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Barney S. Heath
Director

CONTINUED PUBLIC HEARING MEMORANDUM

DATE: January 27, 2017
MEETING DATE: January 31, 2017
TO: Land Use Committee of the City Council
FROM: Barney Heath, Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Nathan Robinson, Housing Planner
CC: Petitioner

PETITION #179-16 & #180(2)-16

NW corner of Washington and Walnut Streets

Request for a change of zone to Mixed Use 4 and for special permits to construct a mixed-use development consisting of three buildings with heights up to 60 feet and 5-stories incorporating 160 residential units, approximately 40,000 square feet of commercial space and 346 parking spaces.

The Land Use Committee (the "Committee") opened the public hearing on June 7, 2016, and the hearing was held open. A site visit was held by the Committee on June 13, 2016, and the hearing was continued on July 12, 2016, September 13, 2016, October 4, 2016, November 1, 2016, November 29, 2016, December 15, 2016, and January 12, 2017. In response to questions raised at the Land Use Committee public hearings or by written communication thereafter, and/or staff technical reviews, the Planning Department is providing the following information and analysis for the upcoming continued public hearing. This information is supplemental to staff analysis previously provided at public hearings.

Current Status Of Newton With Respect To The State's Subsidized Housing Inventory (SHI).

This month the City of Newton provided the Massachusetts Department of Housing and Community Development (DHCD) with its most recent accounting of units that qualify for inclusion on the Subsidized Housing Inventory (SHI) as part of DHCD's biennial update process. The City currently has 2,420 units on the SHI and it is expected that the SHI count will increase to 2,441 once DHCD processes the City's biennial update.

With 2,441 units affordable to households earning up to up to 80% of Area Median Income (AMI) out of Newton's 2010 Census total of 32,346 housing units, Newton's percentage of affordable housing currently stands at 7.5%.

Proposed Affordable Units At Washington Place To Be Added To Newton’s Subsidized Housing Inventory (SHI).

In compliance with Newton’s Inclusionary Zoning requirement, the developer of Washington Place will be dedicating 24 Inclusionary Units (15% out of 160) as permanently affordable apartments for households at an average of 65% Area Median Income. Twelve of these units would be for households earning up to 50% AMI and twelve of these units would be for households earning up to 80% AMI. All 24 of the Inclusionary Units would be eligible to be added to Newton’s SHI total. It is important to note that these units will be subject to a Regulatory Agreement such that they will never be removed from the SHI so long as this project exists. The 24 new Inclusionary Units that this project provides will put Newton’s percentage of affordable housing at 7.6%

In order for all units in a rental project to be eligible for listing on the SHI, 20% of the units must be affordable to households at 50% AMI or less, or 25% must be affordable to households at 80% AMI or less. In meeting the percentage threshold, each unit must meet the target income limit; an AMI average cannot be applied to the affordable units in the project, as is the case with Newton’s Inclusionary Zoning Ordinance.

The chart below indicates the income range of households that would be eligible for the Inclusionary Units along with occupations that fall within the applicable income limit. The table assumes a single wage earner or a single wage earner with children.

Income Range for Inclusionary Housing (0-50% AMI and 50-80% AMI)				
Household Size	Income Cap for units serving those earning up to 50% AMI	Occupations with Mean Annual Wages up to 50% AMI*	Income Cap for units serving those earning up to 80% AMI	Occupations with Mean Annual Wages up to 80% AMI*
1-Person	\$34,350	Cook = \$32,170	\$51,150	Hearing Aid Specialist = \$50,150
2-Person	\$39,250	Animal Control = \$38,600	\$58,450	Firefighter = \$57,610
3-Person	\$44,150	Solar Installer = \$43,860	\$65,750	Special Ed. Teacher = \$64,670
4-Person	\$49,050	Tree Trimmer = \$48,860	\$73,050	H.R. Specialist = \$72,410

* Occupation Mean Annual Wages for positions in Massachusetts from BLS.gov,

https://www.bls.gov/OES/current/oes_ma.htm#00-0000

Household Size assumes one working adult and children

Proposed Middle Income Units At Washington Place

In addition to the Inclusionary Units, the developer is proposing to provide a second tier of affordable units, a total of 16 additional units (10%) out of the 160 units in the project as permanently restricted for “middle income” households. Middle-income households are those earning between 80% - 120% AMI, which traditional housing programs do not serve. The recent housing strategy found that “the data suggest Newton is polarizing at the highest and lowest ends of the earning spectrum. The City experienced a net household decline for those [families] earning between \$50,000 and \$200,000 while experiencing a net increase of those earning below \$50,000 and those earning above \$200,000” (p.37).

This polarization in incomes was observed in the rental market specifically as well as overall. The majority of renters earn either more than 120% AMI or less than 30% AMI, with approximately 18.2% of renters fitting into the middle-income bracket of 80-120% AMI.

While the recent housing strategy indicated that there is a significant shortage in housing for households below 80% AMI, middle income housing units would also support economic diversity in Newton. Based on data from the Housing Strategy, nearly 40% of renters earn more than 120% AMI and approximately 21% earn less than 30% AMI, while approximately 18.2% of renters are defined as middle-income.

The comparatively small share of middle-income households is consistent with the broader trends across the Boston metro area. Income levels are polarizing across the metro area, from Boston out to I-495, but inner core communities like Newton are experiencing a faster loss of middle-income families, suggesting that they are moving out and commuting long distances.

