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Certificate of Approval  
Affordable Housing Restriction  
G.L. c. 184, §32

PROPERTY ADDRESS: 241 Watertown Street, Newton

The undersigned Director of the Massachusetts Department of Housing and Community Development hereby certifies that the Affordable Housing Restriction made and declared by CASCAP Realty, Inc., recorded with the Middlesex South Registry of Deeds as Book Number 35076 Page Number 387 on March 19, 2002 or filed with the \_\_\_\_\_ Registry District of the Land Court as Document No. \_\_\_\_\_, noted on Certificate of Title No. \_\_\_\_\_ with respect to land in the City / Town of Newton described in deed to CASCAP, Inc., recorded with the Middlesex South Registry of Deeds as Book Number 35076 Page Number 378-38 March 19, 2002, or filed with the \_\_\_\_\_ Registry District of the Land Court as Document No. \_\_\_\_\_, noted on Certificate of Title No. \_\_\_\_\_, is hereby declared to be in public interest and is approved pursuant to the provisions of Massachusetts General Laws chapter 184, section 32.

Date: 12-16-03

COMMONWEALTH OF MASSACHUSETTS

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

Jane Wallis Gumble  
Director, Department of Housing  
and Community Development

Commonwealth of Massachusetts

Suffolk, ss.

Date: 12-16-03

Then personally appeared before me the above named Jane Wallis Gumble, Director of the Department of Housing and Community Development, and acknowledged the foregoing to be her free act and deed.

Candace Tempesta

Notary Public Candace Tempesta  
My commission expires:

[Signature]  
Notary Public

My Commission Expires

## DECLARATION OF RESTRICTIVE COVENANTS

**CASCAP Realty, Inc.**, a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts having an address of 678 Massachusetts Avenue, Cambridge, MA 02139, and owner in fee simple of property known as 241 Watertown Street, Newton, Massachusetts and described more fully in Exhibit A (the "Owner") hereby covenants and agrees for itself, its successors, heirs and assigns, that the parcel described in Exhibit A, attached hereto and incorporated herein, (hereinafter the "Property") shall be subject to the following restrictions for the benefit of the City of Newton, having a mailing address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts, 02459 (the "City"), its successors and permitted assigns and the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), its successors and permitted assigns.

The terms of this Declaration of Restrictive Covenants, (hereinafter "Covenant") authorized by Massachusetts General Laws, Chapter 184, §§31-33 and otherwise by law, are as follows:

1. The purpose of this Covenant is to ensure that the Property will be retained as affordable housing for occupancy by low income elderly persons in accordance with the United States Department of Housing and Urban Development ("HUD") Section 202 program ("Section 202"), the Community Development Block Grant ("CDBG") program, or such successor programs, and with Condition No. 19 of the Decision of the Newton Zoning Board of Appeals in Docket No. 33-01, filed with the Newton City Clerk on November 28, 2001 (the "Comprehensive Permit") and recorded as Instrument No. 1209 of December 21, 2001 with the Middlesex South Registry of Deeds.
2. The Owner intends, declares and covenants on behalf of itself, its successors and assigns that these covenants, agreements, and restrictions are not merely personal covenants of the Owner and shall run with the land and shall bind the Owner, its successors and assigns and inure to the benefit of the City, DHCD, and their successors and assigns.
3. This Covenant is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law. In the event approval pursuant to Sections 31-33 of Chapter 184 is not given, the restrictions contained herein shall endure for a period of thirty (30) years from the date of this Declaration and for such further time (not to exceed 80 years from the Completion Date, as defined below) as this Declaration may be lawfully extended. The Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for this Covenant to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied

in full, or in the alternative, that an equitable servitude has been created to insure that this Covenant runs with the land.

4. For purposes of this Covenant, the term "Completion Date" shall mean the date on which all required Certificates of Occupancy for the building(s) on the Property are issued and the Owner has provided written notification to the City and the City has verified that all units are fully occupied. If the units receive Certificates of Occupancy and/or are occupied on different dates, then the Completion Date shall be the date of occupancy of the unit which is occupied last.

5. For a period of no more than eighty (80) years from the Completion Date as defined in paragraph 4 above, and without regard to the term of the Grant Agreement dated May 15, 2000, as amended by Amendment #1 dated August 22, 2001, between the City and Owner, or to any transfer of ownership, for the period which is forty (40) years from the Completion Date ("Initial Period"), the Owner shall provide thirty-four (34) units of housing for low income elderly persons at the Property and one (1) unit of housing for a resident manager, all in accordance with the requirements of the Section 202 program, or such successor program. For that period which is between forty (40) and eighty (80) years from the Completion Date ("Subsequent Period"), the Owner shall provide thirty-four (34) units of housing for low and/or very low income elderly persons and one (1) unit of housing for a resident manager in accordance with applicable regulatory requirements, as follows: If during the Subsequent Period, Owner receives continued funding from the Section 202 program, then the requirements of such program shall govern. However, if Owner no longer receives Section 202 funding, then the requirements of the stricter of the CDBG (or successor program), or Owner's alternate funding source shall apply.

