



Setti D. Warren  
Mayor

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

#132-17  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

---

## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	June 13, 2017
Land Use Action Date:	August 15, 2017
City Council Action Date:	August 28, 2017
90-Day Expiration Date:	September 11, 2017

DATE: June 9, 2017

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Neil Cronin, Senior Planner

SUBJECT: **Petition #132-17**, KESSELER WOODS, LLC., to AMEND SPECIAL PERMIT #102-06(15) AT Kessler Woods to allow relocation of the inclusionary zoning units by use of the Off-Site Development Option in conjunction with the rehabilitation of the apartment building at 219 Commonwealth Avenue resulting in an increased number of affordable units from the approved site of 179 Kessler Way, Ward 8, on land know as Section 82 Block 037 Lot 0095, containing approximately 640,847 sq.ft. of land in a district zoning Multi Residence 3. Ref: 7.3, 7.4, 11.4, 5.11.6 of Chapter 30 of the Newton Revised Zoning Ordinance, 2015.

---

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Public Hearing/Working Session.



219 Commonwealth Avenue

## EXECUTIVE SUMMARY

The petitioner, Chestnut Hill Realty Development, LLC, obtained a special permit (Council Order #102-06(15)) in April of 2015 to construct a four-story 88 unit building on LaGrange Street in Oak Hill now known as Hancock Estates (**Attachment A**). As part of the approval, the petitioner is required to provide 13 deed restricted inclusionary units affordable to households earning an average of 65% of area median income (AMI). To date, the project is about 75% complete and the entire structure is expected to be eligible for a certificate of occupancy in the fall.

The petitioner has recently acquired the property located at 219 Commonwealth Avenue in Chestnut Hill. The property is improved with a 3.5-story Tudor-style structure that has served as a 29-unit apartment building for many years. The petitioner is seeking to renovate the interior of the existing structure and locate the 13 deed restricted inclusionary units associated with Board Order #102-06(15) there. Therefore, the petitioner is seeking a special permit to amend Board Order #102-06(15) and to locate the required deed restricted inclusionary units off site. For the purposes of this memo, all land use analysis will pertain to the property located at 219 Commonwealth Avenue.

As proposed, the Planning Department does not feel that locating the inclusionary units at 219 Commonwealth Avenue is comparable to keeping the units on site at Hancock Estates. Although the petitioner proposes to increase the number of affordable units (for those earning up to 80% AMI) from 13 units at Hancock Estates to 19 units at 219 Commonwealth Avenue, the vast majority of the affordable units at 219 Commonwealth Avenue would be studio and one-bedroom units. In addition, six units at Hancock Estates are required to be deed restricted to households earning 50% of AMI, an income level not proposed at 219 Commonwealth Avenue. Lastly, the units at Hancock Estates are of new construction, larger in size, associated with modern amenities, and accessible via an elevator. In sum, staff feels that the units to be provided at Hancock Estates represent a kind of product and inventory of deed restricted units that are rare and in short supply in Newton.

### I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD – 219 COMMONWEALTH AVENUE

#### A. Neighborhood and Zoning

The subject property is a corner lot with frontages on Commonwealth Avenue and Manet Road in the Multi-Residence 1 (MR-1) zone in Chestnut Hill. The immediate area is largely residential in the form of single- and multi-family uses, but there are institutional, commercial, and public space uses in the neighborhood as well (**Attachments B & C**).

B. Site

The site consists of 10,347 square feet of land and is improved with a multi-family Tudor-style structure circa 1880. There are currently two curb cuts on site: one at the southeast corner which is ten feet wide providing access to a right of way shared with the abutter at 209 Commonwealth Avenue; the other curb cut is located at the northwest corner of the site and is approximately 15 feet wide providing access to a 2,160 square foot parking area. The parking area is constructed out of asphalt and is legally nonconforming. The site is predominantly flat with mature landscaping at the western, southern, and eastern boundaries.

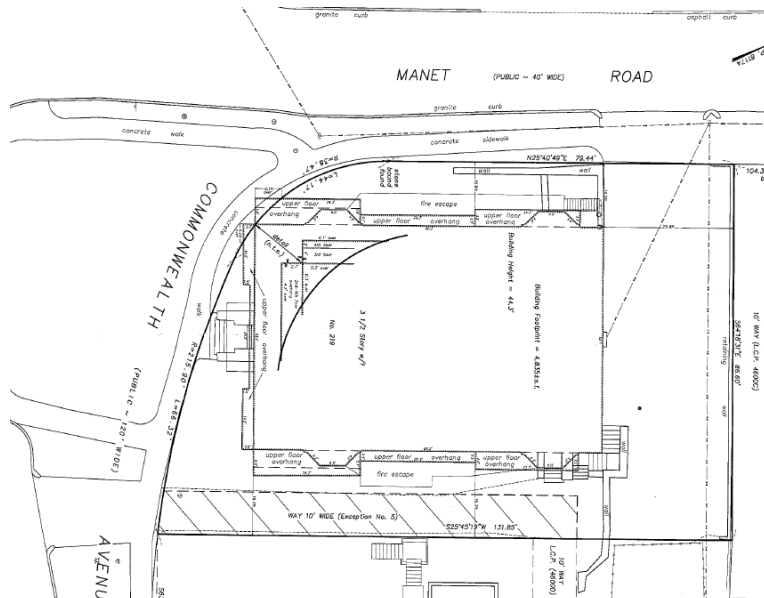
II. PROJECT DESCRIPTION AND ANALYSIS - 219 COMMONWEALTH AVENUE

A. Land Use

The principal use of the site is and will remain a multi-family residence.

B. Building and Site Design

The petitioner is not proposing major changes to either the structure or site. Changes to the structure include a proposed American with Disabilities (ADA) entrance at the northeast corner of the structure (rear), and repairs to the stucco and brick cladding on the facades. Staff notes the proposed ADA entrance is not accessible from the parking lot. With respect to the site, the petitioner is proposing to stripe a four-foot wide ADA path along the western side of the right of way to meet the proposed ADA entrance. Otherwise, the only changes to the structure are internal to the building. As provided in the scope of work, the petitioner is planning to rehabilitate the units with repairs and finishes where applicable (**Attachment D**). Staff notes that all proposed changes to the site and structure are by-right.



C. Parking and Circulation

The site's parking area is accessed via a 15 foot wide curb cut on Manet Road. The 2,160 square foot area is bituminous and is legally nonconforming. The petitioner is not proposing any changes to the parking area, but staff suggests the petitioner install a fence to screen the parking from the abutter at 28 Manet Road.

III. INCLUSIONARY ZONING ANALYSIS

A. Board Order #102-06(15)

Existing Board Order #102-06(15) requires the petitioner to provide 88 units at Hancock Estates, including 13 deed restricted units available to households earning an average income of 65% of AMI. Specifically, six units are required to be available to households earning 50% of AMI, six units are required to be available to households earning 80% of AMI, and one unit is required to be available to households earning 65% of AMI. All of these 13 units meet the affordability definition established under the State's Chapter 40B law, making the units eligible for the City's Subsidized Housing Inventory (SHI). The unit mix for the total project is broken down as follows:

**Table 1: Hancock Estates Unit Mix**

<b>Unit Type</b>	<b>Total Number of Units in Development</b>	<b>Number of Affordable Units</b>	<b>Average Sq. Ft.</b>
One-Bedroom	34	5	893 sq. ft.
Two Bedroom	54	8	1,000 sq. ft.
Total Units	88	13	NA

The Inclusionary Zoning Ordinance (Section 5.11) of the Newton Zoning Ordinance (NZO) provides for two possible alternatives to providing inclusionary units on-site: either through a cash payment or by providing an equivalent number of inclusionary units at another off-site location. If providing the units off site, the petitioner must partner with a nonprofit housing development organization. As such, the petitioner proposes to enter into a development agreement for the renovation and leasing of the 219 Commonwealth Avenue property with B'nai B'rith, a non-profit housing development organization per Section 5.11.6 of the NZO.

The petitioner has proposed to meet the inclusionary zoning requirement by

renovating the interior of the structure at 219 Commonwealth Avenue into 29 units. Nineteen (19) of these units would be reserved for households earning at or below 80% of AMI and 13 of the 19 unit specifically available to households at 65% AMI. The other 10 rehabilitated units would be reserved for households at or below 120% of Area Median Income. However, staff notes the proposal does not target the 50% of AMI income level that is required at Hancock Estates.

**Table 2: Off Site Development Proposal at 219 Commonwealth Avenue**

Unit Type	Average 65% AMI Units (Inclusionary Housing Requirement)	80% AMI Units	80% - 120% AMI Units	Total Units
Studio	3	0	0	3
One-Bedroom	10	4	5	19
Two Bedroom	0	2	5	7
Total Units	13	6	10	29

Staff notes that 19 units would meet the affordability definition established by the State’s affordable housing law. Additionally, the petitioner has proposed designating an additional 10 units for households earning between 80% - 120% AMI. Since 219 Commonwealth Avenue will be a rental project, all 29 units in the project would be eligible for the City’s SHI because more than 25% of the units are affordable to households earning up to 80% AMI.

**B. Purpose and Intent**

One of the stated purposes cited in Newton’s Inclusionary Zoning Ordinance is to “provide for a full-range of housing choices throughout the City for households of all incomes, ages, and sizes in order to meet the City’s goal of preserving its character and diversity.” One of the principal ways to achieve that goal is to gain inclusionary units in approved development projects across the City. The clear intent and preference of the ordinance is to have units created and made available to low and moderate income households at the actual location of each development, thereby increasing diversity in that neighborhood location and at each specific development

**C. Timing**

The units at Hancock Estates are scheduled to be leased beginning this summer with full completion of the project’s 88 units this fall. Of their own accord, the petitioner purchased the property at 219 Commonwealth Ave, which is proposed as the location for providing the off-site units. The petitioner proposes to rehabilitate the

units at 219 Commonwealth Avenue immediately and delay seeking certificate of occupancy for the 13 units at Kessler Woods until 13 inclusionary units are created at 219 Commonwealth Avenue. The petitioner’s attorney states the rehabbed inclusionary units at 219 Commonwealth Avenue could be delivered in October of this year.

D. Size and Affordability

The chart below compares the 13 inclusionary units to be created under the current Board Order for Hancock Estates with the proposed off-site inclusionary units at 219 Commonwealth Avenue.

**Table 3: Unit Type and Size Comparison**

	Unit Type	Total	Average Size	Affordability
Hancock Estates	1 bedroom	5	890 s.f.	50-80% AMI
Hancock Estates	2 bedroom	8	1,000 s.f.	50-80% AMI
Commonwealth	Studio	3	300 s.f.	65% AMI
Commonwealth	1 bedroom	10	540 s.f.	65% AMI

As shown, not only is the petitioner not proposing to include two-bedroom units at either the 50% or 65% income level, but the overall unit sizes at Hancock Estates are far larger than at 219 Commonwealth Avenue. A detailed inventory of the unit mix including square footage of the 219 Commonwealth Avenue program is found in **Attachment E**.

Additionally, staff notes that 5.11.7.A of the NZO states that, ‘Inclusionary Units have habitable space of not less than 650 square feet for a 1-bedroom unit and an additional 300 square feet for each additional bedroom’. Staff notes four of the proposed units and one 2-bedroom unit does not meet this threshold. Please note, staff treated studios as 1-bedroom apartments for the criterion outlined above.

