

Southern Middlesex - 20/20 Perfect Vision i2 Document Detail Report

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Doc#	Document Type	Town	Book/Page	File Date	Consideration
82017	AGREEMENT		42435/225	04/07/2004	
Property-Street Address and/or Description					
VINE PL 2004-347					
Grantors					
C/S KESSELER LLC, CORNERSTONE MANAGER INC, KESSELER DEVELOPMENT LLC, NEWTON CITY					
Grantees					
References-Book/Pg Description Recorded Year					
49623/379 CERT 2007, 65280/324 AMEND 2015					
Registered Land Certificate(s)-Cert# Book/Pg					

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DEVELOPMENT COVENANTS AGREEMENT

This Development Covenants Agreement (the "Agreement") is entered into as of the 7th day of April, 2004, by and between (i) C/S KESSELER, LLC, a Massachusetts limited liability company and (ii) KESSELER DEVELOPMENT, LLC, a Massachusetts limited liability company, both with an address of c/o Cornerstone Corporation, 725 Canton Street, Norwood, Massachusetts 02062 (hereinafter, together, "Cornerstone"), and the CITY OF NEWTON, a municipal corporation at 1000 Commonwealth Avenue, Newton, Massachusetts 02459 (hereinafter "City").

WHEREAS, Cornerstone Corporation, a Massachusetts corporation, and City entered into a Cooperative Bidding Agreement dated June 20, 2003, as amended by Amendment #1 dated August 7, 2003 and by Amendment #2 dated August 25, 2003 and by Amendment #3 dated April 7, 2004 (together, the "Cooperative Bidding Agreement") in connection with the property known as Kessler Woods, located in Newton, Massachusetts and designated by the Newton Board of Assessors as parcels 82-41-22 and 82-37-3 (hereinafter "Kessler Woods") in order to purchase Kessler Woods and develop some portions of Kessler Woods for residences and maintain other portions of Kessler Woods as conservation land.

WHEREAS, the City has acquired fee ownership of the parcel of Kessler Woods situated on the southerly side of Vine Street designated as "Lot C" and "Lot D" on the "Subdivision Plan of Land in Newton, MA" of Kessler Woods dated November 26, 2003 prepared by Toomey-Munson & Associates, Inc. (the "Subdivision Plan") recorded with the Middlesex South Registry of deeds immediately prior hereto, as well as the southerly portion of the northerly parcel of Kessler Woods designated as "Lot G" on the Subdivision Plan (together, the "City Parcels"), and Cornerstone, as the designee of Cornerstone Corporation, has acquired fee simple ownership of the remainder of the northerly parcel of Kessler Woods, designated as Lot H and Lot J on the Subdivision Plan (hereinafter the "Cornerstone Parcels").

WHEREAS, Cornerstone intends to develop the Cornerstone Parcels for residential purposes.

WHEREAS, Cornerstone and City have agreed, in connection with the Cooperative Bidding Agreement, for Cornerstone to develop the Cornerstone Parcel subject to certain constraints and covenants for the benefit of the City.

NOW, THEREFORE, in consideration of the respective rights and obligations of Cornerstone and City in the Cooperative Bidding Agreement and the respective rights and agreements granted herein, the receipt and sufficiency of which are hereby acknowledged, Cornerstone hereby agrees as follows with respect to the development of the Cornerstone Parcels for the benefit of the City Parcels:

MUNTA CULLINA
600 LINCOLN PARK BL
LEWIS MA 01801

SEE PLAN IN RECORD BOOK 2004 PAGE 347

Handwritten signature

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1. Development Limitations

a. Cornerstone intends to develop the Cornerstone Parcels for single-family houses and/or residential units (in the aggregate the "Residential Units," and the parcels of land on which they shall be located, the "Residential Lots").

b. With respect to Lot J of the Cornerstone Parcels, Cornerstone shall limit the development of this Lot to no more than fourteen (14) single-family house lots, but which may include up to three (3) rear lots within the meaning of Section 30-15(b)(4) of the Zoning Ordinances of the City of Newton and up to two (2) lots off Harwich Road; provided that the total number of lots shall not exceed 14. Cornerstone will impose upon all the house lots on Lot J a uniform set of design covenants and restrictions which shall be binding upon Cornerstone and any third-party builders of the houses and upon the homeowners. Cornerstone shall, prior to recording or otherwise imposing such uniform covenants and restrictions, first submit to a designated representative of the City (who may be the Mayor of the City or the City official or City department designated by the Mayor), who shall be afforded the opportunity by Cornerstone to have reasonable review of and comment on the proposed covenants and restrictions. At the request of Cornerstone, the City shall execute and deliver to Cornerstone a certification, in recordable form, as to Cornerstone's compliance with the covenants and restrictions set forth herein and in the Cooperative Bidding Agreement which can be relied upon by third-parties, including, as applicable, a certificate of final compliance.