6. (a) For so long as Owner receives funding from the Section 202 program, the Owner shall provide the City with copies of all reports required by and/or furnished to HUD as part of Section 202 program compliance and reporting requirements, contemporaneously with Owner's submission of such materials to HUD.

(b) In the absence of continued Section 202 program funding, the Owner shall maintain as part of its records copies of all leases governing the rental of the units as may be executed throughout the affordability period and all initial and annual income certification(s) by the tenant(s). Within 60 days after the end of each calendar year of occupancy, the Owner shall provide to the City annual reports consisting of certifications regarding the annual and monthly gross and adjusted income of each household occupying the units. With respect to a household that moved to a unit in the prior year, the annual report shall also include certification regarding the annual and monthly gross and adjusted incomes of any such household at the time of their initial occupancy of the unit. The annual reports shall be in a form approved by the City and shall contain such supporting documentation as the City shall reasonably require. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to the City such additional reports as the City may deem necessary to ensure compliance with the requirements of this Declaration and of the Grant Agreement.

7. (a) Prior to initial occupancy of the units and annually thereafter for so long as the Owner receives Section 202 funding, the Owner shall furnish to the City the HUD-approved schedule of monthly rent and monthly allowances for utilities and services, within 30 days after its receipt from HUD.

(b) In the absence of continued Section 202 funding, the Owner shall furnish to the City the schedule of monthly rent and monthly allowances for utilities and services as required by the applicable program as outlined in Paragraph 5 above.

8. Except in conjunction with renovation or rehabilitation of the Property, the Owner shall not demolish any part of the Property or substantially subtract from any real or personal property of the Property without the prior written consent of the City, which consent may be granted or withheld in the City's sole judgment. The Owner shall not permit the use of any residential unit for any purpose other than housing. The Owner covenants and agrees to maintain the Property in good order, repair, and condition and in compliance with all laws, regulations, ordinances, codes, orders, or other laws, now existing or hereafter enacted, regarding the habitability of the Property as low income housing for the elderly.

9. The Owner represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Owner (subject to the approval of the lender(s) which will provide the financing) will use its best efforts to repair and restore the Property to substantially the same condition as existed prior to the event causing such damage or destruction, and the Owner represents, warrants and agrees that the Property shall thereafter continue to operate in accordance with the terms of this Covenant and the Comprehensive Permit.

10. Any use of the Property or activity thereon which is inconsistent with the purpose of this Covenant or the Comprehensive Permit is expressly prohibited. The Owner shall carry out each activity provided for in this Covenant in compliance with all applicable federal laws and regulations concerning equal opportunity and fair housing, affirmative marketing, displacement, relocation, and acquisition, lead-based paint, conflict of interest, debarment and suspension and flood insurance, including any waivers or approvals given by HUD.

11. By its acceptance of this Covenant, the City does not undertake any liability or obligation relating to the condition of the Property.

12. (a) This Covenant is intended to and shall be subordinate to documents and instruments securing Owner's HUD Section 202 funding. Upon request of the Owner, the City agrees to execute, acknowledge and deliver any instruments deemed necessary to evidence such subordinate position.

(b) The City shall have the option, but not the obligation, to subordinate this Covenant to documents and instruments securing financing from sources other than the Section 202 program. If the City should consent to subordinate this Covenant to such other

financing source(s), the City agrees to execute, acknowledge and deliver any instruments deemed necessary to evidence such subordinate position.

(c) The City is authorized to record or file any notices or instruments appropriate to ensuring the enforceability of this Covenant. The Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the City intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

13. This Covenant shall be contained or referenced in any deed of conveyance of the subject Property or any other instruments conveying a non-leasehold interest in the Property or any part thereof and shall be equally binding on any subsequent owner of the title thereto whether acquired by grant, sale or any other means and such subsequent owner shall comply with this restriction for the remaining duration of said restriction.

14. (a) During the Initial Period, the City shall be given 60 days prior written notice of foreclosure sale and shall be provided with copies of all correspondence and documents related to the foreclosure proceedings in a timely manner.

(b) During the Subsequent Period, and in the absence of continued Section 202 funding, at least 60 days prior to the foreclosure sale by a lender or other transfer in lieu of foreclosure, the lender shall notify the City of its intent to so foreclose and shall allow the City the option/opportunity to assume the mortgage. In the event of such assumption of the mortgage, the Owner shall not further pledge or hypothecate said Property and the Owner's recapture of any equity it may have shall be deferred until such time as the Property is sold. If the option is exercised, the City may direct the sale of the Property at any time during the period of affordability and shall undertake to sell the property within a reasonable period of time after the expiration of the affordability period. In the event of such a sale, the monies received shall be applied first to any and all encumbrances outstanding with respect to the property in order of priority, next to the costs of sale, then to repay the City for any amounts expended on the assumption of the mortgage. Any sums remaining after the above payments shall then be paid to the person or entity which was Owner of record prior to assumption of the mortgage, in full satisfaction of its equity interest in the Property. In the event the City chooses not to exercise its option to assume the mortgage, then the affordability restriction created hereunder shall terminate upon foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives the City not less than 60 days prior written notice of the mortgagee's intention to foreclose upon the Property or to accept an instrument in lieu of foreclosure. Thereafter, if at any time following foreclosure or other transfer in lieu of foreclosure but still during the term of affordability, as defined in paragraph 5, the Owner of Record prior to foreclosure, any subsidiary thereof, or any newly formed entity that includes the former Owner or those with whom s/he or it has had family or business ties obtains ownership interest in the Property, the affordability period shall be revived in accordance with its original term.

