

**WARRANT ARTICLE EXPLANATIONS
FILED BY PETITIONERS FOR THE
MAY 19, 2020 ANNUAL TOWN MEETING**

ARTICLE 1

Submitted by: Select Board

Article 20 of the November, 2000 Special Town Meeting requires that this be the first article at each Annual Town Meeting. It calls for the Select Board to appoint two Measurers of Wood and Bark.

ARTICLE 2

Submitted by: Human Resources

This article is inserted in the Warrant for any Town Meeting when there are unsettled labor contracts. Town Meeting must approve the funding for any collective bargaining agreements.

ARTICLE 3

Submitted by: Treasurer/Collector

This article authorizes the Town Treasurer to enter into Compensating Balance Agreements, which are agreements between a depositor and a bank in which the depositor agrees to maintain a specified level of non-interest bearing deposits in return for which the bank agrees to perform certain services for the depositor. In order to incorporate such compensating balance agreements into the local budget process, the Commonwealth passed a law in 1986 mandating that all such arrangements be authorized by Town Meeting on an annual basis.

ARTICLE 4

Submitted by: Select Board

Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a warrant article showing the status of all special appropriations.

ARTICLE 5

Submitted by: Select Board

This article is inserted in the Warrant for every Town Meeting in case there are any unpaid bills from a prior fiscal year that are deemed to be legal obligations of the Town. Per Massachusetts General Law, unpaid bills from a prior fiscal year can only be paid from current year appropriations with the specific approval of Town Meeting.

ARTICLE 6

Submitted by: Board of Assessors

This article provides for an increase in the property tax exemptions for certain classes of individuals, including surviving spouses, the elderly, and the blind and disabled veterans. The proposed increases, which require annual reauthorizations, have been approved by Town Meeting continually since FY1989.

ARTICLE 7

Submitted by: Select Board

In May 2018, Brookline voters supported a debt exclusion override to fund the expansion and renovation of Brookline High School. Construction on the Brookline High School Expansion began on June 10, 2019. There are three major components to the project:

1. Build a new, state of the art Science, Technology, Engineering, and Math wing at the corner of Tappan and Greenough Streets, replacing the existing Roberts Wing
 2. Build a new academic building at the corner of Cypress and Tappan Streets that will primarily serve 9th grade students while being fully integrated into the core of BHS campus
 3. Renovate the third floor of the Schluntz Gym wing turning the existing and outdated science labs into modern, full sized classrooms
- Other improvements and upgrades will take place at the Tappan Gym, Kirrane Pool and at Cypress Field.

This warrant article seeks Town vote to appropriate, borrow or transfer from available funds, up to \$32M additional increase to the previously approved budget of \$205.6M in order to complete all planned sub-projects of the Brookline High School Expansion Project.

The Town is using a CM at-risk method for the High School project. With this method the Town uses a two-phase selection process to contract with a construction manager that will also serve as the project's general contractor. The contract is a cost plus fixed fee contract with a guaranteed maximum price (GMP). CM at Risk provides design phase and preconstruction services and can provide early cost estimates and feedback to help in the design development process resulting in a more accurate cost model and the ability to influence outcomes by addressing issues early. It is typical with CM @ Risk (CMR) delivery approach to incrementally start a project with early bid packages, in advance of final overall building designs and complete cost estimates/Guaranteed Maximum Price (GMP), in order to meet an earlier desired completion date for the project. A risk with this approach is starting the project, and then at a later date receiving a GMP for the overall project after majority of bid packages are procured. The Project Team had previously agreed to release early design packages for Enabling work, Demolition/Abatement, Curtainwall, Precast, Sitework, Structural Steel, Concrete, MBTA Enabling Phase, and misc. other early scopes, which were all bid and procured between January

2019 and Summer 2019. 100% final designs were completed for the new Cypress Building, STEM addition and the MBTA Station Improvements between July and August 2019 at which point the balance of bid packages could then be procured throughout Fall and early Winter 2019.

As of February 2020, the majority of bid results came in cumulatively over budget for STEM, Cypress and MBTA Station projects. Additionally, projected costs for Town-funded Force Accounts with the MBTA in order to fund selective shutdowns of the D-line service on certain weekend/weeknight diversions in order to complete construction activities in and around the active Station. Combined overruns from bidding to date and MBTA are estimated between \$27M-\$32M over the original 2017 budget of \$205.6M (approximately 15%).

The balance of Brookline High School Expansion sub-projects Tappan Renovations, 3rd Floor Renovations (Old Science Wing), Streetscape improvements and misc. Deferred Maintenance are on hold at the moment pending budget decisions. 60% estimates for these sub-projects are currently reflected within the above projections.

The entire project team have continuously looked for opportunities to reduce the projected overruns throughout each various design phases over the past couple of years (dual estimates performed each time), and even after bids have been received. Mitigating options and recommendations to the Town will be presented in various upcoming meetings.

ARTICLE 8

Submitted by: Advisory Committee

This is the annual appropriations article for FY2020. Included in this omnibus budget article are operating budgets, special appropriations, enterprise funds, revolving funds, and conditions of appropriation. This is the culmination of work that officially began with the publication of the Town Administrator's Financial Plan on February 12th. The proposed budget has since been reviewed by numerous sub-committees of the Advisory Committee, the full Advisory Committee, and the Select Board. The vote ultimately recommended to Town Meeting is offered by the Advisory Committee.

ARTICLE 9

Submitted by: Paul Saner, on behalf of the Newbury Zoning Committee

Summary

The Newbury Zoning Committee (NZC) voted at its meeting on March 4th to sponsor seven interrelated warrant articles dealing with the former Newbury College campus. This "package" of articles is the result of over 8 months of negotiations between the Town and Welltower, Inc. ("Welltower" or the "Developer"), the new owner of the campus. Welltower is a Real Estate Investment Trust (REIT) and a senior housing developer.

The three key components of the transaction are:

1. Proposed “**Fisher Hill Special Overlay District**” (the “Overlay District”) to allow Welltower to develop a senior living community on a portion of the property. The Developer has indicated that if the Fisher Hill Special Overlay District is not approved at the May Town Meeting it intends to sell the property in one or more pieces.

2. Related **Affordable Housing Inclusionary Zoning Alternatives. Town Meeting is being presented with two** alternative paths by which Welltower may satisfy its affordable housing obligations in connection with its senior housing project.

3. Assuming the Fisher Hill Special Overlay District Zoning is passed by Town Meeting and subsequently approved by the Attorney General, the Town will have the **Opportunity to Purchase** that portion of the property located on the West side of Fisher Avenue (“former West Campus”) for \$14.8 million, a below-market price, if a debt exclusion vote planned for May 5th is approved by the voters and followed by Town Meeting approval of the acquisition. If either of those two steps fail, the Town will otherwise **share in sale proceeds over \$14.8 million** when the former West Campus is sold by the Developer to another party. A description of the property to be acquired is contained in Article X7 which is the authorization to purchase the former West Campus.

The articles are listed below:

Article	Warrant Reference	Comments
Article X1	Fisher Hill Special Overlay District Zoning	If Articles X1-X4 are not approved, the Developer has indicated its intent to sell off the property to another buyer. Articles X5, X6 and X7 would then be moot.
Article X2	Acceptance of Restrictive Covenant	
Article X3	Authorize Select Board to enter into Memorandum of Agreement	
Article X4	Acceptance of an easement protecting trees along Fisher Avenue	This easement will protect trees along Fisher Avenue and allow the linkage of the Tax Certainty Agreement to the Project Site.
Article X5	125 Holland Zoning	If Article X5 is not approved, the inclusionary zoning requirement will be met with the Alternative Cash Option.
Article X6	Municipal Use Overlay Zoning	Approval of Article X6 is necessary for the Town to be able to use the former West Campus for municipal uses, most notably municipal office and associated support services if Article X7 is approved.
Article X7	Authorization to acquire	If Article X7 is not approved, the

	former Newbury College West Campus	Developer will sell the former West campus to another buyer. The Town will share in the proceeds of the sale for the portion of the sale price above \$14.8 million.
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Town Benefits: If passed, the articles will provide significant benefits to the Town, including:

- Substantial inclusionary zoning (affordable housing) commitments;
- New and secure property taxes, with a present value to the Town estimated to range from approximately \$40 million to \$60 million¹ and memorialized in the tax certainty agreement (Article x4);
- Sustainability undertakings including voluntary compliance with the No Fossil Fuels By-law²;
- The maintenance and adaptive re-use of the historic Mitton House; and
- Other community benefits (such as partnering with the Senior Center and Teen Job Fairs).

Passage of the Fisher Hill Special Overlay District zoning article is a prerequisite of Welltower offering the Town the opportunity to acquire the west side of the former campus. The Town’s acquisition of the west side is dependent on both the voters and Town Meeting approving it and funding it.³ Article X6 is a zoning Article that would allow the Town to use the West Campus for short-term, interim municipal uses while it undertook an intensive process involving the community to determine the final use of the former West Campus.

