

**CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM**

DATE: October 24, 2014

TO: Ald. Marc Laredo, Chairman  
Members, Land Use Committee

FROM: Ouida C.M. Young, Associate City Solicitor

RE: Kessler Woods  
Executive Summary of Cooperative Purchasing Agreement

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The Land Use Committee requested more detailed information regarding the background on the Cooperative Purchasing Agreement between Cornerstone Development and the City of Newton that resulted in the acquisition by the City and Cornerstone of a 42 acre parcel owned, but undeveloped, by Boston Edison. The purpose of the Cooperative Purchasing Agreement ("Agreement") from the City's perspective is most succinctly stated in one of the opening paragraphs of the Agreement,

*Whereas*, the City seeks to acquire portions of Kessler Woods for open space purposes and also seeks to foster a balanced development of the remaining land, in a manner that maximizes preservation of open space and passive recreation opportunities, affordable housing, integrates housing with existing land characteristics, and is reflective of the concerns and considerations of the existing residential neighbors.

I've attached copies of the Agreement as well as the six amendments made to the Agreement, the last of which was executed in 2009 by Mayor Cohen, to this memorandum. Attached as well is a memorandum from Benjamin Solomon-Schwartz, Sr. Planner, regarding the Kessler Woods project. Although addressed to the CPC, the memorandum was prepared as part of the Planning Department's 2008 memorandum submitted to the Board of Aldermen at the time Cornerstone filed its second special permit application for a 62 unit condominium development with 11 affordable units.

Also attached, and perhaps of particular interest, are the original recommendations made by the Community Preservation Committee in 2003 to the Board of Aldermen at the time the Board was considering the request to use \$5,000,000 in CPA funds as the City's monetary contribution towards acquisition of Kessler Woods. While the Board approved the initial \$5,000,000 request, it did not approve the CPC's recommendation to appropriate an additional \$1,000,000 towards the acquisition cost. The additional funding was needed because Boston Edison did not accept the initial bid from the City and Cornerstone, but did invite them to submit a second, higher bid. Cornerstone contributed the additional funds necessary to increase the bid offer.

While Open Space and Recreation is the stated CPA category for funding, the CPC's recommendations make clear that affordable housing was a significant aspect of the Kessler Wood acquisition that the CPC hoped to achieve. It is also clear that the CPC and Board of Aldermen knew a multi-residential development consisting of 62 or 63 units, of which 11 units

would be affordable, would be proposed for this part of the 42 acre site, referred to as Area 2.

The framework of the public/private partnership between the City and Cornerstone is the Agreement, although the Agreement does not control the special permit process. The Agreement divides the 42 acres between Cornerstone and the City and requires conservation restrictions and easements to be recorded on some parts of Cornerstone's property. The Agreement also capped the number of housing units that could be built by Cornerstone in either the subdivision or multi-family development (8 and 64 units with 20% of the latter being affordable). It also identified a "Preferred Plan" of not more than 55 units on Area 2 that Cornerstone would have to pursue first. Only if Cornerstone was unable to get all necessary permits for the Preferred Plan would it be able to pursue an alternative plan.

As noted, the Agreement has been amended six times, with the first amendment being executed in August of 2003 at approximately the time the CPC was recommending that the Board add an additional \$1,000,000 in CPA funds towards the acquisition cost. In this 1<sup>st</sup> amendment, Cornerstone agrees to increase the funds it's contributing from \$6,300,000 to \$9,100,000. This amendment notes that the City's share would be increased by \$1,000,000 if the appropriation was approved.

The 1<sup>st</sup> Amendment also has a corresponding increase in the number of units that Cornerstone is permitted to build in both the subdivision and multi-family development. The Preferred Plan allows up to 11 single family houses in the subdivision, while the Preferred Plan for the multi-family development allows up to 62 units. The caps on the total number of units are also raised to 14 single family houses for the subdivision, and 80 units for the multi-family development. The 20% affordable housing requirement is not changed by the 1<sup>st</sup> Amendment. However, the 2<sup>nd</sup> Amendment, also executed in August, 2003, states that, "If 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."(Emphasis Added)

At the time Cornerstone applied for the first special permit in 2006, the Agreement had been amended again, to permit a single, large multi-residential structure with several townhouse structures rather than buildings resembling large single family homes, and to reduce the number of affordable units to 11. That special permit was not exercised. At the time Cornerstone applied for a new special permit for the same project in 2008, the Agreement was amended a 5<sup>th</sup> time to extend the time for performance by Cornerstone in recognition that the "... changes in the housing and lending markets in the Greater Boston area ... have had direct negative impacts upon the financial feasibility, potential success and ability to commence the proposed development of Area 2...."

While Cornerstone received the second special permit, it was unable to commence construction due to the significant downturn in the economy. In May, 2009, the 6<sup>th</sup> and last amendment was executed, which permitted Cornerstone to develop Area 2 either as the approved special permit project; or as a multi-family development in either 1 or more structures with a maximum of 80 units; or as an Assisted Living Facility of up to a maximum of 130 independent dwelling units in either 1 or more structures.

As noted in the Petitioner's Response, while there are several areas where the Petitioner will be looking to modify the Agreement again, none of those modifications would concern the number of units, number of affordable units, or any of the rights that the City already has in regard to the recorded conservation restriction and recorded easement.

## INDEX OF DOCUMENTS

1. Memorandum, Benjamin Solomon-Schwartz, Sr. Planner
2. CPC Recommendations dated May 13, 2003
3. CPC Recommendations dated September 2, 2003
4. Cooperative Bidding Agreement Regarding Kessler Woods Property
5. Amendment #1 to Cooperative Bidding Agreement dated August 7, 2003
6. Amendment #2 to Cooperative Bidding Agreement dated August 25, 2003
7. Amendment #3 to Cooperative Bidding Agreement dated April 6, 2004
8. Amendment #4 to Cooperative Bidding Agreement dated September 19, 2005
9. Amendment #5 to Cooperative Bidding Agreement dated November 7, 2008
10. Amendment #6 to Cooperative Bidding Agreement dated May 5, 2009
11. Conservation Restriction to the City of Newton
12. Easement Agreement

**DEPARTMENT OF PLANNING AND DEVELOPMENT**

**CITY OF NEWTON**

**Massachusetts**

**INTER-OFFICE CORRESPONDENCE**

**DATE:** January 7, 2010

**TO:** Alice Ingerson, Community Preservation Program Manager

**FROM:** Benjamin Solomon-Schwartz, Sr. Planner

**SUBJECT:** Kessler Woods

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In early 2003, Boston Edison announced that it would sell its surplus property known as Kessler Woods, pursuant to the requirements of deregulation, in a sealed auction to the highest bidder. For many years, the City has identified Kessler Woods as a conservation priority in the City's Recreation and Open Space Plan. It was determined that acquisition of the property would meet the goals of the Community Preservation Act (CPA) and that CPA funds could be used as a source of financing. Mayor David B. Cohen established a working group to help guide the City's strategy in responding to Boston Edison's request for bids.

Through an extensive design and selection process, the City sought to find a co-bidder with whom the City could purchase the land. The City issued a Request for Proposals and, once received, nine proposals were evaluated by a working group. A public hearing was held to provide an opportunity for community input. The community response to the proposals favored townhouse-style structures that mimicked large single-family homes and which were nestled into the existing topography. Cornerstone Corporation was selected as the City's development partner, with plans for a proposed single-family subdivision on the northernmost portion of the site off Brookline Street and attached dwellings on the southernmost portion of the site off LaGrange Street, which would resemble large single-family homes in appearance.

A cooperative bid was submitted to Boston Edison. After the first round of sealed bidding, the City of Newton and Cornerstone Corporation were invited to submit a second and higher bid. That bid of \$15.1M, with Cornerstone providing \$10.1M and the City contributing \$5M, funded through the Community Preservation Fund, proved to be the successful bid.

Per the terms of the agreement, Cornerstone Corporation acquired Lot J and Lot H (now officially recorded as Lot J, Lot 11, and Lot H-1) of the Kessler Woods site from Boston Edison. Lot J has been developed for single-family residences through an Approval Not Required (ANR) Plan for the lots with frontage on Brookline Street, approved by the City Engineer on May 14, 2004 and a Subdivision Plan, reviewed and approved by the Conservation Commission on August 3, 2004, and the Board of Survey on August 11, 2004.

In 2006, the development of Lot H-1 as a 62-unit condominium complex was approved by the Board of Aldermen; the approved site plan consists of one 52-unit building and two groups of attached townhouses. A one-year extension of the special permit was granted in 2007. Because the special permit was not exercised by the conclusion of this extension and no more extensions are available, the petitioner re-submitted the application as approved in 2006 for a new special permit 2008. The application was approved, and the new special permit was extended 2009. If the developer does not exercise the special permit by fall 2010, the special permit will expire, and this project would require special permit review again.



### **CONSERVATION**

As required by the Cooperative Bidding Agreement, the City of Newton received a Conservation Restriction and easement from Kessler Development over a portion of Lot H-1), consisting of an area of approximately 483,657 square feet. The Conservation Restriction and easement gives the City the right to access land owned by Cornerstone Corporation, for the purposes of pedestrian and recreational access, footpaths and trails. The Cooperative Bidding Agreement also requires that upon the substantial completion of construction, or sale, of ninety percent (90%) of the dwelling units, Cornerstone Corporation will transfer to the City \$75,000 for the trail system and creation of a maintenance fund. Additionally, and in accordance with the City's Cooperative Bidding Agreement with Cornerstone Corporation, undeveloped land within Lot H-1, Lot 11 and Lot J that is not required by Cornerstone to meet its dimensional requirements for zoning and permitting ("Residual Areas") will be transferred to the City of Newton for one dollar. According to the proposed design, the area subject to the conservation easement, approximately nine acres, would be deeded to the City of Newton as additional public conservation land. With the 12+/- acres of land that the City currently owns (Lots C, D, and G, located to the north and south of Vine Street), this would potentially bring the City's total ownership of Kessler Woods to approximately 21 acres.

### **AFFORDABLE HOUSING**

Eighteen percent of the units (11 units) in the proposal are designated as "Inclusionary Units" as was required by the City's Zoning Ordinance at the time the special permit was granted, as an initial proposal for 20 percent affordable units proved financially infeasible. Six of these units will be available to households earning up to 80 percent of the area median income, and five of these units will be available to households earning up to 120% of the area median income.

### **ZONING**

While single-family attached dwellings are permitted by special permit in the SR3 District (minimum lot size of one acre), multi-family developments are not permitted, either by right or by special permit. As such, the petitioner is seeking approval for a change in zone to Multi-Residence 3 (MR3). Under the proposed MR3 zoning, the petitioner is seeking approval of a special permit for the proposed 52 unit multi-family dwelling and ten single-family attached dwellings. The proposed building height of 3½ stories and 46.75 feet also requires the approval of a special permit. In addition, the petitioner is seeking waivers to allow for some of the parking spaces to be narrower than the minimum required width, lighting levels below 1.0 foot candles, and the required bicycle racks to be located within the lower level garage of the multi-family structure instead of near the main entrance. In addition, the petitioner is seeking a special permit to alter the grade by more than three feet. A special permit is also necessary to allow for a directional sign to be over three sq. ft. in area.

The prior approval of the proposed zoning map amendment was contingent on the exercise of the special permit and thus requires a repeated review. Once again in 2008, a zoning map amendment was approved contingent on the implementation of the special permit. If the special permit expires in 2010, the zoning map amendment will expire then as well.

The initial Cooperative Bidding Agreement between the City and the developer has been amended six times. The most recent amendment would allow the developer to construct an assisted living facility with up to 130 units as an alternative to a multi-family dwelling. Despite the flexibility offered by the City as a bidding partner, an assisted living facility could not be constructed without a rezoning and a special permit.







CC: Planning Department File

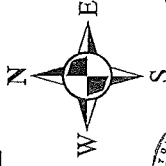
ATTACHMENT B

# Existing Land Use Map

City of Newton,  
Massachusetts

### Legend

-  Municipal Borders
-  Single Family Res.
-  Multifamily Res.
-  Vacant Land
-  Open Space
-  Public Housing

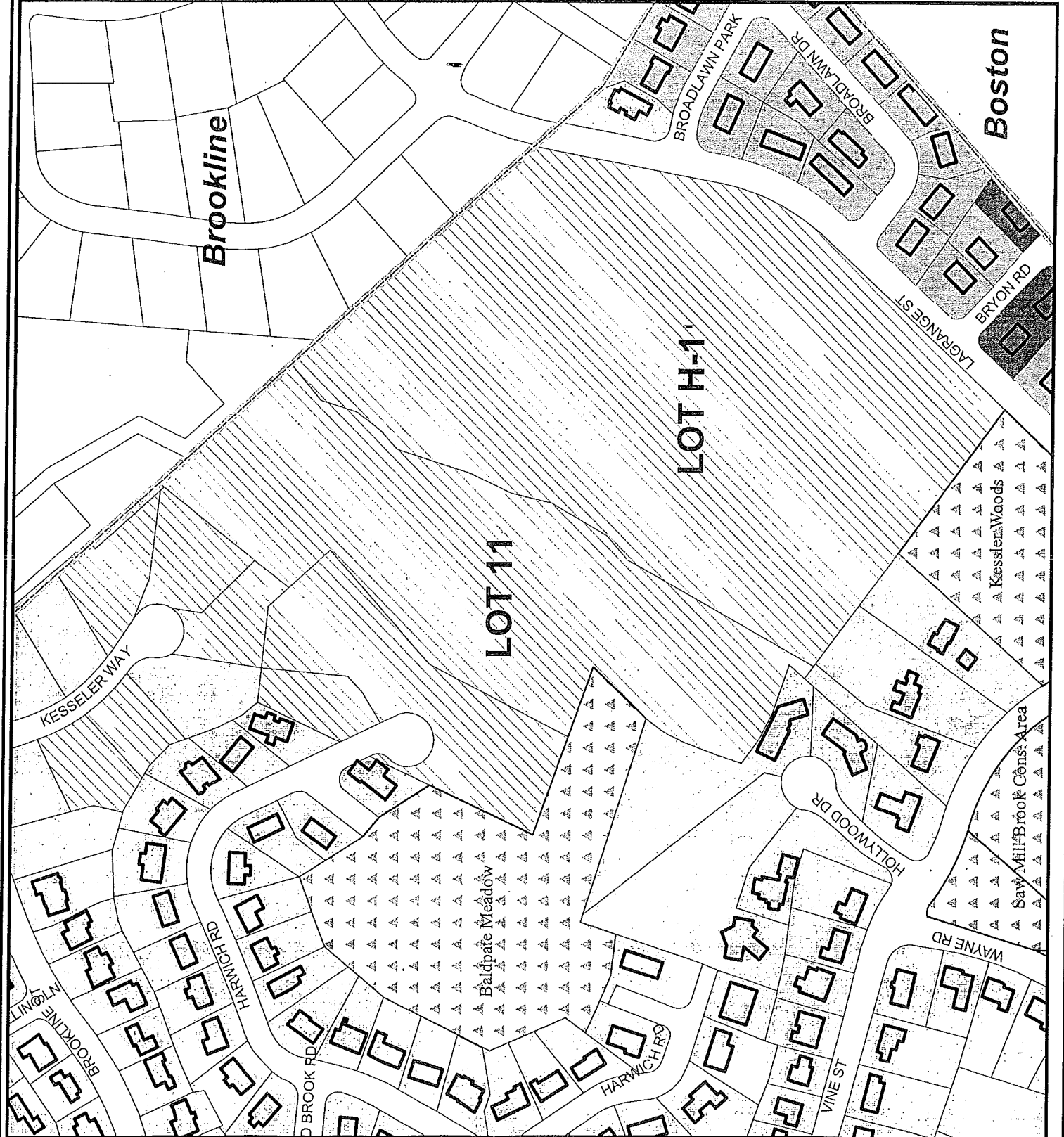


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

130 65 0 130 Feet



MAP DATE: October 08, 2008



City of Newton



City of Newton, Massachusetts  
Community Preservation Committee

David B. Cohen

Mayor

TO: Honorable Board of Aldermen  
FROM: Community Preservation Committee (CPC)  
DATE: 14 May 2003  
RE: **CPC Recommendations for CPA Funding**