c. With respect to Lot H of the Cornerstone Parcels, Cornerstone shall limit the development of this Lot to no more than eighty (80) residential units or eighty (80) single-family house lots. In either case, not less than twenty (20%) percent of all such units and/or house lots shall be Inclusionary Units within the meaning of Section 30-24(f) of the Newton zoning ordinances. Upon application by Cornerstone to the City and submission of evidence to the City that it is not economically feasible for Cornerstone, notwithstanding the use of its best efforts, to provide at least 20% Inclusionary Units, the City, in its reasonable discretion, shall agree to a lesser number of Inclusionary Units, in which case, the parties shall enter into and record an amendment to this Agreement to evidence such revision.

d. In addition to the standards and restriction set forth in subparagraph (c), above, Cornerstone shall, with respect to Lot H, comply with certain other design and development criteria, including, without limitation, the development of the Cornerstone Parcels pursuant to a "Preferred Plan," in accordance with the Cooperative Bidding Agreement, a true copy of which shall be kept with the records of the City Clerk of the City. At the request of Cornerstone, the City shall execute and deliver to Cornerstone a certification, in recordable form, as to Cornerstone's compliance with the covenants and restrictions set forth herein and in the Cooperative Bidding Agreement which can be relied upon by third-parties, including, as applicable, a certificate of final compliance.

2. Right of First Refusal. If Cornerstone shall propose to sell to any bona fide third party purchaser any portion of a Cornerstone Parcel other than as a Residential Lot or for the development of Residential Units, Cornerstone shall so notify the City of its intention to do so

and the price which such third party purchaser proposes to pay for the property in question. The City shall have sixty (60) days within which to notify Cornerstone of the City's intention to exercise this right of first refusal to purchase that portion at the price offered by the third party purchaser; whereupon Cornerstone and the City shall close on the sale of the property in question within one hundred eight (180) days of the date of Cornerstone's receipt of the foregoing notice from the City. The City's failure to exercise its rights with respect to any one offered property shall not preclude the City's rights with respect to any other portion of the Cornerstone Parcel; and, if the City shall have failed to exercise its rights with respect to a particular portion of the Cornerstone Parcel and Cornerstone shall subsequently fail to close on the sale of such property on substantially the terms set forth in Cornerstone's notice to the City within one hundred eighty (180) days of the City's failure to exercise its right of first refusal, the City's right of first refusal shall be deemed to have been reinstated with respect to the property in question. The City shall, at Cornerstone's request, issue to Cornerstone or for the benefit of the third party purchaser, or such other purchaser of a Residential Lot or Residential Units an estoppel certificate in recordable form which can be used at the closing with such purchaser to clear title of the terms and conditions of this right of first refusal with respect to such Residential Lot or Residential Unit. The City shall have the right and power to assign the foregoing right of first refusal by written notice to Cornerstone.


3. Run with the Land. The restrictions, covenants and other agreements created herein shall be construed in accordance with the laws of the Commonwealth of Massachusetts shall run with the land, and this instrument shall be binding upon and inure to the benefit of successors and assigns of the parties hereto and all persons claiming by, through or under them.

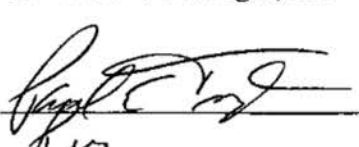
4. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. Facsimiles or copies of this Agreement shall be deemed originals for all purposes.

IN WITNESS WHEREOF, the parties have executed this as an instrument under seal as of the date first above written.

C/S KESSELER, LLC
By: Cornerstone Manager, Inc.

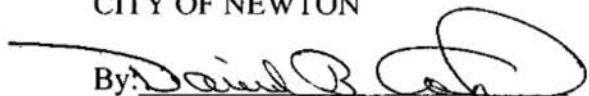
KESSELER DEVELOPMENT, LLC
By: Cornerstone Manager, Inc.

By: 
Its _____
Duly Authorized

By: 
Its _____
Duly Authorized

ACCEPTED AND AGREED TO:

CITY OF NEWTON

By: 
David B. Cohen, Mayor
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

^{Suffolk}
COUNTY OF MIDDLESEX, ss.

April 7, 2004

On this day, before me, personally appeared the above-named Paul E. Taylor,
as President of Cornerstone Manager, Inc. and not individually, who acknowledged the
foregoing Development Covenants Agreement to be his/her free act and deed, in his/her capacity
as aforesaid, on behalf of C/S KESSELER, LLC.

[Signature]
Notary Public
My Commission expires: 12-31-04

COMMONWEALTH OF MASSACHUSETTS

^{Suffolk}
COUNTY OF MIDDLESEX, ss.

April 7, 2004

On this day, before me, personally appeared the above-named Paul E. Taylor,
as President of Cornerstone Manager, Inc. and not individually, who acknowledged the
foregoing Development Covenants Agreement to be his/her free act and deed, in his/her capacity
as aforesaid, on behalf of KESSELER DEVELOPMENT, LLC.

[Signature]
Notary Public
My Commission expires: 12-31-04

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss.

April 6, 2004

On this day, before me, personally appeared the above-named David B. Cohen, as Mayor
of the City of Newton, who acknowledged the foregoing Development Covenants Agreement to
be his/her free act and deed, in his capacity as aforesaid, on behalf of the City of Newton.

[Signature]
Notary Public
My Commission expires:



[Signature]
Notary Public