Both Boston and Cambridge have recognized this segment of the population as one which, in addition to low-income households, is being priced out of their communities and for that reason, have required developers to set-aside units for these households. In addition, MassHousing recently launched its Workforce Housing Initiative, which is a program dedicated to households earning between 60% - 120% AMI. There is growing consensus at local and state levels of the need to attract and retain middle-income households in order to maintain a competitive workforce and growing economy.

The Petitioner is proposing that these Middle Income Units would also be restricted in perpetuity and subject to an agreement with the City. A sample middle income use restriction for a project in Weston is attached for reference (**Attachment A**). Should this project be approved by the Council, Newton will have to draft our own version of this agreement.

The chart below indicates the income range of households in the middle income category and occupations that a single working person with children might hold and be eligible for middle-income housing.

Income Range for Middle-Income Housing (80-120% AMI)			
Household Size	Income Range	Occupations with Mean Annual Wages in these ranges*	Occupations for a household with two working adults*
1-Person	\$51,151 - \$82,400	Optician = \$51,850	NA
2-Person	\$58,451 - \$94,200	Surveyor = \$60,030	Customer Service Rep (\$40,800) + Paralegal (\$52,790)
3-Person	\$65,751 - \$105,960	Corrections Officer = \$66,880	Occupational Therapist (\$55,410) + Machinist (\$49,220)
4-Person	\$73,051 - \$117,720	Pipelayer = \$74,110	Teacher (\$49,320) + Librarian (\$68,070)

* Occupation Mean Annual Wages for positions in Massachusetts from BLS.gov,

https://www.bls.gov/OES/current/oes_ma.htm#00-0000

Household Size includes all working adults and children

Newton Household Local Preference

According to the Inclusionary Housing Plan for Washington Place submitted by the developer, the project will include 70% of the Deed Restricted Units (both the Inclusionary and Middle Income Units) as Local Preference units, to households that meet at least one of the following criteria:

1. Up to 3 of the Inclusionary Units for those current renters who will be temporarily displaced and meet the required 80% or below income guidelines for the Inclusionary Units. The developer also pledges to provide temporary housing for the qualifying households during the construction period.
2. Income qualifying households who currently live in Newton;
3. Income qualifying households with a member who currently works in Newton or an offer of employment to work in Newton;
4. Income qualifying households with a member who attends public school in Newton.

Compliance Monitoring

The City's Department of Planning and Development will be responsible for monitoring compliance on both the Inclusionary Units and the Middle Income Units. Compliance monitoring for the units will be done in accordance with DHCD's annual compliance protocols; it will be the responsibility of the property owner to recertify the income eligibility of tenants in the Inclusionary and Middle Income Units, with annual monitoring from the City.

The regulatory agreement and the affordable housing restriction that will govern the occupancy and use of the Inclusionary Units and Middle Income Units, respectively, will be executed prior to the issuance of building permits for construction.

Design Standards In The MU-4 Vs. BU District As Related To Streetscapes And Facades

The objective of the MU-4 zone is to further encourage, vibrant, active and inviting spaces in Newton's village centers. MU-4 zoning is not a "one-size fits all" approach, and unlike the BU zoning, requires special permits for those attributes that deviate from what might be viewed as generally acceptable in village centers. As highlighted below, the zones are differentiated by the types of uses allowed, dimensional standards, and by specific design requirements.

-The MU-4 zone requires at least 75% of the property frontage facing a public way be occupied by buildings. There is no standard regarding how the front of a property is used in the BU zones and parking can occupy property frontage, which is not permitted in the MU-4 zone.

-In an effort to create uninterrupted pedestrian ways that activate the streetscape, the MU-4 zone promotes "build to line" development which creates continuous storefronts that embrace the street, whereas BU zone distances themselves from the street by requiring setbacks, typically half the building height.

-To further encourage more interesting village-scale storefronts, the MU-4 zone requires entrances every 50 feet. Under the BU zone, a single tenant could have limited or rear entrances only and minimal windows facing the street. In order to make commercial spaces more inviting at the ground

level, MU-4 requires at least 60% of street-facing facades have windows with views of the interior space or display areas. The BU zone has no such requirements. It should be noted that the Petitioner is requesting a waiver for entrances every 50 feet for tenant leasing flexibility, although the Petitioner intends to meet the requirement for most of the building façade. Commercial Space 1 has 140 feet of frontage on Washington Street and may not have more than one entrance off of Washington Street. The rest of the building appears to meet the requirement. The Petitioner is no longer seeking a waiver from the transparency requirements.

-In the MU-4 zone, any commercial space over 5,000 SF requires a special permit to encourage more small scale, neighborhood retail and personal services. In a BU zone, a single commercial tenant could be as large as 20,000 square feet and not require a special permit. For tenant leasing flexibility the petitioner is seeking special permits for retail uses of more than 5,000 square feet and personal service uses of more than 5,000 square feet.

-The MU-4 zone does not allow for less active uses, such as office on the first floor without the benefit of a special permit. For tenant leasing flexibility the petitioner is seeking special permits for health club establishments at or above ground floor, animal service, and street level office.

Urban Design Commission

At the Urban Design Commission's January meeting the Commission voted to submit a letter to the City Council expressing their support for the project (**Attachment B**).