E. Quality

The Inclusionary Housing Plan for Hancock Estates states that, “The affordable units will have the same finishes as the market rate units including granite countertops, stainless steel appliances, in unit washers and dryers, hard wood floors, and access to on-site amenities such as an exercise facility, Wi-Fi café, business center, theater, community room, and underground parking” (**Attachment F**). All of the units at Hancock Estates are accessible to those with disabilities as the development is serviced by an elevator.

The petitioner has not submitted detailed plans for the units to be rehabilitated at

Commonwealth Ave so it is difficult to assess their finishes. Additionally, One of the inclusionary units at 219 Commonwealth Avenue will be accessible and all units could be modified.

F. Accessibility

Hancock Estates is a three-story, elevator building with covered parking. In accordance with the regulations of the Massachusetts Architectural Access Board (MAAB) in Section 521 of the Code of Massachusetts Regulations, all of the units in the project will be required to meet MAAB's Group 1 Unit definition. Group 1 Units have features that can be modified without structural change to meet the needs of a household with a disability. In addition to the Group 1 Unit standard, the project will need to meet MAAB's requirements for Group 2 Units. Group 2 Units are fully accessible units that have spatial requirements to accommodate persons with mobility impairments, such as wider doorways. In accordance with 521 CMR, 5% of the units at Hancock Estates will be Group 2 Units. Providing visitable and accessible units in an elevator building is an important consideration, especially given the increasing proportion of older residents in Newton.

The petitioner has indicated one unit at Commonwealth Ave will be made handicap accessible. The 219 Commonwealth Avenue building is not served by an elevator. Given the age of the building, it is unlikely that the units meet the MAAB Group 1 Unit or Group 2 Unit standard. The project sponsor has proposed making one unit accessible for persons with mobility impairments as part of the off-site development proposal.

IV. Planning Recommendation

The preference and intent of Newton's Inclusionary Zoning Ordinance is to provide inclusionary units on site as part of Special Permit approval. However, provisions do exist in the ordinance for petitioners to meet this requirement by paying a fee or providing off-site units.

Decisions to grant these alternative means for complying with the ordinance should be weighed carefully. While the petitioner in this case has offered to provide more overall affordable units, staff does not feel that the proposed inclusionary unit benefits at this off site location outweigh the provision of affordable units at Hancock Estates, for the following reasons:

- The units at Hancock Estates are larger in size (8 two-bedroom units averaging 1,000 square feet vs. 10 one-bedroom units averaging 540 square feet) making them more accommodating for families.

- Six of the Hancock Estates inclusionary units will be deed restricted to households earning 50% of AMI, which is a deeper level of affordability than proposed at Commonwealth Avenue, where the proposal at Commonwealth would be to provide all 13 inclusionary units at 65% AMI.
- The units at Hancock Estates are new construction units with new appliances (i.e. washer/dryer) and on-site amenities including an outdoor play area and underground parking.
- The units at Hancock Estates are all fully accessible via elevator for visitation purposes and four units will be made fully accessible, including one of the inclusionary units.

## V. TECHNICAL REVIEW

### A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment G**). Based on the Memorandum, the petitioner is seeking the following relief:

- §5.11.4 and §5.11.6 of Section 30, to allow the provisions of the Inclusionary Zoning requirement to be met off site.
- Amend Board Order #102-06(15).

### B. Engineering Review

No Engineering Review is required at this time. This project will be reviewed for conformance with the City of Newton Engineering Standards prior to the issuance of the building permit, should this petition be approved.

### C. Historic Review - 219 COMMONWEALTH AVENUE

The Commonwealth Avenue site is on the National Register of Historic Places, which limits modifications to existing historical buildings. The petitioner's only substantive change is to locate an ADA accessible entrance at the northeast corner. As such, the scope does not meet the minimum criteria for review by the Newton Historical Commission (NHC). However, the petitioner is proposing to finance the project with funds from Mass Housing which triggers NHC review pursuant to M.G.L. Chapter 9, sections 26-27C. This review is restricted to the proposed ADA entrance and repairs to the stucco and brick cladding. The review will be held on the June 22<sup>nd</sup> meeting of the NHC.

## VI. PETITIONER'S RESPONSIBILITIES

At the Land Use Committee's Public Hearing or prior to being scheduled for a continued public hearing, the petitioner should be expected to provide an updated scope of work



detailing the rehabilitation of the units at 219 Commonwealth Avenue.

**ATTACHMENTS:**

- Attachment A:** Council Order #102-06(15)
- Attachment B:** Zoning Map
- Attachment C:** Land Use Map
- Attachment D:** Scope of Work at 219 Commonwealth Avenue
- Attachment E:** 219 Commonwealth Avenue Affordability Program
- Attachment F:** Kessler Woods (Hancock Estates) Inclusionary Housing Plan
- Attachment G:** Zoning Review Memorandum, dated May 8, 2017

DRAFT

Middlesex South Registry of Deeds  
Electronically Recorded Document

This is the first page of the document - Do not remove

---

Recording Information

Document Number	: 80577
Document Type	: DECIS
Recorded Date	: May 29, 2015
Recorded Time	: 02:56:51 PM
Recorded Book and Page	: 65451 / 484
Number of Pages(including cover sheet)	: 8
Receipt Number	: 1817026
Recording Fee	: \$75.00

**Middlesex South Registry of Deeds**  
**Maria C. Curtatone, Register**  
208 Cambridge Street  
Cambridge, MA 02141  
617-679-6300  
[www.cambridgedeeds.com](http://www.cambridgedeeds.com)

RECEIVED  
Newton City Clerk  
#102-06(12)  
APR 27 AM 11:39  
DAVID A. DISON, OMC  
Newton, MA 02459

CITY OF NEWTON  
IN BOARD OF ALDERMEN

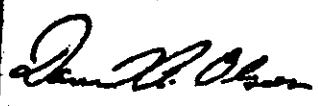
April 21, 2015

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow eighty eight units within an already approved and vested 80-unit multi-family building as authorized in Special Permit #102-06(12), to modify the below grade and at-grade parking areas to accommodate 16 additional parking stalls, and for minor changes to the façade of the previously approved building, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Marc Laredo:

Lot  
Property: H-1 Kessler Way, Newton

1. The site is an appropriate location for the reconfiguration of the approved 80 unit building into 88 units of rental housing in the same building envelope and same building footprint because the additional units and parking stalls do not change the type of use, and there are other multi-family residential uses in the surrounding area and the use should not adversely impact the surrounding neighborhood. (§30-24(d)(1))
2. The proposed reconfiguration of units does not change the location, design, and massing of the permitted structure, remains compatible with the character of the surrounding neighborhood, and will not adversely affect the surrounding neighborhood because the additional units and parking stalls do not change the location of the building on the site, the mass of the building, nor the distance of the building from the abutting properties and LaGrange Street and allows for a more compact development that maintains more of the site in its natural state. (§30-24(d)(2))
3. The development proposal will not cause a nuisance or a serious hazard to vehicles or pedestrians in the surrounding neighborhood because the additional units and parking stalls do not change nor increase any hazards to vehicles or pedestrians. (§30-24(d)(3))
4. Access to the site over streets remains appropriate for the vehicles that will be accessing the site because the additional units and parking stalls do not create traffic hazards. (§30-24(d)(4))
5. The site planning, building design, construction, maintenance and long term operation of the premises will continue to contribute significantly to the efficient use and conservation of natural resources and energy because the additional units and parking stalls are accommodated within the portion of the property already approved for development. (§30-24(d)(5))

A True Copy  
Attest  
  
City Clerk of Newton, Mass.

6. The Board finds that the public convenience and welfare will be served through the creation of an additional inclusionary housing unit which conforms to the requirements of the Newton Zoning Ordinance. (§30-24(f))
7. The Board finds that the first of two building permits (#15030759, dated March 27, 2015) for construction of the 80 unit multi-family building authorized in Special Permit #102-06(12), dated November 17, 2014, and Change of Zone Ordinance #106-06(11), dated November 17, 2014, each recorded in the Middlesex South Registry of Deeds, has been issued and that substantial use and construction work authorized by Special Permit #106-06(12), Change of Zone Ordinance #106-06(11) and building permit #15030759, dated March 27, 2015 has commenced.
8. The Board finds that substantial use and construction as authorized by Special Permit #102-06(12) (and all prior special permits that were incorporated therein), Change of Zone Ordinance #106-06(11), and building permit #15030759, dated 3/27/2015 has occurred and that, therefore, the Petitioner has complied with and fulfilled the requirements of M.G.L. Chapter 40A, Section 9 and the Newton Zoning Ordinance §30-23(c)(4) and §30-24(c)(4), thereby vested its rights under Special Permit #106-06(12) and Change of Zone Ordinance #106-06(11).
9. The Board intends that this special permit amends only the provisions of Special Permit #106-06(12) related to the number of approved units and the parking stalls for those additional units, and minor façade modifications.

PETITION NUMBER: #102-06(15)

PETITIONER: Chestnut Hill Realty Development, LLC.

LOCATION: Land located on LaGrange Street, known as Section 82, Block 37, Lot 95, containing approximately 640,847 square feet of land

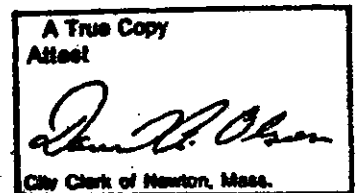
OWNER: Kessler Development, LLC c/o Cornerstone Corp.

ADDRESS OF OWNER: 400 Blue Hill Drive, Suite 2C  
Westwood, MA 02090

TO BE USED FOR: 88-unit multi-family building with a partially below grade parking garage.

CONSTRUCTION: Wood framed construction

EXPLANATORY NOTES: Allow eighty eight units in a single multi-family building, to modify the below grade and at-grade parking areas to accommodate 16 additional parking stalls, and for minor changes to the façade of the previously approved building.

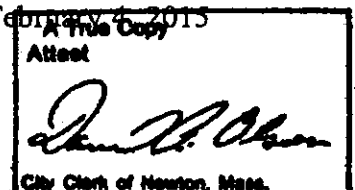


ZONING: Multi-Residence 3 district

All the conditions and provisions from the prior vested and exercised special permit approved under Board Order #102-06(12) remain valid and are still in full force and effect, except where noted below.