The Town’s real estate advisor, McCall & Almy (<http://mccallalmy.com/>), has considered the following questions: (1) *What is the highest and best use for the East side property and how does that compare to both the land value attributable to the senior living proposal as well as to what is allowed under zoning?* and (2) *Did we get as much from the developer as we could?*

The Town’s advisors believe a tax-exempt educational use is the highest and best use for the former Newbury campus. If the property were sold to such an institution, the Town would not receive any tax revenue⁴, nor would there be any new affordable housing units built or funded. Further, if such an educational entity elected to invoke the Dover amendment, the Town’s ability to control what happens on the site, an important goal of the neighborhood, will be limited, although, according to Ch. 40A sec. 3, the Town may impose reasonable dimensional controls on such a development.

¹ The range reflects 3% and 4% discount rates. The Town’s long term cost of capital is currently about 2%. Present value was calculated over 95 years.

² With an expected limited exemption request for heating the water of an indoor pool

³ Technically, Town Meeting could approve the purchase even if the voters reject it but the strain such an acquisition would put on the Town’s Capital Improvement Program would be a strong disincentive for the Select Board to act on the authorization.

⁴ The Town would likely attempt to negotiate a PILOT (“Payment In Lieu of Taxes”) agreement for some revenue but, even if successful, such payments would likely be substantially less than the tax revenue from the project being discussed.

See the **Commonly Asked Questions Regarding the Property and the Transactions** section at the end of this explanation for a discussion of these and other questions, a financial analysis of the Welltower development, and related issues.

Background and Developer

In December 2018, Newbury College (“Newbury” or the “College”) publicly announced that it would be closing its 7.87-acre campus atop Fisher Hill at the conclusion of the 2019 spring term. Non-profit educational uses have been located there for nearly 70 years, and this is a by-right allowed use throughout the Town. Due to its tax-exempt status, the College was not paying taxes but was making a small voluntary PILOT. The property is located in an area zoned for single-family residential (S-15 and S-25).

The Spring 2019 Bid Process

In early 2019, the College’s Trustees engaged Colliers International to sell the property. Specific transaction terms required a single buyer for the entire property and there was a stated preference for bids containing neither permitting nor financing contingencies.

The Town engaged McCall & Almy in early 2019 to assist the Town in its pursuit of the Newbury campus. McCall & Almy served as the Town’s professional advisor throughout the competitive auction process and acted as intermediary between the Town and Colliers International. McCall & Almy confirmed that Colliers planned to run its process as an auction with multiple rounds of bidding. McCall & Almy guided the Town in its formulation of a bidding strategy which was designed to: i) allow for the Town’s advancement to each subsequent round of bidding while also ii) attempting to secure the property for the Town at the lowest possible price. Given Newbury’s desire to quickly find a buyer, there was a sense that Newbury might accept a lower bid from the Town given its credit worthiness and credibility. In an attempt to provide Newbury with certainty of closure, the Town structured all but its final bid at price levels that did not require the contingency of a debt exclusion vote. Because the Town’s decision-making and capital procurement process is political in nature, the Town was at a competitive disadvantage in the auction process relative to many other bidders. In the “final and best” round of bidding, the Town put forth an offer to purchase the property in excess of \$30 million, subject to a debt exclusion vote contingency. Final and best bids were due just after the failed May 2019 debt exclusion vote, highlighting to Newbury the risk that the Town might not approve a debt exclusion for the acquisition of the property.

Welltower as the Winning Bidder

In June 2019, the Town was confidentially approached by representatives of Welltower Inc., the winning bidder. Welltower is a major health care REIT (NYSE: WELL) that develops and owns senior housing, assisted living and memory care communities, as well as post-acute care facilities and medical office buildings. Welltower generally owns assets by itself or in joint venture with other entities. As a REIT, Welltower does not directly operate its properties and either leases them under long-term triple net leases or owns them subject to management

agreements with leading industry operators. Recently, Welltower has grown its direct development portfolio, targeting state of the art, luxury senior housing developments in growing urban areas, particularly in coastal markets. On February 10, 2020, Welltower was recognized as a “Global Leader in Sustainability Performance” by S&P Global. While Welltower owns many senior living facilities in Massachusetts, Newbury would be Welltower’s first direct development in the metropolitan Boston market.

Welltower’s representatives disclosed that they had the entire 7.87-acre Newbury property under contract to purchase, subject to the Attorney General’s approval of the Newbury Trustees’ disposition plan. Welltower requested that the Select Board immediately upon Welltower’s closing on the acquisition, to begin work on a zoning change to enable the development of a high-end senior living community, incorporating the maintenance and adaptive re-use of the Mitton House, on the East side of the campus⁵. In addition, Welltower offered to sell to the Town the former West Campus⁶. Welltower also indicated its intent to sell the final Newbury parcel, the .87 acre 125 Holland Road site, given that it was not part of the senior care facility development.

Thirty days after the Attorney General approved the transaction, Welltower finalized the purchase for \$34 million, representing 13% less than the property’s \$39.1 million assessed value at the time of sale.

In anticipation of the closing, the Select Board created and charged the Newbury Zoning Committee (“NZC”). See <https://www.brooklinema.gov/1720/Newbury-Campus-Zoning-Study-Committee> for plans, minutes, and the identities of NZC members, many of whom had served on the previous Newbury Acquisition Committee. Members consisted of real estate professionals, neighbors, and two Select Board members. The Town Administrator and representatives of the Planning Department and Town Counsel’s office provided staff support to the NZC.

Welltower repeatedly requested that the Town expeditiously review its request for a zoning change since its intentions were, and remain, to commence construction as soon as possible. Since October 2019, there have been 10 public meetings of the NZC, 7 of the Architectural Subcommittee and 8 of the Negotiations Subcommittee (mostly in Executive Session) in addition to a number of working group negotiations with Welltower.

The recent Brookline Fiscal Advisory Committee report recommends expanded economic development with targeted zoning changes to provide much needed new tax growth. Newbury is a unique opportunity to do this in a residential zone where an educational use has a value greater than residential. That is rarely the case in Brookline.

Package Negotiated with Welltower

Negotiations with Welltower focused primarily on 3 topics: i) the proposed size and design of the senior living community, ii) the inclusionary zoning (affordable housing) alternatives, and iii) extracting value from the former West Campus either in the form of a discounted purchase price

⁵ A total of 3.88 acres at 117 Fisher Avenue and 124 Holland.

⁶ A total of 3.13 acres at 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road.

for the Town or revenue sharing upon the potential sale of the property to a party other than the Town. McCall & Almy advised the Town and directly participated in the negotiations. Market and financial feasibility analyses were provided by Pam McKinney (<https://tinyurl.com/sq3k8z7>), an independent consultant who has been the Town's real estate financial consultant for a number of negotiated overlay zones. Gary McCabe, the recently-retired Chief Assessor, provided advice on the projected senior living real estate taxes.

Ms. McKinney concluded the proposed unit mix and project scale are necessary to enable operational efficiency and financial feasibility.

The Town focused its negotiating efforts on securing for the Town the requirements Welltower, as the developer of a major project in the Town, would need to follow – most particularly the means by which it would meet its inclusionary zoning requirement – along with memorializing the benefits and planning objectives the development would advance while mitigating its impacts. The main municipal benefit pursued by the Town's negotiators was the creation of value from the disposition of the West Campus: either through the lowest possible purchase price in an acquisition by the Town or, should the voters elect not to proceed with the acquisition, the highest return in a profit-sharing arrangement if Welltower were to sell it to a third party. However, as noted above, the fiscal benefit of a completed and operational Welltower project to the Town was considerable, so negotiations needed to be pursued in a manner that would not jeopardize the viability of the entire transaction. Finally, all parties involved recognized that a failure to negotiate a deal would likely lead to a sale of the former Newbury campus to one or more tax-exempt educational uses, with an attendant loss of tax revenue.

Through the MOA, Welltower has committed to sustainability requirements and goals in excess of State and local requirements, Transit Demand Management (TDM) measures, the maintenance and adaptive re-use of the Mitton House, the two affordable housing inclusionary zoning alternatives before Town Meeting, and the opportunity for the Town to purchase the former West Campus or otherwise share in sale profits in excess of what the Town would pay as well as other community benefits.

Fisher Hill Special Overlay District

The Fisher Hill Overlay District proposes zoning changes to the 3.88-acre Newbury College East Parcel fronting on Fisher Avenue. Even though the existing site has been used as a college campus, it is zoned for single family residences.

The Overlay District zoning would allow, by special permit, the development of Balfour at Brookline, an approximately 193,000 square foot senior living community. The redevelopment includes the maintenance and adaptive re-use of the 20,000 square foot historic Mitton House, and will require the demolition of 75,000 square feet of existing structures. The project is expected to contain approximately 160 luxury market rate senior rental units, with approximately 80 independent living, 40 assisted living and 40 memory care units⁷.

Proposed Zoning and Summary Project Design

⁷ This is the current allocation of units and is subject to minor adjustments.

