

**AMENDMENT #1 TO COOPERATIVE BIDDING AGREEMENT  
REGARDING KESSELER WOODS PROPERTY**

This Amendment #1 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 725 Canton Street, Norwood, Massachusetts 02062.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003, and pursuant to said Agreement, submitted a bid to Boston Edison; and

WHEREAS, following the submittal of the bid, Boston Edison has called for Best and Final Bids; and

WHEREAS, the parties wish to submit a new bid and to modify their *Cooperative Bidding Agreement Regarding Kessler Woods Property* in order to reflect the modified arrangements between them;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to amend their *Cooperative Bidding Agreement Regarding Kessler Woods Property* as follows:

1. Delete paragraph 1.1 and insert the following new paragraph 1.1 in its place:
  - 1.1. The parties agree to take all steps necessary to prepare and submit a single, timely and responsive bid to Boston Edison for purchase of Kessler Woods. Cornerstone's share of the cooperative bid price shall be \$ 9.1 million. The total bid amount will be the sum of Cornerstone's \$9.1 million added to the City's share. The City's share shall be \$6 million, subject however to the City's appropriation of \$1 million of said sum.
2. Add a new paragraph 1.3.1, as follows:
  - 1.3.1 For purposes of the revised bid, the parties will rely on the cashier's check provided with the parties' initial bid.
3. Delete paragraph 4.1.1 and insert the following new paragraph 4.1.1 in its place:
  - 4.1.1 Subject to the provisions of paragraph 4.2, Area 1 (which includes the area off Harwich Road) shall be limited to no more than fourteen single-family houselots, but which may include up to three rear lots, within the meaning of section 30-15(b)(4) of the Newton zoning ordinances, and up to two lots off Harwich Road (for a total of no more than fourteen). Cornerstone will impose upon all the house lots a uniform set of design covenants and restrictions which shall be binding on Cornerstone and any third-party builders of the houses and upon the homeowners, such covenants to be subject to the

prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department).

4. Delete paragraph 4.1.2 and insert the following new paragraph 4.1.2 in its place:

4.1.2 Subject to the provisions of paragraph 4.2, Area 2 shall be limited to no more than eighty (80) residential units or eighty (80) single family houselots. In either case, they shall include no less than twenty percent (20%) Inclusionary Units, consistent with section 30-24(f) of the Newton zoning ordinances. If the parties agree that Cornerstone has used best efforts but that such a development containing twenty percent (20%) Inclusionary Units is not feasible, parties may agree on a lesser number of Inclusionary Units.

5. Delete paragraph 4.2.1 and insert the following new paragraphs 4.2.1A and 4.2.1B in its place:

4.2.1A Prior to pursuing any other development approach for Area 1 (which includes the area off Harwich Road), Cornerstone shall diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan Area 1"): Preferred Plan Area 1: Development will include no more than nine (9) single family houselots fronting on Brookline Street, but which may include up to three rear lots within the meaning of section 30-15(b)(4) of the Newton zoning ordinances, and no more than two (2) single family houselots off Harwich Road (for a total of no more than eleven). Such development will include a suitable undeveloped buffer from the existing residences along Harwich Road. Cornerstone may also propose a plan which may require subdivision approval, provided such plan meets the foregoing design considerations. The untitled and undated conceptual site plan submitted by Cornerstone, (Exhibit D) meets the foregoing criteria; but material changes from that plan will be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department). Cornerstone will impose upon all the house lots a uniform set of design covenants and restrictions which shall be binding on Cornerstone and any third-party builders of the houses and upon the homeowners, such covenants to be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department).

4.2.1B Prior to pursuing any other development approach for Area 2, Cornerstone shall diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan Area 2"): Preferred Plan Area 2: Development will include no more than 62 residential units, of which no less than twenty percent (20%) will constitute Inclusionary Units, as defined in section 30-24(f) of the Newton zoning ordinances. The buildings will be located on the site to provide an undeveloped buffer from existing nearby houses and LaGrange Street. The massing and scale will be designed so that the Area 2 buildings resemble large single family houses. The City acknowledges that a development plan substantially in the form of the untitled and undated conceptual site plan submitted by Cornerstone, (Exhibit D) meets the foregoing criteria; but material changes from that plan will be subject to

the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department).

6. Delete paragraph 4.2.2

7. Delete paragraph 4.3 and insert the following new paragraph 4.3 in its place:

4.3 Cornerstone shall pursue all necessary approvals to carry out Preferred Plan Area 1 and Preferred Plan Area 2, and shall defend against any challenges and appeals to the issuance of such approvals. Cornerstone's obligations under this paragraph shall include its aggressive and timely defense against the challenges and appeals, through the Massachusetts Trial Court, i.e. Superior Court or Land Court, and, in the event that Cornerstone prevails in the Trial Court, through the appellate courts to conclusion. However, in the event that Cornerstone does not prevail in the Trial Court, the City and Cornerstone, within one (1) week of the entry of judgment, shall jointly choose and engage outside independent legal counsel having substantial expertise in Massachusetts land use litigation and specifically in matters such as are being litigated relative to this proposed Cornerstone development, to provide an opinion regarding the likelihood of success on appeal. If the Counsel's opinion indicates a reasonable likelihood of success of said appeal, Cornerstone shall pursue said appeal to conclusion. Otherwise, Cornerstone may take whatever action it deems appropriate.

8. Delete paragraph 4.4 and insert the following new paragraph 4.4 in its place:

4.4 Once Cornerstone receives the final approvals and permits for development in accordance with Preferred Plan Area 2, Cornerstone shall promptly begin construction and pursue such development of Area 2 to completion.