**PROJECT TITLE: KESSELER WOODS**  
**CPA CATEGORY: Open Space and Recreation**

**PROJECT DESCRIPTION**

The applicant, the City of Newton's Executive Department and the Planning & Development Department, request CPA funding of up to \$5,000,000 for a proposal to preserve up to 30 acres of the Kessler Woods property. Kessler Woods is a tract of more than 42 acres of unprotected open space in Newton. The land is currently owned by the Boston Edison Company (*NSTAR*) and includes two (2) parcels of land at LaGrange and Vine Streets, in the southeast corner of the City. The north parcel contains more than 33 acres and the south parcel contains nearly 9 acres. The land is currently zoned single-family residential.

Boston Edison has offered this land in a sealed bid auction to the highest bidder. Insignia ESG, Edison's real estate broker, has extended their "call for offers" date from February 21 to June 20, 2003 to allow time for all interested parties to better formulate a "conforming bid." In Insignia's letter to prospective bidders, the offering conditions require that the full purchase price be paid on October 10, 2003. It states that bids involving any delayed payments or other contingencies will be considered nonconforming.

The City intends to submit a bid to Boston Edison for acquisition of the property. In order to assemble a competitive bid, the City is exploring a potential co-bid with a development firm to pursue housing on a portion of the 42-acre site, leaving the remainder of the site open.

The City of Newton released a Request for Interest (RFI) on March 28 to seek expressions of interest from individuals or developers to explore the potential to submit a co-bid to Boston Edison for acquisition of the land. On April 14, nine complete responses to the RFI were received. The Mayor and his working group reviewed and evaluated the proposals, held a public meeting on May 6, and interviewed and negotiated with many of the respondents. During the following week, the Mayor selected a development partner.

Through this process and in response to the Community Preservation Committee's request to increasing the number of affordable units, a preferred conceptual site plan (as revised on May 14, after submission of the May 12 application) emerged as follows (refer to attached map to locate Areas 1-4):

## **OPEN SPACE COMPONENT**

**Area 3 (corner of Vine and LaGrange Streets):** Open Space, owned by the City, under the control of the Conservation Commission.

**Area 4 (the South Parcel):** Open Space, owned by the City, under the control of the Conservation Commission and likely to be merged with the existing Saw Mill Brook Conservation Area.

**Environmentally Constrained Area (approximately 35% of entire site):** Open Space possibly protected through a conservation easement or restriction (held by the City, Conservation Commission) with an option to purchase for nominal consideration.

## **HOUSING COMPONENT**

**Area 1 (Brookline Street, 6.8 acres):** 7 (or 8) single-family houses including 6 along the existing road frontage (ANR lots) and 1 or 2 rear lot subdivisions with common driveways. A conservation easement (to be held by the City) would be located on the rear developable acreage (up to 5 acres, depending on lot size).

**Area 2 (LaGrange Street, 11.3 acres):** 56 (or 55) multi-family units on Area 2 that are housed in multiple buildings with the general appearance and massing of single-family houses with approximately 2-4 units in each building. Units in Area 2 include a minimum of 11 affordable units.

The plan would likely include a loop road, individual driveways with garages incorporated within the buildings to minimize surface parking, and a significant landscaped buffer along the northern edge abutting existing single family houses.

The development of the housing portion on Area 2 would require a special permit and, depending on the final site plan, some of the development on Area 1 may require a special permit. In the event that the special permits required are not forthcoming, while Areas 3-4 will still be preserved as open space, the remainder of Area 1 may be subject to development, and some of the environmentally regulated areas, although unbuildable, may form part of some of the lots on Area 2. However, under these circumstances, the City would seek to obtain a conservation easement on the environmentally regulated and open space areas.

## **FINDINGS**

### **Community Preservation Act**

This proposal meets the criteria established under MGL c.44B because:

1. The subject parcel meets the definition of open space since it is forest land, 35% of which is environmentally constrained, and the land is also important wildlife habitat since it links to two conservation areas (Saw Mill Brook and Baldpate Meadow Conservation Areas).
2. The project will protect existing open space from development encroachment through a City acquisition of Areas 3 and 4 of the site, which comprise approximately 9.4 acres of developable land and a conservation easement on the environmentally constrained land (over 15 acres).

## Newton Community Preservation Plan

### *Overarching Goals*

1. Contribute to the preservation of Newton's unique character, boost the vitality of the community and enhance the quality of life for its residents.	Yes
2. Serve more than one CPA category.	Yes
3. Demonstrate the highest cost/benefit value relative to other proposals.	See be.
4. Leverage other public and/or private funds.	Yes
5. Preserve a resource or opportunity that would otherwise be lost.	Yes
6. Create incentives for other private projects to occur.	No
7. Show that a project is the most reasonable available option to achieve the objective.	Yes
8. Demonstrate strong community support.	See be
9. Serve to equitably distribute CPA funds throughout the City.	Yes

### *Additional comments on selected goals:*

*Goal #3:* Projects received during the November 2002 funding round included a high CPA cost of \$850,000 and a low CPA cost of \$24,780. The CPA cost for this project is up to \$5M. The relative benefit for this project includes the following factors: At a minimum, if the City wins the bid to Boston Edison, the CPA funding would result in permanently preserving Areas 3 and 4 as open space. According to the City's private appraisal, the combined value for Areas 3 and 4 is a range of \$4.9M to \$5.4M. If the preferred conceptual plan, as described above, is achieved, the City would preserve almost 30 acres of open space on the site through a combination of City acquisition of the entire south parcel and a portion of the north parcel, and conservation restrictions on portions of the north parcel.

*Goal #8:* Kessler Woods is the largest open space land in the City at risk of development. For many years, this land has been a conservation priority identified in the City's *Recreation and Open Space Plan* due to its environmentally sensitive features which include: a substantial amount of wetland and floodplain; Saw Mill Brook; a locally-rare vegetative community; and a significant amount of diverse wildlife habitat. The Mayor held a public meeting on May 6 and the CPC heard public comments at its May 12 meeting. Although the attendees expressed various viewpoints, there is clear agreement that the City should request CPA funds in order to make a competitive bid to Boston Edison for acquisition of the land. Many attendees spoke in favor of limited development on the site that incorporated community housing, just as many spoke in favor of maximizing open space on the site to the greatest extent possible. The City's proposed conceptual site plan intends to balance both of these important CPA and community goals as well as integrating passive recreation opportunities into the site.

**Open Space Goals**

1. Provide protection for land listed in the <i>Recreation &amp; Open Space Plan</i> .	Yes
2. Expand existing open space.	Yes
3. Enhance biodiversity or wildlife habitat and reclaim natural resources.	Yes
4. Protect wetlands, mitigate flooding and improve groundwater recharge.	Yes
5. Create small pocket parks.	No
6. Enable the development of passive recreation opportunities.	Yes, :
7. Serve as suitable sites for nature-related education, scientific study, or observation and enjoyment of nature.	Yes, :
8. Protect a natural feature of special interest.	Yes, :
9. Enhance public access (where access does not seriously threaten habitat).	Yes
10. Provide linkages and wildlife corridors between open spaces.	Yes

**Additional comments on selected goals:**

*Goals #6 & #7:* Acquiring Areas 3 and 4 will provide an opportunity to create a passive recreation trail system and to formalize public access on existing trails. Public access provides opportunities for passive recreation, nature-related education, scientific study, etc.

*Goal #8:* This project would provide protection to Areas 3 and 4, which both have scenic road frontage, forested land, flowing water, and scenic views. In addition, Area 4 has a locally rare plant community. See the attached matrix titled "Kessler Woods: Environmental Attributes of Areas 1-4" prepared by Martha Horn, Senior Environmental Planner, City of Newton.

**Recreation Goals**

1. Address the needs targeted in the <i>Recreation and Open Space Plan</i> and take advantage of other opportunities to meet the recreation needs of the residents of the City.	Yes
2. Meet the recreation needs of the greatest number of residents possible.	No
3. Meet the greatest variety of recreation needs possible.	No
4. Serve passive as well as active uses. Finding ways to balance the range of recreational opportunities and serve the diverse recreation needs of the community is a priority of the CPC.	Yes
5. Preserve sight lines consistent with open space. . . . Decisions about scale and placement should be made with the objective of enhancing or enabling open views.	Yes, :
6. Access for disabled residents should be included in plans wherever possible.	NA

*Additional comments on selected goals:*

*Goal #5:* The City's preferred conceptual plan, described above, clusters limited housing development in two areas of the site and enables maximum preservation of open space, passive recreation opportunities, and preserves site lines consistent with open space to the greatest extent possible under a limited development scenario.

**CPC RECOMMENDATION**

This project is a rare opportunity that is consistent with the CPA criteria and many of the Plan's goals, as described in detail above. The Community Preservation Committee (CPC) recognizes the extraordinary amount of open space that would be preserved through this proposal and acknowledges the Mayor's commendable efforts to incorporate affordable housing into the preferred plan. However, at its May 12 meeting, the CPC strongly urged the Mayor to make best efforts to increase the number of affordable units above the 9 units as originally proposed. Additionally, in the event that the zoning relief for the preferred conceptual plan is not approved, the CPC strongly urged the Mayor to negotiate additional assurances that affordable units will be provided under the developer's fallback plan. In response to these concerns, at the CPC's May 14 meeting, the Mayor submitted a revised plan increasing the total number of units from 60 to 63 in order to accommodate an increase in affordable units from 9 to 11, as described in more detail above. The CPC applauds the Mayor's efforts in bringing forth the revised plan which is responsive to the CPC's initial concerns.

Therefore, the Community Preservation Committee unanimously recommends funding this application to submit a bid to Boston Edison by borrowing up to the requested \$5,000,000 to be expended under the direction and control of His Honor the Mayor for purposes of funding a portion of the proposed bid to Boston Edison for acquisition of Kessler Woods with the following conditions:

1. If the City prevails in its bid to Boston Edison, at a minimum the City will acquire the entire south parcel (parcel #820410022) and an approximately 2.4-acre portion of the north parcel (parcel #820370003) located on the corner of Vine and LaGrange Streets. These areas are referred to as Areas 3 and 4 on the attached map, prepared by Sasaki Associates, Inc. The purpose of these acquisitions is for permanent open space.
2. Any portion of the grant not used for the purposes stated herein shall be returned to the Newton Community Preservation Fund.

The Community Preservation Committee further recommends that the Board of Aldermen authorize the Mayor to take all steps to carry out the purchase of the property described as Areas 3 and 4, and a conservation easement or restriction in the environmentally constrained areas with an option to purchase for nominal consideration. In addition, the Mayor's authorization should allow him to acquire, on behalf of the City, additional real estate interests in the north parcel in order to maximize the creation of open space and development of community housing.

City of Newton



City of Newton, Massachusetts  
Community Preservation Committee

MEMORANDUM

David B. Cohen  
Mayor

TO: Honorable Board of Aldermen  
FROM: Community Preservation Committee (CPC)  
DATE: 2 September 2003  
RE: **CPC Recommendations for CPA Funding**

**PROJECT TITLE: KESSELER WOODS**

**CPA CATEGORY:** Open Space and Recreation

**PROJECT DESCRIPTION**

The applicant, the Mayor of the City of Newton and the Planning & Development Department, request CPA funding of an additional \$1,018,500 for acquisition of the Kessler Woods property and related expenses. Kessler Woods is a tract of more than 42 acres of unprotected open space in Newton. The land is currently owned by the Boston Edison Company (*NSTAR*) who recently notified the Mayor that the City's co-bid with Cornerstone Corporation was the highest bid received in the second round of bidding on August 8. The City and Cornerstone are scheduled to close on the purchase of the property on January 7, 2004.

As presented at your special meeting on August 5, in order to create the City's final and best offer for the land, Cornerstone agreed to increase its contribution from \$6.3M to \$9.1M and the Mayor agreed to request an additional \$1M to increase the City's share from \$5M to \$6M. The development plans were also modified from the original proposal, which was 63 total units, to a total of 73 units (Area 2 increases from 55 to 62 units, with 20% affordable; and Area 1 increases from 8 to 11 house lots). The City submitted the winning bid with Cornerstone on August 8, totaling \$15.1M.

Should the additional \$1M, as requested, not be granted, Cornerstone has agreed to increase its contribution from \$9.1M to \$10.1M and will create 14 single-family house lots on Area 1 (rather than 11); the plans for Area 2 would not change in any way.

In addition to the \$1M, this request includes \$18,500 for related expenses resulting from the purchase. This includes \$10,000 for outside counsel, \$6,000 for title insurance, and \$2,500 for recording fees, title rundowns, copies, and other miscellaneous expenses related to the purchase. (See the attached letter from City Solicitor Dan Funk, dated August 25.)



