

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

94557

of THE ESTATES AT HARVARD HILLS

69/00/03

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE ESTATES AT HARVARD HILLS (the "Declaration"), is made this day by the Mass Devens Limited Partnership, a Massachusetts limited partnership (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of the real estate in Ayer and Harvard, Massachusetts, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference and shown on a set of plans entitled "Level One Lotting Plan" and "Level Two Lotting Plan", Estates at Harvard Hills, Ayer and Harvard, Massachusetts Prepared For: Mass Devens Limited Partnership, 380 Union Street, Suite 300, W. Springfield, MA 01089" dated December 1, 2000, Prepared by Meisner Brem Corporation, recorded at Worcester County Worcester District Registry of Deeds simultaneously herewith but prior hereto and the Middlesex County Southern District Registry of Deeds simultaneously herewith but prior hereto (collectively, such real estate, together with any additional real estate that becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate"); and

WHEREAS, The Real Estate is divided into residential Lots in order to create a residential community to be known as "The Estates at Harvard Hills Homeowners Association, Inc." with, among other things, landscape easements, drainage easements, utility easements, access easements and common areas for the benefit of such residential community; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the values of the lots in such community and the common areas therein and, to this end, Declarant desires to subject the Real Estate to certain rights, privileges, covenants, restrictions, easements, assessments, charges and liens, each and all to the extent herein provided, for the benefit of the Real Estate and each owner of all or part thereof; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values of the lots in said community, to create an organization to which shall be delegated and assigned, among other things, the powers of owning, maintaining and administering any common areas located on the Real Estate, administering and enforcing the covenants and restrictions contained in this Declaration, collecting and disbursing the assessments and charges imposed and created hereby and hereunder, and promoting the health, safety and welfare of the owners of the Real Estate, and all parts thereof; and

\* Plan Book 769 plan 122  
\* Plan Book 769 plan 123

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WHEREAS, Declarant has caused, or will cause, to be incorporated under the laws of the Commonwealth of Massachusetts, a not-for-profit corporation under the name "The Estates at Harvard Hills Homeowners Association" or a similar name for the purpose of exercising such functions.

NOW, THEREFORE, Declarant hereby declares that the Real Estate, including any additional real estate that may be subjected to this Declaration as provided herein, shall be held, sold and conveyed subject to the following covenants, conditions, easements and restrictions which shall run with the land and shall be binding on, and inure to the benefit of, all persons or entities now or hereafter having any right, title, or interest in the Real Estate or any part thereof, their heirs, successors, successors-in-title, and assigns. Declarant, for itself and its successors and assigns, reserves the right and privilege to subject Additional Land (as hereinafter defined) to the terms and provisions of this Declaration by recording with the Worcester County Worcester District Registry of Deeds and the Middlesex County Southern District Registry of Deeds, an amendment or supplement to this Declaration making reference to the terms and provisions hereof and purporting to subject such Additional Land to the provisions hereof. Such amendment or supplement shall not require the vote or approval of any Owners or Mortgagees. To the extent any such vote or approval is required, it shall be deemed that the Declarant has been given an irrevocable power of attorney to so vote and/or approve of such addition on behalf of the Owners and Mortgagees for which the Declarant shall have a power coupled with an interest. Any such Additional Land, from and after being so subjected to the provisions of this Declaration, shall be deemed a part of the Real Estate for all purposes of this Declaration. Additionally, the Declarant reserves the right to convert, subdivide and withdraw portions of the hereinafter defined Common Area into individual Lots and to build thereon Dwelling Units as hereinafter defined, all in accordance with Article XIV hereof.

#### ARTICLE I DEFINITIONS

Section 1.3. "Applicable Date" means the date determined pursuant to Section 4.3 of this Declaration.

Section 1.4. "Articles of Incorporation" means the Articles of Incorporation of the Association, as the same may be amended from time to time, as filed with the Secretary of State of the Commonwealth of Massachusetts.

Section 1.5. "Association" means The Estates at Harvard Hills Homeowners Association, Inc., or an organization of similar name, formed, or to be formed, as an Massachusetts not-for-profit corporation, its successors and assigns with a mailing address of 380 Union Street, Suite 300, West Springfield, Massachusetts 01089.

Section 1.6. "Association Documents" means this Declaration, the Articles of Organization, the By-Laws and all rules and regulations adopted by the Board of Directors.

Section 1.7. "Board of Directors" means the Board of Directors of the Association.