The proposed Overlay District allows by special permit a maximum Floor Area Ratio (FAR) of 1.15. This overlay zoning **sunset**s if the required special permits are not applied for **by the end of 2020**, or in the event of the developer not using best efforts to diligently receive all permits and approvals subject to financing and economic conditions. The proposed Overlay District leaves in place the existing residential zoning which consists of S-25 (FAR of .20 with .25 for cluster by special permit) as well as S-15 (FAR .25 or .30 for cluster by special permit). The proposed 193,000 square foot project would slightly more than double the amount of floor space currently on the property.

Balfour at Brookline would be a major impact project requiring a Design Advisory Team (DAT) appointed by the Planning Board. Over the course of several public meetings, the NZC Architectural Subcommittee guided a 9% reduction to the proposed building mass, as well as significant changes to the site plan and building design. The NZC Architectural Subcommittee has also developed design guidelines to inform the DAT, which have already been reviewed by the Planning Board. Welltower has requested that the DAT be appointed in June should Town Meeting approve the zoning change.

The Welltower architectural team consists of Robert A.M. Stern Architects (RAMSA), a distinguished architecture firm based in New York City, and Finegold Alexander Architects, an established local architecture firm. The proposed design references the architectural traditions found in the surrounding residential neighborhood. It reinforces a neighborhood scale at grade and activates the street edge with open space in excess of what presently exists by varying setbacks and building heights. These range from a low of three stories or 70 feet along Fisher Ave and Holland Road to a range within the interior of 80 to 95 feet and five stories to a maximum of 100 feet and 6 stories.

Balfour at Brookline will contain two courtyards that face Holland Road and Fisher Avenue, allowing the preservation of large existing street trees. There will be two piazzas where residents enter the building as well as sheltered parking. Gambrel and hipped roof forms are expected to reduce the appearance of the project's size. The project will result in an increase in both open and green space.

There will be 98 parking spaces, 43 of which will be sheltered. The approximately 0.6 spaces per unit is deemed sufficient given the expected low use of cars by residents and the TDM measures to which Welltower has committed. After 5 years, based on operating experience, a special permit may be applied for to reduce the amount of exterior (not sheltered) parking.

Anticipated Operating Approach

Welltower has selected Balfour Senior Living <https://balfourcare.com> as the operator of Balfour at Brookline. In 2019, Welltower formed a new relationship with this Denver, Colorado-based premier operator of luxury independent, assisted living and memory care communities.

Balfour at Brookline will offer an all-inclusive lifestyle including distinctive restaurant venues, over 200 life enrichment programs each month and complimentary scheduled transportation.

Facility amenities will include a large centralized dining room with adjacent great room, lounge, salon, indoor swimming pool, fitness center, library and upper-floor sky bar.

The approximately 80 Independent living units will range in size from about 750 sq. ft. to 2,000 sq. ft., and all will contain either 1 or 2 bedrooms and have full kitchens with in-unit washer and dryers. Rents are projected to average \$9,600 per month with all utilities included. Also included will be a range of services and amenities, including an extensive activities program containing a variety of lectures, educational, cultural and musical events. There are a number of meal plan options and some services may require an additional fee.

The 40 assisted living units will average approximately 450 sq. ft. and will have modified kitchens. These units will consist of studios, and 1- and 2-bedroom units and will have in-unit washers and dryers. Rents are projected to average \$8,700 per month with all utilities included. Extensive activities with entertainment and a variety of educational events will be run within the assisted living wing which has a separate kitchen and community dining room serving all meals. Nursing services will be provided including assistance with medication administration. In addition, advanced high-tech monitoring systems will be provided so that nursing staff can monitor remotely the residents' activity levels 24/7 to ensure that nursing staff is aware of activity levels relating to the health and well-being of the residents who need assistance. Residents will receive a basic level of care and for those who need or request additional services they will be available at an additional cost.

The 40 Memory Care Units will average 350 sq. ft. and average monthly rents are projected to be \$10,700. All meals are provided as these units do not have kitchens. Residents have a separate activities program and dining room. The Memory Care units are staffed 24/7 with slightly higher overnight staffing than the Assisted Living Units and are all located within a secure wing.

The community will have a Director of Nursing whose sole focus and responsibility is for the care of residents in the assisted living and memory care units. The Director of Nursing will also supervise the nursing staff made up of RNs, LPNs and CNAs. Residents of the Independent Living units will also have access to nursing care should they require it in an emergency. Balfour asserts that this complement of on-site nursing staff sets Balfour apart from other Senior Living facilities and not only provides a high level of care and security to its aging residents, but also reduces the need to use 911 services for non-emergency situations.

Nursing staff will be on-site 24/7. There will be three employee work shifts with staff allocated among all three unit types. Approximately 50 employees will work the morning and afternoon shifts, while the overnight shift will have approximately 10 employees.

Anticipated Net Fiscal Benefits and Tax Certainty

The Tax Certainty Agreement will be triggered if Town Meeting votes in favor of the Fisher Hill Overlay District article and the Attorney General approves it. The Tax Certainty Agreement has a term of 95 years with the proposed senior living community use taxed at the residential rate. Welltower has agreed separately to hold all associated personal property in an entity taxable by the Town, which will mean the Town will be able to assess personal property tax on it at the

higher commercial rate. Once the Project is completed, the Tax Certainty Agreement will be recorded, ensuring that it will run with the land and apply to Welltower or any successive owner of the property for the full term.

Determining a future assessed value for this type of asset is complicated with few if any comparable properties to look to as examples. Further, Balfour at Brookline has operating business components generating significant value that are not subject to real estate tax. While the Developer believes the taxes upon stabilization will be about \$800,000 (assuming the current tax rate and no overrides), the Town's tax consultant believes this may be a conservative estimate.

Fiscal costs to the Town associated with this development are not expected to be significant. Balfour will have on-site 24/7 nursing staff to limit the number of 911 calls generated by the facility to an expected average of one call per week. The Town is not responsible for paying for ambulance service, and it is anticipated that there is sufficient capacity if police and fire EMTs also respond to calls.

The present value of the fiscal benefits has been calculated to range from approximately **\$40 million to \$60 Million**. That range is based on the \$800,000 estimate beginning in late 2025, the projected date for stabilized occupancy and 3 years after the tax certainty agreement starts.⁸ The three-year lease-up after projected completion is a standard assumption according to Ms. McKinney. The analysis assumes the \$800,000 grows at the rate of 2.5% annually over 92 years (the maximum amount the overall tax levy can increase but conservatively assumes no operating overrides which would increase the tax). The analysis also uses a discount rate of 3% and 4%, conservative figures given the Town's current long-term cost of capital of approximately 2%.

In addition, building permit fees are estimated to be at least \$1.5 Million.

Negotiated Sustainability Benefits:

The following sustainability commitments are contained in the MOA:

1. As envisioned by the recently passed Article 21 of Fall 2019 Town Meeting (Prohibition on Fossil Fuel Infrastructure), no use of natural gas or fuel oil except for the commercial kitchens, emergency generator, and domestic hot water⁹.
2. LEED-NCv4 Gold Certifiable.
3. Developer will optimize the building for solar renewable energy measures and will consider photovoltaic and solar thermal where feasible.
4. To the extent feasible as reasonably determined by the Developer, it will implement so-called Passive House strategies to reduce energy use.
5. Implement Site Sustainable Measures which will include the following:
 - a. Consider the use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. Overlook, and other site features where feasible.

⁸ There will be smaller tax payments from the issuance of the Certificate of Occupancy made until then.

⁹ The developer has stated their requirement to use natural gas to heat an indoor pool.

- b. Stormwater control measures will optimize on-site filtration using rain gardens and bioswales.
- c. Install native and drought tolerant plants. Incorporate bird friendly and pollinator plants.

Negotiated Community Benefits:

The following community commitments also are contained in the MOA:

1. Balfour will partner with the Council on Aging and/or Brookline Community Aging Network (“CAN”) on various cultural, educational and/or musical/artistic events at least quarterly. Such events shall be either at the Project Site or the Senior Center or such other public place as mutually agreed upon. Welltower has also agreed to make a voluntary contribution of \$2,500 per year to the Senior Center to support its programming.
2. Provide community space for meetings of local neighborhood associations or other Brookline non-profits up to once a month or 12 times per year.
3. Balfour will hold a job fair at the Brookline Teen Center or other public venue and, to the extent permitted by law, will give qualified Brookline residents preference for jobs at Balfour at Brookline. In order to make Brookline residents aware of job opportunities, Balfour will send a notice of such job opportunities to the Town. Balfour will also work with the Brookline High School culinary arts and restaurant program to provide, from time to time, paid or unpaid internship opportunities for students engaged in the culinary arts program at the High School.
4. A Public Easement Area will be provided to create a green buffer of mature trees on Fisher Ave maintained by Developer.
5. The Developer will provide a landscape buffer to abutters on the south side entry.
6. Electric vehicle charging stations will be provided in excess of Town requirements for Project residents and guests.
7. Full cut-off exterior light fixtures with LED lighting. Use of pole mounted fixtures limited to surface parking areas.
8. Optimize Energy Efficiency of Building Systems
 - a. Provide water-efficient plumbing fixtures;
 - b. Perform building commissioning training for Operations and Maintenance