A preferred conceptual site plan (as revised for the August 8 bid submittal) is as follows (refer to attached map to locate Areas 1-4):

#### **OPEN SPACE COMPONENT**

**Area 3 (corner of Vine and LaGrange Streets):** Open Space, owned by the City, under the control of the Conservation Commission.

**Area 4 (the South Parcel):** Open Space, owned by the City, under the control of the Conservation Commission and likely to be merged with the existing Saw Mill Brook Conservation Area.

**Environmentally Constrained Area (approximately 35% of entire site):** Open Space possibly protected through a conservation easement or restriction (held by the City, Conservation Commission) with an option to purchase for nominal consideration.

#### **HOUSING COMPONENT**

**Area 1 (Brookline Street):** 11 single-family houses including 6 along the existing road frontage (ANR lots), 3 rear lot subdivisions with common driveways, and 2 lots off of the end of Harwich Road. This plan provides a substantial open space buffer along the east portion of Area 1.

**Area 2 (LaGrange Street):** 62 single-family attached units on Area 2 that are housed in multiple buildings with the general appearance and massing of single-family houses with approximately 2-8 units in each building. Twenty percent of the total units in Area 2 will be affordable units as defined by the City's Inclusionary Zoning Ordinance. In order to comply with the minimum lot size requirements of the Zoning Ordinance, some of the environmentally constrained land, although unbuildable, may form part of the lot. The City would obtain a conservation easement that enables public access on the environmentally regulated and open space areas of the lot.

The plan would likely include a loop road, individual driveways with garages incorporated within the buildings to minimize surface parking, and a significant landscaped buffer along the northern edge abutting existing single family houses.

The development of the housing portion on Area 2 would require a special permit and, depending on the final site plan, some of the development on Area 1 may require a special permit. In the event that the special permits required are not forthcoming, while Areas 3-4 will still be preserved as open space, the remainder of Area 1 may be subject to development to accommodate up to 14 single-family house lots. Area 2 may be developed with no more than 80 dwelling units.

#### **FINDINGS**

##### **Community Preservation Act**

This proposal meets the criteria established under MGL c.44B because:

1. The subject parcel meets the definition of open space since it is forest land, 35% of which is environmentally constrained, and the land is also important wildlife habitat since it links to two conservation areas (Saw Mill Brook and Baldpate Meadow Conservation Areas).
2. The project will protect existing open space from development encroachment through a City acquisition of Areas 3 and 4 of the site, which comprise approximately 9.4 acres of developable land and a conservation easement on the environmentally constrained land (over 15 acres), with an option to purchase for nominal consideration.

##### **Newton Community Preservation Plan**

##### **Overarching Goals**

1. Contribute to the preservation of Newton's unique character, boost the vitality of the	Yes
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community and enhance the quality of life for its residents.	
2. Serve more than one CPA category.	Yes
3. Demonstrate the highest cost/benefit value relative to other proposals.	See below
4. Leverage other public and/or private funds.	Yes
5. Preserve a resource or opportunity that would otherwise be lost.	Yes
6. Create incentives for other private projects to occur.	No
7. Show that a project is the most reasonable available option to achieve the objective.	Yes
8. Demonstrate strong community support.	See below
9. Serve to equitably distribute CPA funds throughout the City.	Yes

Additional comments on selected goals:

Goal #3: Projects received during the FY03 funding round included a high CPA cost of \$5,000,000 and a low CPA cost of \$24,780. The CPA cost for this project is up to \$1,018,500 (which would be added to the \$5M that was already approved for this project). The relative benefit for this project includes the following factors:

- At a minimum, the CPA funding would result in permanently preserving Areas 3 and 4 as open space.
- If the preferred conceptual plan, as described above, is achieved, the City would preserve a total of 24-28 acres of open space on the site through a combination of City acquisition of the entire south parcel (Area 4) and a portion of the north parcel (Area 3), and conservation restrictions on portions of the north parcel, with an option to purchase for nominal consideration.
- Specifically, the request for additional funding would enable the development on Area 1 to be limited to 11 single-family house lots, which would:
  - Preserve an open space buffer between the new development and existing residences,
  - Maximize the amount of city-owned, publicly accessible open space,
  - Enable the creation of a passive-recreation trail system with access from the end of Harwich Road,
  - and minimize the amount of impervious surfaces through create use of common driveways.

Goal #8: Kessler Woods is the largest open space land in the City at risk of development. For many years, this land has been a conservation priority identified in the City's *Recreation and Open Space Plan* due to its environmentally sensitive features which include: a substantial amount of wetland and floodplain; Saw Mill Brook; a locally-rare vegetative community; and a significant amount of diverse wildlife habitat. The Mayor held a public meeting on May 6, and the CPC heard public comments at its May 12 and September 2 meetings. Many attendees spoke in favor of limited development on the site that incorporated community housing, just as many spoke in favor of maximizing open space on the site to the greatest extent possible. The City's proposed conceptual site plan intends to balance both of these important CPA and community goals as well as integrating passive recreation opportunities into the site.

***Open Space Goals***

1. Provide protection for land listed in the <i>Recreation &amp; Open Space Plan</i> .	Yes
2. Expand existing open space.	Yes
3. Enhance biodiversity or wildlife habitat and reclaim natural resources.	Yes
4. Protect wetlands, mitigate flooding and improve groundwater recharge.	Yes
5. Create small pocket parks.	No
6. Enable the development of passive recreation opportunities.	Yes, see below
7. Serve as suitable sites for nature-related education, scientific study, or observation and enjoyment of nature.	Yes, see below

8. Protect a natural feature of special interest.	Yes, see below
9. Enhance public access (where access does not seriously threaten habitat).	Yes
10. Provide linkages and wildlife corridors between open spaces.	Yes

Additional comments on selected goals:

Goals #6 & #7: Acquiring Areas 3 and 4 will provide an opportunity to create a passive recreation trail system and to formalize public access on existing trails. To further this goal, the City's agreement requires Cornerstone to contribute \$75,000 for construction and maintenance of new trails on this property. New trails will provide opportunities for passive recreation, nature-related education, scientific study, etc.

Goal #8: This project would provide protection to Areas 3 and 4, which both have scenic road frontage, forested land, flowing water, and scenic views. In addition, Area 4 has a locally rare plant community. See the attached matrix titled "Kessler Woods: Environmental Attributes of Areas 1-4" prepared by Martha Horn, Senior Environmental Planner, City of Newton.

### **Recreation Goals**

1. Address the needs targeted in the <i>Recreation and Open Space Plan</i> and take advantage of other opportunities to meet the recreation needs of the residents of the City.	Yes
2. Meet the recreation needs of the greatest number of residents possible.	No
3. Meet the greatest variety of recreation needs possible.	No
4. Serve passive as well as active uses. Finding ways to balance the range of recreational opportunities and serve the diverse recreation needs of the community is a priority of the CPC.	Yes
5. Preserve sight lines consistent with open space. . . . Decisions about scale and placement should be made with the objective of enhancing or enabling open views.	Yes, see below
6. Access for disabled residents should be included in plans wherever possible.	NA

Additional comments on selected goals:

Goal #5: The City's preferred conceptual plan, described above, clusters limited housing development in two areas of the site and enables maximum preservation of open space, passive recreation opportunities, and preserves site lines consistent with open space to the greatest extent possible under a limited development scenario.

**CPC RECOMMENDATION**

This project is a rare opportunity that is consistent with the CPA criteria and many of the Plan's goals, as described in detail above. The Community Preservation Committee (CPC) recognizes the extraordinary amount of open space that will be preserved through this proposal and acknowledges the Mayor's commendable efforts to incorporate affordable housing into the preferred plan.

Specifically, the CPC supports the preferred plan for Area 1 of 11 single-family house lots, over the fallback plan of 14 single-family house lots, because it will serve to preserve more open space, maintain an open space buffer from abutters, maximize the amount of City-owned open space, enable creation of a trail system with access from Harwich Road, and will minimize impervious surfaces. The additional \$1M, as requested, will enable Cornerstone to pursue the preferred plan for Area 1.

Therefore, the Community Preservation Committee unanimously recommends funding this application by borrowing the requested \$1,018,500 to be expended under the direction and control of His Honor the Mayor for purposes of funding the acquisition of a portion of the Kessler Woods property and related expenses with the following conditions:

1. At a minimum, the City will acquire the entire south parcel (parcel #820410022) and an approximately 2.4-acre portion of the north parcel (parcel #820370003) located on the corner of Vine and LaGrange Streets. These areas are referred to as Areas 3 and 4 on the attached map, prepared by Sasaki Associates, Inc. The purpose of these acquisitions is for permanent open space.
2. The preferred plan for Area 1 includes an adequate open space buffer from abutters that will be permanently protected with a conservation easement held by the City.
3. Any portion of the grant not used for the purposes stated herein shall be returned to the Newton Community Preservation Fund.

COOPERATIVE BIDDING AGREEMENT  
REGARDING KESSELER WOODS PROPERTY

This Agreement 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 property known as Kessler Woods, now owned by Boston Edison Company, (hereinafter "Boston Edison") generally consisting of two vacant assessors parcels of land, located in an existing residential area at and near La Grange and Vine Streets, Newton, Middlesex County, Massachusetts, designated by Newton Board of Assessors as parcels #82-41-22 and #82-37-3 all as more particularly described hereinafter, portions of which include delicate environmental features, substantial wetland and floodplain, Saw Mill Brook, a locally-rare vegetative community, and a significant amount of diverse wildlife habitat (hereinafter "Kessler Woods"), and

WHEREAS, for many years the City has identified Kessler Woods as a conservation priority in the *City's Recreation and Open Space Plan*, deeming it worthy of conservation as open space and acquisition by the City;

WHEREAS, Boston Edison, acting pursuant to requirements incumbent upon that company in connection with deregulation of electricity in the Commonwealth of Massachusetts, intends to sell Kessler Woods and has publicly called for bids, stating that it will consider only "no contingency" bids, which must be submitted for the entire Kessler Woods site; and

WHEREAS, Cornerstone, an experienced real estate developer, seeks to acquire portions of Kessler Woods for development of residences; and

WHEREAS, the City seeks to acquire portions of Kessler Woods for open space purposes and also seeks to foster a balanced development of the remaining land, in a manner that maximizes preservation of open space and passive recreation opportunities, affordable housing, integrates housing with existing land characteristics, and is reflective of the concerns and considerations of the existing residential neighbors; and

WHEREAS, Cornerstone seeks to promote the success and value of its private development given its proximity to City-protected open space, and development in accordance with such a balanced approach;

WHEREAS, the City and Cornerstone seek to enter into this Cooperative Bidding Agreement that will allow them to pursue purchase of Kessler Woods by submitting a cooperative bid for the full acreage, to maximize their likelihood of submitting a successful bid.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree and intend to be mutually bound as follows:

Section 1. Submission of bid

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 \$6.3 million. The total bid amount will be the sum of Cornerstone's \$6.3 million added to the City's share. The City's share shall be an amount determined in good faith by the Mayor, at his sole discretion, which will further the likelihood of both parties reaching a successful bid and which amount shall be no less than \$3 million and not exceed \$5 million.

1.2 The cooperative bid will identify both parties, the total bid amount and the amount that each party is bidding, and include a brief statement to the effect that the City intends to purchase its share of the land for open space purposes using Community Preservation funds and Cornerstone intends to use its share for private development.

1.3 Cornerstone shall, from its own funds, provide a cashier's check in payment of the initial deposit of \$25,000, which will accompany the parties' bid.

1.4 To satisfy Boston Edison's requirement for evidence of financial ability to perform the purchase, the parties shall include the following documents as part of the bid:

1.4.1 Cornerstone shall provide a letter from its principal bank, Citizens Bank, in substantially the form of a certain letter from such Bank dated April 7, 2003

1.4.2 The City shall provide copies of 1) Order # 227-3 of the Board of Aldermen; 2) City's Comprehensive Annual Financial Report for the year ended June 30, 2002; and 3) a letter dated September 16, 2002 from Moody's Investors Service, which describes the bond rating for the City's most recent issuance of general obligation bonds.

1.5 Except in accordance with the provisions of this Cooperative Bidding Agreement as stated herein, the City and Cornerstone shall not submit any bids for purchase of Kessler Woods or participate as a bidder or potential buyer for Kessler Woods, whether as a partner, through an agent or by any other means, provided that nothing contained herein shall be construed to restrict the parties from cooperating together to seek the purchase of the property by means of a negotiated transaction, i.e. outside of the pending sealed bid procedure.

1.6. If the bid submitted to Boston Edison pursuant to this Cooperative Bidding Agreement is not the successful bid, the parties shall have no further obligations under this Agreement and each party may pursue purchase of all or part of Kessler Woods in any manner. However, if pursuant to paragraph 1.7 below Boston Edison agrees prior to December 31, 2003, to sell Kessler Woods to either the City and/or Cornerstone, Cornerstone and the City will be bound by the terms hereof and will purchase the property pursuant to the terms of this Agreement.

1.7 The parties acknowledge that the City may attempt to have Boston Edison suspend the sale of Kessler Woods through the above-referenced bid process and to enter into a negotiated sale with the City and Cornerstone. If the City is able to enter into such a negotiated sale with Boston Edison, Cornerstone and the City agree that they shall have a coordinated agreement to purchase the Kessler Woods property on all the same terms and conditions as are set forth in this Agreement, except for those provisions which are specific to a bidding process. The City shall be the lead negotiator and Cornerstone may participate in any such negotiations and in any and all events the City shall keep Cornerstone advised as to the City's progress and deliberations. The City shall act in good faith to obtain the best terms it deems possible from Boston Edison, on behalf of itself and Cornerstone, but subject to the terms and conditions of this Agreement. If such negotiations fail to result in a purchase and sale agreement by December 31, 2003, this Agreement shall be null and void.

Section 2. Purchase following successful bid and/or successful negotiated agreement

2.1 Following the successful bid and/or negotiated agreement with Boston Edison and within one (1) month prior to closing the purchase from Boston Edison, Cornerstone and the City shall execute a detailed agreement, including the terms of covenants and restrictions described herein. Such detailed agreement shall be consistent with and based on the terms of this Cooperative Bidding Agreement, and such additional terms as the parties may agree but not limited to description of the easement and easement area, description of property restrictions on Cornerstone parcel, Inclusionary Zoning provisions, cost and price adjustments between the parties and documents and ratifications of this Agreement and the Bid.