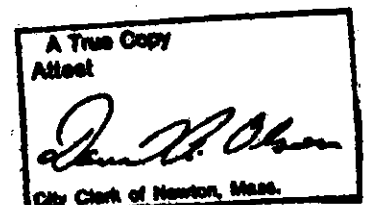
Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with the following plans with:
  - a. Plan titled "Existing Conditions Plan of Land for Kessler Woods Condominiums", prepared by H.W. Moore Associates, Inc., dated January 31, 2006.
  - b. Plan set with a project name "The Residences at Kessler Woods, Newton, MA", prepared by Stantec Planning and Landscape Architecture P.C., 226 Causeway Street, Boston, MA 02114, bearing the stamp of a registered landscape architect or professional engineer, dated August 4, 2014 and last revised on March 4, 2015, as to certain plans, including the following twenty (20) sheets:
    - i. Sheet L-001 - Overall Site Plan;
    - ii. Sheet L-002 - Site Comparison Plan;
    - iii. Sheet L-100 - Layout and Materials Plan;
    - iv. Sheet L-200 - Grading Plan;
    - v. Sheet L-201 - Blasting Comparison Plan;
    - vi. Sheet L-202 - Height Calculation Plan;
    - vii. Sheet L-300 - Utility Plan;
    - viii. Sheet L-301 - Utility Profiles;
    - ix. Sheet L-400 - Planting Plan;
    - x. Sheet L-401 - Tree Removal Plan;
    - xi. Sheet L-500 - Photometrics Plan;
    - xii. Sheet L-600 - Life Safety Plan;
    - xiii. Sheet L-700 - Site Details 1;
    - xiv. Sheet L-701 - Site Details 2;
    - xv. Sheet L-702 - Site Details 3;
    - xvi. Sheet L-703 - Site Details 4;
    - xvii. Sheet L-704 - Site Details 5;
    - xviii. Sheet L-800 - Site Sections 1;
    - xix. Sheet L-801 - Site Sections 2; and
    - xx. Sheet L-802 - Site Sections 3.
  - c. Plan set with a project name "Kessler Woods", prepared by The Architectural Team, Inc., 50 Commandant's Way, Chelsea, MA 02150, bearing the stamp of a registered professional architect, dated August 22, 2014, March 5, 2015, and February 4, 2015.



and last revised on February 19, 2015, as to certain plans, including the following thirteen (13) sheets:

- i. Sheet A1.00 - Floor Plan: Parking Floor Plan & First Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - ii. Sheet A1.01 - Floor Plan: Second Floor Plan & Third Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - iii. Sheet A2.00A - Floor Plan: Partial Parking Floor Plan, dated August 22, 2014 and revised February 19, 2015;
  - iv. Sheet A2.00B - Floor Plan: Partial Parking Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - v. Sheet A2.01A - Floor Plan: Partial First Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - vi. Sheet A2.01B - Floor Plan: Partial First Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - vii. Sheet A2.02A - Floor Plan: Partial Second Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - viii. Sheet A2.02B - Floor Plan: Partial Second Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - ix. Sheet A2.03A - Floor Plan: Partial Third Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - x. Sheet A2.03B - Floor Plan: Partial Third Floor Plan, dated August 22, 2014 and revised on February 19, 2015;
  - xi. Sheet A4.01 - Building Elevations, dated March 5, 2015 and revised on February 19, 2015; and
  - xii. Sheet A4.02 - Building Elevations, dated February 4, 2015 and revised on February 19, 2015.
2. The Petitioner shall comply with the affordable housing requirements set out in §30-24(f) of the Newton Zoning Ordinance and the Inclusionary Housing Plan, dated March 11, 2015, approved by the Director of Planning and Development, on file with the City Clerk. A total of 13 deed restricted inclusionary housing units shall be provided (1 additional unit from the previously approve 80 unit project); the size and location of such units shall be consistent with what is shown on the approved plans listed in Condition #1. The Petitioner shall ensure that the inclusionary units shall be maintained in perpetuity and made available to households in the following mix as more fully described in the Inclusionary Housing Plan:
- a. six (6) units at 50% of area median income;
  - b. six (6) units at 80% of area median income; and
  - c. one (1) unit at 65% of area median income.
3. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:



- a. Recorded a certified copy of this board order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
  - b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. No Final Inspection/Occupancy Permit for the use or building covered by this Special Permit/Site Plan Approval shall be issued until the petitioners have:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services, the City Engineer and the Department of Planning and Development a final as-built survey plan in paper and digital format for any portion of the Project.
  - c. Obtained a written statement from the Planning Department that confirms the project has been constructed consistent with the plans approved in Condition #1.

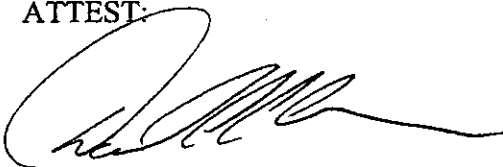
Under Suspension of Rules

Readings Waived and Approved

19 yeas 2 nays (Aldermen Harney and Yates) 3 absent (Aldermen Gentile, Hess-Mahan, and Laredo)

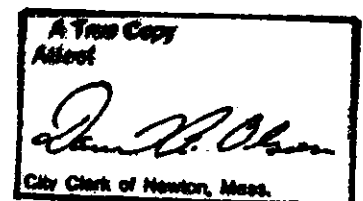
The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on April 27, 2015. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk  
Clerk of the Board of Aldermen


I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on 4/27 and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.



ATTEST.



(SGD) DAVID A. OLSON, City Clerk  
Clerk of the Board of Aldermen

A True Copy  
Attest  
  
City Clerk of Newton, Mass.









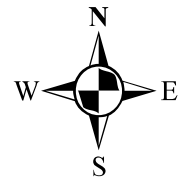
For our title see deed dated as of April 27, 2015, recorded in Book 65280, Page 339.

**Attachment B  
Zoning Map  
Commonwealth Ave., 219**

*City of Newton,  
Massachusetts*

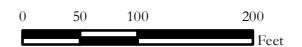
**Legend**

-  Single Residence 2
-  Multi-Residence 1
-  Public Use
-  Building Outlines
-  Surface Water
-  Property Boundaries

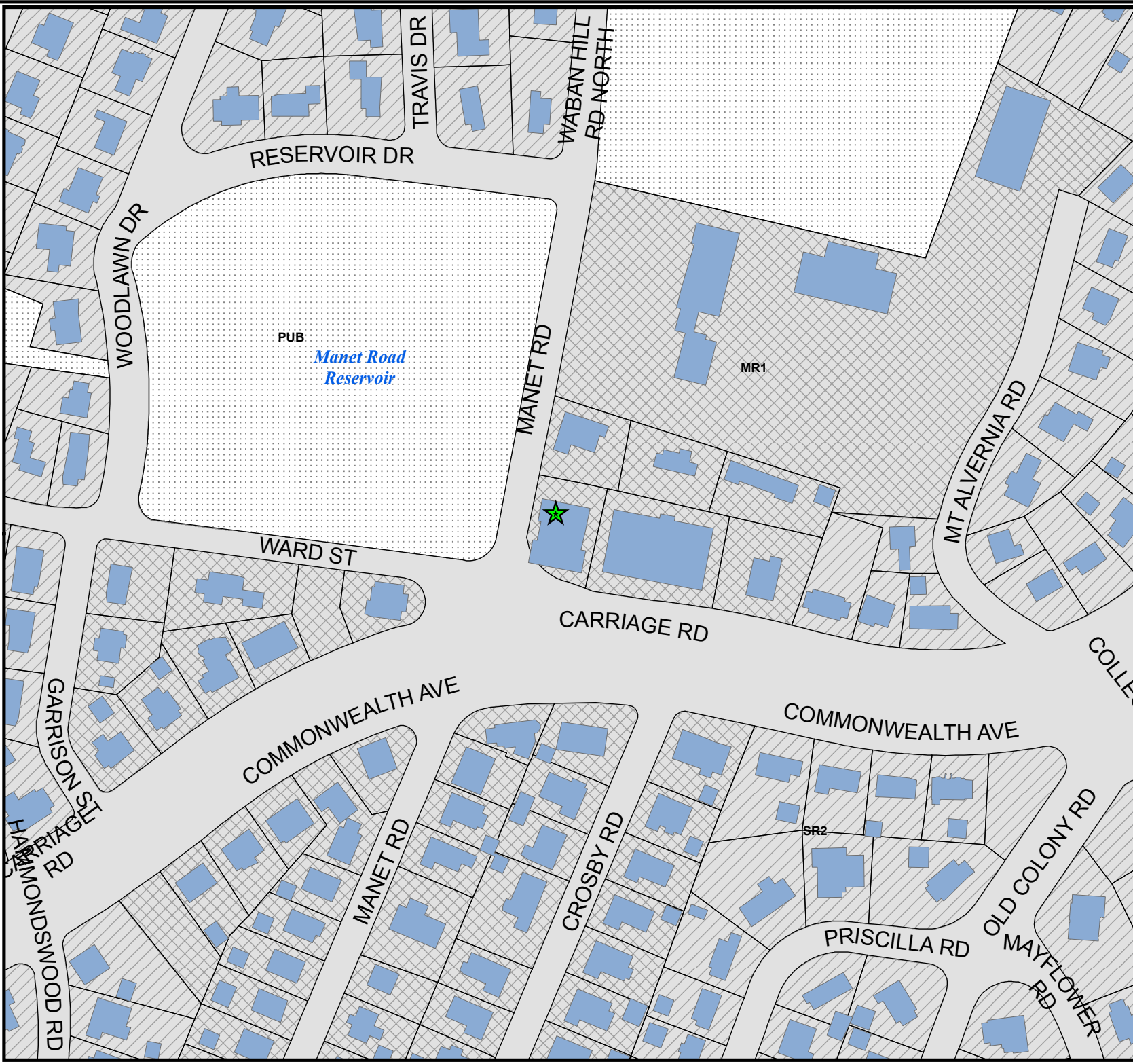


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: June 09, 2017











# Attachment C Land Use Map Commonwealth Ave., 219

## Legend

### Land Use

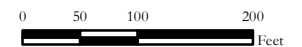
### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Open Space
-  Private Educational
-  Vacant Land
-  Building Outlines
-  Surface Water
-  Property Boundaries