Compliance with Findings and Mitigation Suggestions from Transportation Study

The scope of the transportation study paid for by Welltower and completed by VHB was developed in consultation with the Town’s Transportation Department staff. The study treated the entire senior housing development as *new* for impact analysis purposes and did not take any traffic credit for the prior college use nor consider traffic impacts from future uses of the West campus. Since the average age of residents at the time of entry is expected to be approximately 82 years, car ownership will be relatively low and the potential for resident trips by personal automobile is expected to be minimal. The operations of the proposed facility are aimed at reducing the number of automobile trips to and from the site and minimizing single occupant vehicles. Specifically, Balfour will implement the following transportation demand management ideas along with other measures:

1. Staggered employee shifts that do not coincide with peak roadway traffic hours
2. Employee shuttles will be run to the nearest train stations (C and D Green line stations to the north) and employee T passes will be subsidized
3. Residents will have access to electric vehicles and vans with drivers for shared trips to appointments and errands
4. No trailer truck deliveries, except for moving trucks hired by residents, will be allowed to service the site
5. Bicycle parking will be provided on-site and showers/dressing rooms will be available for employees
6. New on-site walkways will connect to the existing sidewalk on Fisher Avenue

VHB's report concludes that additional peak period traffic estimated to be generated by the development falls within the range of daily fluctuations in traffic volumes and will not be perceptible to a typical driver traveling through the area. Detailed analysis presented in the study indicates that the existing transportation infrastructure in the area can adequately support development related traffic. The report also concludes no off-site traffic mitigation will be necessary to support the development.

Negotiated Inclusionary Zoning (Affordable Housing) Alternatives

While the main project includes 160 total units, only 120 of those units—the approximately 80 units of service-supported senior housing and the approximately 40 assisted living units—are covered under the Town's Inclusionary Zoning By-law. The 40 memory care units are not considered full dwelling units under Inclusionary Zoning as they do not have cooking facilities.

The NZC Negotiating Subcommittee, with input from the Housing Advisory Board (HAB), sought to arrive at an affordable housing recommendation which would fulfill as closely as possible the various provisions of Brookline's existing Inclusionary Zoning By-law. The ultimate recommendation, along with all of the other Town objectives, had to remain within Welltower's overall financial feasibility constraints. These financial limitations were evaluated by the Town's consultant.

Town Meeting will actually be provided the opportunity to choose between two distinct affordable housing plans, both of which were unanimously voted as acceptable by HAB.

HAB Preferred Plan: Develop 18 new mixed-income affordable condominium units at 125 Holland Road, a part of the former Newbury College campus directly across from the main project. This plan is a preferred alternative under the Town's Inclusionary Zoning By-law and by the HAB. Because 125 Holland Road would require an affordable housing zoning overlay, this preferred option would require a 2/3 vote of approval by Town Meeting.

Acceptable alternative plan: Welltower would contribute \$6.525 million to the Housing Trust Fund. The Housing Advisory Board has recommended that these funds be earmarked for the exclusive prescribed use of the Brookline Housing Authority (BHA). The BHA would be required to apply these funds to redevelop its Colonel Floyd senior housing property on Marion

Street, including replacing 60 obsolete senior housing units and adding 40 to 45 new low-income senior rental housing units. This acceptable alternative plan does not require re-zoning. Should the needed rezoning for the preferred plan not receive the required 2/3 vote, the Colonel Floyd/BHA alternative plan would become effective as part of a majority Town Meeting vote to approve the Memorandum of Agreement (MOA) for the main project.

The Inclusionary Zoning By-law requires 15% or 18 of the 120 housing units to be affordable. The preferred 125 Holland Road development plan includes 18 affordable ownership units, with 6 units affordable to households earning up to 80% of the Area Median Income (AMI), 6 units affordable to households earning up to 100% of AMI, and 6 units affordable to households earning up to 150% of AMI. With 40 to 45 new affordable units, the alternative BHA plan would exceed the minimum 15% requirement and serve primarily households earning less than 50% of AMI.

A third option that is generally prescribed under the existing By-law—direct integration of the affordable units within the main project—was evaluated at the outset and determined by all parties to be infeasible for this type of project because the very costly service/support amenity package is inseparable from the housing component. Only about six affordable units would have been feasible under this option.

Further detail comparing the preferred 125 Holland Road plan with the alternative Colonel Floyd/BHA plan appears in the following table.

	<u>125 Holland Road: 38,000 sq. ft. parcel adjacent to main Welltower project</u>	<u>Brookline Housing Authority: Existing BHA Col. Floyd property with available land</u>
Zoning By-law preference	Adjacent offsite development is #1 of 3 defined By-law alternatives	Payment to Trust Fund for future affordable housing development is #3 of 3 alternatives
Zoning By-law compliance (4.08)	Meets 15% requirement but some units serve income range above current by-law range	Payment is less than the By-law formula, but yields over 2x the minimum 15% of total units
Up-zoning required	Yes	No; eventual parking relief may be needed
Creation of new affordable units	18 affordable ownership units (15% x 120) serving incomes up to 80% (6 units), up to 100% (6 units), and up to 150% (6 units) of AMI and available to all age groups	40 net new affordable rental units targeting incomes at 50% of AMI + 60 replacement units available only to seniors
Geographic dispersion of	Would augment 24 existing affordable units on Fisher Hill (Olmsted Hill)	Would increase affordable housing concentration near Coolidge Corner

affordable housing		
Timing and delivery	By yearend 2022. May be longer than main project but earlier than BHA option.	Depends upon timing of state subsidy awards. Could take 1-2 years longer to complete.
40B – SHI inventory credit	Minimum 6 units would qualify for 40B SHI inventory credit	All the 40 new units would receive 40B SHI inventory credit
Affordable Housing developer	Anticipated to be: New Atlantic Development—developer of Olmsted Hill Affordable Housing-- designated and supported by Welltower ¹⁰	Brookline Housing Authority
Physical features	Max. 0.5 FAR; Max.18,965 GSF; 2.5 floors; 18 affordable units, most or all 1-bedroom w/most parking under new building area; Preserve/add to existing building if feasible; otherwise all new construction	One or more multistory elevator buildings at Col. Floyd site. Would replace 60 obsolete 2-story walk-up senior housing units and add 40-45 net new units for a total of 100-105 new 1BR units. Welltower contribution would be one component of a larger finance and subsidy package for the BHA project.

COMMONLY ASKED QUESTIONS REGARDING THE PROPERTY AND THE TRANSACTIONS

What is the highest and best use for the East side property and how does that compare to both the land value attributable to the senior living proposal as well as to what is allowed under zoning?

As part of the Town’s due diligence when formulating its bid, McCall & Almy prepared a set of opinions of land value based on a range of residential and continued educational uses:

¹⁰ Note that the selection of New Atlantic is subject to Welltower and New Atlantic entering into a binding agreement with respect to the development of the 125 Holland Site.

Newbury College - "East Campus" 3.88 acre site (168,856 square feet) Range of Land Value Scenarios and Associated Town Benefit				
Scenario	Unit Count	Estimated Value	NPV Stream of Tax Payments ¹	Affordable Housing Contribution
Educational User	N/A	\$ 18,900,000 ⁴	N/A	N/A
Welltower Senior Living Project	160	\$ 17,000,000 ⁴	\$40-\$60 million ⁵	\$ 6,525,000
Cluster Residential Development ²	12	\$ 5,300,000	\$ 7,250,000	\$ 2,000,000
"As of Right" Residential Development	6	\$ 4,300,000	\$ 6,150,000	\$ 700,000
East Campus Assessed Value: \$18,960,000				
Newbury College - "West Campus" 3.13 acre site (136,157 square feet) Range of Land Value Scenarios and Associated Town Benefit				
Scenario	Unit Count	Estimated Value	NPV Stream of Tax Payments ¹	Affordable Contrib.
Educational User	N/A	\$ 17,700,000 ⁶	N/A	N/A
Town Acquisition	N/A	N/A	N/A	N/A
Cluster Residential Development ²	8	\$ 6,400,000	\$ 5,510,000	\$ 900,000
"As of Right" Residential Development ³	4	\$ 5,400,000	\$ 4,570,000	N/A
West Campus Assessed Value: \$14,800,000				
FOOTNOTES & ASSUMPTIONS				
¹ Net Present Value calculation applies discount rate of 3.0% to stream of inflation-adjusted future real estate tax payments (see footnote 5 for Welltower assumptions)				
² "As of Right" Residential Development Zoning Requirements - S-15 zoning for residential as of right requires a minimum lot size of 15,000 SF and stipulates a maximum FAR of 0.25. - S-25 zoning for residential as of right requires a minimum lot size of 25,000 SF and stipulates a maximum FAR of 0.20.				
³ Cluster Residential Development Zoning Requirements - S-15 zoning for residential cluster requires a minimum lot size of 7,500 SF and stipulates a maximum FAR of 0.30. - S-25 zoning for residential cluster requires a minimum lot size of 12,500 SF and stipulates a maximum FAR of 0.25.				
⁴ Estimated provided by Byrne McKinney				
⁵ Estimated fiscal impact of Welltower project (approximate). - Assumes \$800,000 tax payment beginning at stabilized occupancy (3 years after Tax Certainty Agreement takes effect). - Increases 2.5% per year over 92 years. Smaller tax payments during three-year lease-up not considered. - Range reflects discount rates of 3.0% and 4% applied to stream of future inflation-adjusted real estate tax payments				
⁶ Estimate provided by McCall & Almy				
<i>This analysis is an opinion of value only based on a review of readily accessible publicly available information relating to the subject property. The opinion presented herein is based on our market and development experience and expertise and general conversations with knowledgeable real estate professionals. This opinion of value is further based on current market conditions, changes to which would likely impact the value ranges we present. We make no warranty or representation, expressed or implied, as to the accuracy of the information contained herein, and the same is submitted subject to errors, omissions.</i>				

These valuations were determined using the standard residual land value methodology¹¹ while factoring in the value of existing improvements (or the cost of their demolition).