Section 1.8. "By-Laws" means the By-Laws of the Association, as the same may be amended from time to time.

Section 1.9. "Committee" means the "The Estates at Harvard Hills Architectural Control Committee" established pursuant to Section 6.1 of this Declaration.

Section 1.10. "Common Areas" means (i) that area designated on any Plans recorded hereunder as Common Area, (ii) all Lots conveyed by the Declarant to the Association by a deed that contains a statement to the effect that said Lot(s) are intended to be "Common Areas", (iii) the service roads designated as such on the Plan as service roads; (iv) all Easements conveyed by the Declarant to the Association by an instrument that contains a statement to the effect that such Easement is intended to the "Common Areas", and (v) all facilities and personal property owned or leased by the Association from time to time.

Section 1.11. "Common Expenses" means (i) expenses of administration of the Association, (ii) expenses of and in connection with the improvement, operation, maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including, without limitation, expenses for the improvement, maintenance, repair or replacement of any Easement areas, the drainage system located within and upon the Drainage Easements, the Common Areas or any streets and/or service roads within or upon the Real Estate (to the extent the same are the responsibility of the Association), (iii) all sums lawfully assessed against the Owners by the Association, and (iv) all sums declared by this Declaration to be Common Expenses.

Section 1.12. "Declarant" means Mass Devens Limited Partnership, a Massachusetts Limited Partnership, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, without limitation, any mortgagee acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

Section 1.13. "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Declarant no longer owns any Lot within or upon the Real Estate.

Section 1.14. "Drainage Easement" means that area designated on any Plan as a Drainage Easement, either separately or in combination with any other easement designated on such Plan, and such other drainage easements hereafter designated by Declarant as reasonably necessary for the future development of the Real Estate, provided the same do not interfere with the improvements constructed or to be constructed on the Real Estate.

Section 1.15. "Dwelling Unit" means one or more rooms connected together in a residential building which are arranged, designed, used and intended for use by one or more human beings living as a single household unit; and which includes lawful sanitary facilities and cooking, eating and sleeping space reserved solely for the occupants thereof.

Section 1.16 "Land Disposition Agreement" means that certain agreement made and entered into between the Massachusetts Development Finance Agency and the Declarant dated June 30, 2000, recorded with the Worcester County Worcester District Registry of Deeds in Book 22769,

Page 110, and with the Middlesex County Southern District Registry of Deeds in Book 31583, Page 559.

Section 1.17. "Landscape Easement" means that area designated on any Plan as a Landscape Easement, either separately or in combination with any other easement designated on such Plan.

Section 1.18. "Lot" means any numbered parcel of land shown and identified as a Lot on any Plan.

Section 1.19. "Mortgagee" means the holder of a recorded first mortgage lien on any Lot.

Section 1.20. "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot. The term Owner as used herein shall include Declarant so long as Declarant shall own any Lot.

Section 1.21. "Plan" means the subdivision plan of the Real Estate (as described on Schedule A) identified as the "Estates at Harvard Hills, Ayer and Harvard, Massachusetts, Prepared for: Mass Devens Limited Partnership, 380 Union Street, Suite 300, West Springfield, MA 01089 dated December 1, 2000, Prepared by Meisner Brem Corporation, Scale 1" = 200" as hereafter recorded in the Worcester District Registry of Deeds and Middlesex South Registry of Deeds (as the same may be amended or supplemented from time to time and any subdivision plan(s) for any Additional Land hereafter subjected to the provisions of this Declaration, which subdivision plans are hereafter recorded in the Worcester District Registry of Deeds and Middlesex South Registry of Deeds.

Section 1.22. "Regular Assessments" has the meaning set forth in Section 7.1 of this Declaration.

Section 1.23. "Special Assessments" has the meaning set forth in Section 7.1 of this Declaration.

Section 1.24. "Utility Easement" means that area designated on the Plan as a Utility Easement, be it water, sanitary sewer, gas, electric, telephone or cable, either separately or in combination with any other easement designated on such Plan, and such other utility easements designated or granted by Declarant as reasonably necessary for the development, current or future, of the Real Estate, provided the same do not interfere with the improvements constructed or to be constructed on the Real Estate. Any area designated on the Plan, or any other plan depicting the Real Estate, as an "Access Easement" area may also be utilized as a "Utility Easement". The placement of any pipe, wire, conduit, line main, pole or similar item used in connection with water, sanitary sewer, gas, electric, telephone or cable or similar item shall be deemed as the designation of a Utility Easement by the Declarant.