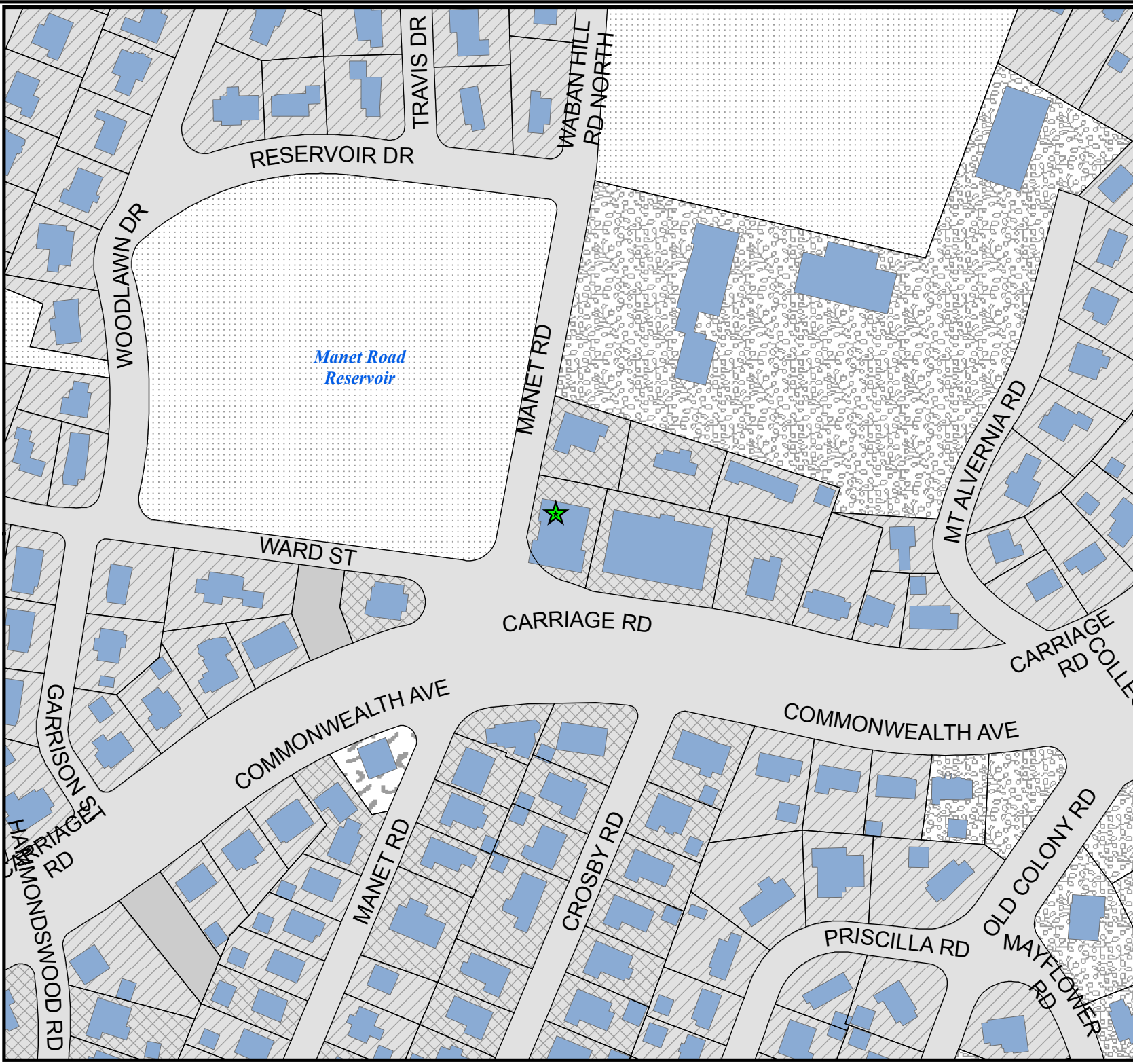


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: June 09, 2017



**219 Commonwealth Avenue  
Preliminary Scope Of Work For Renovation**

**NOT FOR CONSTRUCTION**

May 17, 2017

Located at 219 Commonwealth Avenue  
Newton, Massachusetts 02467

---

**GENERAL INFORMATION**

The project consists of renovating the existing apartments at 219 Commonwealth Avenue in Newton, Massachusetts. The single building is a four-story Tudor-revival located on approximately 0.24 acres of land. The building was completed in 1899 and occupies approximately 14,560 square feet. According to City records, the building has contained 28, 29, or 30 units at various times during its occupancy, with historical building records indicating 40 units. Currently, the existing 28 dwelling units span across five floors, including the occupied ground level. The existing laundry room is located on the ground level and is currently not handicapped accessible. The building's mechanical rooms and electrical closets are all located on the ground level. The meters for the building are currently located in the common-area corridor at the ground level. There are currently no accessible apartments or existing hearing/visually impaired apartments. The two-story duplex unit located on the ground and first floor levels is proposed to be split into two separate units – an accessible 1-bedroom unit located on the ground level and a two-bedroom on the first floor. This will bring the total number of units in the building to 29 which meets the current certificate of occupancy.

- Unit layouts, including kitchen and bathroom types, are non-typical throughout
- Select units to be modified for layout improvement per Owner
- New 1-bedroom accessible unit and new 2-bedroom unit to be created from existing two-story duplex unit
- New laundry area to be created on third-floor by removing existing tenant storage closets
- New dishwashers to be installed at units where layout allows
- Existing meters located on ground level to be enclosed
- Meter area to be maintained as secondary means of egress
- Existing parking lot to be re-graded, milled, and re-paved
- Lead encapsulation and/or removal at all common areas.

**DIVISION 4 – MASONRY**

1. Minor Masonry repair and pointing at exposed brick walls and chimneys.

**DIVISION 5 – METALS**

2. Provide non-structural metal stud framing as required to modify reconfigured duplex unit to create new handicapped accessible one-bedroom unit and new two-bedroom unit, to create laundry area at third floor, to enlarge ground level laundry area, to enclose existing meters located on ground level. New enclosed area to have two new egress doors in order to maintain secondary means-of-egress for residents.

**DIVISION 6 – WOODS, PLASTICS, & COMPOSITES**

1. Remove and replace damaged or deteriorated exterior wood trim per allowance.
2. Provide new wood blocking for mounting of handrails, cabinetry, and toilet accessories in accessible unit.
3. Remove and replace damaged or deteriorated interior trim, moldings, and door casings per allowance.

**DIVISION 7 – THERMAL & MOISTURE PROTECTION**

1. Repair exterior stucco veneer, per allowance and reference to drawings.
2. Provide fire rated protection (fire stop) at all existing penetrations into rear stairwell (particularly at ground level walls around stairwell)

**DIVISION 8 – DOORS AND WINDOWS**

1. Provide new fire-rated egress doors and frames and hardware at locations noted on plans.
2. Provide two new fire-rated egress doors and hardware at corridor and stairwell at ground level.
3. Provide new fire-rated doors and hardware at existing electrical and communications equipment at ground level corridor.
4. Provide new power-operated exterior door at ground level building entrance for accessible unit.

**DIVISION 9 - FINISHES**

1. Provide miscellaneous preparation and painting as indicated at exterior stucco and wood trim. New paint to match existing.
2. Provide miscellaneous patching to unit and common-area interiors at damage caused by new work and where indicated on unit survey matrix.
3. Provide one coat of primer and two coats of new low VOC painted finish over existing interior walls and ceilings at all common areas including hallways and existing painted staircases and handrails and at dwelling units.
4. Provide new VCT flooring at dwelling unit kitchens indicated in unit survey matrix. Provide new vinyl transition strips at joint with existing adjacent flooring.
5. Provide new VCT flooring at dwelling unit bathrooms indicated in unit survey matrix. Provide new vinyl transition strips at joint with existing adjacent flooring.
6. Provide new LVP at unit interiors where existing carpet was removed.
7. Provide new carpet at all common area flooring including existing carpeted staircases.
8. Remove existing tile or other surround and provide new ceramic tile tub surround at dwelling units indicated on unit survey matrix. Patch walls and provide new substrate as necessary.
9. Provide new drop ceiling tiles at ground level units where existing were removed, onto existing suspension grid.
10. Provide new sheetrock ceiling at units where existing ACT ceiling and suspension grid was removed.

**DIVISION 10 - SPECIALTIES**

1. Remove existing and provide new recessed medicine cabinets at dwelling units indicated in unit survey matrix.
2. Provide new surface mounted frameless mirror at new accessible unit and new surface mounted medicine cabinet at new accessible unit (to side of sink area).
3. Provide new toilet accessories at all bathrooms, including grab bars, at new accessible unit bathroom. Accessories shall include two towel bars at all two-bedroom units.
4. Provide new vented wire shelving at all newly constructed closets, as noted on drawings.

#### **DIVISION 11 - EQUIPMENT**

1. Provide new EnergyStar appliances (where applicable) at units where noted in Unit Survey matrix:

#### **DIVISION 12 - FURNISHINGS**

1. Provide new kitchen cabinetry with post-formed plastic laminate countertops with integrated backsplashes and side splashes at dwelling unit kitchens indicated in unit survey matrix.
2. Provide new bathroom vanity cabinetry and cultured marble countertop with integral bowl, backsplash, and side splash where applicable at dwelling unit bathrooms indicated in unit survey matrix.
3. Provide new porcelain wall-hung ADA-compliant sink at new accessible unit.
4. Cabinetry at accessible unit to be accessible and of solid wood construction.
5. Provide new vinyl blinds at all unit interior windows.

#### **DIVISION 13 – SPECIAL CONSTRUCTION - Not Used**

#### **DIVISION 14 – CONVEYING SYSTEMS – Not Used**

#### **DIVISION 21 – FIRE SUPPRESSION SYSTEMS – Not Used**

#### **DIVISION 22 – PLUMBING SYSTEMS**

1. Remove existing and provide new 20 gauge minimum, stainless steel, single bowl sinks, EPA WaterSense\* labeled faucets (1.5gpm), and stops at dwelling unit kitchens. Provide side-drain sinks at units to receive new below-sink dishwasher. Remove existing and provide new EPA WaterSense\* labeled faucets (1.0gpm) and new stops at all dwelling unit bathrooms. Connect to existing plumbing
2. Remove existing and provide new handheld showerheads with low-flow heads with 60" minimum hose and a vertically adjustable mounting bar at new accessible bathroom at new handicapped accessible dwelling unit. Connect to existing / modified plumbing.
3. Remove existing and provide new tub at dwelling units indicated in unit survey matrix.
4. Provide new accessible tub at new handicapped accessible dwelling unit.
5. Remove existing and provide new comfort height/accessible low-flow water closets and stops at dwelling unit bathrooms indicated in unit survey matrix. Connect to existing plumbing. Provide new shut off valve at all locations.
6. Provide new hot/cold water supplies as well as waste/vent piping to new third-floor laundry area.

#### **DIVISION 23 – MECHANICAL SYSTEMS**

1. Contractor shall relocate existing steam and forced hot water piping and radiators at reconfigured units and at accessible unit.

#### **DIVISIONS 26 – ELECTRICAL SYSTEMS**

1. Provide power, connections, and installation of new power door operator at accessible unit entry.
2. Provide new fire alarm devices, wireless doorbell, and telephone/intercom/doorbell horns and strobes at one (1) hearing and visually impaired unit to comply with MAAB requirements.
3. Provide new interconnected smoke detectors at all dwelling units and common-areas.
4. Provide new video intercom system with cable insertion at all dwelling units.
5. Provide updates or add-on components to fire alarm panel to communicate with all new devices at existing and reconfigured apartments.

6. Rework existing unit electric circuits, outlets, and GFI's as necessary for kitchen replacements, reconfigured units, and accessible upgrades.

**DIVISIONS 32 – SITE WORK**

1. Repair storm drain and surrounding grade at rear parking area. Ensure positive drainage away from building and entry doors.
2. Provide restorative landscaping as necessary where damaged by construction.

**Kessler Woods Affordable Housing - 13 units**

5/25/2017

Unit #	Unit Type	# BR	SF	Level of Aff.	Affordable Rent
110	1	1	842	50%	\$970
128	1	1	842	50%	\$970
210	1	1	842	50%	\$970
228	1	1	836	50%	\$970
310	1	1	842	50%	\$970
211	2	2	992	50%	\$1,163
<b>Subtotal 50%</b>	<b>6</b>	<b>7</b>	<b>5,196</b>	<b>50%</b>	<b>\$1,002 AVG</b>
107	2	2	1,025	65%	\$1,513
<b>Subtotal 65%</b>	<b>1</b>	<b>2</b>	<b>1,025</b>	<b>65%</b>	<b>\$1,513 AVG</b>
111	2	2	994	80%	\$1,862
125	2	2	994	80%	\$1,862
129	2	2	1,025	80%	\$1,862
207	2	2	1,025	80%	\$1,862
225	2	2	994	80%	\$1,862
311	2	2	989	80%	\$1,862
<b>Subtotal 80%</b>	<b>6</b>	<b>12</b>	<b>6,021</b>	<b>80%</b>	<b>\$1,862 AVG</b>
<b>TOTAL</b>	<b>13</b>	<b>21</b>	<b>12,242</b>	<b>65% AVG</b>	<b>\$1,438 AVG</b>



## **Kessler Woods Inclusionary Housing Plan**

March 11, 2015

Chestnut Hill Realty Development, LLC is asking the Board of Aldermen for a modification to their Special Permit approval # 102-06 (12) for a 80 unit apartment development in Kessler Woods.