2.2 The parties shall cooperate with one another and use their best efforts to close the purchase from Boston Edison in a timely manner, including but not limited to execution of the Purchase and Sale Agreement and delivery of the purchase funds pursuant to the Bid; fulfilling the Terms and Conditions of Sale, as described in bid documents or as otherwise negotiated; and all other steps and procedures that are customary and reasonable in the context of the real estate purchases of vacant land in the Newton market.

2.3 Cornerstone shall, from its own funds, provide a cashier's check in payment of the 10% deposit which is expected to be required to be delivered to Boston Edison at the execution of the Purchase and Sale Agreement. Any refund of said deposit and any interest thereon shall be returned to Cornerstone.

2.4 The parties will seek to carry out the purchase from Boston Edison by means of separate conveyances directly from Boston Edison to each party for its respective share of the real estate as described in paragraphs 3.1 through 3.5. Towards that end, immediately after the successful bid and/or negotiated agreement with Boston Edison, Cornerstone will arrange to have prepared, in recordable form and consistent with the requirement of M.G.L. c. 41, Sect. 81P, an "approval not required plan" (the "ANR Plan") for submission to the Newton Planning Board which plan shall divide the north 33.48 +/- acre parcel of Kessler Woods (as described in the Boston Edison offering memorandum) into two parcels (substantially as shown on the plan attached hereto as Exhibit A). Cornerstone shall be obligated to arrange for the ANR Plan, as described in the prior sentence, even if Boston Edison does not agree to such separate conveyances. The allocation of

parcels between the City and Cornerstone shall be as set forth in Section 3, below. If Boston Edison does not agree to make such separate conveyances, Cornerstone shall take title from Boston Edison for the entire Kessler Woods Site and immediately thereafter, and upon obtaining ANR approval, Cornerstone shall transfer title of the City Parcel to the City.

2.5 If Boston Edison fails to perform in accordance with an agreement with the parties, the parties will cooperate and share the costs of pursuing mutually acceptable legal remedies.

### Section 3. Real Estate shares

3.1 The parties shall divide ownership of Kessler Woods as set out in this Section 3.

3.2 City Parcel: At the closing with Boston Edison, or pursuant to a conveyance as stated in paragraph 2.4 the City will receive fee ownership of the portion of Kessler Woods situated on the southerly side of Vine Street totaling approximately 8.88 +/- acres of Kessler Woods (as described in the Boston Edison offering memorandum) plus the southerly portion (having an unspecified lot area) of the northerly parcel of Kessler Woods containing approximately 33.48 +/- acres as marked "City" on attached Exhibit A to be more precisely demarcated on the ANR Plan and the Boston Parcel as further described in Paragraph 9.2 herein.

3.3 Cornerstone Parcel: At the closing with Boston Edison, Cornerstone will receive the fee ownership of the remainder of the Kessler Woods property excluding the City Parcel and the Boston Parcel as defined in paragraph 3.2 above and as marked "Cornerstone" on Exhibit A to be more precisely demarcated on the ANR Plan. Cornerstone will simultaneously grant (i) an Easement as hereinafter defined in paragraph 3.4 in favor of the City, benefiting the City Parcel and (ii) certain restrictive covenants as hereinafter defined in paragraph 4.1 in favor of the City, such easements and restrictions to be senior to any mortgages or other liens to be granted by Cornerstone.

3.4 Easements: At the closing with Boston Edison, Cornerstone will grant to the City easements in those portions of the Cornerstone Parcel that are constrained from development as a result of utility easements, floodplain restrictions, wetlands, and Inner-Riparian zone restrictions under the Rivers Protection Act, but not including the wetlands buffer and remaining areas restricted (non-Inner Riparian zone) under the Rivers Protection Act (hereinafter the "Fully Constrained Area"). The Fully Constrained Area is approximately shown as "Full Constraints" on Figure 3 of a plan by Sasaki Associates, dated February 2003 (hereinafter "Sasaki Plan") attached hereto as Exhibit B, however, the final locations of the Fully Constrained Area shall be determined by Cornerstone through its use of Professional Land Surveyors and other professionals who have the credentials to make such determinations, in accordance with legal standards and requirements, and subject to approval of applicable regulatory agencies. The interests conveyed to the City under this paragraph will forever protect the Fully Constrained Area from development and allow public access for pedestrians and will allow for the construction and maintenance by the City of a system of trails. Upon the earlier of substantial completion of construction or sale of ninety percent (90%) of the lots or units, as applicable, for Area 1 and Area 2 as described in Section 4, Cornerstone shall transfer to the City the sum of



seventy-five thousand dollars 75,000, which sum shall be applied by the City for the development of the foregoing trail system and creation of a maintenance fund therefor.

3.5 Cornerstone, in its development plans for the Cornerstone Parcel, shall use its best efforts to design the planned developments of the Cornerstone Parcel so as to minimize the amount of the Fully Constrained Areas which will be incorporated into the development lots. The City acknowledges that notwithstanding the use of best efforts by Cornerstone as stated above, that certain portions of the Fully Constrained Area may have to be included in certain of the development lots so as to meet zoning or permitting requirements or for other sound development and planning considerations. At such time as Cornerstone shall have received its subdivision and other permitting approvals for the development of the Cornerstone Parcel, as described in Section 4, below, Cornerstone shall convey to the City, for consideration of \$1, fee ownership, free of all liens, in all portions of the Fully Constrained Area which have not been included within development lots, as provided above; provided however that such portions to be conveyed shall, in any event, constitute a single, contiguous parcel, allowing access through the Fully Constrained Area and providing access to other neighboring conservation land of the City. Upon the foregoing conveyance, the City's easement provided for in paragraph 3.4 shall terminate. Except as stated herein, the City, during the easement period and upon conveyance, shall have sole and complete custody of and control the area designated for public access through the Fully Constrained Area.

#### 4.0 Private Development by Cornerstone

4.1 General restrictions: Upon conveyance by Boston Edison of Area 1 and Area 2 to Cornerstone, Cornerstone will enter into a restriction agreement in favor of the City pursuant by which Cornerstone will agree to limit the development as follows:

4.1.1 Area 1 shall be limited to no more than eight (8) single-family houses, on lots 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. 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. In either case, 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).

4.1.2 Subject to the provisions of paragraph 4.2, Area 2 shall be limited to no more than sixty-four (64) residential units or sixty-four (64) single family houses on lots. 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.

4.2 Preferred Development Plan:

4.2.1 Prior to pursuing any other development approach for Area 2, Cornerstone shall diligently pursue the following development plan of the Cornerstone Parcel ("Preferred Plan"): Preferred Plan: Development will include no more than 55 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 consistent with The Architectural Team, Inc. Plan (Exhibit C) 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 conceptual site plan prepared by The Architectural Team, Inc. on behalf of Cornerstone, (Exhibit C) meets the foregoing criteria; but that 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).

4.2.2 If development of Area 1 includes fewer than eight single family houses, the Preferred Plan for Area 2 shall be limited to no more than 56 residential units (instead of 55 units), provided that any such development will be subject to all other provisions of paragraph 4.2.1.

4.3 Cornerstone shall pursue all necessary approvals to carry out the Preferred Plan, 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.

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

4.5 In the event that Cornerstone fails to receive all necessary approvals to carry out development of Area 2 in accordance with the Preferred Plan, 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.

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 4.1.1, 4.1.2 and 4.2.

5. Approvals by City/Relationship of parties

5.1 The parties recognize that Cornerstone's development of the property will require various approvals by various agencies of the City. The City will cooperate to facilitate a smooth and timely review in response to Cornerstone's applications for such approvals, as the City does with all responsible developers, and in accordance with all legal standards and requirements. The City cannot and does not guarantee the outcome of any of Cornerstone's applications for such approvals.

5.2 Nothing contained in this Cooperative Bidding Agreement shall be construed as creating a partnership, joint venture or trust between the parties. Without any limitation of the foregoing, it is the express intention of the parties that Cornerstone shall not be bound by any municipal, regulatory, or administrative requirements which bind the City as a body politic and corporate. Neither party shall be liable in any way for the debts, obligations or liabilities of the other arising out of or relating to the ownership or development of their respective parcels; and neither party shall hold itself out as having the authority to bind the other except as expressly set forth herein.

5.3 Neither party may assign its rights under this Cooperative Bidding Agreement except upon the prior written approval of the other party, which approval shall not be unreasonably withheld or delayed, provided that any assignment to an entity controlled by the assigning party shall not require such approval. With regard to any assignment by Cornerstone to other than an entity controlled by Cornerstone, Cornerstone recognizes that the City has chosen Cornerstone to enter into this Agreement based on the particular qualifications of Cornerstone and that it shall not be deemed to be unreasonable for the City to withhold its consent to an assignment if it determines that the proposed assignee does not have substantially similar qualifications.

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 eighteen (18) months after the necessary licenses, permits and approvals are obtained (and all appeal periods expired or pending appeals favorably and finally resolved) (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). The City may assign its rights under this paragraph.

5.5 Following the closing with Boston Edison, should Cornerstone propose to sell a part or all of the Cornerstone Parcel (other than the sale of house lots or condominium units in the ordinary course) to a third party, Cornerstone shall thereafter notify the City of its intention to do so and the price which such third party 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 third party price within 180 days from receipt of notice from Cornerstone and to close on the purchase thereof. The City may assign its rights under this paragraph.

6. Costs and price adjustments:

6.1 The deposit payments made by Cornerstone in accordance with paragraphs 1.3 and 2.3 will be credited against Cornerstone's share of the purchase price.

6.2 At the time of closing, each party shall deliver its share of the purchase price, in accordance with the bid and the Purchase and Sale Agreement.

6.3 The following shall apply in the event that the agreement(s) with Boston Edison require(s) the parties to pay the costs of Massachusetts Excise Stamp Tax on the conveyance(s):

6.3.1 If Boston Edison conveys the entire Kessler Woods site to Cornerstone prior to conveyance of the City's share to the City, each party will be responsible for payment of the tax on a pro rata basis.

6.3.2 If Boston Edison conveys Kessler Woods to the parties in separate conveyances, each party will be responsible for the tax on its respective conveyance, as applicable, recognizing that the City expects to be exempt by law from such tax.

6.4 Cornerstone will obtain, at its sole expense, the services of a Professional Land Surveyor to prepare, in recordable form (i) the ANR Plan and (ii) such plans as shall be necessary to show the locations of easements, all as described in paragraphs 3.3 and 3.4. Except as provided in the prior sentence, all costs of survey work shall be borne separately by each party for its respective share of Kessler Woods.

6.5 Each party will be responsible for the cost of title insurance, legal fees and other closing costs incurred in the purchase of the property as well as all their other expenses arising out of or relating to the matters set forth in this Agreement.

7. Hazardous waste contingencies

7.1 If significant amounts of hazardous waste are discovered on Kessler Woods prior to bid submission, either party may terminate this Cooperative Bidding and Purchase Agreement. In the event of termination under this paragraph, the parties may pursue purchase of Kessler Woods in any manner individually.

7.2. If hazardous waste is discovered on Kessler Woods subsequent to the submission of the bid, but prior to the closing with Boston Edison, the parties will cooperate to obtain the most favorable terms possible from Boston Edison regarding liability and cancellation. If either party is not satisfied with those terms and the total remediation cost is in excess of \$200,000, then either party may terminate this Cooperative Bidding Agreement and be liable for its pro rata share of any portion of the deposit(s) already paid to Boston Edison. In the event of termination under this paragraph, the other party may proceed to close on the purchase alone or with a new partner provided that, at such closing, it shall reimburse the other party for any deposit the withdrawing party has paid and this Agreement and the terms hereof shall be null and void.

7.3 If hazardous waste is discovered on Kessler Woods after the closing with Boston Edison, each party shall be responsible for the costs attributable to its land (i.e. the City Parcel and the Cornerstone Parcel), and neither party shall be responsible to the other for any hazardous waste located on land of the other party.

## 8 Default by City

8.1 If at any time after submission of the City of Newton/Cornerstone bid documents and prior to the conclusion of the closing on the transaction contemplated by this Agreement it is determined, either by the City or a court, that the City's expenditure of the funds as it is obligated to do hereunder would be unauthorized or unlawful, then the City promptly shall so notify Cornerstone. Upon such an event, Cornerstone may elect in its discretion to proceed as follows:

- (i) Cornerstone may continue with the transaction and purchase the property without involvement by the City of Newton subject to the right of the City of Newton to cure its failure to pay its obligations hereunder within one hundred twenty (120) days of such initial determination that the expenditure is unlawful; or
- (ii) If the City of Newton does not timely cure its failure to pay its obligations as described in subparagraph (i), above, then Cornerstone may proceed with its purchase and development of the entire project site in any manner it deems appropriate and in such event upon notice to the City of Newton this Agreement shall be null and void and without recourse between the parties; or
- (iii) Upon initial determination that the expenditure of funds by the City of Newton is unauthorized or unlawful at any time prior to the execution of the Purchase and Sale Agreement with Boston Edison Company, Cornerstone may terminate this Agreement and forfeit its deposit, if any, and not pursue the purchase of such property, all without recourse between the parties.

## 9 Communication Between Parties

9.1 The parties acknowledge their shared intent to cooperate and assist each other in attaining their mutual goals, all in accordance with the provisions of this Cooperative Bidding Agreement.

To that end, up to the closing with Boston Edison, each party agrees to communicate, in a timely manner, with the other party concerning all significant information that it may receive that may impact the progress of the proposed bid or purchase of Kesseler Woods.

10. Miscellaneous Provisions

10.1 This Agreement executed in multiples shall be construed under the laws of the Commonwealth of Massachusetts and shall be binding upon and run to the benefit of the parties hereto and their respective successors and assigns. It is the intention that, notwithstanding the fact that this Agreement contemplates that the parties shall enter into subsequent agreements to effectuate the terms hereof, this Agreement shall constitute a fully enforceable agreement under its own terms and that the parties shall, in good faith, prepare, negotiate and enter into the further agreements and instruments contemplated hereby.

10.2 Boston Parcel: The City shall be responsible for an approximately 444 square foot parcel of land in the City of Boston known as Assessors Parcel Number 7834 in ward 20, either by assuming all title and interest or through other arrangements for disposition of the Boston Parcel.

10.3 Exhibits:

Exhibit A: Plan dividing northerly parcel between City and Cornerstone portions, with hand drawn line (see paragraphs 2.4, 3.2 and 3.4).

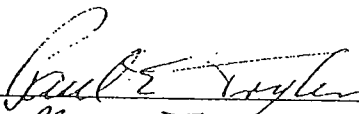
Exhibit B: Figure 3 of Sasaki Associates plan dated February 2003 (see paragraphs 3.4).