Attachment A: Sample Affordable Housing Restriction – Town of Weston

Attachment B: Letter from the Urban Design Commission

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AFFORDABLE HOUSING RESTRICTION

TOWN OF WESTON

Sarah Like Rhatigan, Steven L. Charlip, Michael J. Price, Edward H. Coburn, Elizabeth Valenta, Glenn C. Cardozo and Susannne S. Haber, Trustees of the WESTON AFFORDABLE HOUSING TRUST FUND ("Grantor"), a municipal affordable housing trust fund established under G.L. c.44 §55C and the Declaration of Trust dated December 9, 2014, recorded with the Middlesex South District Registry of Deeds in Book 64667, Page 140, having a mailing address at 11 Townhouse Road, P.O. Box 378, Weston, Massachusetts 02493-0002, its successors and assigns, for consideration of \$2,688,500.00, hereby grants, with quitclaim covenants, to the TOWN OF WESTON (the "Town"), a municipal corporation duly organized under the laws of Massachusetts and acting by and through its Board of Selectmen, having a usual place of business at 11 Townhouse Road, P.O. Box 378, Weston, Massachusetts 02493, its successors and assigns, exclusively for the purpose of ensuring the provision and retention of housing for occupancy by low and moderate income persons and households, the following described Affordable Housing Restriction (this "Restriction") on the parcels of land located at 66-68, 71 and 74 Warren Avenue, Weston, Massachusetts, described more particularly in Exhibit A, attached hereto and incorporated herein, same parcels also being the premises described in a deed recorded with the Middlesex South Registry of Deeds in Book ~~C4184~~ Page 16 (the "Property").

Warren Avenue, Weston

Recitals

WHEREAS, Grantor submitted an application to the Town of Weston Community Preservation Committee (the "CPC") for funds under G.L. c.44B, §1, et seq., the Community Preservation Act (the "CPA"), for the purpose of creating and operating seven (7) units (the "Units") of low and moderate income rental housing on the Property (the "Project"), four (4) of which Units shall be rented to persons and households having an income of no more than eighty percent (80%) of the area median income (the "Low Income Units"), with the remaining three (3) Units to be leased to persons and households having an income no more than one hundred percent (100%) of the area median income (the "Moderate Income Units"), all as set forth more particularly herein;

WHEREAS, the Weston Town Meeting, acting on the recommendation of the CPC, by the vote taken under Article 4 of the December 1, 2014 Special Town Meeting, appropriated funds under the CPA in the amount of \$2,688,500.00 to fund the Project (the "CPA Grant");

WHEREAS, the CPA Grant is contingent on Grantor granting the Town an affordable housing restriction ensuring that all the Units shall be rented to low and moderate income persons and households, as more particularly set forth herein, meeting the requirements of G.L. c.44B, §12(a) and qualifying under G.L. c. 184, §31, binding and enforceable by the Town in perpetuity;

WHEREAS, Grantor obtained a Comprehensive Permit from the Weston Zoning Board of Appeals, recorded with the Middlesex South District Registry of Deeds in Book 04117, Page 342 (the "Comprehensive Permit"), pursuant to which Grantor will develop the Project in accordance with the Comprehensive Permit;

WHEREAS, Grantor has entered into a separate Chapter 40B Regulatory Use Agreement with the Department of Housing and Community Development ("DHCD"), which sets forth certain restrictions pertaining to the rental of the Low Income Units (as amended from time to time, the "Regulatory Agreement"), which provides the Units will be counted in the Town's Subsidized Housing Inventory ("SHI") so long as the Project remains in compliance with the terms of the Regulatory Agreement;

WHEREAS, DHCD has promulgated regulations at 760 CMR 56.00 (as amended from time to time, the "Regulations") relating to the issuance of comprehensive permits under G.L. c. 40B, §§20-23 (as amended from time to time, the "Act"), and has pursuant thereto issued its Comprehensive Permit Guidelines (the "Guidelines" and, collectively with the Regulations and the Act, the "Comprehensive Permit Rules");

WHEREAS, it is the intent of the parties that so long as the Low Income Units are subject to the provisions of the Regulatory Agreement and in compliance therewith, the Regulatory Agreement and the Comprehensive Permit Rules shall govern the tenant selection criteria, income eligibility, the leases to tenants, the maximum rent, and other requirements with respect to the Low Income Units;

WHEREAS, the Town has determined that the rights and restrictions granted to the Town under this Restriction serve the public's interest in the creation and retention of affordable housing for persons and households of low and moderate income and in the restricting of rents of the Units on the Property in order to assure their affordability by future low and moderate income tenants.

NOW, THEREFORE, for consideration of the CPA Grant, Grantor grants this Restriction to the Town, upon the following terms, in accordance with G.L. c. 184, §§31-33 and otherwise by law, are as follows:

1. Purpose. The purpose of this Restriction is to ensure that all the Units on the Property shall be rented to and occupied in perpetuity by Qualifying Households, as set forth more particularly herein. Grantor shall not permit the use and occupancy of any Unit for any purpose other than rental to Qualifying Households in accordance with the Affordability Commitments (defined below). The recitals set forth in the preamble are incorporated herein in their entirety.