Chestnut Hill Realty's new plan is for 88 units of rental housing with an average size of 1,285 s/f. The plan decreases the number of two bedroom units by six and increases the number of one bedroom units by 14. The new plan has the same architecture, footprint and total occupied building square footage as the November 17, 2014 plan.

Consistent with the City of Newton's goals, the project is designed such that 15% of the total units will be designated as affordable in accordance with the Newton Inclusionary Housing Ordinance Section 30- 24(f) (the "Ordinance"). Chestnut Hill Realty Development, LLC (the "Developer"), has prepared this Inclusionary Housing Plan, which sets forth information concerning the inclusionary housing units to be included in the Project. The enclosed materials include:

### **Exhibit 1** - Description of the Inclusionary Units including:

- Overview of the Project
  - Information on the Chestnut Hill Realty Development, LLC project
- Project unit mix
- Outline of construction specifications and summary of amenities
- Building floor plans indicating the locations of the Inclusionary Units
  - (plans attached separately)

### **Exhibit 2** - Proposed Marketing and Resident Selection Plan

**Exhibit 3** - Draft form of Local Initiative Program Regulatory Agreement and Restrictive Covenant for Rental Project Local Action Units

### **Exhibit 4** - City of Newton Guidelines for Uniform Resident Selection

The Developer has agreed that pursuant to Section 30-24(f) (8) (c) and (d) of the Newton Inclusionary Housing Ordinance, prior to marketing the inclusionary housing units, the Developer will enter into an agreement with the Newton Planning and Development Department to use the listing of "Eligible Households" provided by the Newton Housing Authority, to the extent permitted by law, and to develop a supplemental list of "Eligible Households" that will be eligible to rent the inclusionary housing units.

The Developer has agreed that per Section 30-24(f) (8) (e) of the Ordinance, the project will be subject to a covenant to be recorded with the Middlesex South District Registry of Deeds that limits the rental of all designated inclusionary housing units certified as Local Action Units under the DHCD LIP.

The form of the covenant of the inclusionary housing units shall be the LIP Regulatory Agreement for Rental Developments, as approved by the City Solicitor, a draft of which is attached hereto as Exhibit 3, with such modifications as may be approved by the City Solicitor and the Developer. In the event of a conflict between this Plan and the Regulatory Agreement, the Regulatory Agreement shall control.

Per Section 30-24 (f)(8)(g), the Developer agrees to submit, on an annual basis, a Compliance Report certifying compliance with the provisions of this Plan and Section 30-24(f).

The Developer understands that the City intends to qualify inclusionary housing units developed under this Project for the Massachusetts Department of Housing and Community Development (DHCD) Subsidized Housing Inventory under the Local Initiatives Program (LIP).

The LIP Guidelines, dated February 22, 2008, are attached hereto and made a part of this Plan (the "LIP Guidelines").

All materials provided are in draft form and subject to review by the City of Newton as well as subject to change pending project review. Final materials will be submitted as part of the final Local Initiative Program Regulatory Agreement and Local Initiative Program Application for Local Action Units.

## **Exhibit 1**

### **History of the Development**

In 2006, the Cornerstone Corporation permitted a 62-unit condominium development at Kessler Woods. The project was approved with a variety of conditions. It was never built.

In 2014, Chestnut Hill Realty received a Special Permit dated November 17, 2014 for 80 units to be built on the same location as the previously approved Cornerstone project.

During that permitting process there was extensive review of all phases of the development including the stormwater management, the traffic impact, the landscaping, the affordable housing component, the construction management plan and other details of the project.

Chestnut Hill Realty Development, LLC is has a Special Permit for one and two bedroom apartments homes in a single, 3 story above garage, elevator building.

- The development will include 80 apartment homes
  - 20 one-bedroom units (3 affordable)
  - 60 two-bedroom units (9 affordable)
    - 6 at 50% of area median income
    - 6 at 80% of area median income

### **Current Project**

Chestnut Hill Realty is asking for a modification of the unit mix to the November 17, 2014 Special Permit. CHR is asking for a reduction of 6 two bedroom apartments and an increase of 14 one bedroom apartment for a total of 88 units. There is no increase in total occupied building space from the 80 unit project.

The exterior of the building will remain the same as will the total occupied building.

- Average size of the apartments of 1,285 s/f
- Affordable units sizes:
  - One bedroom 893 s/f
  - Two bedroom 1000 s/f
- 176 parking spaces with 135 in a below grade garage
- Common space to include a Wi-Fi café, exercise facility, business center, community room and theater

- Heavily landscaped lot
- Market rate rents start at \$3,000 for one bedroom units and \$4,500 for two bedroom units

**Estimated Rents per Unit Type**

• 29	market rate one bedrooms	\$3,000+
• 2	affordable one bedrooms at 80%*	\$1,271
• 2	affordable one bedroom at 50%*	\$866
• 1	affordable one bedroom at 65%*	\$1,072
• 46	market rate two bedrooms	\$4,500+
• 4	affordable two bedrooms at 80%*	\$1,412
• 4	affordable two bedroom at 50%*	\$951

\* All are estimates and exclude utilities

**Project Unit Mix**

**Description of the Inclusionary Units**

Chestnut Hill Realty Development, LLC is committed to providing 15% of the total number of residential units at the Project as affordable units to six households earning less than 80%, six households at 50% and one at 65% of the area median income.

The Project will have up to 88 units. Assuming 88 units are constructed, 6 units will be made available to eligible households at 80% of median income, 6 units at 50% of median and one will be available to households at 65% of median income in accordance with the Newton Inclusionary Housing Ordinance.

The affordable units will have the same finishes as the market rate units including granite countertops, stainless steel appliances, in unit washers and dryers and hard wood floors. They will be located on all three floors in the front and back of the building and are sized well above the required minimum sizes.

All residents will be able to use the on-site amenities such as the exercise facility, Wi-Fi café, business center, theater and community room.

**Affordable unit mix**

Unit type	Beds/Unit Type	Unit S/F	Affordable
One bedroom	34	893	5
Two bedrooms	54	1000	8
Total Units			13

Rental rates will be calculated prior to project occupancy based on market conditions. For the inclusionary housing units, in accordance with Section 30-24(1)(b)(i), rent (including a utility allowance) will not exceed 30% of the monthly income of an Eligible Household, assuming 1.5 persons per bedroom.

Based on an internal market analysis and examination of the required affordable housing rents, the following represent the estimated aggregate monthly rent for market rate and affordable units by unit type as estimated by the applicant. The affordable rate rents shown below are derived by using the DHCD Boston Area affordable housing income limits by household size (see appendix 2 for detail)

The inclusionary units will be rented such that the mean income of households in the inclusionary units, as of lease commencement, averages no more than 65% of the area median income (adjusted for household size) as provided in Section 30-24 (f)(1)(v) of the Ordinance.

**Affordable Rent Estimates**

The 2015 Boston-Cambridge-Quincy MSA Household Income and Income Limits by Number of People per Unit were used for all calculations. Utilities to be paid separately by the residents.

**Projected rents including utilities allowance for affordable units**

**80% of Median Income**

**One Bedroom Unit**

Two person income limits \$55,800  
 $\$55,800 / 12 = \$4,650$  income per month  
 $\$4,650 \times .30 = \$1,390$  To spend on housing per month

**Two Bedroom Units**

Three person income of \$62,750  
 $\$62,750 / 12 = \$5,229$  income per month  
 $\$5,229 \times .30 = \$1,569$  To spend on housing per month

### ***50% of Median Income***

#### One Bedroom Unit

Two person income limits \$39,400  
 $\$39,400 / 12 = \$3,283$  income per month  
 $\$3,283 \times .30 = \$985$  To spend on housing per month

#### Two Bedroom Units

Three person income of \$44,350  
 $\$44,350 / 12 = \$3,695$  income per month  
 $\$3,695 \times .30 = \$1,108$  To spend on housing per month

### ***65% of Medium Income***

#### One Bedroom Unit

Two person income limits \$47,650  
 $\$47,650 / 12 = \$3,970$  income per month  
 $\$3,970 \times .30 = \$1,191$  To spend on housing per month

## **Outline of Construction Specifications and Summary of Amenities**

### **Amenities**

In-unit Washer/Dryer

Covered parking

Amenity Center

- Wi-Fi
- Exercise Room
- Walking trails
- Community room
- Business center
- Theater

### **Project details**

- Current zoning identified; proposed zone change described, if applicable.
  - Special permit was received in 2006, and extended in December 2009 CHR wants to amend this Special Permit

- Description (graphic) of surrounding land uses and neighborhood context. Provide locus map. Provided
- Traffic impacts and access to alternative transportation.
  - Traffic memo provided.
- Project height, scale, massing
  - Project is 3 stories high over a garage
  - 195,330 of total square footage
- Building appearance (design features, materials, etc.)
  - Elevation provided
- Building layout
  - Site plan provided
- Proposed site plan with buildings, parking, access, landscaping, etc.
  - Site plan provided
- Typical unit floor plan
  - Floor plan provided (updated floor plans to be in next comprehensive plan set)
- Proposed elevations
  - Elevation provided
- Efficiently manages long term operating expenses for residents
  - CHR has an extensive portfolio of apartments, which they have owned and managed for many years.
- Efficiently manages consumption of resources (energy, water, land, etc.)
  - CHR has a program at all of their facilities to be environmentally smart with appliances, materials etc.
- Minimal negative impact on environment
- Quality and type of building systems
- Materials and interior and exterior finishes
  - Exterior materials will be stone and cement board siding with asphalt shingle roof. It will look traditional.
- Type and location of landscaping.
  - Much of the property will remain undisturbed and CHR will replace trees removed as required by the Tree Ordinance. CHR prides itself on its landscaping at all of its housing communities. They employ their own landscaping staff.
- Inventory of trees that will be saved/replaced.
  - Same as previous plan
- Description of the amount of open space and how it functions
  - The property will have 563,190 square feet of open space, which is same as the previous approved Special Permit.
- Plan to meet energy efficiencies and/or Energy Star
  - The building will meet or exceed the Stretch Code. A memo describing the Project's Sustainable Project Features is attached.
- A description of how the project will employ Smart Growth principles
- The Project will include a shuttle.

- Needs of residents (play space for children, units are accessible/adaptable, etc.) are considered
  - Units are designed to accommodate those who want one floor living. The building has an elevator and underground parking. Four units (including 1 affordable unit) will be handicapped accessible.
  - There will be a designated outdoor play/recreation area.
- There is a sense of community
  - The design of the building, layout of the property and amenities all foster a real community at Kessler Woods.
- The project represents a healthy and safe environment
- The project represents a welcoming community and is open and accessible to populations not likely to live in Newton.
  - Kessler Woods will be open and accessible and have 13 affordable units and four Type 2 handicapped accessible units.
- Efficient and appropriate employment of universal design features

## **Attachments**

Site Plan  
 Arial  
 Elevation  
 Floor plans  
 Sustainable Project Features

## **Exhibit 2**

### **Marketing and Resident Selection Plan**

Chestnut Hill Realty Development, LLC (the “Developer”) or its designee will act as the Project’s lottery agent (the “Lottery Agent”) and the City of Newton or its designee will act as the monitoring agent. Lottery and Monitoring Agents shall utilize the City of Newton’s *Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing* (“Newton Fair Housing Guidelines”), a copy of which is attached as Exhibit 4, and incorporated herein. Implementation of the Tenant Selection Plan is based on two fundamental principles: Equal Opportunity and Due Process.