Exhibit C: The Architectural Team, Inc., undated (see paragraph 4.2.1).

IN WITNESS WHEREOF, the parties have set their hands and seals as of this 24 day of June 2003.

CORNERSTONE CORPORATION

CITY OF NEWTON

By:   
Its PRESIDENT  
(office)

  
David B. Cohen, Mayor

**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 B 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:

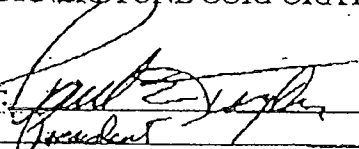
10.4 The parties acknowledge that the property known as Kessler Woods is described in Exhibit E.

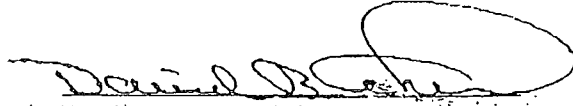
- 15. All references to "Cooperative Bidding Agreement" as they appear in various provisions throughout the *Cooperative Bidding Agreement Regarding Kessler Woods Property* shall be interpreted as references to Cooperative Bidding Agreement, as amended by this Amendment #1.
- 16. All other remaining 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.

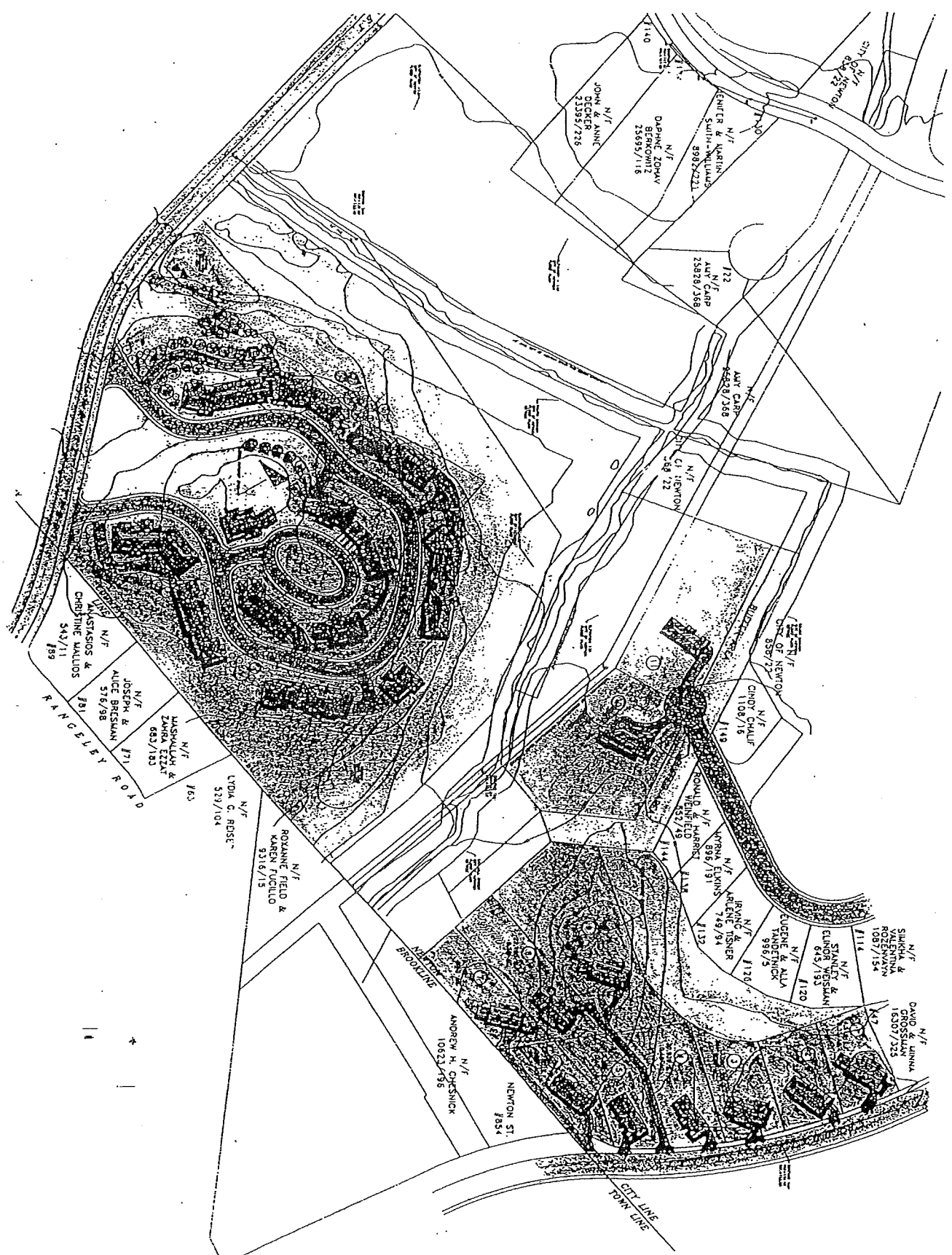
IN WITNESS WHEREOF, the parties have set their hands and seals as of this 7th day of August 2003.

CORNERSTONE CORPORATION

CITY OF NEWTON

By:   
 its President  
 (office)

  
 David B. Cohen, Mayor



RANCHOLEY ROAD

MASTASOS & CHRISTINE MALLIOS 543/11 189

JOSEPH & ALICE BRISMAN 171 181 518/98

MARSHALL & ZYRA EZZA 683/183

LYDIA G. RESE 327/104

ROXANNE FIELD & KAREN FUCILLO 9316/15

ANDREW M. GRESNICK 10023/198

NEWTON ST. 1854

CITY LINE TURN LINE

JOHN & ANNE DECKER 23895/223

DAPHNE ZOHAY BERKOWITZ 23895/118

CHITLER & MARTIN SMITH-MILLARD 998/221

AMY CARP 23828/268

AMY CARP 23828/268

CLYDE HENSON 158 222

DR. J. NEWTON 800/7

CHIRO CHALIF 1109/16

ROBERT N. JAMES 1144 1132

IRVING & ARLENE FISHER 749/94

EUGENE & ALTA TANDENICK 998/5

STANLEY & ROSEMARY CLUSON 615/193

DAVID & LINNA GROSSMAN 18307/223

SIMRICK & VALENTINA 1087/154

Paul Tryer  
Cornerstone Corporation

This letter is to confirm our understanding regarding the number of Inclusionary Units in the Preferred Plan for Area 2, in connection with the parties' agreement for purchase and use of Kessler Woods.

At the time that Cornerstone applies for a Special Permit for Area 2, if the sales price for the Inclusionary Units is projected at less than \$225,000 (as calculated under the zoning ordinance formula), Cornerstone shall have the right to seek a modification of the agreement governing the number of Inclusionary units. However, if the sales price is projected at more than \$275,000, the City shall have the right to seek a modification of the agreement governing the number of Inclusionary units.

VTY  
DBC

AGREED:

Paul Tryer

**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:

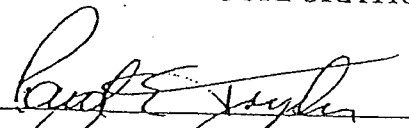
4.1.2 Subject to the provisions of paragraph 4.2, Area 2 shall be limited to no more than eighty (80) residential units or eighty (80) single family houselots. In either case, they shall include no less than twenty percent (20%) Inclusionary Units, consistent with section 30-24(f) of the Newton zoning 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 President  
(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 Easement Area shown on "Plan of Land Showing Conservation Restriction Area & Easement Area," by Toomey-Munson & Associates, Inc., dated January 13, 2004, with revisions most recently dated 4-1-04, (hereinafter "Easement 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 Conservation Restriction Area shown on Easement Plan.
3. Cornerstone shall convey to the City, for consideration of \$1, fee ownership, free of all liens, in a certain parcel of land consisting of 21,131+/- sq. ft., which parcel is located southwest of the Harwich Road cul-de-sac, and has frontage on such cul-de-sac, all as shown on Easement Plan, 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:

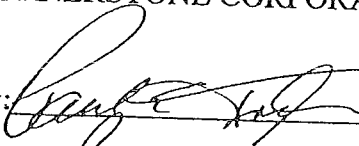
Exhibit F "Plan of Land Showing Conservation Restriction Area & Easement Area," by Toomey-Munson & Associates, Inc., dated January 13, 2004, with revisions most recently dated 4-1-04

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 6<sup>th</sup> day of April, 2004.

CORNERSTONE CORPORATION

By:   
Its: Jes.

CITY OF NEWTON

By:   
Its: Mayor



**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.

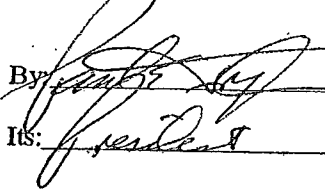
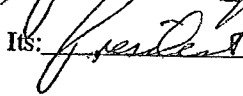
4. All other remaining terms, conditions and provisions of the *Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #1 to Cooperative Bidding Agreement Regarding Kessler Woods Property, Amendment #2 to Cooperative Bidding Agreement Regarding Kessler Woods Property, and Amendment #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

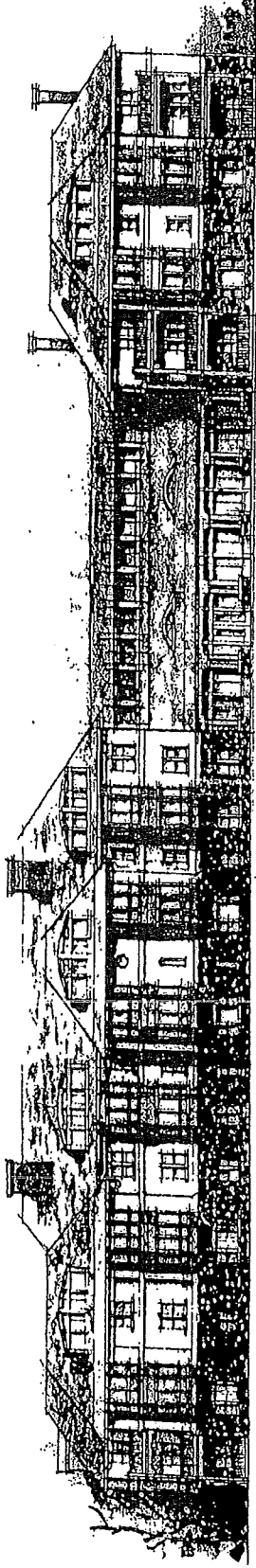
CITY OF NEWTON

By:   
Its: 

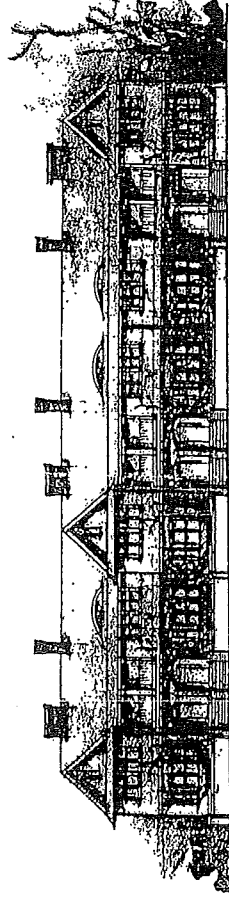
By:   
Its: 9/19/05

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Main Building Elevation

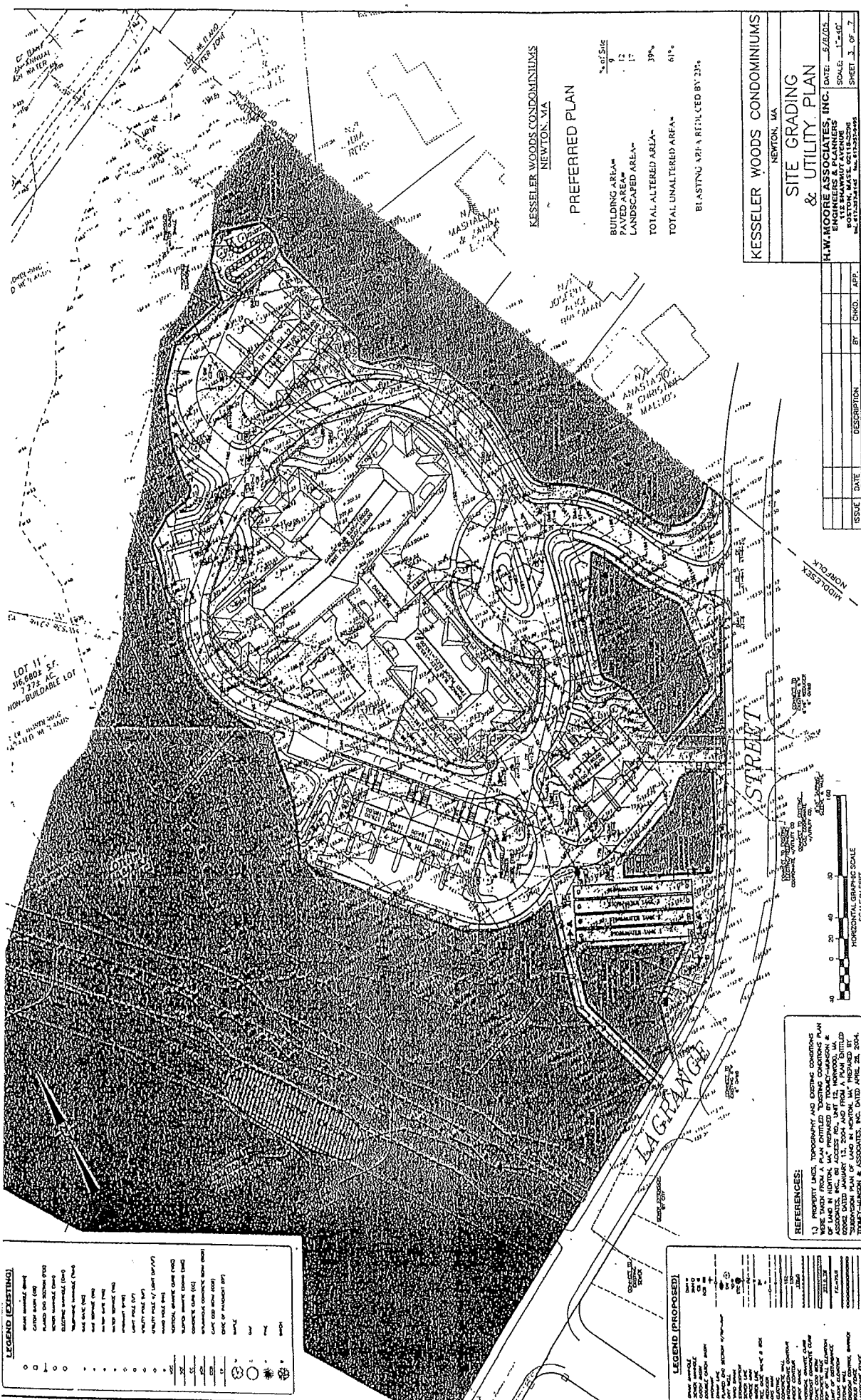


Townhouses Elevation

The Architectural Team, Inc.  
*architect*

Kessler Woods  
Newton, MA

Cornerstone Corporation  
*developer*



**LEGEND (EXISTING)**

1	Lot 11
2	Lot 12
3	Lot 13
4	Proposed Building Footprint
5	Proposed Paved Area
6	Proposed Landscaped Area
7	Proposed Unaltered Area
8	Proposed Access Road
9	Proposed Utility Lines
10	Proposed Storm Sewer
11	Proposed Water Main
12	Proposed Gas Main
13	Proposed Sewer Main
14	Proposed Easement
15	Proposed Right-of-Way
16	Proposed Boundary
17	Proposed Survey
18	Proposed Contour
19	Proposed Spot Elevation
20	Proposed Elevation
21	Proposed Elevation
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24	Proposed Elevation
25	Proposed Elevation
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49	Proposed Elevation
50	Proposed Elevation