2. Permitted Uses. The Property shall be used only for the Project. Grantor shall construct and operate the Project in accordance with the plans and specifications approved by the Town. All Units must contain complete living facilities including but not limited to a stove, kitchen cabinets, plumbing fixtures, and sanitary facilities. Materials used for the interiors of the Units must be of good quality. The Project must fully comply with the State Building Code and with all applicable state and federal building, environmental, health, safety and other laws, rules, and regulations, including without limitation all applicable federal and state laws, rules and regulations relating to the operation of adaptable and accessible housing for the handicapped. Except to the extent that the Project is exempted from such compliance by the Comprehensive Permit, the Project must also comply with all applicable by-laws, rules, and regulations. Any use of the Property or activity thereon which is inconsistent with the purpose of this Restriction is expressly prohibited. Grantor shall carry out each activity provided for in this Restriction in compliance with all applicable federal and state laws and regulations.

3. Units. During the term of this Restriction, all four (4) Low Income Units shall be rented to persons and/or households whose annual income is at or below eighty percent (80%) of the Area Median Income, adjusted for household size, as determined by the Department of Housing and Urban Development ("HUD") (the "Low Income Tenants"), and all three (3) Moderate Income Units shall be rented to persons and/or households whose annual income is at or below one hundred percent (100%) of the Area Median Income, adjusted for household size, as determined by HUD (the "Moderate Income Tenants," and, together with the Low Income Tenants, the "Qualifying Households"). The "Area" means the Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area, as determined by HUD. The "Area Median Income" shall mean the median gross income for the Area, as determined from time to time by HUD. Grantor shall be governed by the income eligibility criteria, asset criteria, and other qualifying criteria established by HUD or by DHCD in the Comprehensive Permit Rules, as such criteria may be applicable to the Project. If HUD discontinues publication of Area Median Income or other criteria, the income statistics and eligibility criteria used by DHCD or the Massachusetts Housing Finance Agency for low and moderate income housing programs shall apply.

4. Rental Expenses; Continued Eligibility. (a) Except as provided below, the annual rental expense for each Low Income Unit, including applicable utility allowances for heat, electricity and hot water, shall not exceed thirty percent (30%) of the income of a Low Income Tenant, adjusted for household size, assuming that household size shall be equal to the number of bedrooms in the Unit plus one, and the annual rental expense for each Moderate Income Unit, including applicable utility allowances for heat, electricity and hot water, shall not exceed thirty percent (30%) of the income of a Moderate Income Tenant, adjusted for household size, assuming that household size shall be equal to the number of bedrooms in the Unit plus one. Notwithstanding the foregoing, if an Unit or household has a subsidy commitment through any federal or state rental assistance program, then the maximum tenant portion of the rent, and the maximum total rent that may be collected by Grantor (including the tenant portion of the rent and the rental assistance subsidy payment), shall each be as permitted by such program.

(b) In determining the maximum monthly rent that may be charged for a Unit under this Section, Grantor shall include an allowance (or a DHCD heat deduction) for any utilities and

services (excluding telephone) to be paid by the Qualifying Household. Adjusted income shall be as defined in 24 C.F.R. 5.609 (or any successor regulation) or by DHCD 760 CMR 6.00 (or any successor regulation) using assumptions provided by HUD or by DHCD.

(c) Any Unit occupied by a Qualifying Household at the commencement of occupancy shall be deemed an affordable unit, so long as (i) such Unit continues to be rent-restricted and (ii) the tenant's income does not exceed 140% of the maximum income (as defined in Section 42(g)(1) of the Internal Revenue Code). If, after initial occupancy, the income of a tenant in a Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

(d) Notwithstanding anything to the contrary herein, to the extent that the Regulatory Agreement or any other agreement that Grantor enters into with any public or quasi-public lender or program (such as the low-income housing tax credit program) imposes affordability requirements on Grantor and the Project at least as restrictive as those set forth herein (each such public or quasi-public lender or program, including the Regulatory Agreement, is referred to herein as a "Public Subsidy Program"), then a household's adjusted income for purposes of determining income eligibility and maximum rents shall be determined in accordance with the applicable guidelines and regulations of such Public Subsidy Program. If any of the Units are tax credit units, then a household's adjusted income for purposes of determining income eligibility and maximum rents shall be determined in accordance with Section 42(g)(1) of the Internal Revenue Code.

5. Resident Selection. Prior to selecting the tenants, Grantor shall submit to the Town a Tenant Selection Plan, prepared by Grantor in accordance with the Comprehensive Permit Rules and approved by DHCD, and, to the extent not subject to DHCD's review, approved by the Town. Tenant shall select tenants for the Units in a fair and impartial manner, based on the Tenant Selection Plan, which shall be made available to such tenants upon request. Such Tenant Selection Plan must comply with any and all applicable laws, rules, regulations and bylaws, including the Comprehensive Permit Rules.

6. Affirmative Marketing Plan. Grantor shall also provide the Town with an affirmative marketing plan acceptable to the Town, or a plan approved by DHCD. The affirmative marketing plan must comply with all applicable statutes, regulations and executive orders and with any DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of NAACP, Boston Chapter v. Kemp. The approved marketing plan and the approved resident selection policies and criteria shall be adhered to in every respect.