9. Delete paragraph 4.5 and insert the following new paragraphs 4.5A and 4.5B in its place:

4.5A In the event that Cornerstone fails to receive all necessary approvals to carry out development of Area 1 in accordance with Preferred Plan Area 1, either as a result of denial or judicial outcome, Cornerstone may, subject to the provisions of paragraph 4.1, pursue an alternate development approach for Area 1. The City will cooperate with Cornerstone in the formulation of acceptable alternate development approaches, subject to the limitations in paragraph 4.1.

4.5B In the event that Cornerstone fails to receive all necessary approvals to carry out development of Area 2 in accordance with Preferred Plan Area 2, either as a result of denial or judicial outcome, Cornerstone may, subject to the provisions of paragraph 4.1, pursue an alternate development approach for Area 2. The City will cooperate with Cornerstone in the formulation of acceptable alternate development approaches, subject to the limitations in paragraph 4.1.

11. Delete paragraph 4.6 and insert the following new paragraph 4.6 in its place:

4.6 Nothing contained in this Section 4 shall be construed to restrict Cornerstone from choosing to develop fewer units or lots than the maximum number allowed, as specified in paragraphs 4.1 or 4.2, as may be applicable.

12. Add a new paragraph 4.7 as follows:

4.7 In order to create additional Inclusionary Units above the number required by this Agreement and notwithstanding any provision herein to the contrary the City of Newton may pay to Cornerstone the sum of \$300,000 to establish one (1) additional Inclusionary Unit in the Area 2 residential development or for the maximum of two (2) additional Inclusionary Units for the sum of \$600,000, provided however, that this paragraph 4.7 will be effective only if Cornerstone's selling price exceeds \$250,000 for each of the Inclusionary Units required by other provisions of this Agreement.

12. Add new paragraphs 8.2, 8.3 and 8.4 as follows:

8.2 The City's Mayor acknowledges that he has communicated with and will use best efforts to obtain any necessary approvals from the City's Board of Aldermen and the Community Preservation Committee for the expenditure of the additional \$1 million of Community Preservation funds (in addition to the \$5 million that was the subject of final appropriation and approval).

8.3 In the event that a) the City does not appropriate and make payment of the \$1 million portion of the funds by January 31, 2004, or b) the City's Mayor notifies Cornerstone that he has decided not to pursue appropriation of such additional \$1 million, the provisions of paragraph 4.2.1A shall no longer be in effect and Cornerstone may, subject to the provisions of paragraph 4.1, pursue an alternate development approach for Area 1. The City will cooperate with Cornerstone in the formulation of acceptable alternate development approaches, subject to the limitations in paragraph 4.1.

13. Amend the provisions of paragraph 8.2 by adding Exhibits D and E as follows:  
Exhibit D Untitled and undated conceptual site plan provided by Cornerstone.

Exhibit E Commitment for Title Insurance issued by Fidelity National Title Insurance Company of New York, signed by Richard H. Murphy, Jr. on behalf of Murtha, Cullina, Roche, Carens & DeGiacomo, LLP

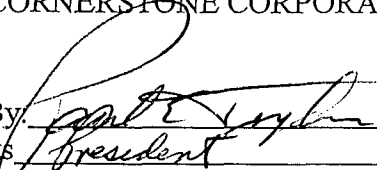
14. Add an additional paragraph 10.4 as follows:

10.4 The parties acknowledge that the property known as Kessler Woods is described in Exhibit E.


15. All references to "Cooperative Bidding Agreement" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property* shall be interpreted as references to Cooperative Bidding Agreement, as amended by this Amendment #1.
16. All other remaining terms, conditions and provisions of the original *Cooperative Bidding Agreement Regarding Kessler Woods Property*, except as modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this 7th day of August 2003.

CORNERSTONE CORPORATION

By   
Its President  
(office)