### **EQUAL OPPORTUNITY**

The Lottery Agent will not discriminate against applicants on the basis of race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance, or the requirement of such programs. The Lottery Agent will maintain a non-discriminatory hiring policy for employees.



## **DUE PROCESS**

### Training

All persons involved with the processing of housing applications for the inclusionary units will receive training in the observation of and compliance with Executive Order 11063, Massachusetts General Laws 1518, the Civil Rights Act of 1964, and Title VI. The purpose of the training is to ensure that all employees enforce the policy of non-discrimination and fair housing.

### Documentation

All information used to evaluate applicants for the inclusionary units will be in writing. This includes application forms, verifications, credit checks, letters of support, interview notes, etc. All applications, advertisements and management materials will include equal opportunity language and the fair housing logo.

### Appeals

Rejected applicants will receive written notification containing the reasons for their rejections and may appeal, in writing, to the Lottery Agent within five days of receiving the rejection notice. All rejection notices will contain phone numbers for complaints to the Massachusetts Commission against Discrimination and the U.S. Department of Housing and Urban Development.

Once an appeal is requested in writing to the Lottery Agent, a hearing will be scheduled to occur within ten (10) days. A member of the Lottery Agent who has not participated in the selection decision will conduct the hearing. All new information presented by the applicant must be in writing and be otherwise verifiable. The hearing officer's decision will be rendered in writing within ten (10) days of the conclusion of the hearing and will be final.

## **ELIGIBILITY**

### Income

As set forth in the City of Newton's Inclusionary Housing Ordinance for rental units, the inclusionary units will be made available to applicants with a household income that is no greater than eighty percent (80%) and (50%) of the area median income for the Boston metropolitan statistical area published by the U.S. Department of Housing and Urban Development (HUD), as adjusted for household size (the "Area Median Income").

Inclusionary Units will be rented such that the mean income of Eligible Households living in the Project is no more than 80% of the area median income as described above. Income shall be determined as defined in the LIP Guidelines.

## Household/Apartment Size

The bedroom mix for Inclusionary Units will be equal to the bedroom mix of the market rate units. Applicants will be eligible for units appropriate to the size of their household. Households must have at least one (1) person per bedroom and no more than two (2) persons per bedroom.

## **PRIORITY HOUSING NEEDS CATEGORIES**

In addition to the minimum eligibility requirements above, a lottery system will be used to select renters. To the extent permitted by law, this selection process will be governed by the City's Newton Fair Housing Guidelines. Notwithstanding the foregoing, in the event there are insufficient potential renters meeting the local preference criteria (as established in the Local Preference Policy) wishing to rent the Local Preference Units, the Local Preference Units shall become General Preference Units. The Developer agrees to use a listing of Eligible Households provided by the Newton Housing Authority. Further, in the event there are insufficient potential renters meeting the eligibility criteria to rent the inclusionary housing units after two (2) rounds of Lottery, then the units may be rented to market-rate households, but will revert to Inclusionary Units once vacated by the market-rate tenant.

## **APPLICATIONS AND MARKETING**

The Inclusionary Housing Units shall be marketed and offered for rental in accordance with the LIP Guidelines and the Newton Fair Housing Guidelines. In the event of a conflict between the Newton Fair Housing Guidelines and the LIP Guidelines, the LIP Guidelines shall control. In all events, the marketing and rental of the Inclusionary Housing Units shall be further subject to the provisions of applicable law.

## **ANNUAL COMPLIANCE REPORT**

Per Section 30-24 (f)(8)(g), the Developer agrees to submit, on an annual basis, a Compliance report on compliance with the provisions of this Plan and Section 30-24(f).

### Exhibit 3

#### LOCAL INITIATIVE PROGRAM

#### REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS FOR RENTAL PROJECT Local Action Units

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_, 20\_ by and among the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD") pursuant to G.L. c.23B §1 as amended by Chapter 19 of the Acts of 2007, the City/Town of Newton, MA ("the Municipality"), and, Chestnut Hill Realty Development, LLC, a Massachusetts [corporation/limited partnership/limited liability company], having an address at 300 Independence Drive, Chestnut Hill, MA, and its successors and assigns ("Developer").

#### WITNESSETH:

WHEREAS, pursuant to G.L. c. 40B, §§ 20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April 1989, regulations have been promulgated at 760 CMR 56.00 (the "Regulations") which establish the Local Initiative Program ("LIP") and *Comprehensive Permit Guidelines: M.G.L. Chapter 40B Comprehensive Permit Projects - Subsidized Housing Inventory* have been issued thereunder (the "Guidelines");

WHEREAS, the Developer intends to construct a rental housing development known as at a \_\_\_\_\_ acre site on \_\_\_\_\_ Street/Road in the Municipality, more particularly described in Exhibit A attached hereto and made a part hereof (the "Project");

WHEREAS, such Project is to consist of a total number of \_\_\_\_\_ rental dwellings (the "Units") and \_\_\_\_\_ of the Units will be rented at rents specified in this Agreement to Eligible Tenants as specified in paragraph two of this Agreement (the "Low and Moderate Income Units");

WHEREAS, the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) and the Developer have made application to DHCD to certify that the units in the Project are Local Action Units (as that term is defined in the Guidelines) within the LIP Program; and \_\_\_\_\_

WHEREAS, in partial consideration of the execution of this Agreement, DHCD has issued or will issue its final approval of the Project within the LIP Program and has given and will give technical and other assistance to the Project;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, DHCD, the Municipality, and the Developer hereby agree and covenant as follows:

Five of the Low and Moderate Income Units shall be one bedroom units; 7 of the Low and Moderate Income Units, eight shall be two bedroom units.

All Low and Moderate Income Units to be occupied by families must contain two or more bedrooms. Low and Moderate Income Units must have the following minimum areas:

1. Construction. The developer agrees to construct the project in accordance with plans and specifications approved by the municipality and DHCD. In addition all low or moderate income units to be constructed as part of the project must be indistinguishable for the other units in the project from the exterior and must contain complete living facilities including kitchen cabinets, plumbing fixtures, washer/dryer hookup, all as more fully shown in the plans and Specifications.

During the term of this Agreement, the Developer covenants, agrees, and warrants that the Project and each Low and Moderate Income Unit will remain suitable for occupancy and in compliance with all federal, state, and local health, safety, building, sanitary, environmental, and other laws, codes, rules, and regulations, including without limitation laws relating to the operation of adaptable and accessible housing for the handicapped. The Project must comply with all similar local codes, ordinances, and by-laws.

2. Affordability. (a) Throughout the term of this Agreement, each Low and Moderate Income Unit will be rented for no more than the rental rates set forth herein to an Eligible Tenant. An Eligible Tenant is a Family whose annual income does not exceed eighty percent (80%) or (50%) of the Area median income adjusted for family size as determined by the U.S. Department of Housing and Urban Development ("HUD"). A "Family" shall mean two or more persons who will live regularly in the Low and Moderate Income Unit as their primary residence and who are related by blood, marriage, or operation of law or who have otherwise evidenced a stable inter-dependent relationship or an individual. The "Area" is defined as the Boston MSA/HMFA/Non-Metropolitan County.

(b) The monthly rents charged to tenants of Low and Moderate Income Units shall not exceed an amount equal to thirty percent (30%) of the monthly adjusted income of a Family whose gross income equals eighty percent (80%), (65%) or (50%) of the median income for the Area, with adjustment for the number of bedrooms in the Unit, as provided by HUD.

In determining the maximum monthly rent that may be charged for a Low and Moderate Income Unit under this clause, the Developer shall include an allowance for any utilities and services (excluding telephone) to be paid by the resident. Annual income shall be as defined in 24 C.F.R. 5.609 (or any successor regulation) using assumptions provided by HUD. The initial maximum monthly rents and utility allowances for the Low and Moderate Income Units are set forth in Exhibit B attached hereto.

Annually as part of the annual report required under Subsection 2(e) below, the Developer shall submit to the Municipality and DHCD a proposed schedule of monthly rents and utility allowances for all Low and Moderate Income Units in the Project.

Such schedule shall be subject to the approval of the Municipality and DHCD for compliance with the requirements of this Section.

Rents for Low and Moderate Income Units shall not be increased without the Municipality's and DHCD's prior approval of either (i) a specific request by Developer for a rent increase or (ii) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by Developer to all affected tenants.

(c) If, after initial occupancy, the income of a tenant of a Low and Moderate Income Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such a tenant, the Developer shall not be in default hereunder so long as either (i) the tenant income does not exceed one hundred forty percent (140%) of the maximum income permitted or (ii) the Developer rents the next available unit at the Development as a Low and Moderate Income Unit in conformance with Section 2(a) of this Agreement, or otherwise demonstrates compliance with Section 2(a) of this Agreement.

(d) If, after initial occupancy, the income of a tenant in a Low and Moderate Income Unit increases, and as a result of such increase, exceeds one hundred forty percent (140%) of the maximum income permitted hereunder for such a tenant, at the expiration of the applicable lease term, the rent restrictions shall no longer apply to such tenant.

(e) Throughout the term of this Agreement, the Developer shall annually determine whether the tenant of each Low and Moderate Income Unit remains an Eligible Tenant. This determination shall be reviewed by the Municipality and certified to DHCD as provided in section 2(g), below.

(f) The Developer shall enter into a written lease with each tenant of a Low and Moderate Income Unit which shall be for a minimum period of one year and which provides that the tenant shall not be evicted for any reason other than a substantial breach of a material provision of such lease.

(g) Throughout the term of this Agreement, the Chief Executive Officer shall annually certify in writing to DHCD that each of the Low and Moderate Income Units continues to be Low and Moderate Income Unit as provided in sections 2 (a) and(c), above; and that the Project and the Low and Moderate Income Units have been maintained in a manner consistent with the Regulations and Guidelines and this Agreement.

3. Subsidized Housing Inventory. (a) The Project will be included in the Subsidized Housing Inventory upon the occurrence of one of the events described in 760 CMR 56.03(2). [If 25% or more of the Units are Low and Moderate Income Units add: All of the Units] [If less than 25% of the Units are Low and Moderate Income Units add: Only Low and Moderate Income Units] will be deemed low and moderate income housing to be included in the Subsidized Housing Inventory.

(b) Units included in the Subsidized Housing Inventory will continue to be included in the Subsidized Housing Inventory in accordance with 760 CMR 56.03(2) for as long as the following three conditions are met: (1) this Agreement remains in full force and effect and neither the Municipality nor the Developer are in default hereunder; (2) the Project and each of the Low and Moderate Income Units continue to comply with the Regulations and the Guidelines as the same may be amended from time to time; and (3) each Low and Moderate Income Unit remains a Low and Moderate Income Unit as provided in section 2(c), above.