7. Income Determinations. During the term of this Restriction, Grantor shall lease all the Units to Qualifying Households in accordance with the terms of this Restriction. Grantor represents, warrants and covenants that the determination of whether a household is a Qualifying Household shall be made by Grantor at the time of leasing of each Unit and thereafter at least annually on the basis of the current income of such household. In initially verifying a household's income, Grantor shall examine the source documents evidencing annual income

(e.g. wage statements, interest statements, unemployment compensation statements) for the household. Grantor shall maintain, until six (6) years after the respective tenant vacates a Unit, as part of its Project records, copies of all leases of the Units in the Project and all initial and annual income certifications by tenants of the Units. Grantor shall provide the Town with such other information as Grantor is required to provide under any Public Subsidy Program, and such other information as the Town may reasonably request to ensure compliance with the terms of this Restriction, subject to statutory and regulatory requirements regarding tenant confidential information and the provisions of the Public Records Law.

8. Rent Schedule. Projected initial monthly rents and allowances for utilities and services for all the Units shall be as set forth in Exhibit B attached hereto, subject to change from time to time (if necessary to reflect any changes in Area Median Income) in accordance with the terms and provisions of this Restriction and any applicable Public Subsidy Program. Annually, as part of the annual reports required under Section 11, Grantor shall submit to Town a proposed schedule of monthly rents and monthly allowances for utilities and services for all the Units. The rent schedule shall include the maximum rents applicable to the Units. The submission shall include in its cover letter the following legend in boldface, upper case letters: **“FAILURE BY THE TOWN TO OBJECT TO THE ENCLOSED PROPOSED SCHEDULE OF RENTS AND ALLOWANCES WITHIN THIRTY (30) DAYS OF RECEIPT SHALL BE DEEMED APPROVAL OF SAME.”** The Town’s rights to approve rents shall be limited to compliance of the Units with the rent-restriction requirements of Section 4. If a response is not received from the Town within thirty (30) days of submission, the proposed rents and allowances will be deemed approved. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days’ prior written notice by Grantor to all affected tenants. The Town hereby agrees that, if Grantor obtains financing for the Project from a Public Subsidy Program, the Town will accept, in satisfaction of the above-described annual rent and allowance schedule, the annual rent and allowance schedule for the Units approved under such Public Subsidy Program, provided that all the Units are counted in the Town’s SHI.

9. Leases. All leases for the Units shall be consistent with the requirements of the applicable Public Subsidy Program. If no Public Subsidy Program is applicable to the leases, then all leases for the Units shall be consistent with the requirements set forth herein, shall be for terms of not less than one (1) year (unless a shorter term is specified by mutual agreement between the tenant and Grantor, subject to the requirements of the Public Subsidy Program and shall require tenants to provide information required for Grantor to meet its reporting requirements hereunder. Grantor may not terminate the tenancy or refuse to renew the lease of an occupant of a Unit except (i) for serious or repeated violation of the terms and conditions of the lease; (ii) for violations of applicable federal, state or local law; or (iii) for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Grantor's service on the tenant of a written notice specifying the grounds for the action.

The lease shall also contain clauses, among others, wherein each resident of such Unit: (a) certifies the accuracy of the statements made in the application and income survey; (b) agrees that the family income, family composition and other eligibility requirements, shall be deemed substantial and material obligations of his or her occupancy; that he or she will comply promptly

with all requests for information with respect thereto from Grantor or the Town; and that his or her failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the tenant's occupancy; and (c) agrees that at such time as Grantor and/or the Town may direct, but at least annually, he or she will furnish to Grantor a certification of the then-current family income, with such documentation as the Town shall reasonably require; and agrees to such charges as the Town has previously approved for any facilities and/or services which may be furnished by Grantor or others to such resident upon his or her request, in addition to the facilities included in the rentals, as amended from time to time.

10. Affordability Commitments. The provisions of Sections 1 through 9 are referred to as the "Affordability Commitments."

11. Annual Compliance Report. Grantor agrees to prepare and deliver annually a report to the Town regarding the compliance of the Project with the Affordability Commitments (the "Annual Compliance Report"). The Annual Compliance Report shall indicate the extent of non-compliance with the relevant reporting and/or substantive requirements, if any, and shall describe efforts being made by Grantor to remedy such non-compliance. Grantor shall deliver the Annual Compliance Report within one hundred twenty (120) days of the end of each calendar year during the term of this Restriction. Notwithstanding the foregoing, Grantor agrees to provide a monthly report to the Town during the initial rent-up period (following construction of the Units) and a quarterly report for a period of first two (2) years from the date that this Restriction is recorded with the Middlesex South Registry of Deeds, detailing Grantor's actions with regard to, and compliance with, the Resident Selection Plan (and the Affordability Commitments. Grantor shall also provide the Town with any affordability compliance report given by Grantor to DHCD or others under the requirements of any Public Subsidy Program.

11. Nondiscrimination. Grantor shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin or any other basis prohibited by law in the lease, use and occupancy of the Units or in connection with the employment or application for employment of persons for the operation and management of the Project. Grantor shall not discriminate against, or refuse to lease, rent or otherwise make available the Units to a holder of a certificate under the Federal Housing Choice Voucher Program or a holder of a comparable document evidencing participation in any state or federal tenant-based assistance program because of the status of the prospective tenant as a holder of such rental voucher or comparable tenant-based assistance document.