CITY OF NEWTON

  
David B. Cohen, Mayor

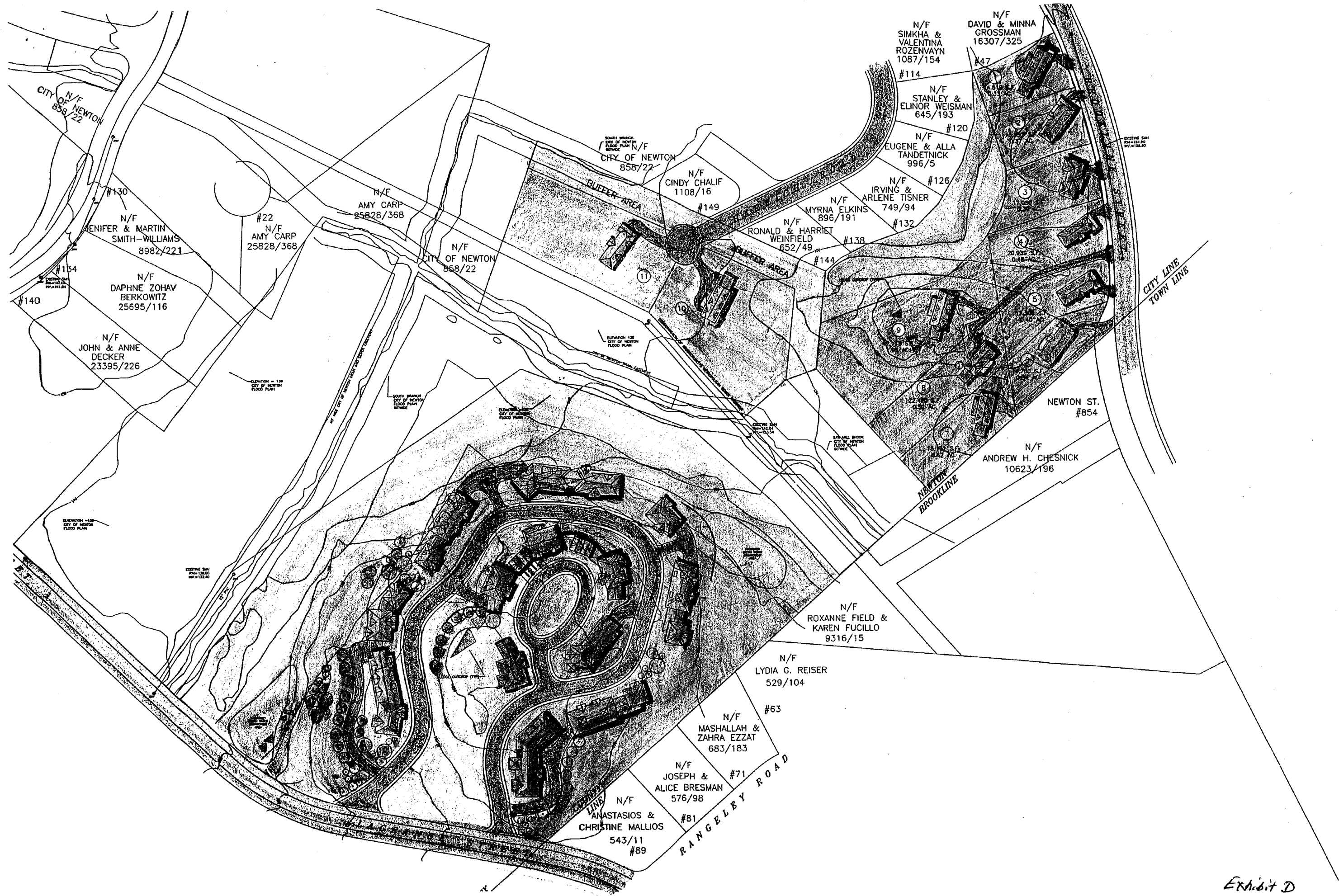


Exhibit D

**AMENDMENT #2 TO COOPERATIVE BIDDING AGREEMENT  
REGARDING KESSELER WOODS PROPERTY**

This Amendment #2 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 725 Canton Street, Norwood, Massachusetts 02062.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003, and *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; and

WHEREAS, following Boston Edison's call for Best and Final Bids the parties submitted a bid, which was determined to be the highest bid; and

WHEREAS, the parties wish to amend their written agreement in order to make it consistent with the arrangements between them;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to amend their *Cooperative Bidding Agreement Regarding Kessler Woods Property* as follows:

1. Delete paragraph 4.1.2 and insert the following new paragraph 4.1.2 in its place:

4.1.2 Subject to the provisions of paragraph 4.2, Area 2 shall be limited to no more than eighty (80) residential units or eighty (80) single family houselots. In either case, they shall include no less than twenty percent (20%) Inclusionary Units, consistent with section 30-24(f) of the Newton zoning ordinances. If the parties agree that Cornerstone has used best efforts but that such a development containing twenty percent (20%) Inclusionary Units is not feasible, the parties shall agree on a lesser number of Inclusionary Units.

2. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property* and *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, except as modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this 25th day of August 2003.

CORNERSTONE CORPORATION

CITY OF NEWTON

By: 

Its 

(office)



David B. Cohen, Mayor

**AMENDMENT #3 TO COOPERATIVE BIDDING  
REGARDING KESSELER WOODS PROPERTY**

This Amendment #3 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 725 Canton Street, Norwood, Massachusetts 02062.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003; *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; and *Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 25, 2003; and

WHEREAS, the parties agree that it is necessary to come to a more detailed agreement regarding the locations and terms of the Conservation Restriction and Easement which affect a portion of the Cornerstone Parcel;

WHEREAS, the parties have agreed to an arrangement, which reflects an equitable arrangement, and desire to further amend said Agreement to reflect such arrangement;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to amend their *Cooperative Bidding Agreement Regarding Kessler Woods Property* as follows:

1. Notwithstanding any term, covenant or provision set forth in Paragraphs 3.4 and 3.5 of the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, the parties agree that Cornerstone, at the closing with Boston Edison, shall grant to the City a perpetual easement for public access in the Fully Constrained Area, provided however, that the easement area shall not include three parcels of land which are located within Area 1, being shown as "Area to be Removed from Full-Constraints Area," consisting of 21,000+/- sq. ft, 3,500+/- sq. ft. and 6,100+/-, respectively (hereinafter "Non-Public Access Areas"), on a plan entitled "Sketch Plan Kessler (sic) Woods, Newton, Massachusetts," by .Toomey-Munson & Associates, Inc., dated 1-6-04, revised 2-17-04 ("Sketch Plan"), a copy of which is attached as Exhibit F.

2. Notwithstanding any term, covenant or provision set forth in Paragraphs 3.4 and 3.5 and Exhibit B of the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, the parties agree that Cornerstone, at the closing with Boston Edison, shall grant to the City a perpetual conservation restriction, in form and substance satisfactory to the City and its Conservation Commission and in conformance with chapter 184 section 32 of the Massachusetts General Laws, which shall run with the land in perpetuity, in all areas of the Fully Constrained Area, including the Non-Public Access Areas.

3. Cornerstone shall convey to the City, for consideration of \$1, fee ownership, free of all



liens, in a parcel of land consisting of 17,600+/- sq. ft., being shown on said attached sketch as "Areas to be conveyed to the City of Newton," which conveyance shall take place no later than the conveyance of the fee interest required pursuant to paragraph 3.5.

4. Notwithstanding the provisions of paragraph 2.1 of the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, the parties acknowledge that by mutual agreement, they no longer intend to execute the detailed agreement anticipated in that paragraph.

5. Amend the provisions of paragraph 8.2 by adding Exhibit F as follows:

Exhibit F "Sketch Plan Kessler (sic) Woods, Newton, Massachusetts," by .Toomey-Munson & Associates, Inc., dated 1-6-04, revised 2-17-04

6. All references to "Cooperative Bidding Agreement Regarding Kessler Woods Property" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, shall be interpreted as references to Cooperative Bidding Agreement, as further amended by this Amendment #3.

7. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property, and Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, except as modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this \_\_\_\_ day of \_\_\_\_\_, 2004.

CORNERSTONE CORPORATION

CITY OF NEWTON

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

19 Sept 2005

**AMENDMENT #4 TO COOPERATIVE BIDDING AGREEMENT  
REGARDING KESSELER WOODS PROPERTY**

This Amendment #4 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 400 Blue Hill Drive, Suite 2C, Westwood, Massachusetts 02090.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003; *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; *Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 25, 2003; and *Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on April 6, 2004; and

WHEREAS, the parties agree that it is appropriate to modify the Cooperative Bidding Agreement, as amended, to accommodate changes in the massing, scale and design of the Preferred Plan Area 2 Development subject however to the Board of Aldermen's approval of a Special Permit and approval of other governmental agencies;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to further amend the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, as follows:

1. Delete Paragraph 4.2.1B in its entirety and substitute therefor the following new Paragraph 4.2.1B:

"4.2.1B Prior to pursuing any other development approach for Area 2, Cornerstone shall Diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan Area 2"); Preferred Plan Area 2: Development will include no more than 62 residential units, of which no less than twenty percent (20%) will constitute Inclusionary Units, as defined in Section 30-24(f) of the Newton Zoning Ordinances. The buildings will be located on the site to provide an undeveloped buffer from existing nearby houses and LaGrange Street. The massing and scale will be designed as follows: one (1) larger multi-family dwelling structure with several attached townhome structures situated around the larger structure. The City acknowledges that a development plan substantially in the form of the attached plan submitted by Cornerstone, (Exhibit D) meets the foregoing criteria; but material changes from that plan will be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department)."

2. Amend the provisions of Paragraph 8.2 by deleting Exhibit D Plans and substituting therefor the following new Exhibit D Plans consisting of two (2) sheets:

Exhibit D

SHEET 1: *Kessler Woods Condominiums, Newton, MA, Site Grading & Utility Plan* dated June 8, 2005 prepared by the H.W. Moore Associates, Engineers & Planners;

SHEET 2: Elevations Schematic entitled "Kessler Woods Newton, MA" undated, prepared by The Architectural Team, Inc.

3. All references to "Cooperative Bidding Agreement Regarding Kessler Woods Property" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, shall be interpreted as references to Cooperative Bidding Agreement, as further amended by this Amendment #4.

4. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property, and Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, except as modified herein, shall remain in full force and effect.

5. Notwithstanding the provisions hereof, this Amendment #4 is subject to a) approval by the Board of Aldermen of the Special Permit in connection with Preferred Plan Area 2 (as described in paragraph 1 hereof) and b) approval by any and all governmental agencies that have jurisdiction over the proposed development excluding Building Permits and related building-type permits, such as electrical and plumbing. In the event that Cornerstone has not obtained all such approvals from the Board of Aldermen and other governmental agencies by December 31, 2007, which date shall be extended for the period required to defend appeal(s) of any approval(s), this Amendment #4 shall be of no effect, and thereafter the parties shall be bound by the terms of *Cooperative Bidding Agreement Regarding Kessler Woods Property* as amended through *Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property*.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this \_\_\_ day of September, 2005.