¹¹ Residual land value looks at the present value of a development using industry standard discount rates and subtracts from that present value the total cost of construction (hard, soft, interest carry, etc.). The excess of the present value over the total cost of construction is the theoretical maximum value someone would pay for the land.

As shown above, McCall & Almy determined that the highest level of value for the East Campus would be the reuse of the 95,000 square feet of existing buildings (potentially adding additional space) by an educational non-profit. Educational non-profits that are exempt from both real estate taxes and zoning, except for reasonable dimensional controls, can pay more for real estate. Ms. McKinney attributed a value of \$18.9 million for the East Campus assuming this use, identical to its assessed value.

McCall & Almy valued the land in the range of \$7.9 to \$10.1 million under the existing residential zoning regime (with the variation attributable to development as single family on the low end and as cluster housing on the high end).

Commercial tax paying uses were determined to not be a good fit. The Town is currently awaiting state certification of its Subsidized Housing Inventory (SHI), which the Town asserts is now at 10%. It should be noted that the Town's SHI is expected to fluctuate over the next few years for a variety of reasons, but any property owner's recourse to 40B will be risky—the Town may very well be at 10% at the time of filing of a Comprehensive Permit so a developer may not claim the protections of 40B.

If an educational use remains the highest and best value, how was Welltower able to buy the property?

As stated above, the rules set forth by the Trustees of Newbury impacted the sale process. The Trustees valued a single purchaser and certainty of execution over price. That is not unusual in many institutional transactions. McCall & Almy believes, through their own research and discussions with the agent for the Trustees, that in addition to the Town and Welltower. Interested buyers were primarily educational institutions and other senior community developers. Those prospective buyers, however, apparently struggled with the requirement to purchase the entire property subject to existing zoning and may not have possessed the same resources as Welltower to ensure a closing that would meet the objectives of Newbury College.

As mentioned above, Welltower obtained an approximately 13% discount from assessed value, a value our consultants believe could have been realized if Newbury did not impose the aforementioned acquisition requirements on the market.

Did Brookline get as much from Welltower as it could?

One never knows if there is a little more to be obtained in a negotiation. It is, however, the view of the NZC that the Town has negotiated a fair deal for both parties and that Welltower is not receiving any windfall.

The NZC reached this conclusion by evaluating the facts of the transaction and by analyzing, with the help of its consultants, appropriate market information. Some of the key matters the NZC reviewed and/or concluded are:

1. The up-zoning will not create any value in the East Campus land beyond what Welltower has paid. Welltower provided its detailed senior living community development *pro*

forma, including projected development costs and projected stabilized net operating income to Ms. McKinney for her review and evaluation¹². The allocated land value of \$17 million is the result of a residual land analysis and, based on comparable market data for other senior living developments, believed to be reasonable. That conclusion suggests that if Welltower, subsequent to the up zoning, were to sell the East side to another senior housing developer, that buyer would not value the land substantially greater than the \$17 million Welltower will have “invested” in at that time. Our consultants believe that if an up-zoning would create substantially greater value than the bidding for the property might have reflected that, even with the restrictions imposed by Newbury. On the other hand, if another purchaser used less ‘aspirational’ rent assumptions, they might offer less for the property.

2. If the up-zoning occurs but the Town does not buy the former West Campus, Welltower will be limited in the upside it can realize from the sale of that property. The Town negotiated a dual-option on the former West Campus. The Town can elect to purchase the property at the discounted price of \$14,800,000¹³ or the Town can share in the revenue when Welltower sells the former West Campus.
3. In presenting her market and financial analysis to the NZC, including her analysis of the financial and operational feasibility of the senior living community, Ms. McKinney characterized the Welltower *pro-forma* as carrying “aspirational” rents and “conservative” development costs. The development costs include demolition of existing facilities and the costly maintenance and adaptive re-use of the Mitton House. Ms. McKinney explained that while Welltower is proposing a high-end project, its operating margin is thin given the high costs of providing the services that the operations will entail. Citing the industry standard benchmark of stabilized Return on Cost (ROC), she concluded that the projected ROC for the Welltower project is less than 6.5%, and that was before the Town negotiated additional concessions. She believes that typical developments target a stabilized ROC of more than 6.5%.¹⁴
4. Additional concessions that have eroded Welltower’s returns were an increased commitment beyond what it was initially willing to pay for one of the inclusionary zoning alternatives and a reduction of the initial asking price for the former West Campus.

If the Town has really pushed Welltower to such a thin ROC, why would they proceed?

Ms. McKinney’s answer to this question at the public meeting was “The site is exceptionally rare and has an exceptional competitive edge over other options.” Companies often make investments for strategic reasons. In this instance, Welltower may want to establish a presence in the Boston market with a premier property and they may be willing to accept lower returns to accomplish that goal.

¹² As is generally normal practice when dealing with public companies or negotiated transactions, the details of the developer’s *pro forma* are subject to a non-disclosure agreement, with the specific exception in this instance for the inclusionary zoning amount and the land value attributed to the senior living project.

¹³ McCall & Almy estimates that the \$14.8 million purchase price represents a \$2.9 million discount from the \$17.7 million McCall & Almy believes a non-profit educational user would be willing to pay for the former West Campus. Colliers, the agent for Newbury, has appraised the former West Campus at \$18.55 million.

¹⁴ Welltower’s February 12, 2020 annual earnings press release stated that it had “completed \$308 million of development funding with an expected stabilized yield of 7.9%”.

Even if we have pushed Welltower to a subpar ROC, why can't we get more or even be given the property for free as some have suggested?

The adage 'Pigs get fat, hogs get slaughtered' is commonly used in the real estate industry. From afar, it seems like developers always 'win'. That is not reality because, as most banks will confirm, real estate development (and investment) is a very risky undertaking.¹⁵ Development requires the investment of considerable resources, financial and human, in the optimistic hope that a concept will be successful even though the results will not be known until many years in the future. The more appropriate question is, 'Why would any rational person, business or otherwise, do whatever a negotiating party wanted if it jeopardized the viability of a decision beyond an acceptable level of risk'?

Balfour at Brookline will not be successful and value will not be created just because it gets built. What must be understood is that the up-zoning is required for Welltower to be able to create the critical mass necessary to make a substantial investment to *try* and create a successful operation at the site. There is no assurance that Welltower and Balfour will succeed in the operating endeavor that is planned. Every dollar in value the Town obtains reduces the viability of the project because it adds to the cost of the project without adding any earning power.

As a public company, Welltower, its management and Board of Directors have legal and fiduciary obligations to their shareholders (which includes anyone who owns an S&P 500 index fund). It has been demonstrated that the projected returns on this project are thin and apparently below market and certainly below what Welltower has been able to achieve in recent developments.¹⁶

The SB and the NZC have determined, with the help of our expert advisors, that the economics of the proposed project are at the point where seeking additional concessions or payments to the Town is not economically reasonable. The choice is to agree with the proposal or to reject the deal and enter a new period of extreme uncertainty, and revenue stagnation (as it relates to the property). In making this decision, Town Meeting Members should understand and evaluate 'what happens if we reject this deal'. The Select Board and the NZC have done that and do not believe there is a 'what if' scenario that is as, let alone more, favorable to the Town.

Why Aren't We Just Saying No to This Whole Thing and Taking the Entire Property By Eminent Domain?

Eminent domain is an extremely risky and expensive undertaking that is widely misunderstood. It is the view of the Select Board and the NZC that a taking would result in the following:

¹⁵ The last two major recessions in the United States were caused by real estate conditions (the savings & loan collapse and the housing crisis).

¹⁶ Welltower's February 12, 2020 annual earnings press release stated that it had "completed \$308 million of development funding with an expected stabilized yield of 7.9%".