ARTICLE II  
APPLICATION

All Owners, their tenants, guests, invitees and mortgagees, or any other person using or occupying a Lot or any part of the Real Estate, shall be subject to and shall observe and comply with the covenants, conditions, easements, restrictions, terms and provisions set forth in this Declaration and any rules and regulations adopted by Board of Directors on behalf of the Association as herein provided, as the same may be amended from time to time.

The Owner of any Lot and all other persons, (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, or (ii) by the act of occupancy of such Lot, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions, restrictions, terms and provisions of this Declaration. By acceptance of such deed, execution of such contract or undertaking of such occupancy, each Owner and all other persons acknowledge the rights and powers of Declarant and the Association provided for by this Declaration, and also for himself, his heirs, personal representatives, successors and assigns, covenant, agree and consent to and with Declarant and the Owners from time to time of the Lots to keep, observe, comply with and perform the covenants, conditions, restrictions, terms and provisions of this Declaration.

ARTICLE III  
PROPERTY RIGHTS

Section 3.1. Owners' Easement of Enjoyment of Common Areas. Declarant hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas which shall run with and be appurtenant to each Lot subject to the following:

- (i) the right of the Association (after conveyance of the Common Areas to the Association) to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer, upon approval of two-thirds (2/3) of the votes cast, in person or by proxy, by all of the members of the Association entitled to vote, voting as a single voting group, present at a meeting at which a quorum is present;
- (ii) the right of the Association to grant a non-exclusive easement to the Unit Owners of The Estates At Harvard Hills Condominium to use the private ways shown on the Plans subject to such terms and conditions as may be set forth in the instrument granting the same.
- (iii) the right of the Board of Directors to suspend an Owner's right to use the Common Areas (except that access and utilities to the Dwelling Unit shall never be denied to the Owner) for any period during which such Owner shall be in default in the payment of any assessment

levied by the Association or the payment of any other amount or in the performance of any other term of this Declaration or for any violation by an Owner of the Association's rules and regulations;

- (iv) the right of the Association to borrow money for the purpose of improving the Common Areas, or any portion thereof, for acquiring additional Common Areas, or for constructing, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Areas; provided that the granting of such mortgage is consented to by the Owners holding two-thirds (2/3) of the votes and provided further, that the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, easements and privileges reserved or established in this Declaration for the benefit of Declarant or any Owner, or the holder of any Mortgage, irrespective of when executed;
- (v) the right (but not the obligation) of the Declarant to install, construct and dedicate to the Association playgrounds, basketball courts and/or recreation areas in and on the Common Areas;
- (vi) the Declarant's reserved easements and rights as described in this Declaration and the right of the Declarant to grant easements in and to the Common Areas to any public agency, authority, or utility for such purposes as benefit the Real Estate or portions thereof;
- (vii) all other easements declared, created or reserved elsewhere in this Declaration or in any Plan, including being shown thereon; and
- (viii) the terms and provisions of this Declaration.

Section 3.2. Any Owner may delegate, in accordance with the By-Laws and any reasonable rules and regulations promulgated from time to time by the Board of Directors, his right of enjoyment of the Common Areas to his family members or tenants who reside on the Lot or to any guests when accompanied by such Owner, family member or tenant.

Section 3.3. Prior to the conveyance of the first Lot by Declarant, Declarant shall convey all of its right, title and interest in and to the Common Areas designated as such on any Plan to the Association by quitclaim deed, and such Common Areas shall then be the property of the Association, subject to its reserved rights as delineated in Article XIV hereof.

## Section 3.4. Easements

A. Declarant hereby declares, creates and reserves the right to grant the Utility Easements (i) for the use of Declarant during the Development Period for access to and installation, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services; and (ii) for the use of all public utility companies (not including transportation companies), governmental agencies and the Association, for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of such utility services. Except for (i) retaining walls, sidewalks and driveways installed by Declarant or the Association or by the Owner with the approval of the Committee, or (ii) decks and/or patios approved by the Committee, no improvements or structures shall be erected or maintained upon said Utility Easements; provided, however, that any installations permitted hereby shall in all events be installed in compliance with and subject to all applicable rules or regulations of the public utility companies and governmental agencies for which such Utility Easements are herein created and reserved.