CORNERSTONE CORPORATION

CITY OF NEWTON

By: [Signature]  
Its: President

By: [Signature]  
Its: 9/19/05

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**LEGEND (EXISTING)**

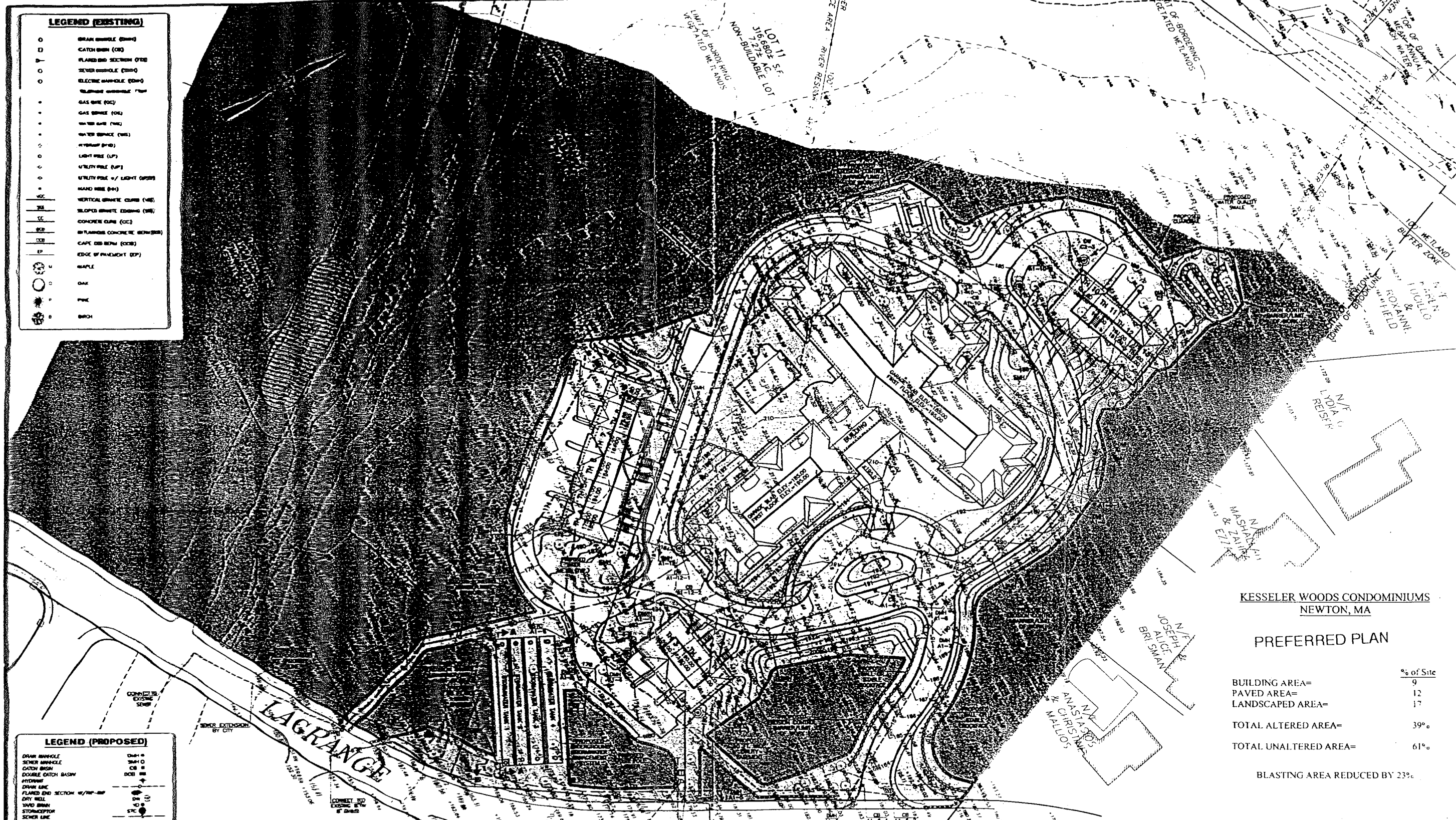
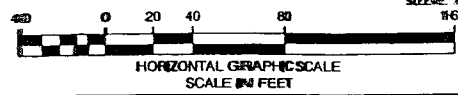
- DRAIN MANHOLE (DMH)
- CATCH BASIN (CB)
- PLUMBED END SECTION (PES)
- SEWER MANHOLE (SMH)
- ELECTRIC MANHOLE (EMH)
- TELEPHONE MANHOLE (TMH)
- GAS MISC (GC)
- GAS SERVICE (GS)
- WATER MISC (WM)
- WATER SERVICE (WS)
- STORM (S)
- LIGHT PIPE (LP)
- UTILITY PIPE (UP)
- UTILITY PIPE w/ LIGHT OFFSET
- HAND HOLE (HH)
- VERTICAL GRANITE CURB (VGC)
- SLOPED GRANITE CURB (SGC)
- CONCRETE CURB (CC)
- REINFORCED CONCRETE RETAINING WALL (RCRW)
- CAPE COD BEAM (CCB)
- EDGE OF PAVEMENT (EOP)
- MAPLE
- OAK
- PINE
- BIRCH

**LEGEND (PROPOSED)**

- DRAIN MANHOLE
- SEWER MANHOLE
- CATCH BASIN
- DOUBLE CATCH BASIN
- HYDRANT
- DRAIN LINE
- PLUMBED END SECTION w/ TOP-UP
- SAND BIN
- DRY WELL
- SAND BIN
- STORAGE TANK
- SEWER LINE
- FENCE LINE
- WATER LINE
- TEE, GATE VALVE & BRK
- REDUCER
- GAS MISC
- ELECTRIC
- CONCRETE WALL
- INTERIOR CONTOUR
- INDEX CONTOUR
- SPOT ELEVATION
- VERTICAL GRANITE CURB
- PRECAST CONCRETE CURB
- CAPE COD BEAM
- CONCRETE WALL
- TOP OF HILL ELEVATION
- LIMIT OF DISTURBANCE
- FLOOR ELEVATION
- STONE WALL
- EROSION CONTROL BARRIER
- SOLID FENCE
- LANDSCAPE FENCE
- WIRE DOWN LINE FENCE

**REFERENCES:**

1.) PROPERTY LINES, TOPOGRAPHY AND EXISTING CONDITIONS WERE TAKEN FROM A PLAN ENTITLED "EXISTING CONDITIONS PLAN OF LAND IN NEWTON, MA" PREPARED BY TOOMEY-MUNSON & ASSOCIATES, INC., 68 ACCESS RD, UNIT 12, NORWOOD, MA 02062 DATED JANUARY 13, 2008 AND FROM A PLAN ENTITLED "SUBMISSION PLAN OF LAND IN NEWTON, MA" PREPARED BY TOOMEY-MUNSON & ASSOCIATES, INC. DATED APRIL 28, 2004.



**KESSELER WOODS CONDOMINIUMS  
NEWTON, MA**

**PREFERRED PLAN**

	% of Site
BUILDING AREA=	9
PAVED AREA=	12
LANDSCAPED AREA=	17
TOTAL ALTERED AREA=	39%
TOTAL UNALTERED AREA=	61%

BLASTING AREA REDUCED BY 23%.

**KESSELER WOODS CONDOMINIUMS  
NEWTON, MA**

**SITE GRADING  
& UTILITY PLAN**

**H.W. MOORE ASSOCIATES, INC.**  
ENGINEERS & PLANNERS  
112 SHAWMUT AVENUE  
BOSTON, MASS. 02118-2298  
TEL. 617-357-6145 FAX. 617-357-8495

DATE: 6/8/05  
SCALE: 1"=40'  
SHEET 3 OF 7

ISSUE	DATE	DESCRIPTION	BY	CHKD.	APP.



Main Building Elevation



Townhouses Elevation

**The Architectural Team, Inc.**  
*architect*

**Kessler Woods**  
**Newton, MA**

**Cornerstone Corporation**  
*developer*

**AMENDMENT #5 TO COOPERATIVE BIDDING AGREEMENT  
REGARDING KESSELER WOODS PROPERTY**

This Amendment #5 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 400 Blue Hill Drive, Suite 2C, Westwood, Massachusetts 02090.