1. An expensive initial award to the current owner that could be at least as large as the value attributed by Colliers in their appraisal conducted on behalf of Newbury (over \$40 million).
2. A lawsuit from Welltower that would challenge our right to acquire the land. Land may only be taken by eminent domain for a valid public purpose, and the current owner would likely claim that the taking failed to meet that standard. Even if the Town succeeded in this initial lawsuit, in the years it was pending, the land's use would be limited, since long-term capital investment would be inadvisably risky. Further, the risk involved would cloud the title such that selling all or a piece of the land would be impossible.
3. A second lawsuit from the former owner challenging our valuation as insufficiently low. The former owner would argue that the appropriate value ascribed to the property would be, by law, the highest and best use of the property assuming zoning changes that could be reasonably anticipated to be approved. The former owner's argument on valuation would not be limited by what previous consultants or assessors have said. It would likely be a number substantially higher than any value previously associated with the property. If the argument by some in the community that the up-zoning immediately creates value for Welltower in the amount of roughly \$170 million is correct, the Town could, conceivably, be required to pay that amount¹⁷.
4. The final outcome of that second lawsuit would not be known for many years and would be decided by a jury and not a judge. Juries in these matters traditionally bestow considerably higher valuation awards than judges.
5. A decision to take is binding and irrevocable. The initial award would have to be immediately available and payment must be made as soon as the decision to take is made. There will not be time to go to voters for a debt exclusion. This will result in a financing that will defer or possibly eliminate significant portions of the current CIP. Additionally, once the property is taken, the Town is obligated to pay however how much the valuation is determined to be. If the jury decided to award the former owner a massive amount in additional damages, the Town would have no choice but to pay it.

The opportunity the Town will have to buy the former West Campus would advance municipal goals without the legal (and associated financial) risk of an eminent domain taking. If, as the NZC and our consultants believe, the value of the East Campus approximates what Welltower is valuing it at in its *pro forma*, then opting for an eminent domain taking would mean the Town would be taking on significant risk without a compelling reason to do so – especially if the contemplated goal were essentially what is contemplated by these warrant articles: upzoning the parcel to allow for additional development while retaining some of the land for municipal use at the lowest possible cost.

ARTICLE 10

Submitted by: Paul Saner, on behalf of the Newbury Zoning Committee

¹⁷ Neither the NZC, the Select Board nor the Town's expert consultants believe the analysis that led to this perspective to be realistic or remotely close to the actual value of the property.

This Article, if approved, will authorize the Select Board to enter into a Restrictive Covenant, entitled “Tax Certainty Agreement” and/or any related agreements. Once recorded, this Tax Certainty Agreement would run with the land and provide tax certainty for real estate taxes for a 95-year term pertaining to the proposed development at so-called “East Parcel” of the former Newbury College Campus – the parcels with the addresses 117 Fisher Avenue and 124 Holland Road in Brookline. The current proposed uses are a senior living facility, but future uses could potentially include ones exempt from taxation. Although no such use is currently contemplated, this Tax Certainty Agreement would ensure a full payment in lieu of taxes to the Town.

This warrant article is one of seven warrant articles related to Welltower’s proposed development on the former Newbury College campus. For more information on how this warrant article fits into the larger package, please review the explanation for the warrant article titled “Fisher Hill Special Overlay District Zoning” proposing a rezoning of the east side of the former Newbury College campus.

TAX CERTAINTY AGREEMENT – March 5, 2020 version

**IN RE: The parcels known as 117 Fisher Avenue (Assessors’ Parcel I.D. No. 250-01-02) and
124 Holland Road (Assessors’ Parcel I.D. No. 250-03-05)
BROOKLINE, MASSACHUSETTS
TAX CERTAINTY AGREEMENT**

This Agreement between WELLTOWER INC. a Delaware corporation, having an office at 4500 Dorr Street, Toledo, Ohio 43615 (“Welltower”; Welltower and its successors and assigns in title or interest the Premises are hereinafter collectively referred to as “Developer”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), (Developer and the Town being collectively referred to as the “Parties”) is executed this ___ day of _____, ____ (the “Execution Date”), and made effective upon the date this Agreement is recorded in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court (the “Effective Date”), upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

PREAMBLE

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land in the town and specifically at the former Newbury College site and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town’s existing property tax revenue; and

WHEREAS, Welltower owns the parcels of real property known as and numbered as 117 Fisher Avenue (Parcel I.D. No. 250-01-02) and 124 Holland Road (Parcel I.D. No.250-03-05) sometimes collectively referred herein collectively as the “East Parcel”, which was acquired by Developer pursuant to that certain Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the “Registry”) in Book 37136, Page 283, the legal descriptions of which are attached hereto as Exhibit A, which as of the date hereof consists of a several buildings and a parking lot;

WHEREAS, Welltower, Welltower TRS Holdco LLC, a Delaware limited liability company and the Town are parties to that certain Memorandum of Agreement by and between the Town of Brookline and Welltower Inc. and Welltower TRS Holdco LLC, dated as of [____], 2020 and recorded in the Registry in Book [____], Page [____] (the “Memorandum of Agreement”); Capitalized terms used in this Agreement and not otherwise defined shall have their respective meanings as set forth in the Memorandum of Agreement;

WHEREAS, as of the Effective Date, each of the Town Meeting Approval Conditions and Special Permit and Other Required Approvals have occurred and/or have been satisfied;

WHEREAS, in accordance with and pursuant to the Memorandum of Agreement, Developer and the Town agree to execute this Agreement as of the date hereof and record a copy thereof in the Registry;

WHEREAS, the Town and Developer seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may become exempt from the payment of

real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third or other applicable exemption; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and Developer have agreed that Developer to the Premises will make certain voluntary payments to the Town in certain circumstances in lieu of real estate taxes, as more particularly set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Developer and the Town agree as follows:

1. Developer Commitment to Voluntary Payment to the Town. Commencing with the first fiscal tax year following the Assessment Date, and ending ninety-five (95) years after the Effective Date of this Agreement (the "Term"), if and to the extent Developer is not otherwise obligated to pay real estate taxes for the Premises by virtue of the Premises being used for one or more Exempt Uses or Developer's tax-exempt status (the "Payment Conditions"), then, with respect to any fiscal tax year for which the Payment Conditions are satisfied Developer shall make a direct financial contribution to the Town in the amount equal to the real property taxes that would otherwise have been levied by the Town for all or any portion of the Premises were the Premises not used for one or more Exempt Uses or were Developer not precluded, based on its status, from the payment of real estate taxes under applicable law in such relevant fiscal tax year (the "Voluntary Payment"). In such event, the Town shall accept the Voluntary Payment in full satisfaction of Developer's obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Section 2, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. As used herein the term "Assessment Date" shall mean January 1st or another date on which the Town Assessors by statute make the first determination of the value of real property following the Effective Date. As used herein the term "Exempt Use" or "Exempt Uses" shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law, whether currently in existence or adopted during the Term of this Agreement.

2. Payment of the Voluntary Payment to the Town. The Voluntary Payment shall be paid to the Town in quarterly installments on the date real property taxes are due for each fiscal tax year during the Term for which the Payment Conditions are satisfied, and the Town shall provide Developer with a written statement of the portion of any Voluntary Payment due not less than thirty (30) days prior to the due date. Developer shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided Developer shall, before commencing legal action, first use good faith efforts to mediate the issue of valuation with the Town's Assessors.

3. Termination of Agreement. **The Town or Developer shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8, in the event that, at any time after the Effective Date the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by Developer of taxes, similar assessments or payments in lieu of such taxes on the Premises used for one or more Exempt Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or Developer, with the exception of a change that would have the effect of expanding the uses covered by the term “Exempt Uses”. This Agreement shall not in any manner whatsoever restrict the Town’s exercise of its police power. Upon transfer of title of the Premises, the grantor Developer’s obligations under the Agreement shall automatically terminate and the grantee Developer (e.g., the successor owner of the Premises) shall be bound by the terms of this Agreement as more particularly described in Section 8(j) of this Agreement.**

4. Period of Restrictions. It is the intent of the parties that the restrictions set forth herein be imposed for the duration of the Term, and Developer hereby agrees and acknowledges that (a) the restrictions set forth herein shall not be deemed to be “unlimited as to time” within the meaning of Massachusetts General Laws, Chapter 184, Section 23, (b) prior to the expiration of the initial thirty (30) years of the Term and prior to the expiration of any subsequent renewal period, this Agreement and the restrictions set forth herein may be renewed by the Town from time to time thereafter for additional periods not in excess of twenty (20) years each, such renewal to be effectuated in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 (as may be amended from time to time) or any successor statute.