**KESSELER WOODS CONDOMINIUMS**  
 NEWTON, MA

**PREFERRED PLAN**

% of Site  
 BUILDING AREA\* 9  
 PAVED AREA\*\* 12  
 LANDSCAPED AREA\*\* 17  
 TOTAL ALTERED AREA\*\* 29%  
 TOTAL UNALTERED AREA\*\* 61%

BLASTING AREA A REFULCED BY 23%

**KESSELER WOODS CONDOMINIUMS**  
 NEWTON, MA

**SITE GRADING & UTILITY PLAN**

K.M. MOORE ASSOCIATES, INC. DATE: 5/2/05  
 ENGINEERS PLANNERS ARCHITECTS  
 100 STATE STREET, SUITE 200  
 BOSTON, MASS. 02108-2000  
 SCALE: 1" = 40'  
 SHEET 3 OF 7

**LEGEND (PROPOSED)**

1	Proposed Building Footprint
2	Proposed Paved Area
3	Proposed Landscaped Area
4	Proposed Unaltered Area
5	Proposed Access Road
6	Proposed Utility Lines
7	Proposed Storm Sewer
8	Proposed Water Main
9	Proposed Gas Main
10	Proposed Sewer Main
11	Proposed Easement
12	Proposed Right-of-Way
13	Proposed Boundary
14	Proposed Survey
15	Proposed Contour
16	Proposed Spot Elevation
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46	Proposed Elevation
47	Proposed Elevation
48	Proposed Elevation
49	Proposed Elevation
50	Proposed Elevation

**REFERENCES:**

1. PROPERTY LINES, TOPOGRAPHY AND EXISTING CONDUIT PLAN OF LOT 11, 12, 13, AND 14, PREPARED BY TOMNEY-MANSON & ASSOCIATES, INC. ON ACCESS RD., UNIT 12, NEWTON, MASS. 02459, DATED AUGUST 1998.

2. SUBDIVISION PLAN OF LAND IN NEWTON, MA, PREPARED BY TOMNEY-MANSON & ASSOCIATES, INC. DATED APRIL 28, 2004.



ISSUE	DATE	DESCRIPTION	BY	CHKD.	APP.

**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 17<sup>th</sup> day of November, 2008.

CORNERSTONE CORPORATION  
By: [Signature]  
Its: [Signature]

CITY OF NEWTON  
By: [Signature]  
Its: \_\_\_\_\_

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





**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.

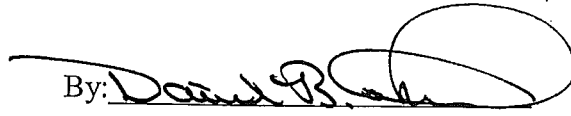
2. In all other respects the *Cooperative Bidding Agreement Regarding Kessler Woods Property*, as amended is ratified and confirmed. The City hereby acknowledges that Cornerstone (other than stated in this amendment above) has met and/or completed all requirements under said *Cooperative Bidding Agreement 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

CONSERVATION RESTRICTION  
TO THE  
CITY OF NEWTON

1. Grantor Clause.

KESSELER DEVELOPMENT, LLC, a Massachusetts limited liability company with its principal place of business at 725 Canton Street, Norwood, Massachusetts 02062 (hereinafter, together with successors in title and assigns or any other interest, collectively called the "Grantor"), being the owners of a certain parcel of vacant land in Newton, Middlesex County, Massachusetts, such parcel having frontage on Brookline Street and Harwich Road, and being shown as Lot H on a plan entitled "Subdivision Plan of Land in Newton, MA," dated November 26, 2003 prepared by Toomey-Munson & Associates, Inc., recorded with the Middlesex South District Registry of Deeds as Plan in Record Book 2004, Page 347 ("Exhibit A"), acting pursuant to Sections 31-33 of Chapter 184 of the General Laws of Massachusetts, grant, with Quitclaim Covenants, to the CITY OF NEWTON, Middlesex County, a Municipal Corporation in the Commonwealth of Massachusetts, acting by and through its Conservation Commission, with an address at City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts (hereinafter, with successors and permitted assigns, called the "Grantee"), in perpetuity and exclusively for conservation purposes, the following described conservation restrictions on said Lot H.

A. A conservation restriction, all as more specifically set forth below, over a portion of said Lot H, shown more specifically on a plan entitled "Plan of Land Showing Conservation Restriction Area & Easement Area in Newton, MA," by Toomey-Munson & Associates, Inc., Civil Engineers & Land Surveyors, dated January 13, 2004, revised through 4-1-01 recorded as Plan in Record Book 2004, Page 348 (which restricted area is hereinafter called the "Conservation Restriction Area").

For Grantor's title, see Deed from Boston Edison Company dated April 7, 2004 and recorded with the Middlesex South District Registry of Deeds as Book 42435, Page 200.

2. Purposes.

The purposes of this Conservation Restriction are to ensure that the Conservation Restriction Area will be retained, in perpetuity, predominantly in its natural and scenic condition and to prevent any use of the Conservation Restriction Area that will significantly impair or interfere with the conservation values of the Conservation Restriction Area. The intent of the Conservation Restriction Area is to preserve the wildlife habitat and protect the wetlands and floodplains associated with Saw Mill Brook and the South Branch Saw Mill Brook.

The Conservation Restriction Area consists of a total of approximately 483,657 square feet of land and contains unusual, unique or outstanding qualities the protection of which in their predominately natural or open condition will be of benefit to the public for the following reasons:

RETURN TO:

**Bernard F. Shadrawy, Jr., Esq.**  
Shadrawy & Rabinovitz  
15 Broad Street, Suite 512  
Boston, Massachusetts 02109

LOT H BROOKLINE STREET AND HARWICH RD., NEWTON, MA

11  
B  
- next  
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- A. The Conservation Restriction Area has a significant amount of wildlife habitat due to its diversity of vegetation and wetland resource areas; and
- B. The Conservation Restriction Area in its undeveloped state serves to protect water quality.

Creation of this Conservation Restriction was agreed to by and between City of Newton and Cornerstone Corporation, in connection with their cooperative purchase of Kesseler Woods. As designee of Cornerstone Corporation, Grantor has acquired ownership of said Lot H. This Conservation Restriction will provide permanent protections of the Conservation Restriction Area and serve to further and promote the conservation values on adjacent and neighboring parcels of land owned by the City of Newton.

3. Prohibited Acts and Uses of the Conservation Restriction Area; Exceptions.

A. Prohibited Acts and Uses of the Conservation Restriction Area.

Subject to the exceptions set forth in paragraph B below, the following acts and uses are expressly prohibited in and on the Conservation Restriction Area:

- (1) Constructing, placing or allowing to remain any building, tennis or other gaming court, landing strip, mobile home, swimming pool, road, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, light or utility pole, satellite dish, tower, power line, conduit line, or other temporary or permanent structure on, above, or under the Conservation Restriction Area;
- (2) Mining, excavating, dredging or removing from the Conservation Restriction Area of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit in such manner as to affect the surface of said land;
- (3) Placing, filling, storing or dumping on the Conservation Restriction Area of leaves or other tree material, soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever, or the installation of underground storage tanks;
- (4) Cutting, pruning, removing or otherwise destroying trees, shrubs, grasses or other herbaceous vegetation, except in the course of good forestry management practices and only as may be necessary to preserve the present condition of the Conservation Restriction Area subject to the proposed activity receiving the prior approval of the Conservation Commission;
- (5) Use and activities which could be detrimental to wildlife habitat values, including without limitation, site lighting illuminating the Conservation Restriction Area whether direct or indirect;

- (6) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation or archaeological conservation;
- (7) The use of motorized and non-motorized recreational vehicles, to include, *inter alia*, motorcycles, bicycles of any type, all-terrain or other off-road vehicles, scooters and snowmobiles;
- (8) The use of chemical fertilizers, herbicides, or pesticides, unless reviewed and approved by the Conservation Commission in advance and in accordance with the City's Integrated Pest Management Plan;
- (9) The use of fences;
- (10) No further subdivision of the Conservation Restriction Area; and
- (11) Any other use of the Conservation Restriction Area or activity thereon which is inconsistent with the purposes of this Conservation Restriction or which would materially impair other conservation interests unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

B. Exceptions to Otherwise Prohibited Acts and Uses of the Conservation Restriction Area.

- (1) Nothing herein is intended to restrict or affect the existing easement rights held by the City of Newton and the Massachusetts Water Resources Authority.
- (2) Grantor reserves the right to install and maintain underground utilities in the Conservation Restriction Area, subject however to the prior review and approval of the Conservation Commission, which review shall include, without limitation, location of utilities, means of construction and manner of maintenance.

4. Installation of boundary markers.

Within six months following approval of this Conservation Restriction by the Massachusetts Secretary of Environmental Affairs, Grantor, at its expense, shall establish a series of visible permanent bounds and markers so as to mark the Conservation Restriction Area, and provide a plan signed and stamped by a Registered Land Surveyor showing the locations of said bounds and markers. The locations and types of said bounds and markers shall be as reasonably determined by the Conservation Commission.

5. Legal Remedies of the Grantee.

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation, relief requiring restoration of the Conservation Restriction Area to its condition prior to

such violation complained of (it being agreed that the Grantee may 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 Grantee.

B. Reimbursement of Costs of Enforcement.

The Grantor and, thereafter, their successors and assigns, covenants and agrees to reimburse the Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking measures to remedy or abate any violation thereof.

C. Grantee Disclaimer of Liability.

By its acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Conservation Restriction Area.

D. Severability Clause.

If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.

E. Non-Waiver.

Any forbearance or election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

F. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Conservation Restriction Area resulting from causes beyond the Grantor's control, including without limitation, fire, flood, storm and earth movement.

6. Access.

This Conservation Restriction grants the right to enter upon the Conservation Restriction Area to the Grantee and its agents and representatives at reasonable times and in a reasonable manner to inspect same to determine compliance with this Conservation Restriction. The rights of access granted hereunder are in addition to the rights granted to Grantee under an Easement Agreement dated April 7, 2004. There shall be no public access to the Conservation Restriction Area except to areas covered by said Easement Agreement dated April 7, 2004.

7. Assignability.

A. Running of the Burden with the Conservation Restriction Area.



The burdens of this Conservation Restriction granted herein is given in perpetuity and shall run with the Conservation Restriction Area and shall be enforceable against the Grantor and thereafter the successors and assigns of the Grantor holding any interest in the Conservation Restriction Area.

B. Execution of Documents.

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of themselves and their successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor agrees to execute any such instruments upon request.

C. Running of the Benefit.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time:

- (1) as a condition of any assignment, the Grantee requires and the successor or assign of the Grantee agree that the purposes of this Conservation Restriction continue to be carried out, and
- (2) the assignee, at the time of the assignment, qualifies under Section 170(b) of the Internal Revenue Code 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts as an eligible donee to receive this Conservation Restriction directly, and
- (3) the Grantee complies with the provisions required by Article 97 of the Amendments to the Massachusetts State Constitution, as applicable.

8. Subsequent Transfers.

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which the Grantor conveys any interest in the Conservation Restriction area or said Lot H including without limitation, a leasehold interest.

-9. Termination of Rights and Obligations.

Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding any interest in the Conservation Restriction Area shall terminate upon transfer of that party's interest, except that liability

for acts or omissions occurring prior to transfer, and liability for the transfer itself if the transfer is in violation of this Conservation Restriction, shall survive the transfer.

10. Estoppel Certificates.

Upon request by the Grantor, or their successors and assigns, the Grantee shall within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction.

11. Amendment

This Conservation Restriction may be amended only by written agreement of the parties or their successors in interest. Any such amendment shall require the approval of the Secretary of Environmental Affairs or such successor agency.

12. Effective Date.

This Conservation Restriction shall be effective when it has been fully executed and it has been recorded with the Middlesex South District Registry of Deeds.

13. Miscellaneous.

A. Controlling Law.

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts. This Conservation Restriction will be recorded in a timely manner.

B. Liberal Construction.

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purpose of Section 31 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts. The provisions of Section 26 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts shall apply to this Conservation Restriction and the City of Newton shall be deemed to be a "Governmental Body" as defined therein. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Restriction that would render such provision valid shall be favored over any interpretation that would render it invalid.

C. Pre-Existing Rights.

Approval of this Conservation Restriction by any municipal officials and by the Secretary of Environmental Affairs is not to be construed as representing the

existence or non-existence of any pre-existing rights of the public, if any, in and to the Conservation Restriction Area, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

D. Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

E. Entire Agreement.

This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

No documentary stamps are required as this Conservation Restriction is for nominal consideration, which, in any event, is less than One Hundred (\$100.00) dollars.

IN WITNESS WHEREOF, KESSELER DEVELOPMENT, LLC has signed under seal, acknowledged and delivered the foregoing instrument on this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

KESSELER DEVELOPMENT, LLC

By: Cornerstone Manager, Inc.