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003; *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; *Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 25, 2003; *Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on April 6, 2004; and *Amendment #4 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on September 19, 2005 ; and

WHEREAS, the parties agree that it is appropriate to modify the Cooperative Bidding Agreement, as amended, to accommodate for the changes in the housing and lending markets in the Greater Boston area that have had direct negative impacts upon the financial feasibility, potential success and ability to commence the proposed development of Area 2 (Lot H) within the Kessler Woods proposed development which has caused a substantial delay in commencing construction as granted in Special Permit #102-06(3). Special Permit #102-06(3) is now due to expire and a new Special Permit must be applied for in order to continue with the proposed development of Area 2 (Lot H) as contemplated in said *Cooperative Bidding Agreement Regarding Kessler Woods Property*;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to further amend the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, as follows:

1. Insert the following new Paragraph 4.1.3:

“4.1.3 Notwithstanding any provisions of Paragraph 4.1.2 to the contrary, in the event that the residential development of Area 2 consists of sixty-two (62) residential units, then such residential development shall include no fewer than eleven (11) Inclusionary Units, consistent with Section 30-24(f) of the Newton Zoning Ordinances.

2. Delete Paragraph 4.2.1B in its entirety and substitute therefor the following new Paragraph 4.2.1B:

“4.2.1B Prior to pursuing any other development approach for Area 2, Cornerstone shall diligently pursue the following development plan of the Cornerstone Parcel (“Preferred Plan Area 2”); Preferred Plan Area 2: Development will include no more than 62

residential units, of which no fewer than eleven (11) units will constitute Inclusionary Units, as defined in Section 30-24(f) of the Newton Zoning Ordinances. The buildings will be located on the site to provide an undeveloped buffer from existing nearby houses and LaGrange Street. The massing and scale will be designed as follows: one (1) larger multi-family dwelling structure with several attached townhome structures situated around the larger structure. The City acknowledges that a development plan substantially in the form of the attached plan submitted by Cornerstone, (Exhibit D - Revised) meets the foregoing criteria; but material changes from that plan will be subject to the prior reasonable review and comment by the City's Mayor or his designee (who may be a City official or a City department)."

3. Delete Paragraph 5.4 in its entirety and substitute therefor the following new Paragraph 5.4:

5.4 Following the closing with Boston Edison, should Cornerstone fail to pursue or complete its development in a timely manner, the City shall have the right to purchase the Cornerstone Parcel for Cornerstone's documented hard and soft costs. For the purposes of this paragraph, a "timely manner" shall mean: (i) Cornerstone shall commence the licensing and permitting process promptly after closing and shall, in good faith, diligently pursue the same thereafter. Promptly after the property is subdivided and all local, state and federal licenses, permits and approvals are obtained (and all appeal periods expired or pending appeals favorably and finally resolved) sufficient to qualify to obtain building permits (provided that Cornerstone shall have commenced the licensing and permitting process promptly after closing and shall have, in good faith, diligently pursued the same thereafter) Cornerstone shall market the single family house lots. It is understood that Cornerstone may not be constructing the single family home structures, as this may be performed by third party owners and/or builders and no completion dates for construction can be determined and (ii) with respect to Area 2, commencement of construction shall be within two (2) years after the granting of all necessary licenses, permits and approvals pursuant to Special Permit #102-06(3) or following the granting of a new Special Permit from the Board of Aldermen as applied for by Cornerstone before October 16, 2008 and issued thereafter (and all appeal periods expired or pending appeals favorably and finally resolved) provided that Cornerstone shall have commenced the licensing and permitting process promptly by October 16, 2008 and shall have, in good faith, diligently pursued the same thereafter. The City may assign its rights under this paragraph.

4. In all other respects the *Cooperative Bidding Agreement Regarding Kessler Woods Property* is ratified and confirmed. The City hereby acknowledging that Cornerstone (other than stated in this amendment above) has met and/or completed all requirements under said *Cooperative Bidding Agreement Regarding Kessler Woods Property*. Further both parties herein agree and acknowledge that *Amendment #4 to the Cooperative Bidding Agreement Regarding Kessler Woods Property* is ratified and in effect.

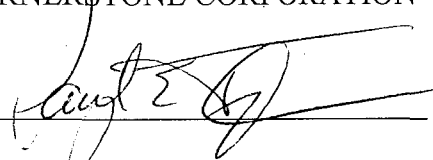
5. All references to "Cooperative Bidding Agreement Regarding Kessler Woods Property" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, shall be interpreted as references to *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as further amended by this Amendment #5.

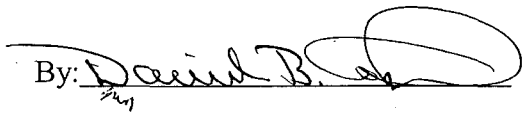
6. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property, and Amendment #4 to Cooperative Bidding Agreement Regarding Kessler Woods Property* except as modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals as of this 7th day of November, 2008.

CORNERSTONE CORPORATION

CITY OF NEWTON

By: 