12. No Demolition. Grantor shall not, during the term of this Restriction, demolish any part of the Project or substantially subtract from any real or personal property included within the Property except in conjunction with renovation or rehabilitation of the Units or construction of a new project on the Property, in either case subject to the prior written consent of the Town, which consent may be granted or withheld in the Town's sole judgment.

13. Casualty. Grantor represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed, Grantor shall use diligent efforts to repair and restore the Project to the same condition as existed prior to the event causing such damage or destruction if

it is financially feasible to do so, and Grantor represents, warrants and agrees that the Project shall thereafter continue to operate in accordance with the terms of this Restriction.

14. Inspection Grantor hereby grants to the Town and its duly authorized representatives the right to enter the Property, including the Units, during business hours, (a) upon 24 hours' notice, for the purpose of inspecting the Project to determine compliance with this Restriction or any other agreement between Grantor and the Town, and (b) after forty-five (45) days prior written notice, to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Restriction.

15. Term. (a) This Affordable Housing Restriction is intended to ensure that all the Units on the Property are rented to Qualifying Households, binding on Grantor and enforceable by the Town in perpetuity (and, at a minimum, for a term of ninety-nine (99) years). This Affordable Housing Restriction is intended to be construed as an affordable housing restriction as defined in G.L. c. 184, §31 which has the benefit of G.L. c. 184, §32, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law. Grantor hereby agrees that any and all requirements of the laws of The Commonwealth of Massachusetts to be satisfied in order for this Restriction 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 intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that this Restriction runs with the land.

(b) Grantor intends, declares and covenants, on behalf of itself and its successors and assigns, that the covenants and restrictions set forth in this Restriction regulating and restricting the use and occupancy of the Property: (a) shall be and are covenants running with the Property, encumbering the Property for the longest period allowed by law (which shall be a minimum of ninety-nine (99) years), and binding on Grantor's successors and all subsequent tenants of the Property, (b) are not merely personal covenants of Grantor, and (c) shall bind Grantor and its successors and assigns (and the benefits shall inure to the Town) and any present or future owner of the Property. Grantor acknowledges that it has received significant assistance from the Town in developing the Property as affordable housing.

(c) Without limiting the foregoing, the Town is authorized to record or file any notices or instruments appropriate to insuring the perpetual enforceability of this Restriction. Grantor, on behalf of itself and its successors and assigns, appoints the Town as its attorney-in-fact to execute, acknowledge and deliver any such instruments on Grantor's behalf. In addition, Grantor and its successors and assigns agree to execute any such instruments upon request. The benefits of this Restriction shall be in gross and shall be assignable by the Town.

16. Enforcement. (a) The Town shall have the right to enforce this Restriction, independent of any such rights held by DHCD or by others under any Public Subsidy Program, 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 Town will have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Town. Grantor covenants and agrees to reimburse to the Town all reasonable costs and expenses

(including without limitation reasonable counsel fees) incurred in enforcing this Restriction or in taking reasonable measures to cure any violation hereof (after any applicable notice and cure period has expired), provided that a violation of this Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. If any provision of this Restriction shall to any extent be held invalid, the remainder shall not be affected. No delay or omission on the part of the Town in enforcing the restrictions contained herein shall operate as a waiver of the right to enforce it, nor shall any delay, omission or waiver on any one occasion be deemed to be a bar to or waiver of the same or of any other right on any future occasion.

(b) Grantor shall not be deemed to be in violation of this Restriction unless Grantor shall fail to perform or comply with any of the other terms, covenants or conditions herein and such failure shall continue for a period of forty-five (45) days after written notice from the Town to Grantor specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such forty-five (45) day period, within such additional time reasonably necessary provided Grantor commences to cure the same within such forty-five (45) day period and thereafter prosecutes the curing of such default with diligence (but in no event shall such additional period exceed ninety (90) days).

17. Subsequent Conveyances. Each and every contract, deed or other instrument hereafter executed conveying Grantor's leasehold interest in the Property or portion thereof shall expressly provide that such conveyance is subject to this Restriction, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the leasehold interest in the Property or portion thereof provides that such conveyance is subject to this Restriction.

18. Notices. Any notice, request or other communication which either party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered, if sent by recognized overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Grantor:

Weston Affordable Housing Trust Fund
11 Townhouse Road, P.O. Box 378
Weston, MA 02493

If to the Town:

Town of Weston
11 Townhouse Road, P.O. Box 378
Weston, MA 02493
Attention: Town Manger

With a copy to:

Kopelman & Paige, P.C.
101 Arch Street
Boston, MA 02110
Attention: Katharine Klein, Esq.

or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. A notice sent by certified or registered mail shall be deemed given three days after mailing; a notice sent by overnight courier shall be deemed given one day after deposit with such courier; and a notice delivered by hand shall be deemed given upon receipt.

19. Amendment. This Affordable Housing Restriction may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of all parties to this Restriction.

20. Monitoring Services. The Town acknowledges that DHCD will conduct monitoring services under the Regulatory Agreement. Grantor acknowledges that its obligations under this Restriction are independent of its obligations to DHCD, and that Grantor shall comply with the provisions hereof.