By: [Signature]  
Its \_\_\_\_\_  
Duly Authorized

Seybold  
MIDDLESEX, SS

COMMONWEALTH OF MASSACHUSETTS

April 7, 2004

On this 7<sup>th</sup> day of April, 2004, before me, the undersigned notary public, personally appeared Paul E. Trayder, proved to me through satisfactory evidence of identification, which were Damon Levesque, to be the person whose name is signed on the preceding document, and acknowledged that (he) (she) signed it as President of Cornerstone Manager, Inc., on behalf of KESSELER DEVELOPMENT, LLC, voluntarily for its stated purpose.

[Signature]  
NOTARY PUBLIC:

My Commission Expires: 12-31-04

ACCEPTANCE BY NEWTON CONSERVATION COMMISSION

The above Conservation Restriction is accepted this 28<sup>th</sup> day of July, 2005

CONSERVATION COMMISSION OF  
THE CITY OF NEWTON:

Rachel Freed \_\_\_\_\_

[Signature] \_\_\_\_\_

[Signature] \_\_\_\_\_

[Signature] \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

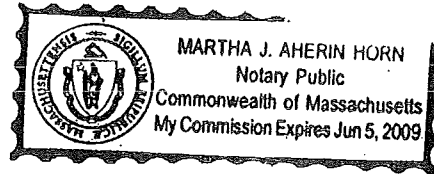
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

July 28, 2005

On this 28<sup>th</sup> day of July, 2005, before me, the undersigned notary public, personally appeared Rachel Freed, proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged that (he) (she) signed it as Vice Chairman of Conservation Commission of the City of Newton, voluntarily for its stated purpose.

[Signature]  
NOTARY PUBLIC  
My Commission Expires:



APPROVAL AND ACCEPTANCE BY BOARD OF ALDERMEN  
CITY OF NEWTON (GRANTEE)

LINDA FINICCALE atty  
I, Edward G. English, the duly appointed Clerk of the Board of Aldermen of the City of Newton, Massachusetts, hereby attest and certify that at a meeting duly held on SEPT. 19, 2005 the Board of Aldermen voted to approve and accept the foregoing Conservation Restriction pursuant to M.G.L. chapter 40, Section 8C and M.G.L. Chapter 184, Section 32.

Attest: Clerk of the Board of Aldermen,  
City of Newton, Massachusetts:

Linda Finiccale

APPROVAL AND ACCEPTANCE BY MAYOR  
CITY OF NEWTON (GRANTEE)

I, David B. Cohen, Mayor of the City of Newton, Massachusetts, hereby certify that the foregoing Conservation Restriction has been approved and accepted by the City of Newton, by and through its Conservation Commission, pursuant to M.G.L. Chapter 40, Section 8C and M.G.L. Chapter 184, Section 32.

City of Newton, Massachusetts

By: David B. Cohen  
David B. Cohen, Mayor

COMMONWEALTH OF MASSACHUSETTS

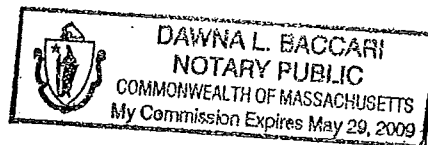
MIDDLESEX, SS

oct 13, 2005

On this 13<sup>th</sup> day of oct, 2005, before me, the undersigned notary public, personally appeared David B. Cohen, proved to me through satisfactory evidence of identification, which were MASS DRIVERS LICENSE to be the person whose name is signed on the preceding document, and acknowledged that he signed it as Mayor of the City of Newton, voluntarily for its stated purpose.

Dawna L. Baccari  
NOTARY PUBLIC:

My Commission Expires:



APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction has been approved in the public interest pursuant to M.G.L. Chapter 184 Section 32.



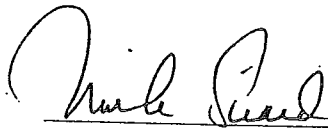
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

March 3, 2006

On this 3rd day of March, 2006, before me, the undersigned notary public, personally appeared Stephen B. Ratchford, proved to me through satisfactory evidence of identification, which were personal knowledge of identity, to be the person whose name is signed on the preceding document, and acknowledged that (he) ~~(she)~~ signed it as Secretary of Environmental Affairs of the Commonwealth of Massachusetts, voluntarily for its stated purpose.



Notary Public

My commission expires: 12/15/2011

PL. # 348

4/04 2597M

Exhibit A

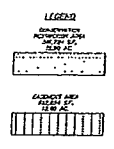
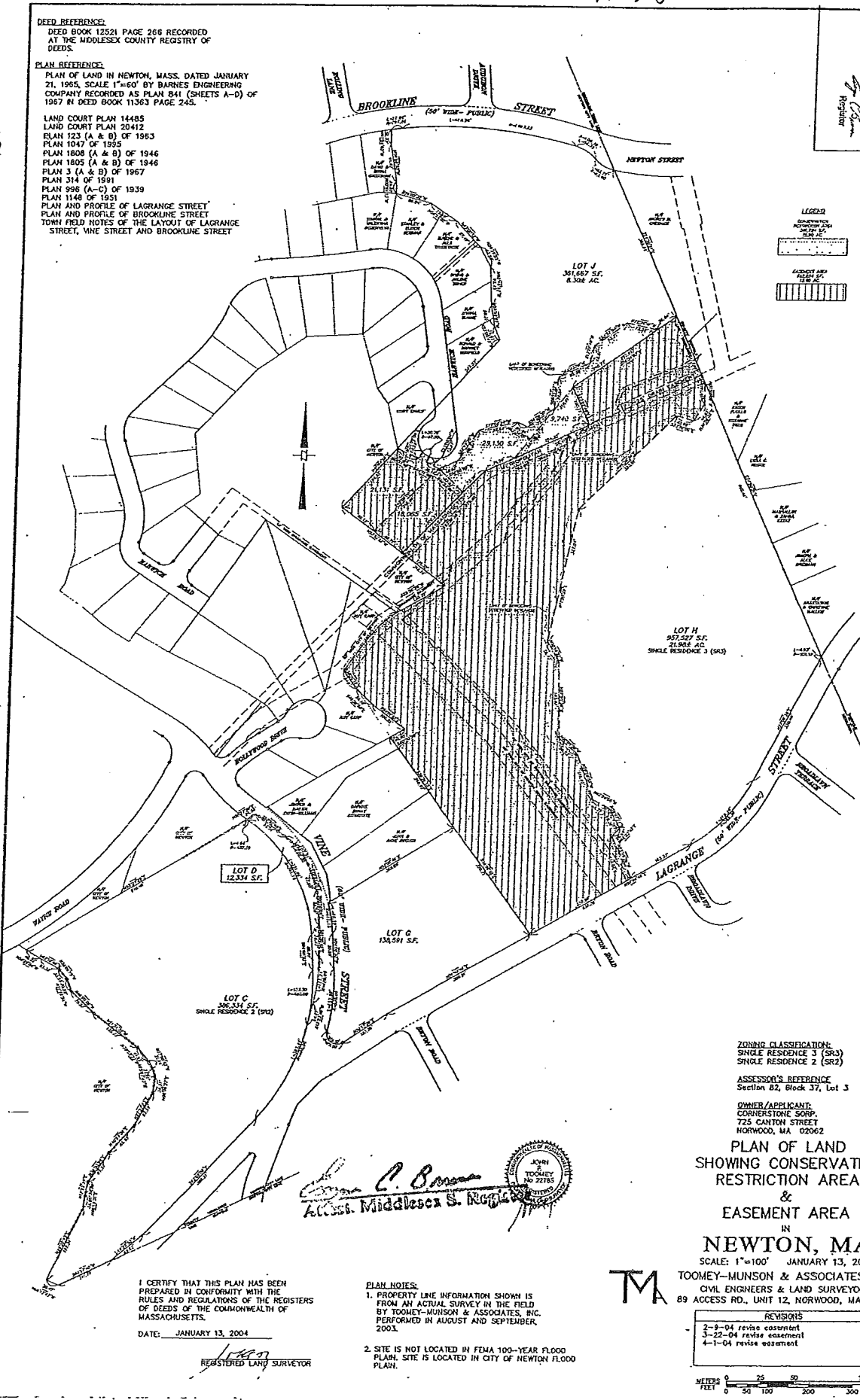
PL. # 348

DEED REFERENCE:  
DEED BOOK 12521 PAGE 266 RECORDED  
AT THE MIDDLESEX COUNTY REGISTRY OF  
DEEDS.

PLAN REFERENCE:  
PLAN OF LAND IN NEWTON, MASS. DATED JANUARY  
21, 1965, SCALE 1"=60' BY BARNES ENGINEERING  
COMPANY RECORDED AS PLAN 841 (SHEETS A-D) OF  
1967 IN DEED BOOK 11363 PAGE 245.

LAND COURT PLAN 14485  
LAND COURT PLAN 20412  
PLAN 123 (A & B) OF 1963  
PLAN 1047 OF 1965  
PLAN 1808 (A & B) OF 1946  
PLAN 1805 (A & B) OF 1946  
PLAN 3 (A & B) OF 1967  
PLAN 314 OF 1991  
PLAN 998 (A-C) OF 1939  
PLAN 1148 OF 1951  
PLAN AND PROFILE OF LAGRANGE STREET  
PLAN AND PROFILE OF BROOKLINE STREET  
TOWN FIELD NOTES OF THE LAYOUT OF LAGRANGE  
STREET, VINE STREET AND BROOKLINE STREET

Commonwealth of Massachusetts  
Department of Transportation  
Registration Office  
100 State Street  
Boston, MA 02109  
Phone: 617-725-2000  
Fax: 617-725-2004  
Internet: www.mass.gov  
Registration Office  
100 State Street  
Boston, MA 02109  
Phone: 617-725-2000  
Fax: 617-725-2004  
Internet: www.mass.gov



ZONING CLASSIFICATION:  
SINGLE RESIDENCE 3 (SR3)  
SINGLE RESIDENCE 2 (SR2)

ASSESSOR'S REFERENCE  
Section 82, Block 37, Lot 3

OWNER/APPLICANT:  
CORNERSTONE CORP.  
725 CANTON STREET  
HORWOOD, MA 02062

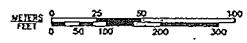
PLAN OF LAND  
SHOWING CONSERVATION  
RESTRICTION AREA  
&  
EASEMENT AREA  
IN  
NEWTON, MA

SCALE: 1"=100' JANUARY 13, 2004

TOOMEY-MUNSON & ASSOCIATES, INC.  
CIVIL ENGINEERS & LAND SURVEYORS  
89 ACCESS RD., UNIT 12, HORWOOD, MA 02062

REVISIONS

2-9-04	revise easement
3-22-04	revise easement
4-1-04	revise easement



*John C. Toomey*  
John C. Toomey  
No. 2278  
REGISTERED LAND SURVEYOR

I CERTIFY THAT THIS PLAN HAS BEEN  
PREPARED IN CONFORMITY WITH THE  
RULES AND REGULATIONS OF THE REGISTERS  
OF DEEDS OF THE COMMONWEALTH OF  
MASSACHUSETTS.  
DATE: JANUARY 13, 2004

PLAN NOTES:  
1. PROPERTY LINE INFORMATION SHOWN IS  
FROM AN ACTUAL SURVEY IN THE FIELD  
BY TOOMEY-MUNSON & ASSOCIATES, INC.  
PERFORMED IN AUGUST AND SEPTEMBER,  
2003.

2. SITE IS NOT LOCATED IN FEMA 100-YEAR FLOOD  
PLAIN. SITE IS LOCATED IN CITY OF NEWTON FLOOD  
PLAIN.

**ATTACHMENT G**

2004 00082015

Bk: 42435 Pg: 215 Doc: EASE  
Page: 1 of 5 04/07/2004 03:42 PM

EASEMENT AGREEMENT

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

WHEREAS, Cornerstone 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 6, 2004, in connection with the property known as Kessler Woods (hereinafter "Kessler Woods") located in Newton, Massachusetts, consisting of Lots C, D, G, H and J 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 and designated by the Newton Board of Assessors as parcels 82-41-22 and 82-37-3 in order to allow Cornerstone and City to purchase the Kessler Woods, and to develop some portions of Kessler Woods for residences and to maintain other portions of Kessler Woods as conservation land.

WHEREAS, the City has acquired fee ownership of the parcels of Kessler Woods situated on the southerly side of Vine Street designated as "Lot C" and "Lot D" on the Subdivision Plan, 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 designee of Cornerstone Corporation, has acquired fee simple ownership of Lot J on the Subdivision Plan (hereinafter the "Cornerstone Parcel").

WHEREAS, portions of the Cornerstone Parcel are constrained from development due to utility easements, flood plain restrictions, wetlands and Inner Riparian zone restrictions under the Rivers Protection Act and are otherwise intended to be made subject to certain rights in favor of the City by the terms of this Easement Agreement (hereinafter the "Easement Area"). The Easement Area is demarcated as the "Easement Area" on a "Plan of Land Showing Conservation Restriction Area and Easement Area in Newton, MA" dated January 13, 2004, with revisions dated 2-9-04, 3-22-04 and 4-1-04 by Toomey-Munson & Associates, Inc. Civil Engineers and Land Surveyors and attached hereto as Exhibit "A." **RECORDED HERE WITH**

WHEREAS, Cornerstone intends to develop the portions of the Cornerstone Parcel which are not constrained from development into residential lots.

WHEREAS, Cornerstone and City have agreed, in connection with the Cooperative Bidding Agreement, for Cornerstone to provide City with certain rights and easements over the Easement Area in order to facilitate City's purpose of maintaining the Easement Area as publicly accessible conservation land.