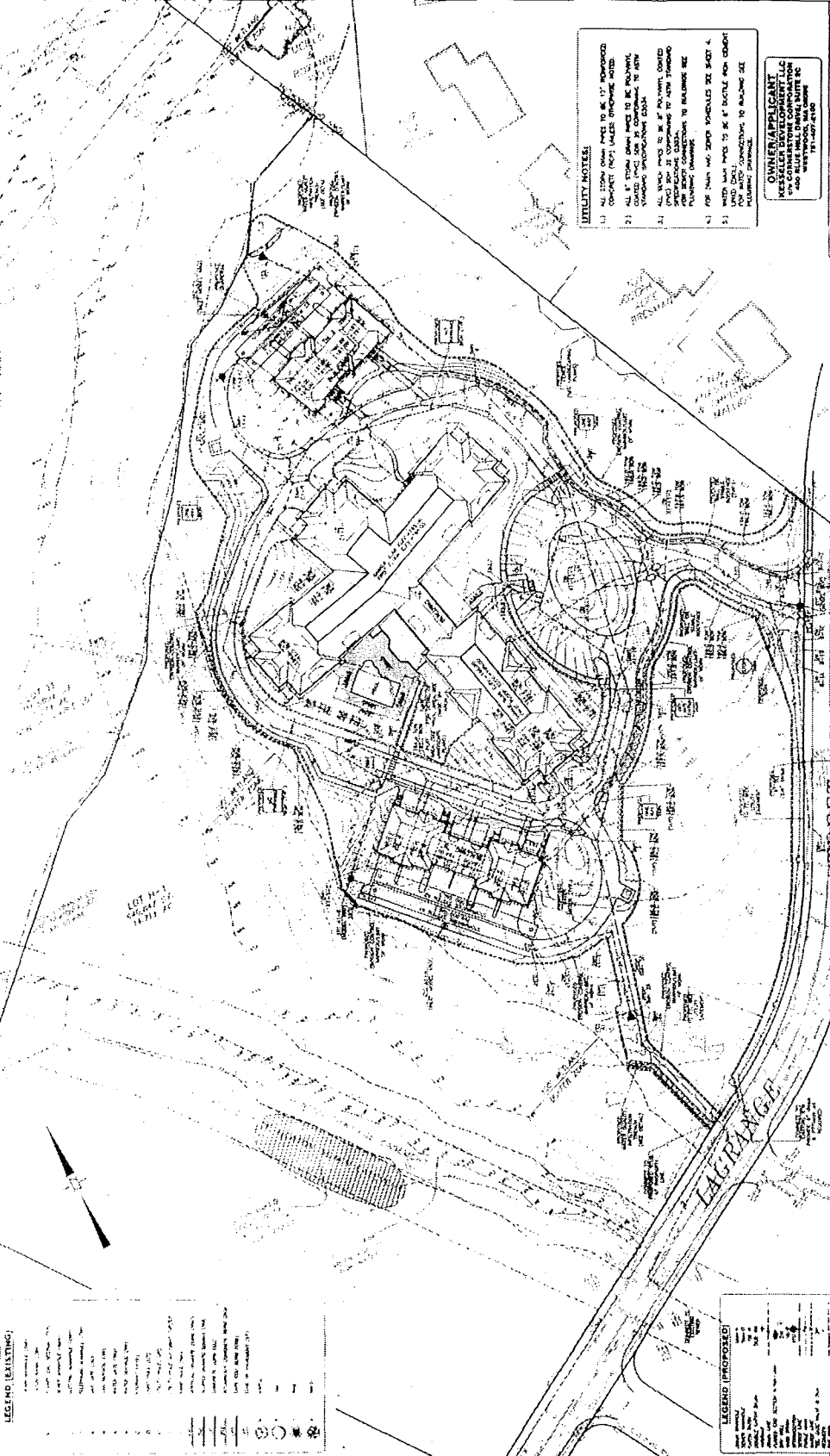
By: 

Its: 

Its: \_\_\_\_\_



**EXHIBIT D – Revised  
(Development Plan)**



- UTILITY NOTES:**
- 1. ALL EXISTING UTILITIES SHOWN ARE TO BE REMOVED AND REPLACED BY THE PROPOSED UTILITIES.
  - 2. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF NEWTON STANDARDS.
  - 3. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF NEWTON STANDARDS.
  - 4. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF NEWTON STANDARDS.
  - 5. ALL UTILITIES SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF NEWTON STANDARDS.

**OWNER/APPLICANT:**  
 KESSELLER DEVELOPMENT, LLC  
 100 BLUE HILL DRIVE, SUITE 100  
 NEWTON, MASS 02459  
 TEL: 617-552-1100

**KESSELLER WOODS CONDOMINIUMS**  
 NEWTON, MA  
**SITE GRADING & UTILITY PLAN**

**PREPARED BY:** H.M. MOORE ASSOCIATES, INC.  
**ENGINEER & PLANNER**  
 100 STATE STREET, SUITE 200  
 BOSTON, MASS 02109  
 TEL: 617-552-1100

NO.	DATE	DESCRIPTION	BY	APP'D BY
1	10/15/02	ISSUED FOR PERMIT	J.M.	H.M.
2	11/15/02	REVISED FOR COMMENTS	J.M.	H.M.
3	12/15/02	REVISED FOR COMMENTS	J.M.	H.M.
4	01/15/03	REVISED FOR COMMENTS	J.M.	H.M.
5	02/15/03	REVISED FOR COMMENTS	J.M.	H.M.
6	03/15/03	REVISED FOR COMMENTS	J.M.	H.M.
7	04/15/03	REVISED FOR COMMENTS	J.M.	H.M.
8	05/15/03	REVISED FOR COMMENTS	J.M.	H.M.
9	06/15/03	REVISED FOR COMMENTS	J.M.	H.M.
10	07/15/03	REVISED FOR COMMENTS	J.M.	H.M.