4. Marketing. Prior to marketing or otherwise making available for rental any of the Units, the Developer must obtain DHCD's approval of a marketing plan (the "Marketing Plan") for the Low and Moderate Income Units. Such Marketing Plan must describe the tenant selection process for the Low and Moderate Income Units and must set forth a plan for affirmative fair marketing of Low and Moderate Income Units to protected groups underrepresented in the Municipality, including provisions for a lottery, as more particularly described in the Regulations and Guidelines. At the option of the Municipality, and provided that the Marketing Plan demonstrates (i) the need for the local preference (e.g., a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area), and (ii) that the proposed local preference will not have a disparate impact on protected classes, the Marketing Plan may also include a preference for local residents for up to seventy percent (70%) of the Low and Moderate Income Units, subject to all provisions of the Regulations and Guidelines. When submitted to DHCD for approval, the Marketing Plan should be accompanied by a letter from the Chief Executive Officer of the Municipality (as that term is defined in the Regulations) which states that the tenant selection and local preference (if any) aspects of the Marketing Plan have been approved by the Municipality and which states that the Municipality will perform any aspects of the Marketing Plan which are set forth as responsibilities of the Municipality in the Marketing Plan. The Marketing Plan must comply with the Regulations and Guidelines and with all other applicable statutes, regulations and executive orders, and DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of NAACP, Boston Chapter v. Kemp.

If the Project is located in the Boston-Cambridge-Quincy MA-NH Metropolitan Statistical Area, the Developer must list all Low and Moderate Income Units with the City of Boston's MetroList (Metropolitan Housing Opportunity Clearing Center), at Boston City Hall, Fair Housing Commission, Suite 966, One City Hall Plaza, Boston, MA 02201 (671-635-3321).

All costs of carrying out the Marketing Plan shall be paid by the Developer. A failure to comply with the Marketing Plan by the Developer or by the Municipality shall be deemed to be a default of this Agreement. The Developer agrees to maintain for five years following the initial rental of the last Low and Moderate Income Unit and for five years following all future rentals, a record of all newspaper advertisements, outreach letters, translations, leaflets, and any other outreach efforts (collectively "Marketing Documentation") as described in the Marketing Plan as approved by DHCD which may be inspected at any time by DHCD. All Marketing Documentation must be approved by DHCD prior to its use by the Developer or the Municipality.

The Developer and the Municipality agree that if at any time prior to or during the process of marketing the Low and Moderate Income Units, DHCD determines that the Developer, or the Municipality with respect to aspects of the Marketing Plan that the Municipality has agreed to be responsible for, has not adequately complied with the approved Marketing Plan, that the Developer or Municipality as the case may be, shall conduct such additional outreach or marketing efforts as shall be determined by DHCD.

5. Non-discrimination. Neither the Developer nor the Municipality shall discriminate on the basis of race, creed, color, sex, age, handicap, marital status, national origin, sexual orientation, familial status, genetic information, ancestry, children, receipt of public assistance, or any other basis prohibited by law in the selection of tenants; and the Developer shall not so discriminate in connection with the employment or application for employment of persons for the construction, operation or management of the Project.

6. Inspection. The Developer agrees to comply and to cause the Project to comply with all requirements of the Regulations and Guidelines and all other applicable laws, rules, regulations, and executive orders. DHCD and the Chief Executive Officer of the municipality shall have access during normal business hours to all books and records of the Developer and the Project in order to monitor the Developer's compliance with the terms of this Agreement.

7. Recording. Upon execution, the Developer shall immediately cause this Agreement and any amendments hereto to be recorded with the Registry of Deeds for the County where the Project is located or, if the Project consists in whole or in part of registered land, file this Agreement and any amendments hereto with the Registry District of the Land Court for the County where the Project is located (collectively hereinafter the "Registry of Deeds"), and the Developer shall pay all fees and charges incurred in connection therewith. Upon recording or filing, as applicable, the Developer shall immediately transmit to DHCD and the Municipality evidence of such recording or filing including the date and instrument, book and page or registration number of the Agreement.

8. Representations. The Developer hereby represents, covenants and warrants as follows:

(a) The Developer (i) is a Corporation/LLC duly organized under the laws of the Commonwealth of Massachusetts, and is qualified to transact business under the laws of this State, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Agreement.

a. (b) The execution and performance of this Agreement by the Developer (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, and (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Developer is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

- b. (c) The Developer will, at the time of execution and delivery of this Agreement, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Agreement, any loan documents relating to the Project the terms of which are approved by DHCD, or other permitted encumbrances, including mortgages referred to in paragraph 17, below).
- c. (d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Developer, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

#### 9. Transfer Restrictions.

(a) The Developer shall provide DHCD and the Municipality with thirty (30) days' prior written notice of the following:

(i) any change, substitution or withdrawal of any general partner, manager, or agent of Developer; or

(ii) the conveyance, assignment, transfer, or relinquishment of a majority of the Beneficial Interests (herein defined) in Developer (except for such a conveyance, assignment, transfer or relinquishment among holders of Beneficial Interests as of the date of this Agreement).

For purposes hereof, the term "Beneficial Interest" shall mean: (i) with respect to a partnership, any limited partnership interests or other rights to receive income, losses, or a return on equity contributions made to such partnership; (ii) with respect to a limited liability company, any interests as a member of such company or other rights to receive income, losses, or a return on equity contributions made to such company; or (iii) with respect to a company or corporation, any interests as an officer, board member or stockholder of such company or corporation to receive income, losses, or a return on equity contributions made to such company or corporation.

(b) Prior to any transfer of ownership of the Project or any portion thereof or interest therein, the Developer agrees to secure from the transferee a written agreement stating that transferee will assume in full the Developer's obligations and duties under this Agreement.

10. Casualty; Demolition; Change of Use (a) The Developer represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Developer (subject to the approval of the lender(s) which has provided financing) will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with this Agreement.



(b) The Developer shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any residential rental Unit for any purpose other than rental housing during the term of the Agreement unless required by law.

11. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

12. Notices. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

DHCD: Department of Housing and Community Development Attention: Local Initiative Program Director

100 Cambridge Street, 3rd Floor Boston, MA 02114

Municipality: Newton, MA

Developer: Chestnut Hill Realty Development, LLC

13. Term. (a) This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in G.L. c. 184, § 31 and as that term is used in G.L. c.184, § 26, 31, 32 and 33. This Agreement is made for the benefit of DHCD, and DHCD shall be deemed to be the holder of the affordable housing restriction created by this Agreement. DHCD has determined that the acquiring of such affordable housing restriction is in the public interest. The term of this Agreement, the rental restrictions, and other requirements provided herein shall be perpetual.

(b) The Developer intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Project for the term of this Agreement, and are binding upon the Developer's successors in title, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer, its successors and assigns and inure to the benefit of DHCD and the Municipality and their successors and assigns for the term of the Agreement. Developer hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privacy of estate are also deemed to be satisfied in full.

14. Senior Lender Foreclosure. (a) Notwithstanding anything herein to the contrary, but subject to the provisions of this Section, if the holder of record of a first mortgage granted

to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender shall acquire the Project by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Project in lieu of foreclosure, and provided that the holder of such mortgage has given the Municipality and DHCD not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Project in lieu of foreclosure to attempt to structure a workout or other arrangement to avoid such foreclosure, conveyance in lieu of foreclosure, or similar remedial action and the Municipality or DHCD has failed within such sixty (60) days to locate a purchaser for the Project who is capable of operating the Project for the uses permitted under this Agreement and who is reasonably acceptable to such mortgage holder, then except as provided below, the rights and restrictions herein contained shall not apply to such mortgage holder upon such acquisition of the Project or to any purchaser of the Project from such mortgage holder, and the Project shall, subject to Paragraph (b) below, thereafter be free from all such rights and restrictions.

Notwithstanding the foregoing, the rights and restrictions contained herein shall terminate only to the extent it is financially infeasible to maintain the level of affordability required by this Agreement or some lesser level of affordability (i.e., fewer Local Action Units or Local Action Units affordable to persons or families with higher annual incomes than those required by this Agreement.) "Financially infeasible" shall mean (i) with respect to the operation of the Project, that the rent and other income from the Project is, or is reasonably projected to be, less than the reasonable expenses required (or reasonably projected to be required) to maintain and operate the Project and (ii) with respect to a sale of the Project, that the restrictions would prevent (or be reasonably projected to prevent) the senior mortgage holder from recovering all amounts due and owing with respect to its financing of the Project, including without limitation, principal, interest, charges, costs, expenses, late fees and prepayment premiums.

Financial infeasibility shall be determined by the senior mortgage holder in its reasonable discretion after consultation with the Municipality and DHCD. The senior mortgage holder shall notify the Municipality and DHCD of the extent to which the rights and restrictions contained herein shall be terminated and the Developer agrees to execute any documents required to modify this Agreement to conform to the senior mortgage holder's determination. The Developer hereby irrevocably appoints any senior mortgage holder and each of the Municipality and DHCD, its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any such documents on behalf of the Developer should the Developer fail or refuse to do so.

(b) The rights and restrictions contained herein shall not lapse if the Project is acquired through foreclosure or deed in lieu of foreclosure by (i) Developer, (ii) any person with a direct or indirect financial interest in Developer, (iii) any person related to a person described in clause (ii) by blood, adoption or marriage, (iv) any person who is or at any time was a business associate of a person described in clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest (each a "Related Party"). Furthermore, if the Project is subsequently acquired by a Related Party during the period in which this Agreement would have remained in effect but for the provisions of this

Section, this Agreement shall be revived and shall apply to the Project as though it had never lapsed.

(c) In the event such holder conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Project is sold for a price in excess of the sum of the outstanding principal balances of all notes secured by mortgages of the Project plus all future advances, accrued interest and all reasonable costs and expenses which the holders thereof are entitled to recover pursuant to the terms of such mortgages, such excess shall be paid to the Municipality in consideration of the loss of the value and benefit of the rights and restrictions herein contained and released by the Municipality pursuant to this Section in connection with such proceeding (provided, that in the event that such excess shall be so paid to the Municipality by such holder, the Municipality shall thereafter indemnify such holder against loss or damage to such holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to the Municipality in accordance herewith, provided that such holder shall give the Municipality prompt notice of any such claim and shall not object to intervention by the Municipality in any proceeding relating thereto). To the extent the Developer possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the full extent permissible by law, the Developer hereby assigns its interest in such amount to said holder for payment to the Municipality.

15. Further Assurances. The Project Sponsor and the Municipality each agree to submit any information, documents, or certifications requested by DHCD which DHCD shall deem necessary or appropriate to evidence the continuing compliance of the Project Sponsor and the Municipality with the terms of this Agreement.

16. Default. (a) The Developer and the Municipality each covenant and agree to give DHCD written notice of any default, violation or breach of the obligations of the Developer or the Municipality hereunder, (with a copy to the other party to this Agreement) within seven (7) days of first discovering such default, violation or breach (a "Default Notice"). If DHCD becomes aware of a default, violation, or breach of obligations of the Developer or the Municipality hereunder without receiving a Default Notice from Developer or the Municipality, DHCD shall give a notice of such default, breach or violation to the offending party (with a copy to the other party to this Agreement) (the "DHCD Default Notice"). If any such default, violation, or breach is not cured to the satisfaction of DHCD within thirty (30) days after the giving of the Default notice by the Developer or the Municipality, or if no Default Notice is given, then within thirty (30) days after the giving of the DHCD Default Notice, then at DHCD's option, and without further notice, DHCD may either terminate this Agreement, or DHCD may apply to any state or federal court for specific performance of this Agreement, or DHCD may exercise any other remedy at law or in equity or take any other action as may be necessary or desirable to correct non-compliance with this Agreement.