15. All notices required under this and the preceding section shall be deemed to have been received if mailed, postage prepaid to the following:

For the City:            Director  
                                 Dept. of Planning and Development  
                                 City Hall, 1000 Commonwealth Avenue  
                                 Newton, MA 02459

For Owner:             Director  
                                 CASCAP Realty, Inc.  
                                 678 Massachusetts Avenue  
                                 Cambridge, MA 02139

16. Enforcement.

(a) The rights hereby granted shall include the right of the City to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that the City will have no adequate remedy at law), and such restoration shall be in addition to, and not in limitation of, any other rights and remedies available to the City. The Owner covenants and agrees to reimburse the City all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Covenant or in taking reasonable measures to cure any violation hereof, provided that a violation of this Covenant is acknowledged by Owner or determined by a court of competent jurisdiction to have occurred.

(b) Without limitation on any other rights or remedies of the City, its successors and assigns, the City shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (1) specific performance of the provisions of this Covenant, which shall be the preferred remedy;
- (2) voiding of any rental arrangement that violates this Covenant;
- (3) in the case of any rental arrangement where the Owner is found to have violated willfully or in bad faith, then money damages for charges in excess of rents permissible under this Covenant.

(c) If any action is brought to enforce this Covenant, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.

(d) The Owner hereby grants to the City and its duly authorized representatives the right to enter upon the Property upon reasonable notice and at reasonable times for the purpose of enforcing the restrictions contained in this Covenant and to take any reasonable

and appropriate action under the circumstances to cure any violation of the provisions of this Covenant. Notwithstanding the definition of Owner hereinbefore contained, the rights of enforcement for violations of this Covenant shall survive any subsequent sale or transfer of the Property.

17. Both the City and DHCD shall be deemed to be the holder of this Covenant. The City may assign this Covenant to the Newton Community Development Authority or such other City agency, department, commission, or authority, if the City determines that such assignment would be consistent with the purposes of this Covenant.

18. This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and executed by all of the parties hereto. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

**IN WITNESS WHEREOF** the said **CASCAP Realty, Inc.** has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Michael Haran, its duly authorized representative, this 18th day of March, 2002.

**CASCAP Realty, Inc.**

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

Date: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

March 18, 2002

Then personally appeared the above named Michael Haran of **CASCAP Realty, Inc.** and acknowledged the foregoing instrument to be his/her free act and deed before me.

\_\_\_\_\_  
Notary Public  
My commission expires:

**EXHIBIT A**  
**Description of Property**

Parcel B shown on a Subdivision Plan prepared by Design Consultants, Inc., dated October 17, 2001 and entitled "Plan of Land 243 Watertown Street, Newton, Massachusetts prepared for CASCAP, Inc." recorded on December 21, 2001 as Plan No. 1260 with the Middlesex South Registry of Deeds and described as follows:

Beginning at a point on the east line of land of the city of Newton, said point bearing  
NO2°-00'-50"E and 260.71 feet from the north line of Watertown Street;  
Thence, running N02°-00'-50"E along the City of Newton 168.13 feet to a point;  
Thence, running S66°-55'-20"E along the city of Newton 48.72 feet to a point at  
the Southwest corner of KF II Nominee Trust;  
Thence, running S86°-00'-36"E 36.15 feet to a point;  
Thence, running N70°-32'-27"E 106.18 feet to a point, the last two (2) courses  
being along said KF II Nominee Trust;  
Thence, running S01°-47'-45"W along Newton Community Development  
Authority 202.99 feet to a point at the Northeast corner of Parcel A as shown on the  
aforesaid plan;  
Thence, running N87°-59'-10"W 81.65 feet to a point;  
Thence, running N02°-00'-50"E 16.55 feet to a point;  
Thence, running N87°-59'-10"W 64.84 feet to a point;  
Thence, running S02°-00'-50"W 1.80 feet to a point;  
Thence, running N87°-59'-10"W 34.69 feet to the point of beginning, the last  
five (5) courses being along said Parcel A.

Parcel B contains 30,500 square feet, more or less, and is conveyed with the benefit of and is subject to certain access, utility and drain easements, all as recited in an easement agreement entitled "Mutual Easements for 237-253 Watertown Street, Newton, Massachusetts" recorded as Instrument No. 1214 of December 21, 2001 with the Middlesex South Registry of Deeds, which easements are more particularly described and portrayed on the foregoing plan.