21. Termination of DHCD Monitoring Services. In the event that DHCD no longer provides monitoring services under the Regulatory Agreement, or only monitors compliance for some of the Affordability Commitments set forth herein, Grantor agrees that it will retain a monitoring agent, at Grantor's expense, to conduct affirmative fair marketing consistent with the Comprehensive Permit Rules and/or to review and enforce Grantor's compliance with the terms of this Restriction, and make such amendments hereto, or enter into other agreements, and/or take other steps as may be necessary or convenient to ensure that the Units continue to be counted in the SHI for the term set forth herein.

22. DHCD Approval. (a) Notwithstanding anything to the contrary herein, the parties agree that so long as the Low Income Units are subject to the provisions of the Regulatory Agreement (or an agreement under a Public Subsidy Program that imposes affordability requirements on Grantor and the Project at least as restrictive as those set forth herein) and the Affordability Commitments are set forth therein, including, without limitation, the requirement that Grantor obtain approval of the Tenant Selection Plan, the affirmative marketing plan, the income eligibility, the terms of the leases to tenants, and the maximum rent, Grantor shall not be required to obtain the Town's consent under this Restriction for such Affordability Commitments if Grantor has obtained DHCD's written approval of the same under the Regulatory Agreement with respect to the Low Income Units, provided that (i) Grantor complies with the Affordability Commitments, (ii) Grantor does not violate any of the other terms and purposes of this Restriction, including without limitation, the requirement that the Units be rented to Qualified Households in perpetuity, (iii) Grantor copies the Town on all communications with DHCD or under any Public Subsidy Program and provides the Town with copies of such reports, rent schedules, Tenant Selection Plan and other information or documents

contemporaneously with the submission of the same to DHCD (except that Grantor shall provide the Town with the Annual Compliance Report and interim reports as required herein), and (iv) Grantor provides the Town with written evidence of DHCD's approval of the Affordability Commitments. Nothing herein shall impair or otherwise affect the ability of the Town to enforce the Affordability Commitments. Nothing herein shall affect Grantor's obligation to comply with and seek and obtain the Town's written consent, where required under the Affordability Commitments, with respect to the Moderate Income Units (except to the extent that the Regulatory Agreement and/or the Comprehensive Permit Rules also govern the Affordability Commitments for the Moderate Income Units).

(b) Grantor and the Town agree that if DHCD or another public or semi-public agency under a Public Subsidy Program no longer exercises such approval rights (or fails to exercise such approval rights for all the Units), or in any instance if Grantor fails to provide the Town with DHCD's written approval of the Affordability Commitments, then the Town shall exercise the right to approve (i) the Resident Selection Plan as being consistent with affirmative fair marketing, (ii) the annual rent and allowance schedule, respectively, and/or (iii) other provisions requiring the Town or DHCD's approval, in all cases such the Town approval not to be unreasonably denied, conditioned nor delayed, and, under the circumstances providing for such Town approval pursuant to the terms herein, Grantor shall submit the foregoing to the Town for approval at least sixty (60) days prior to the effective date thereof. Nothing herein shall in any way impair the Town's rights and remedies for any breach of Grantor's obligation under this Restriction.

(c) Governing Law. This Affordable Housing Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

The Town's Acceptance of this Restriction is attached hereto and incorporated herein.

Executed under seal this 22nd day of December, 2014.

WESTON AFFORDABLE HOUSING TRUST FUND

[Signature]

Sarah Like Rhatigan

[Signature]

Steven L. Charlip

[Signature]

Michael J. Prioe

[Signature]

Edward H. Coburn

[Signature]

Elizabeth Valenta

Glenn C. Cardozo

[Signature]

Susananne S. Haber

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

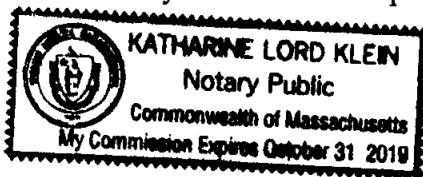
On this 22nd day of December, 2014, before me, the undersigned notary public, personally appeared Edward H. Coburn, member of the Weston Affordable Housing Trust Fund, who proved to me through satisfactory evidence of identification, which was MA Driver's License, to be the person whose name is signed on the preceding instrument, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose of behalf of the Weston Affordable Housing Trust Fund.

[Signature]

Notary Public

My Commission Expires:

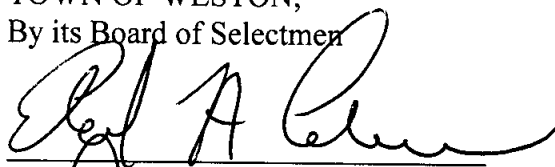
512114/WEST/0197



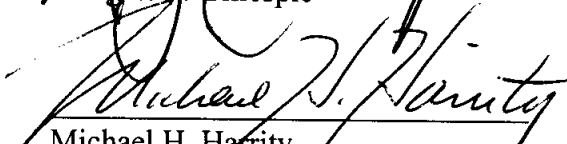
ACCEPTANCE

The Town of Weston, acting by and through its Board of Selectmen, hereby accepts the foregoing Affordable Housing Restriction from the Weston Affordable Housing Trust Fund on this 13th day of January, 2015.

TOWN OF WESTON,
By its Board of Selectmen


Edward H. Coburn



Douglas P. Gillespie


Michael H. Harrity

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 13th of January, 2015, before me the undersigned Notary Public, personally appeared DOUGLAS P. GILLESPIE, member of the Weston Board of Selectmen, as aforesaid, who proved to me through satisfactory evidence of identification, which was PERSONALLY KNOWN, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/they signed it voluntarily for its stated purpose on behalf of the Town of Weston.