(b) If DHCD elects to terminate this Agreement as the result of a breach, violation, or default hereof, which breach, violation, or default continues beyond the cure period set forth in this Section 16, then the Low and Moderate Income Units and any other Units at the

Project which have been included in the Subsidized Housing Inventory shall from the date of such termination no longer be deemed low and moderate income housing for the purposes of the Act and shall be deleted from the Subsidized Housing Inventory.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided herein is to create and maintain long-term affordable rental housing, and by reason thereof the Developer agrees that DHCD or the Municipality or any prospective, present, or former tenant shall be entitled for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce the specific performance by the Developer of its obligations under this Agreement in a state court of competent jurisdiction. The Developer further specifically acknowledges that the beneficiaries of its obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. In the event of a breach of this Agreement, the Developer shall reimburse DHCD for all costs and attorney's fees associated with such breach.

17. Mortgagee Consents. The Developer represents and warrants that it has obtained the consent of all existing mortgagees of the Project to the execution and recording of this Agreement and to the terms and conditions hereof and that all such mortgagees have executed the Consent to Regulatory Agreement attached hereto and made a part hereof.

Attachments:

COUNTY OF

, 20

Executed as a sealed instrument as of the date first above written. Developer

By: [its \_\_\_\_\_

Department of Housing and Community Development

By:

Municipality By:

its \_\_\_\_\_ (Chief Executive Officer)

Exhibit A - Legal Property Description [ ] Exhibit B - Rents for Low and Moderate Income Units

COMMONWEALTH OF MASSACHUSETTS, ss.

its \_\_\_\_\_ (Associate Director)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory

evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ of the \_\_\_\_\_ [Developer], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_ Notary Public ☐ Print Name: ☐ My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS ☐ COUNTY OF SUFFOLK, ss. , 20\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary public ☐ Print Name: ☐ My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS COUNTY OF \_\_\_\_\_, ss. , 20\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ for the City/Town of \_\_\_\_\_, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public ☐ Print Name: ☐ My Commission Expires:

Consent to Regulatory Agreement

The Undersigned being the holder of a mortgage on the above described Project recorded with the Registry of Deeds in Book \_\_, Page \_\_, hereby consents to the execution and recording of this Agreement and to the terms and conditions hereof.

(name of lender) By:

its \_\_\_\_\_

(If the Project has more than one mortgagee, add additional consent forms. Execution of the consent form by a mortgagee is only necessary if the mortgage has been recorded prior to the Regulatory Agreement.)

COMMONWEALTH OF MASSACHUSETTS ☐ COUNTY OF \_\_\_\_\_, ss. , 20\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory

evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document, as \_\_\_\_\_ of \_\_\_\_\_ Bank, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public ☐ Print Name: ☐ My Commission Expires:

Re: ☐ Kessler Woods

Newton, MA Chestnut Hill Realty Development, LLC (Developer)

#### EXHIBIT A

Property Description

Re: Kessler Woods

Newton, MA Chestnut Hill Realty Development, LLC

#### EXHIBIT B

Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units – After deducting utility allowance

Utility Allowances (estimates)

- One bedroom - \$119
- Two bedroom - \$157

Assuming two people in the one bedroom unit and three people in the two bedroom unit.

50% Median Income

- One bedroom units - \$866
- Two bedroom units - \$951

80% Median Income

- One bedroom units - \$1,271
- Two bedroom units - \$1,412

65% Median Income

- One bedroom units - \$1,072

## Exhibit 4

### NEWTON FAIR HOUSING COMMITTEE

Newton Housing & Community Development Program Newton City Hall, 1000  
Commonwealth Avenue, Newton, MA 02459. Phone 617-796-1146. TDD/TTY 617-796-  
7089

### **Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing**

The Newton Fair Housing Committee recommends the adoption of the following uniform policies for the use of selection preferences for that affordable housing which is subject to the oversight of the City of Newton, either through funding or by regulation. The Uniform Guidelines are intended for use in affordable rental and homeownership programs that utilize a lottery at initial distribution of the units and upon resale. Local resident selection preference policies should be as uniform as program constraints will allow across Newton's programs that distribute funding or regulate affordable housing, including but not limited to: Community Development Block Grant Program, HOME Program, Community Preservation Act Program, Inclusionary Zoning Ordinance, and Chapter 40B.

#### *1. Non-Discrimination.*

The use of the local selection preference shall not have the purpose or effect of delaying, denying, or excluding participation in a housing program based on race, color, religion, national origin, gender, age, disability, ancestry, marital status, family status, veteran or military status, sexual orientation, genetic characteristics, or status as a person who is a recipient of federal, state, or local public assistance, or the requirements of such programs.

#### *2. Requirements of Other Programs.*

Many programs, such as low-income housing tax credits, the approval procedures in effect under the Comprehensive Permit Guidelines (the 40B Guidelines), the HOME program, and others permit local resident selection preferences subject to program-specific limitations. These recommendations are to apply only where not in conflict with other applicable state or federal program requirements, or with fair housing or civil rights requirements.

#### *3. Criteria for Local Preference.*

Preference shall be given for qualified applicants as follows. First preference for initial occupancy shall be given to applicants who are being displaced as a result of the construction, alterations, or rehabilitation involving the unit in question, and are qualified for the unit in terms of household size, income, and if relevant for the unit, disability, as provided below, unless such preference would be unallowable under the rules of a source of funding for the project.

Following that, preference shall go to any other qualified applicants who fall within any of the following equally weighted categories:

(a) Individuals or families who live in Newton.

(b) Households with a family member who works in Newton, has been hired to work in Newton, or has a bona fide offer of employment in Newton.

(c) Households with a family member who attends a public school in Newton.

As set forth above, preference for dwelling units having features that are designed, constructed, or modified to be usable and accessible to people with visual, hearing, or mobility disabilities shall, for first occupancy, be assigned to displaced applicants needing the features of the unit. All other applicants shall be assigned in the following order of priority: (a) first to households having preference under one or more of the three categories listed above that include a family member needing the features of the unit; (b) then to households without a preference that include a family member needing the features of the unit; (c) then to other households based on the preferences described above; and (d) then to other qualified applicants.

#### *4. Numerical Limitations.*

The local preference may be used for up to 70% of the affordable dwelling units to be distributed, or such lower share as may be required by other applicable authorities.

#### *5. Mitigating Potential Discriminatory Outcomes.*

When the local preference is utilized, the developer or owner should use the procedures required by the 40B Guidelines in effect as of July 30, 2008. Under the 40B Guidelines, the owner or developer uses a lottery to select applicants from two pools: (1) a pool of applicants with preferences and (2) a pool of applicants without preferences. Any discriminatory effects are mitigated by adding minority applicants without preferences to the local preference pool until the percentage of racial and ethnic minorities in the local preference pool reflects the corresponding percentages in the Boston metropolitan statistical area. Additional mitigation may be required to assure that a preference for households that work in the community does not discriminate against or have the effect of excluding disabled and elderly households in violation of fair housing laws.

#### *6. Affirmative Fair Housing Marketing.*

When the local preference is used, the developer or owner should engage in affirmative fair housing marketing. Marketing should be based on the procedures such as those established under the 40B Guidelines. Marketing should meet the following minimum standards:

(a) Outreach. Marketing should reach out to those groups protected by fair housing laws. Marketing should be conducted in the print, radio and other media serving families with children, people with disabilities, and those racial and ethnic groups in the Boston metropolitan area not represented in comparable numbers in Newton. At minimum, available units should be listed with the MetroList administered by the Boston Fair Housing Commission.



(b) MassAccess. Units modified or designed as accessible units for people with disabilities should be registered with the MassAccess Registry.

(c) Application Procedures. The owner or developer should use fair methods for accepting applications, such as accepting applications over a period of weeks, accepting applications by mail, and use of lotteries to establish waiting lists.

The procedures are described in detail in Chapter III of the "Guidelines for G.L. c.40B Comprehensive Permit Projects and the Subsidized Housing Inventory" in effect as of July 30, 2008. A copy of the 40B Guidelines is available at:  
<http://www.mass.gov/dhcd/Temp/06/40Bgdlines.doc>

(d) Selection Preferences. Local residency preferences must not be advertised as they may discourage non-local potential applicants.

## Exhibit B

Re: Kessler Woods

Newton, MA

Chestnut Hill Realty Development, LLC

### Initial Maximum Rents and Utility Allowances for Low and Moderate Income Units

#### 50% of Median Income

	Rent	Utility Allowance
One Bedroom	\$866	\$119
Two Bedroom	\$951	\$157

#### 80% of Median Income

One Bedroom	\$1,271	\$119
Two Bedroom	\$1,412	\$157

#### 65% of Median Income

One Bedroom	\$1,072	\$119
-------------	---------	-------

### Utilities Paid by Tenant - As allowed by City of Newton - 2015

#### **Utility Allowance**

Row/Garden/Walkup

	1 bedroom	2 bedroom
Natural gas heat	47	62
Natural gas cooking	8	9
Other electric	45	63
Water heating	19	23
Total	119	157



Setti D. Warren  
Mayor

Attachment G

**City of Newton, Massachusetts**  
Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

**ZONING REVIEW MEMORANDUM**

Date: May 8, 2017

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Alexandra Ananth, Chief Planner for Current Planning

Cc: Frank Stearns, Attorney  
Chestnut Hill Realty, Applicant  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to amend Board Order 102-06(12) to allow off-site fulfilment of the inclusionary housing provisions**

Applicant: Chestnut Hill Realty	
Site: Lot H-1, LaGrange Street	SBL: 82037 0095
Zoning: MR3	Lot Area: 640,847 square feet
Current use: 88-unit multi-family dwelling	Proposed use: No change

**BACKGROUND:**

The subject property is a large parcel located on LaGrange Street within the Kessler Woods subdivision created in 2004 and recorded in 2005. Special permit Board Order #102-06(16) allows for construction of an 88-unit multi-family residential building. Condition #2 of the board order requires that the 15% Inclusionary Zoning requirement of Section 5.11.4 be met on the project site. The applicant seeks an amendment to this condition to allow the requirement to be met off-site per Section 5.11.6.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Franklin Stearns, K & L Gates, attorney, submitted 4/25/2017
- Board Order #102-06(12), dated 11/17/2014
- Board Order #102-06(15), dated 4/21/2015

**ADMINISTRATIVE DETERMINATIONS:**

---

1. Condition #2 of Board Order #102-06(15) requires that the 88-unit multi-family dwelling provide 13 deed restricted inclusionary housing units on site, as shown on the approved plans. These 13 units include six units at 50% of area median income; six units at 80% are a median income; and one unit at 65% of area median income.

Section 5.11.6 states that the inclusionary units required in Section 5.11.4 may be met by providing units off-site where an applicant has entered into an agreement with a non-profit housing development organization. The applicant has entered into an agreement with B'nai B'rith Housing, a non-profit providing affordable housing opportunities to seniors, to accommodate the required affordable housing units for the Kessler project at 219 Commonwealth Avenue, an existing 29-unit multi-family dwelling built in 1899 to be rehabilitated. The rehabilitation of 219 Commonwealth Avenue will be by right and limited to improvements to the existing units and common areas of the building, with no changes, extension, enlargement or reconstruction of the existing nonconforming building or use. All 29 of the units will be permanently income and rent restricted.

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§5.11.4, §5.11.6	To amend Board Order #102-06(15) to allow for the provisions of the Inclusionary Housing requirements to be met off-site	Amend Board Order #102-06(15)