation, the applicant’s current financial statement including all sources of income for each member of the applicant’s household. The applicant shall also provide the Declarant or its designee, including

any mortgagee providing mortgages on a Unit, with such additional information and application forms as required by the mortgagee.

Affordable Housing Units will be allocated to residents or owners of real property situated in Wells, Maine under a lottery system the terms and conditions of which shall be advertised to the general public in a newspaper of general circulation in the Town of Wells and such other venues deemed desirable by the Declarant and the Town to advertise the availability of Affordable Housing Units. The announcement of the lottery and any advertisement of the lottery will, at a minimum, define Affordable Housing Units and will otherwise contain an abstract of the terms and conditions of this Declaration. If six months after the initial announcement and advertisement of the lottery system, there remain an insufficient number of applicants, the Affordable Housing Units will be allocated on a first-come, first-served basis to any applicant who resides or owns real property situated in the Southern York County – Portsmouth, New Hampshire Metropolitan Statistical Area as determined by HUD. The decision of the Declarant or its designee as to an applicant’s eligibility shall be made solely by the Declarant or its designee and the Declarant shall have no liability for the failure to approve an applicant as eligible, except as may be required by law.

7. Resale of Affordable Housing Units. In the event that an owner of an Affordable Housing Unit intends to sell his or her Unit, the owner is hereby notified that the gross sales price of an Affordable Housing Unit may not exceed the gross purchase price paid by the owner multiplied by the ratio of the HUD median income for the Southern York County – Portsmouth, New Hampshire Metropolitan Statistical Area in the year of the re-sale divided by the HUD median income for the Southern York County – Portsmouth, New Hampshire Metropolitan Statistical Area in the year of the initial purchase, without regard to the value of any improvements made by the owner. Accordingly, owners of Affordable Housing Units should be aware that the value of any improvements made to a Unit may not necessarily be recovered by the owner upon the sale of the Affordable Housing Unit.

The Town, the Declarant or the Association may require any owner of an Affordable Housing Unit to provide reasonable assurances that the owner is selling his or her Unit to a person or household who qualifies for Affordable Housing including, without limitation, income certifications and supporting documentation such as income tax returns. Required material may include, without limitation, the proposed purchaser’s current financial statement including all sources of income for each member of the applicant’s household. The applicant shall also provide the Declarant or its designee, including any mortgagee providing mortgages on a Unit with such additional information and application forms as required by the mortgagee.

Without assigning or delegating its authority to decide all matters related to purchaser qualification and further, without waiver of its sole and absolute authority to make final decisions respecting matters of purchaser eligibility, the Declarant and Association reserve the right to retain attorneys and housing consultants to assist it in making such decisions.

8. Acceptance and Ratification. All present and future owners of the Real Estate and other persons claiming by, through, or under them shall be subject to and shall comply with the

Covenants and Restrictions. The acceptance of a deed of conveyance to a Unit or any portion of the Real Estate shall constitute an agreement that the Covenants and Restrictions, as may be amended or supplemented from time to time, are accepted and ratified by such future owners, tenants or occupants, and all such Covenants and Restrictions shall be covenants running with the land and shall bind any person having at any time any interest or estate in the Real Estate, all as though such Covenants and Restrictions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

9. Benefit. This Declaration shall run with and bind the Real Estate for a term commencing on the date this Declaration is recorded in the York County (Maine) Registry of Deeds. The failure or delay at any time of the Town or any other person entitled to enforce this Declaration shall in no event be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

10. Use. No use of any Unit other than for residential single family use may be made except for home occupations as may be permitted by the zoning ordinances of the Town.

11. Costs and Attorney's Fees. In any proceeding arising because of failure of Declarant or any future owner of the Real Estate to comply with the Covenants and Restrictions required by this Declaration, as may be amended from time to time, the Town shall be entitled to recover costs and reasonable attorney's fees incurred in connection with such default or failure.