NOW, THEREFORE, in consideration of the respective rights and obligations of Cornerstone and City in the Cooperative Bidding Agreement and the respective rights and

SEE PLAN IN RECORD BOOK 2004 PAGE 347  
VINE ST NEWTON

SEE PLAN IN RECORD BOOK 2004 PAGE 348

MURTHA COLLINA  
600 UNICORN PLAZA DR  
WOBURN MA 01801



easements granted herein, the receipt and sufficiency of which are hereby acknowledged, Cornerstone and City hereby agree as follows:

1. Incorporation of portions of Easement Area into development residential lots.

a. Cornerstone intends, subject to the terms of a certain Development Covenants Agreement of even date between Cornerstone and the City, to develop the Cornerstone Parcel for single-family house lots (the "Residential Lots").

b. Cornerstone may incorporate portions of the Easement Area into some of the Residential Lots if necessary to meet zoning requirements, permitting requirements, or other sound development and planning considerations.

c. Cornerstone shall, however, use its best efforts to design the Residential Lots in such a manner as to minimize the amount of the Easement Area incorporated into the Residential Lots. To the extent Cornerstone must incorporate portions of the Easement Area into the Residential Lots, Cornerstone must preserve the remaining portion of the Easement Area as a single contiguous parcel. Those remaining portions of the Easement Area which are, pursuant to subparagraphs (a), (b), and (c), not included within any residential lot shall be referred to hereinafter as the "Residual Area."

d. The parties acknowledge that the "Easement Area" shown on Exhibit A and which is the subject of this Agreement does not include certain portions of the Cornerstone Parcel which shall be incorporated into one or more Residential Lots and which, although constrained from development by certain regulatory restrictions, are not intended to be constrained by the terms of this Easement. Notwithstanding the foregoing, nothing in this Easement shall be deemed to remove such areas from any applicable regulatory constraints, and the City shall continue to have all powers ordinarily associated with the use and development of such areas.

e. In obtaining any mortgage loan financing for the Cornerstone Parcel or the development thereof, Cornerstone's agreements with any mortgagees shall provide that such mortgagee shall release the lien of its mortgage from the Residual Area once such area has been identified of record, so that the Residual Area shall be free of any liens or encumbrances.

f. Upon the later to occur of (i) the conveyance by Cornerstone of the last of the subdivided Residential Lots as shown on the subdivision plan or plans to be prepared by Cornerstone as contemplated by this Section 1 or (ii) December 31, 2005, Cornerstone, at its expense, shall establish a series of permanent bounds and markers on the Residential Lots so as to mark clearly their division from the Residual Area..

g. Cornerstone shall complete its subdivision plan or plans, setting out which portions of the Easement Area will be incorporated in the Residential Lots, within ten (10) years of the date hereof.

2. Public Access Easement

a. Cornerstone hereby grants to City, with quitclaim covenants, the perpetual right and easement over and through the Easement Area for the following public purposes: (i) pedestrian and general recreational access, including access to other lands of the City (whether properties owned by the City in fee simple or with respect to which the City has similar easement rights) and (ii) general public recreational uses. The City shall have the right to limit and regulate the access and use by the public of the foregoing easement rights.

b. Cornerstone hereby grants to City the perpetual and exclusive right to plan, construct, and maintain at the City's sole cost and expense (except as set forth below) footpaths and trails within the Easement Area to allow pedestrian and general recreational access.

c. Cornerstone reserves to itself, its successors and assigns, the rights to continue to enter upon and use the Easement Area, so long as such entrance and use do not interfere with the use by the City of the Easement Area as provided for herein and the rights granted to the City hereby. With respect to the foregoing reservation, the City specifically acknowledges that temporary entrances by Cornerstone and its authorized agents upon the Easement Area for construction and maintenance of the improvements upon the Cornerstone Parcel contemplated hereby shall be permitted hereunder so long as they do not materially interfere with the use and enjoyment of the Easement Area by the City for the purposes set forth in subparagraphs (a) and (b), above.

3. Conveyance of Residual Area

a. At such time and in such manner as shall be set forth below, Cornerstone shall convey the Residual Areas to the City in consideration of the sum of one dollar (\$1.00).

b. Cornerstone shall establish the date for the conveyance of the Residual Area by giving written notice to the City at any time within six (6) months after Cornerstone shall have received approval for and shall have recorded a subdivision plan or plans for the development of the Cornerstone Parcel. Cornerstone may delay the date for the notice if and to the extent additional time is required for the approval of the subdivision plan (or "approval under subdivision control law not required" plan) required to establish the Residual Area.

c. Closing on the conveyance of the Residual Area shall occur within thirty (30) days of the date of the Cornerstone's notice to the City as set forth in subparagraph b, above. Cornerstone shall be responsible for having its engineers or surveyors prepare true and accurate metes and bounds description of the Residual Area and for preparing and submitting for all necessary approvals any subdivision plan (or "approval under subdivision control law not required" plan) required to establish the Residual Area. Cornerstone shall convey the foregoing by good and sufficient quitclaim deed, free of all liens and encumbrances.

4. Run with the Land. The easement 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.

5. Conservation Restrictions. Cornerstone shall deliver to the City a perpetual restriction agreement, 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, regarding the preservation of certain restrictions and covenants regarding the use and development of the Easement Area. Nothing in this Easement shall be deemed to supplant or supersede the foregoing conservation restriction; and the granting of the conservation restriction shall not be deemed to supplant or supersede and of the provisions of this Easement.

6. Respective Rights and Obligations.

a. Nothing herein shall be construed or interpreted to mean that Cornerstone, merely by the granting of the easements and rights set forth herein, has assumed any liability for any injury or damage resulting from the City's use of the Easement Area as provided herein.

b. The City shall be responsible for maintaining, in its sole discretion, the Easement Area in a manner consistent with the Easement Area's use for conservation and recreation purposes.

c. Cornerstone and the City shall each be responsible for their own compliance with all applicable laws in connection with the exercise by each of them of their respective rights with regard to the Easement Area.

7. 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.

[Remainder of page intentionally left blank]

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.

By: [Signature]  
Its: [Signature]  
Duly Authorized

CITY OF NEWTON

By: [Signature]  
David B. Cohen  
Its Mayor  
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF Suffolk ) ss.  
)

April 7, 2004

On this day, before me, personally appeared the above-named Paul E. Tyderas ~~President~~ of Cornerstone Manager, Inc., the Manager of C/S Kessler, LLC, and not individually, who acknowledged the foregoing instrument to be his/her free act and deed, in his/her capacity as aforesaid.

[Signature]  
Notary Public  
My Commission expires:

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, and not individually, who acknowledged the foregoing instrument to be his free act and deed, in his capacity as aforesaid.

[Signature]  
Notary Public  
My Commission expires:

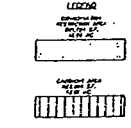
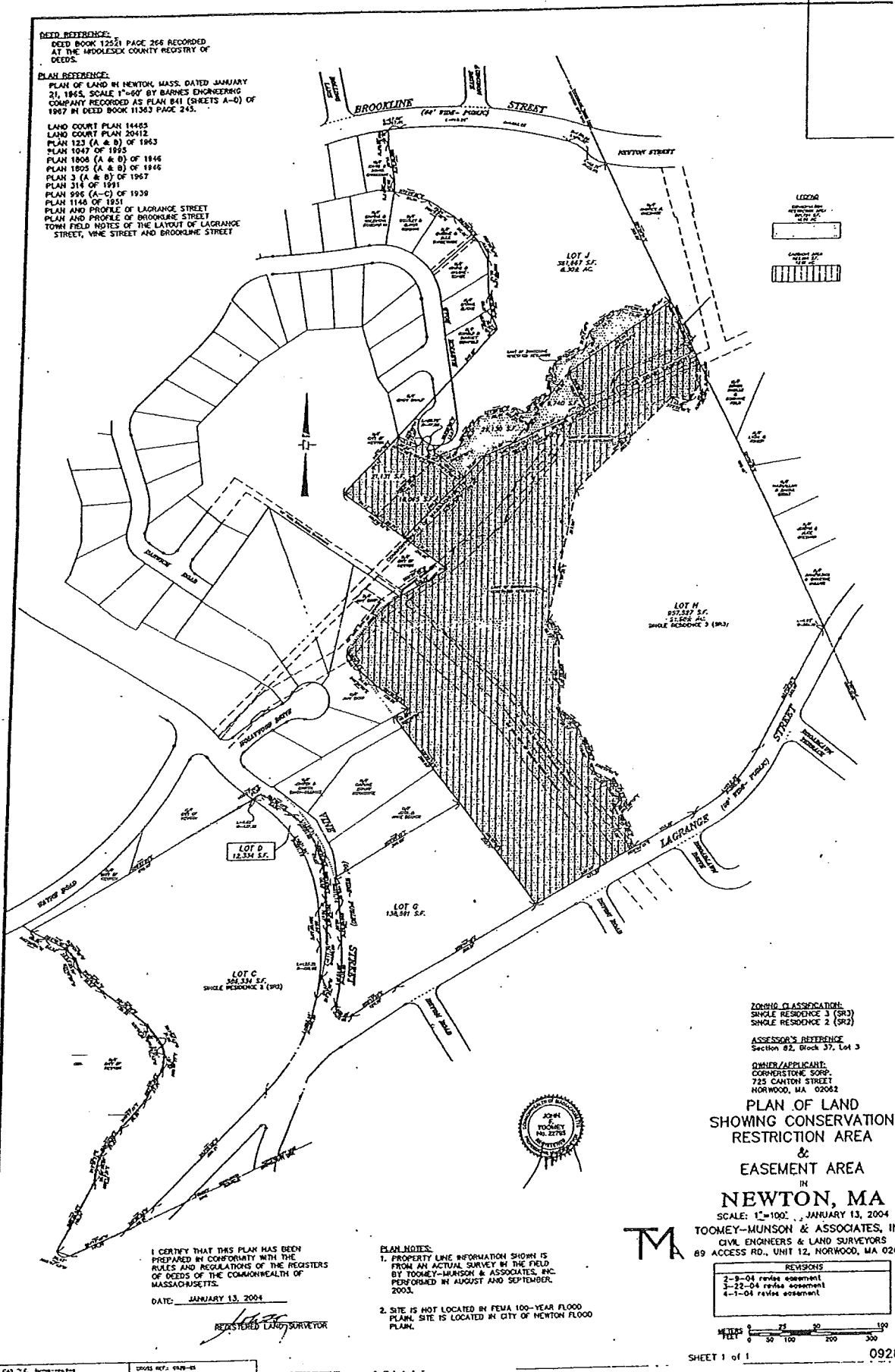
[Signature]  
Notary Public



**DEED REFERENCE:**  
DEED BOOK 12521 PAGE 266 RECORDED  
AT THE MIDDLESEX COUNTY REGISTRY OF  
DEEDS.

**PLAN REFERENCE:**  
PLAN OF LAND IN NEWTON, MASS. DATED JANUARY  
21, 1945, SCALE 1"=60' BY BARNES ENGINEERING  
COMPANY RECORDED AS PLAN B41 (SHEETS A-D) OF  
1967 IN DEED BOOK 11363 PAGE 245.

LAND COURT PLAN 14485  
LAND COURT PLAN 20412  
PLAN 123 (A & B) OF 1963  
PLAN 1047 OF 1965  
PLAN 1808 (A & B) OF 1946  
PLAN 1805 (A & B) OF 1946  
PLAN 3 (A & B) OF 1967  
PLAN 314 OF 1991  
PLAN 996 (A-C) OF 1939  
PLAN 1148 OF 1951  
PLAN AND PROFILE OF LAGRANGE STREET  
PLAN AND PROFILE OF BROOKLINE STREET  
TOWN FIELD NOTES OF THE LAYOUT OF LAGRANGE  
STREET, VINE STREET AND BROOKLINE STREET



**ZONING CLASSIFICATION:**  
SINGLE RESIDENCE 3 (SR3)  
SINGLE RESIDENCE 2 (SR2)

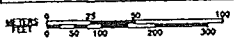
**ASSESSOR'S REFERENCE:**  
Section 82, Block 37, Lot 3

**OWNER/APPLICANT:**  
CORNERSTONE SORP.  
725 CANTON STREET  
NORWOOD, MA 02062

**PLAN OF LAND  
SHOWING CONSERVATION  
RESTRICTION AREA  
&  
EASEMENT AREA  
IN  
NEWTON, MA**

SCALE: 1"=100' JANUARY 13, 2004  
TOOMEY-MUNSON & ASSOCIATES, INC.  
CIVIL ENGINEERS & LAND SURVEYORS  
89 ACCESS RD., UNIT 12, NORWOOD, MA 02061

REVISIONS	
2-9-04	revise assessment
3-22-04	revise assessment
4-1-04	revise assessment



I CERTIFY THAT THIS PLAN HAS BEEN  
PREPARED IN CONFORMITY WITH THE  
RULES AND REGULATIONS OF THE REGISTERS  
OF DEEDS OF THE COMMONWEALTH OF  
MASSACHUSETTS.

DATE: JANUARY 13, 2004  
*[Signature]*  
REGISTERED LAND SURVEYOR

- PLAN NOTES:**
1. PROPERTY LINE INFORMATION SHOWN IS FROM AN ACTUAL SURVEY IN THE FIELD BY TOOMEY-MUNSON & ASSOCIATES, INC. PERFORMED IN AUGUST AND SEPTEMBER, 2003.
  2. SITE IS NOT LOCATED IN FEMA 100-YEAR FLOOD PLAIN. SITE IS LOCATED IN CITY OF NEWTON FLOOD PLAIN.



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:

*Vine St*

SEE PLAN IN RECORD BOOK 2004 PAGE 347

BK: 42435 Pg: 225 Doc: AGH  
Page: 1 of 4 04/07/2004 03:42 PM

MURRAY COLLINA  
600 WILSON PARK BL  
WATSON MA 01801

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.

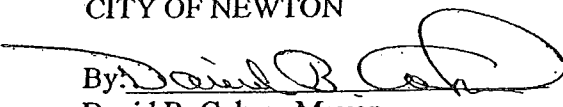
KESSELER DEVELOPMENT, LLC  
By: Cornerstone Manager, Inc.

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. Tyder, 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.

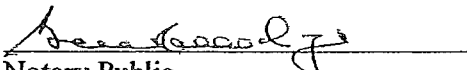
  
Notary Public  
My Commission expires: 12-31-04

COMMONWEALTH OF MASSACHUSETTS

*Suffolk*  
COUNTY OF MIDDLESEX, ss.

April 7, 2004

On this day, before me, personally appeared the above-named Paul E. Tyder, 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.


  
Notary Public  
My Commission expires: 12-31-04

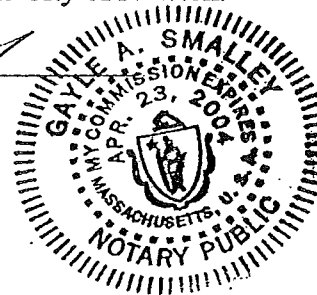
COMMONWEALTH OF MASSACHUSETTS

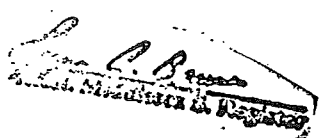
COUNTY OF MIDDLESEX, ss.

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.

  
Notary Public  
My Commission expires:



  
David B. Cohen  
Mayor, City of Newton