5. Representations as to Authority.

i. ***The Town’s Authority.*** **As of the Execution Date, the Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town’s Bylaws and under the laws of Massachusetts to execute, deliver, perform and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town’s behalf are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.**

ii. ***Developer's Authority.*** As of the Execution Date, Developer represents that it is duly organized, validly existing and in good standing under the laws of the State of its incorporation, that it is qualified to do business in, and in good standing under the laws of, the State of Massachusetts and that has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. Developer represents that (i) the individual executing and delivering this Agreement on Developer's behalf has the authority to do so, and such signing authority has been authorized by all necessary corporate action taken by and on the part of Developer, (ii) the Agreement has been duly and validly authorized, executed and delivered by Developer, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of Developer, enforceable against Developer in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against Developer, Developer agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

6. **Lien/Collection Remedies.** Upon the failure of Developer to make any Voluntary Payment to the Town when the Payment Conditions were otherwise satisfied, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Within no more than ten (10) days following written request from time to time to the Town Tax Collector, the Tax Collector shall provide Developer (e.g., the record owner of the Premises) with a written statement to Developer and any potential purchaser of or lender to the Premises certifying Developer's and the Town's compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

7. **Deed Reference and Affirmation of Successor In Title.** Developer agrees that during the Term each successive deed of the Premises executed and delivered by the grantor shall contain the following statement:

“Reference is made to that certain Tax Certainty Agreement by and between Developer and the Town of Brookline dated _____, _____, recorded with Norfolk County Registry of Deeds in Book _____, Page _____ (together with all amendments duly made and recorded, the “Tax Certainty Agreement”). By acceptance and recording of this deed, the Grantee (i) acknowledges and accepts the Tax Certainty Agreement, (ii) acknowledges that Grantor is hereby released in full from all obligations of “Developer” under the Tax Certainty Agreement and (iii) agrees that the Tax Certainty Agreement shall be binding and enforceable against the Grantee in accordance with its terms.”

Developer and such successors in title shall notify the Town in the manner provided in Section 8(j) hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 7.

8. Miscellaneous Provisions.

(a) **Notices.** All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:

If to Developer:

Welltower Inc.
4500 Dorr Street
Toledo, OH 43615
Attention: General Counsel

With a copy to:

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen Jr., LLP
300 Washington Street
Brookline, MA 02445

If to the Town:

Town of Brookline
Attn: Town Administrator
Brookline Town Hall
333 Washington Street
Brookline, MA 02445

With a copy to:

Town of Brookline
Attn: Town Counsel
333 Washington Street
Brookline, MA 02445

___ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

___ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

— By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) **Severability/Captions.** The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those Developer obligations that otherwise would survive the Term shall end. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.

(c) **Waivers/Time of Essence.** The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.

(d) **Amendments.** This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.

(e) **Whole Agreement/Survival.** This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 5 and 9, survive the Term for so long as applicable; and all of the provisions of this Section 9 shall also survive the Term in relation to any of this Agreement's other surviving provisions.

(f) **Real Property.** All references in this Agreement to real property or property owned by or of Developer shall be deemed to mean fee

ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.

(g) **Reservations.** The Town and Developer agree that this Agreement provides the Town with protection of its tax base, but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its police power or imposes any restrictions on Developer's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, one or more Exempt Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and Developer each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. Developer is entering into this Agreement voluntarily; and nothing in this Agreement or Developer's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by Developer of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by Developer for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by Developer under, and subject to all of the terms and conditions of, this Agreement.

(h) **Counterparts.** This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(i) **Applicable Law.** This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(j) **Successor In Title.** This Agreement shall bind Developer and its successors and assigns in title to the Premises and shall be deemed to "run with the land" for the duration of the Term. Any Developer, as grantor of title to the Premises, shall be released from all obligations as "Developer" under this Agreement upon the execution by such Developer, and subsequent recordation in the Registry, of any deed transferring title of the Premises (a "Premises Deed"), which Premises Deed shall include the paragraph required pursuant paragraph 7 above. Simultaneously with the recording of a

Premises Deed in the Registry, either grantor or grantee thereunder shall provide written notice to the Town of the recording of such Deed, the transfer of title to the Premises, and the notice addresses for grantee thereunder for purposes of notices under this Agreement, including, without limitation, Section 8(a).

(k) Recording. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court.

IN WITNESS whereof the parties have executed this Agreement under seal as of the Effective Date.

Welltower Inc.

Town of Brookline
Select Board:

By _____

Hereunto duly authorized

Date: _____

Hereunto duly authorized
Date:

County of Lucas

State of Ohio

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____ of Welltower Inc. as _____ of _____ through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

Notary Public

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

My Commission

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this _____ day of _____ 20__, before me, the undersigned notary public, personally appeared _____, _____, _____ Select Board, of the Town of Brookline, proved to me through satisfactory evidence of identification to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the Board of Selectmen of the Town of Brookline.

Notary Public

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

My Commission

Exhibit A

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

- NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence
- NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence
- SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence
- SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

- NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;
- EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;
- SOUTHERLY by Tract II herein, 298.18 feet;

WESTERLY by Fisher Avenue, 323.75 feet;

NORTHWESTERLY by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

ARTICLE 11

Submitted by: Paul Saner, on behalf of the Newbury Zoning Committee

This Article, if approved, will authorize the Select Board to enter into and/or amend as necessary any new or existing agreements so that the Town receives the full benefits and protections as set forth in the Memorandum of Agreement pertaining to the proposed development of the former Newbury College Campus.

The Memorandum of Agreement and draft exhibits follows – although please note some exhibits may be placeholders.

This warrant article is one of seven warrant articles related to Welltower’s proposed development on the former Newbury College campus. For more information on how this warrant article fits into the larger package, please review the explanation for the warrant article titled “Fisher Hill Special Overlay District Zoning” proposing a rezoning of the east side of the former Newbury College campus.

MEMORANDUM OF AGREEMENT – March 5, 2020 version

MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE TOWN OF BROOKLINE AND WELLTOWER INC. AND WELLTOWER TRS HOLDCO LLC

This Memorandum of Agreement (this “Agreement”) between WELLTOWER INC., a Delaware corporation and WELLTOWER TRS HOLDCO LLC, a Delaware limited liability company, each having an office at 4500 Dorr Street, Toledo, Ohio 43615 (together with their successors and assigns hereinafter collectively referred to as “Developer”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), (Developer and the Town being collectively referred to as the “Parties”) is made and entered into this ___ day of _____, 2020, upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

WHEREAS, by Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the “Registry”) in Book 37136, Page 283, Welltower Inc. acquired property in Brookline, Massachusetts commonly known as 117 Fisher Avenue and 124 Holland Avenue (said properties being sometimes referred to herein as the “East Parcel”, a legal description of which is attached hereto as Exhibit A-1);

WHEREAS, by Quitclaim Deed dated September 5, 2019 recorded with the Registry in Book 37136, Page 286, Welltower TRS Holdco LLC acquired property commonly known as (i) 110 Fisher Avenue, 150 Fisher Avenue, 146 Hyslop Road (a/k/a 129 Fisher Avenue) and 124 Fisher Avenue (said properties being collectively referred to as the “West Parcel”, a legal description of which is attached hereto as Exhibit A-2), and (ii) 125 Holland Road (“125 Holland”), a legal description of which is attached hereto as Exhibit A-3;

WHEREAS, Developer seeks to construct a senior living facility consisting of 160 units of independent living, assisted living and memory care units and related facilities and parking spaces for a total of 98 vehicles (hereinafter collectively referred to as the “Project”, which term does not include the 125 Holland Project as such term is defined below), and a summary of the proposed Project and associated concept site plan, and concept building massing are attached hereto as Exhibit B;

WHEREAS, the proposed location for the Project is the East Parcel all as more particularly described in the legal description contained in Exhibit A-1 (collectively referred to as the “Property” or the “Site” unless otherwise indicated);

WHEREAS, the Parties have elected to develop multiple options for the Project to address the requirements it engenders related to affordable housing, and intend to memorialize the parameters by which the Developer will either: (1) provide eighteen (18) affordable condominium units at 125 Holland; or (2) provide a cash payment of Six Million Five Hundred Twenty Five Thousand Dollars (\$6,525,000) made payable to the Brookline Affordable Housing Trust Fund;

WHEREAS, the Parties agree that the Project will benefit the Town in many ways including, but not limited to: (1) the opportunity for the Town to acquire the West Parcel at an agreed-upon price or, if the Town elects not to acquire the West Parcel, share in certain proceeds of the sale of the West Parcel, as set forth below; (2) substantial fiscal benefits associated with the redevelopment of the East Parcel for a taxable use; (3) a 95-year Tax Certainty Agreement for the East Parcel (the “Tax Certainty Agreement”); (4) improvements to the public realm including a public area easement along the Fisher Avenue frontage of the East Parcel which will include the obligation of Developer to maintain the existing trees in the easement area (the “Public Area Easement”), (5) commitment to sustainable development in general conformance to the standards embodied in the Town’s “Prohibition on New Fossil Fuel Infrastructure in Major Construction”; (6) providing access in the Project for neighborhood meetings and for events held by the Town’s Council on Aging; and (7) maintenance for adaptive reuse of the Mitton House and addition on the East Parcel, subject to the terms hereof;

WHEREAS, the Newbury College Zoning Study Committee (“the Committee”) intends to submit a zoning by-law amendment (the “Proposed Zoning Amendment”) for consideration at the Town Meeting commencing in May, 2020 that, if approved, would allow the Project to proceed through a special permit process informed by design guidelines developed specifically for the Project;

WHEREAS, the provisions of this Agreement are available for consideration by the Planning Board and the Board of Appeals in reviewing any application for a special permit(s) for the Project;