**LEGEND (EXISTING):**

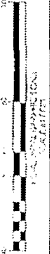
(Symbol)	EXISTING UTILITIES
(Symbol)	EXISTING CONCRETE
(Symbol)	EXISTING ASPHALT
(Symbol)	EXISTING GRAVEL
(Symbol)	EXISTING SOIL
(Symbol)	EXISTING VEGETATION
(Symbol)	EXISTING DRIVEWAYS
(Symbol)	EXISTING WALKWAYS
(Symbol)	EXISTING FENCES
(Symbol)	EXISTING LIGHTS
(Symbol)	EXISTING SIGNAGE
(Symbol)	EXISTING PAVEMENT
(Symbol)	EXISTING CURBS
(Symbol)	EXISTING GUTTERS
(Symbol)	EXISTING DRAINAGE
(Symbol)	EXISTING SEWER
(Symbol)	EXISTING WATER
(Symbol)	EXISTING GAS
(Symbol)	EXISTING CABLE
(Symbol)	EXISTING TELEPHONE
(Symbol)	EXISTING POWER
(Symbol)	EXISTING OTHER

**LEGEND (PROPOSED):**

(Symbol)	PROPOSED UTILITIES
(Symbol)	PROPOSED CONCRETE
(Symbol)	PROPOSED ASPHALT
(Symbol)	PROPOSED GRAVEL
(Symbol)	PROPOSED SOIL
(Symbol)	PROPOSED VEGETATION
(Symbol)	PROPOSED DRIVEWAYS
(Symbol)	PROPOSED WALKWAYS
(Symbol)	PROPOSED FENCES
(Symbol)	PROPOSED LIGHTS
(Symbol)	PROPOSED SIGNAGE
(Symbol)	PROPOSED PAVEMENT
(Symbol)	PROPOSED CURBS
(Symbol)	PROPOSED GUTTERS
(Symbol)	PROPOSED DRAINAGE
(Symbol)	PROPOSED SEWER
(Symbol)	PROPOSED WATER
(Symbol)	PROPOSED GAS
(Symbol)	PROPOSED CABLE
(Symbol)	PROPOSED TELEPHONE
(Symbol)	PROPOSED POWER
(Symbol)	PROPOSED OTHER

**REFERENCES:**

1. PROJECT SITE, EXISTING AND PROPOSED UTILITIES, AS SHOWN ON THE ATTACHED SITE PLAN, ARE PROVIDED BY THE CITY OF NEWTON, MASSACHUSETTS, AND ARE SUBJECT TO THE CITY OF NEWTON STANDARDS AND REGULATIONS. THE CITY OF NEWTON STANDARDS AND REGULATIONS ARE SUBJECT TO CHANGE WITHOUT NOTICE AND WITHOUT LIABILITY TO THE ENGINEER AND PLANNER.



**AMENDMENT #6 TO COOPERATIVE BIDDING AGREEMENT  
REGARDING KESSELER WOODS PROPERTY**

This Amendment #6 to *Cooperative Bidding Agreement Regarding Kessler Woods Property* is entered into by and between the City of Newton (hereinafter "City"), a municipal corporation, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through its duly elected Mayor (the "Mayor"), but without personal liability to him, and Cornerstone Corporation (hereinafter "Cornerstone"), a Massachusetts corporation, 400 Blue Hill Drive, Suite 2C, Westwood, Massachusetts 02090.

WHEREAS, Cornerstone was granted a Special Permit (#102-06(a)) dated November 17, 2008 recorded in Middlesex South Registry of Deeds in Book 52087, page 553 to develop Area 2 of Kessler Woods ("Special Permit") which Special Permit included an approved site plan ("Approved Site Plan"); and

WHEREAS, the parties entered into *Cooperative Bidding Agreement Regarding Kessler Woods Property* on June 20, 2003; *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 8, 2003; *Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on August 25, 2003; *Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on April 6, 2004; *Amendment #4 to Cooperative Bidding Agreement Regarding Kessler Woods Property* on September 19, 2005; *Amendment #5 to Cooperative Bidding Agreement Regarding Kessler Woods Property* in 2008; and

WHEREAS, in light of the economic downturn and difficulties in obtaining financing, Cornerstone is considering alternate development approaches to the Preferred Development Plan for Area 2 of Kessler Woods; and

WHEREAS, the City and Cornerstone agree that it is appropriate to modify the Cooperative Bidding Agreement, as amended to allow Cornerstone to proceed with alternate development approaches for Area 2 subject to applicable zoning and other permitting and licensing approvals of the appropriate governmental authority having jurisdiction over any such alternate proposal;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to further amend the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, as follows:

1. Insert new Paragraph 10.5 as follows:

“10.5 Notwithstanding any provisions of the Cooperative Bidding Agreement, as amended, to the contrary Cornerstone may proceed to develop Area 2 of Kessler Woods as follows:

- a) in the manner set forth in the Cooperative Bidding Agreement, as last amended by Amendment #5 to Cooperative Bidding Agreement Regarding Kessler Woods Property Area 2 subject to reasonable modifications to said Special Permit and/or Approved Site Plan; or
- b) a residential multi-family development consisting of either multiple structures or a single structure containing up to a maximum of 80 residential units with accessory parking spaces in Area 2; or
- c) an Assisted Living Facility (residential care facility) with up to a maximum of 130 independent dwelling units located in either multiple structures or a single residential structure with accessory parking spaces in Area 2.

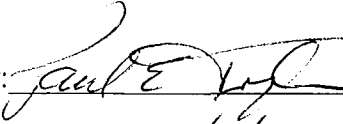
Nothing in this Paragraph 10.5 shall exempt Cornerstone from obtaining any and all applicable permits, licenses and approvals for such alternate development of Area 2.


2. In all other respects the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended is ratified and confirmed. The City hereby acknowledges that Cornerstone (other than stated in this amendment above) has met and/or completed all requirements under said *Cooperative Bidding Agreement Regarding Kessler Woods Property*.
3. All references to “Cooperative Bidding Agreement Regarding Kessler Woods Property” as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended, shall be interpreted as references to *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as further amended by this Amendment #6.
4. All other applicable remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, *Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, *Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, *Amendment #3 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, *Amendment #4 to Cooperative Bidding Agreement Regarding Kessler Woods Property*, and *Amendment #5 to Cooperative Bidding Agreement Regarding Kessler Woods Property* except as modified herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seals to this *Amendment #6 to Cooperative Bidding Agreement Regarding Kessler Woods Property* as of this 5<sup>th</sup> day of May, 2009.

CORNERSTONE CORPORATION

CITY OF NEWTON

By:   
Its: 5/5/09

By:   
Its: 5/1/09