Notary Public
My Commission Expires MAY 19, 2017

512114/WEST/0197

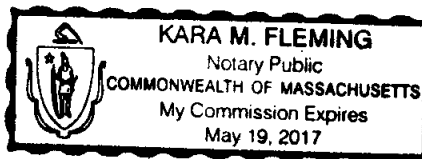


EXHIBIT AProperty Description

A parcel of land located on Warren Avenue, Weston, Massachusetts, and all improvements located thereon, shown as "Map 26, Lot 26" on a plan entitled "Plan of Land to be Conveyed to the Weston Affordable Housing Trust Fund – 66-68, 71 and 74 Warren Avenue Weston, MA," dated December 17, 2014, prepared by LandTech Consultants, recorded with the Middlesex South Registry of Deeds in ~~Book~~ ///, ~~Page~~ ///.

as Plan 2015-20.

EXHIBIT BProjected Initial Rent Schedule

	<u>Rents</u>	<u>Utility Allowances</u>
Two-bedroom Units	\$1,321	\$173
Three-bedroom Units	\$1,647	\$214

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

The undersigned Acting General Counsel of the Massachusetts Department of Housing and Community Development hereby certifies that the Affordable Housing Restriction made and declared by Sarah Like Rhatigan, Steven L. Charlip, Michael J. Price, Edward H. Coburn, Elizabeth Valenta, Glenn C. Cardozo and Susananne S. Haber, Trustees of the Weston Affordable Housing Trust Fund, and recorded with the Middlesex South District Registry of Deeds in Book C4667, Page 140 or recorded herewith, with respect to land in the Town of Weston and described more particularly in a deed recorded with said Deeds in Book C4784, Page 16, is hereby declared to be in the public intest and is approved pursuant to the provisions of Massachusetts General Laws chapter 183, section 32.

Date: December 26, 2014

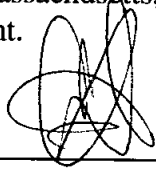
COMMONWEALTH OF MASSACHUSETTS

By: Christine McClave
Name: Christine McClave
Title: Acting General Counsel

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 26th of December, 2014, before me the undersigned Notary Public, personally appeared Christine McClave, Acting Gen'l Counsel, who proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/they signed it voluntarily for its stated purpose on behalf of the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development.



Notary Public
My Commission Expires 1-19-18

512114/WEST/0197



CAROLYN DYMOND
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 19, 2018



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

179-16
Telephone
(617) 796-1120
Attachment B
Fax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

January 18, 2017

Dear City Councilors,

In the course of the Washington Place permitting process the applicants have twice presented to the Urban Design Commission. We have appreciated that the applicants have taken much of our advice and believe that this project will enhance the urban design/public realm in Newtonville.

In our opinion, the site plan is well organized. The mass of the building is located along Washington Street, balancing with the width of Washington Street and in keeping with the commercial character of that roadway. This proposal responds to the smaller residential buildings on Foster Street by limiting the impact on its historic homes.

Early on, the Urban Design Commission encouraged the applicants to narrow the width of the plaza to keep it an intimate gathering space, much like the Mews at The Street at Chestnut Hill. We were happy to see the updated plans did just that, reducing the width of the plaza and adding additional space to the Walnut Street sidewalk. We encouraged them to add a passageway between Walnut Street and the plaza, to replicate the pattern of development that exists south of the Pike, and to facilitate the flow of pedestrians in and out of the plaza and enliven the space. The applicants have incorporated this recommendation.

We have also appreciated the evolution of the architecture over this past year. The westernmost building, bordering Washington Terrace, has undergone the most substantial revision to make it legible as a residential building. The original design was flat, boxy, and felt placeless. The updated design does a good job of tying into the site while simultaneously standing out as distinct design. The variation of materials and setbacks breaks up the massing and sets a strong rhythm along the Washington Street edge.

On the Walnut Street façade, the project has evolved, however it should continue to be refined to improve its residential qualities (window proportions and divisions). Our primary recommendation to the applicant was to step down the height of the building as it approaches the residential neighborhood. The most recent design does exactly this. The gradient in heights signals the transition from commercial to residential and also highlights the importance of the Washington Street and Walnut Street intersection as a major crossroads within Newton.

Finally, in our commission's conversations with the applicant, we have encouraged them to use architectural detail to emphasize the human scale. The design for all of the buildings utilizes

traditional design techniques to draw the eye to important areas while creating an environment that is rich in detail that pedestrians can enjoy. The use of traditional design techniques combined with subtle modern touches is an excellent fit with the building's mix of 19th and 20th century neighbors and contemporary styles of living.

The Urban Design Commission supports the project overall and recommends continued advancement subject to the following comments:

- **Signs:** Recommend that there be a separate review and permit process for signage involving the Urban Design Commission
- **Windows:** Recommend further definition of the window design to enhance the project's residential sensibility, particularly on the Walnut Street façade and Washington St/Walnut St intersection
- **Retail Datum:** Maintain the strong datum between the public ground floor and residential above
- **Materials:** Recommend use of natural materials on the ground floor façades
- **Corner Element at Washington/Walnut:** Recommend that there be further study of the corner element during subsequent design phases

Sincerely,

The Urban Design Commission