12. Enforcement Easement. The Declarant reserves, and also hereby GRANTS, CONVEYS, QUITCLAIMS and ASSIGNS, WITHOUT ANY COVENANT OF TITLE WHATSOEVER to the Town and the Association, the right and easement to enter onto any and all portions of the Real Estate, for the purposes of inspecting compliance with the covenants and restrictions set forth in this Declaration and for the purpose of enforcing any of the covenants and restrictions set forth in this Declaration. At least forty-eight (48) hours' notice shall be given to an owner or lessee of a Unit prior to any entry by the Declarant or the Town and the Association. The Declarant, Town or the Association through its officers or agents may conduct any such inspection between the hours of 9:00 a.m. and 8:00 p.m. This enforcement easement is included herein for purposes of compliance with Title 33 M. R. S. A. § 122(5) providing that "the instrument creating an affordable housing covenant must designate the manner in which and the times when representatives of the holder of an affordable housing covenant are entitled to enter the real property to assure compliance."

13. Leasing and Sub-leasing. Rental of a Unit by an owner and sub-letting by a lessee shall be permitted, provided that the tenant or person in possession, regardless of how denominated, shall use a Unit only for Elderly Housing and/or Affordable Housing (both as defined herein), as the case may be. The determination of whether a tenant or person-in-possession qualifies for such housing shall be made by the Declarant or Association in accordance with the applicable income limits published by HUD for rental housing in the Southern York County – Portsmouth , New Hampshire Metropolitan Statistical Area and Section 2(a) of this Declaration.

The Town, the Declarant and the Association may require any lessee of an Affordable

Housing Unit to provide income certifications and supporting documentation such as income tax returns, the lessee's current financial statement showing all sources of income for each member of the lessee's household.

Without assigning or delegating its authority to decide all matters related to lessee qualification and further, without waiver of its sole and absolute authority to make final decisions respecting matters of lessee eligibility, the Declarant and Association reserves the right to retain attorneys and consultants to assist it in making such decisions.

14. Continuing Qualification of Occupants. Without waiver of the right of the Town, Declarant and Association to enforce any other term or provision of this Declaration, if because of the death, relocation (e.g., and not by way of limitation, because of divorce) or absence of any member of a household over the age of 55, a Unit will no longer qualify as Elderly Housing, then notwithstanding that failure to qualify, the surviving or remaining spouse who uses the Unit as a principal residence may continue to do so provided that no other person who does not otherwise qualify may remain in occupancy in such Unit other than dependent children under the age of 18; provided further that any person who is ineligible to remain in a Unit under this Paragraph 14 may continue to reside in the Unit for a period of no greater than six (6) months after the occurrence of the event that resulted in such ineligibility or for such longer period of time as may be agreed to by the Town and the Association.

15. Private Roads. The Declarant and the Association warrant and represent to the Town that any roads constructed on the Real Estate will remain private roads in perpetuity.

16. Severability. The invalidity of the Covenants and Restrictions, including, without limitation, invalidation because of a violation of the Rule Against Perpetuities or because the Covenants and Restrictions are determined to be an unlawful restraint against alienation, or any other covenant, restriction, condition, limitation, or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

17. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

18. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof. This Declaration shall be interpreted in accordance with the laws of the State of Maine without regard to conflicts of law.

19. Incorporation. This Declaration incorporates by reference the Affordable Housing Covenants law set forth in Title 33 M. R. S. A. §§ 121 *et seq.*, as it may be amended from time to time, the Ordinance, as it may be amended from time to time, the federal Fair Housing Act, as it may be amended from time to time and the Maine Human Rights Act, as it may be amended

from time to time, and any other fair housing legislation, notwithstanding any provision herein to the contrary.

20. Amendment. No amendment or modification of this Declaration by the Declarant or the Association shall be permitted without consent of the Town, which consent shall be evidenced by a joinder of the Town therewith as set forth in a recordable instrument.

21. Recordation. This Declaration will be filed of record in York County (Maine) Registry of Deeds by the Declarant at its expense.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date and year first above written.

**FOREST VILLAGE CONDOMINIUM
NORTH, LLC**

**By Evergreen Partners Development
Corporation, Its Manager**

Witness

By: _____
Ronald Murro, Chairman

STATE OF MAINE
County of York, ss

, 2005

Personally appeared before me the above-named Robert A. Satter and acknowledged the foregoing instrument to be his free act and deed in their aforesaid capacity.

Before me,

Notary Public

(Printed Name) _____

ACCEPTANCE BY TOWN

Pursuant to Title 33 M. R. S. A. § 122(2), the Town, by and through its Board of Selectmen, accepts this Declaration of Affordable Housing Covenants on _____, 2003.

BOARD OF SELECTMEN

Witness

,Chairman

Witness

,Vice Chairman

Witness

Witness

Witness