B. Declarant hereby declares, creates and reserves the right to grant the Drainage Easements (i) for the use of Declarant during the Development Period for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) for the use of the Association and governmental agencies having jurisdiction for access to and maintenance, repair or replacement of such drainage system; provided, however, that each Owner of a Lot subject to a Drainage Easement shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions (including providing for the installation of culverts as may be necessary to accomplish such purpose) so that the surface water drainage will be unimpeded. Except for (i) retaining walls, sidewalks and driveways installed by Declarant or the Association or by the Owner with the approval of the Committee, or (ii) decks and/or patios approved by the Committee, no improvements or structures shall be erected or maintained upon said Drainage Easements; provided, however, that any installations permitted hereby shall in all events be installed in compliance with and subject to all applicable rules or regulations of the governmental agencies for which such Drainage Easements are herein created and reserved.

C. Declarant hereby declares, creates and reserves the Landscape Easements (i) for the use of Declarant during the Development Period for access to and the installation or removal of walls, permanent signs, earth mounds, trees, foliage, landscaping, screening materials and other improvements and (ii) for the use of the Association for access to and the installation, maintenance, repair or replacement of walls, permanent signs, earth mounds, trees, foliage, landscaping, screening materials and other improvements. Except as approved in writing by the Committee, no improvements or structures (including, without limitation, fences) shall be erected or maintained by any Owner in or upon said Landscape Easements.

D. Declarant hereby declares, creates and reserves the right to grant the Access Easements (i) for the use of Declarant during the Development Period for access to the Lots and Common Areas, (ii) for the use of the Owners, their family members, tenants and guests, for access to the Lots and Common Areas, (iii) for the use of the Association for access to the Lots and Common Areas, and (iv) for the use of governmental authorities, agencies, and departments for

access to the Lots and Common Areas. Except as approved in writing by the Committee, no improvements or structures (including without limitation, fences) shall be erected or maintained by any Owner in or upon said Access Easements.

E. Declarant hereby declares, creates and reserves an access easement over and across the entirety of the Real Estate (subject to the limitations hereinafter provided in this paragraph): (i) for the use of Declarant during the Development Period, and for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to the Utility Easements created and reserved herein; (ii) for the use of Declarant during the Development Period and for the use of the Association, and governmental agencies having jurisdiction for access to the Drainage Easements created and reserved herein; (iii) for the use of Declarant during the Development Period, and for the use of the Association for access to the Landscape Easements created and reserved herein; and (iv) for the use of the Declarant during the Development Period for installing and constructing improvements in or on the Common Areas. Notwithstanding the foregoing, the area of the access easement created by this paragraph shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or other improvement or the foundation of a building or other improvement located on the Real Estate. The parties for whose benefit this access easement is herein created and reserved shall exercise such access easement rights only to the extent reasonably necessary and appropriate.

F. Notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby reserves unto itself, and its successors and assigns, the right to grant in the future, and the nonexclusive right, privilege, and easement in, on, over, under, and across the entirety of the Real Estate, without charge to Declarant, to tie into and/or otherwise connect to and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including (without limitation) cable television service, gas, water, electric, sewer and drainage lines and facilities constructed or installed in, on, under, and/or over all or any portion of the Real Estate. Future grants shall be defined so as to not permanently interfere with the improvements constructed or to be constructed on the Real Estate.

G. If any Dwelling Unit and all improvements associated with it, including but not limited to patios, porches, walks, decks, and privacy fencing, or any other improvement in existence at the time Declarant transfers title to the Owner, encroaches or projects upon any other Lot or upon any portion of the Common Area as a result of the construction of such Dwelling Unit, or if any such encroachment or projection shall occur as a result of settling or shifting of such Dwelling Unit or portion thereof, there shall be an easement for such encroachment or projection and for the maintenance of same so long as such encroaching or projecting Dwelling Unit or portion thereof shall stand. In the event one (1) or more Dwelling Units or portions thereof are partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, or proceedings of similar import and effect, and such Dwelling Unit(s) or portions thereof are thereafter rebuilt, inadvertent encroachments or projections by such Dwelling Unit(s) or portions thereof upon any other Dwelling Unit or Lot, or upon any portion of the Common Area, in excess of any encroachment or projection which existed as a result of initial construction, due to such rebuilding, shall be permitted, and valid easements for such encroachments or projection and the maintenance thereof shall exist so long as such improvements shall stand; provided, however, that any increase in such encroachment or projection shall not be greater than two (2) feet.