WHEREAS, the Parties wish to enter into this Agreement to memorialize their mutual understandings and obligations with respect to (1) the Project and certain permits and approvals required for the Project, as well as any other agreements between the Developer and the Town pertaining to the Project, including a 95-year Tax Certainty Agreement and the Public Area Easement, (2) the manner in which the Developer will comply with the requirements of Section 4.08 of the Town’s Zoning Bylaw with respect to affordable housing requirements; (3) agreements of the Parties with respect to the disposition of the West Parcel; and (4) other matters set forth herein, all on the terms and conditions hereinafter set forth;

WHEREAS, the Parties contemplate entering into such further binding agreements as reasonably appropriate and approved by both Parties to proceed with the Project and to satisfy the mutual obligations contained herein;

NOW THEREFORE, in consideration of the promises and mutual obligations of the Parties hereto and upon good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, each of them does hereby covenant and agree as follows:

1. CERTAIN DEFINITIONS. All references herein to the following terms shall have the meanings hereinafter set forth:

- a. All references to the “Proposed Project Zoning Amendment” shall be construed as a reference to the text of a Warrant Article prepared for the Town Meeting commencing May 19, 2020, a copy of which is attached hereto as Exhibit C, as such text may be amended at Town Meeting, provided that such amendments do not impose burdens on the Project that are materially adverse to the financial feasibility of the Project in the reasonable judgement of Developer (which may include construction or operation costs). If Developer determines in its reasonable judgment that any such amendment/s to the text of the Proposed Project Zoning Amendment (Exhibit C) do impose burdens on the Project that are materially adverse to the financial feasibility of the Project, Developer shall use all commercially reasonable efforts to notify the Town as soon as possible prior to any vote to amend the Proposed Project Zoning Amendment. If the Proposed Project Zoning Amendment is nonetheless passed in a form amended in a materially adverse manner, and as a result thereof Developer decides in its sole discretion not to proceed with the Project or if Developer determines in its reasonable judgment that the amendment/s prohibits Developer from proceeding with Project as proposed then, in either case, Developer shall so notify the Town in writing within seven (7) business days after the date Town Meeting votes these articles, and in such case this Agreement shall immediately become null and void and of no force and effect.
- b. All references to the “Town Meeting Approval Conditions” shall be construed as references to: (i) approval by the 2020 Annual Town Meeting and the Attorney General of the Proposed Project Zoning Amendment; (ii) authorization by Town Meeting of the acceptance of the 95-year Tax Certainty Agreement attached hereto as Exhibit D; (iii) authorization by Town Meeting for the Select Board to execute this Agreement and any other documents or agreements necessary or appropriate for implementation of the proposed Project; and in each case with challenge periods to all such Town Meeting actions having passed (which, in the case of the Proposed Zoning Amendment, shall be the challenge period under G.L. c. 40, Secs. 32 and 32A) with no challenges by unrelated third parties pending or, if any of such actions is/are challenged, the same having been finally disposed of in a manner favorable to the Town Meeting action, not later than December 31, 2020. Notwithstanding anything herein to the contrary, if the Town Meeting Approval Conditions have not been satisfied by such date, then the Developer shall have the right, at any point prior to the issuance of the Special Permit contemplated by the Proposed Project Zoning Amendment, to abandon its permit application and relinquish its right to pursue the Project. Exercise of said right by the Developer will terminate this Agreement without the need for any further action on the part of either Developer or the Town, and without further recourse to the parties hereto.
- c. All references to the “Special Permit and Other Required Approvals” shall be construed as references to such other special permits, variances, licenses and/or other approvals, including but not limited to the expiration of any demolition delay under the Town’s Demolition Delay By-Law or lift(s) of stay as to such delay, any additional special permits under the existing Zoning By-Law and Proposed Project Zoning Amendment, including building permits and certificates of occupancy, which are necessary, in Developer’s and Town’s reasonable determination, to allow for the

construction and operation of the Project such that the Project, with all the appeal periods having passed, with no appeals pending or, if any such permit or approval is appealed, the same having been finally disposed of favorably to Developer not later than two (2) years from the date of issuance of the permit or approval which is the subject of the appeal.

2. AFFORDABLE HOUSING.

- a. 125 Holland Option. In addition to the Town Meeting Approval Conditions, the Committee shall submit a warrant article for consideration at the 2020 Annual Town Meeting (the “Proposed 125 Holland Warrant Article”, a copy of which is attached hereto as Exhibit E) pursuant to which 125 Holland shall be included in an overlay district to allow for the construction thereon of a condominium project containing eighteen (18) units of affordable housing (the “125 Holland Project”). In the event that the 125 Holland Warrant Article fails to achieve the 2/3 Town Meeting vote necessary for approval, the “Cash Option”, as described further below, shall automatically take effect.

A conceptual site plan of the development of 125 Holland Project proposed by the Proposed 125 Holland Warrant Article is attached as Exhibit F. The conceptual site plan is subject to change as 125 Holland Developer advances the 125 Holland Project.

The Town understands and agrees that the Developer does not intend, nor shall it be required to construct the 125 Holland Project. Accordingly, the Developer shall have the right to enter into such contractual arrangements with a third party, which the Developer has determined to have the requisite experience and financial wherewithal to construct the 125 Holland Project (the “125 Holland Developer”). The Developer shall include within the arrangements it enters into with the 125 Holland Developer a provision stating that any recourse by the 125 Holland Developer to the Zoning Board of Appeals for modification of the affordability requirements pursuant to Section 5.06.4.m.4 (or equivalent section), if such recourse would require raising the applicable Median Income levels, shall be conditioned upon prior recourse to funds available to the 125 Holland Developer by means of all budgeted contingencies (but in no event including the Developer Backstop, as such term is hereinafter defined). The Developer shall send to the Town copies of all contractual arrangements reached with the 125 Holland Road Developer prior to their execution. Pursuant to said contractual arrangements:

- (i) As soon as is reasonably feasible following the later of (i) issuance of a building permit for the Project, and (ii) the 125 Holland Developer’s obtaining a construction loan for the 125 Holland Project (which construction loan is expected to contain or require customary net worth and liquidity covenants of the 125 Holland Developer and its guarantors), the Developer shall cause 125 Holland to be conveyed for nominal consideration to the 125 Holland Developer, subject to an Affordability

Deed Restriction (in a form substantially similar to the one attached at Exhibit G) whose terms specify that it will survive any further transfer including foreclosure; and

- (ii) the Developer shall contemporaneously contribute cash in the amount of Three Million One Hundred Twenty Three Thousand Dollars (\$3,123,000) to the 125 Holland Project, to be deposited in a construction disbursement account and made available on a requisition basis to the 125 Holland Developer during the course of construction on customary terms and conditions; and
- (iii) except for the Developer Backstop (as hereinafter defined), the 125 Holland Developer shall be solely responsible for all costs associated with the 125 Holland Project, including, without limitation, the design, financing, construction, completion and marketing of the same. The Developer agrees to reasonably cooperate in the 125 Holland Developer's attempt to secure all permits and approvals necessary to proceed with the 125 Holland Project, including by executing applications for the same (or authorizing the 125 Holland Developer to do so), but such cooperation shall be at no additional cost or obligation to Developer. Following the conveyance of 125 Holland to the 125 Holland Developer, the 125 Holland Developer shall be responsible for obtaining all necessary approvals and permitting and the Developer agrees not to appeal or otherwise contest any issuance of any permit necessary to complete or bring online the 125 Holland Project.

It is expressly understood and agreed by the Town that under no circumstance shall the issuance of the Special Permit and Other Required Approvals for the Project (including, without limitation, any building permit or certificate of occupancy) be conditioned on the commencement or completion of the 125 Holland Project.

If the 125 Holland Developer is unable to close on a construction loan for the 125 Holland Project by December 31, 2021, the obligations of the Developer hereunder will automatically revert to making the cash payment described in the Cash Option below without the need for any further agreement or documentation.

Upon closing of the construction loan for the 125 Holland Project, Welltower Inc., will also provide a financial guaranty of up to \$650,000 (the "Developer Backstop") for the benefit of the Town to help ensure completion of the 125 Holland Project should the funds available for completion be deemed insufficient by the construction lender after recourse to the available sources of funding from the 125 Holland Developer and its guarantor(s). Evidence that the construction lender has deemed the funds insufficient shall include: (1) notification by the construction lender to the Developer or the Town that the construction lender has reached such a conclusion; (2) publication of a foreclosure sale of 125 Holland; (3) classification by the lender of the loan as 100 percent impaired with a full

write-off; or (4) an arm's length sale of the loan while impaired. To the extent Welltower Inc. elects not to contribute further funds under the Developer Backstop to help ensure completion of the 125 Holland Project under those circumstances, Welltower Inc. will be required to pay into the Town's Affordable Housing Trust any funds not previously advanced by the Developer under its Developer Backstop. If (1) Welltower has not advanced the full amount of the Developer Backstop prior to the later of (i) December 31, 2023 or, (ii) the term of any applicable construction loan as the same may be extended by the construction lender, and (2) the 125 Holland Road Project has not been completed by such date, Welltower Inc. will be required to pay into the Town's Affordable Housing Trust any funds not previously advanced under the Developer Backstop, unless it has already done so.

It is understood that the text of the Proposed 125 Holland Warrant Article may be amended at Town Meeting, provided that such amendment/s in the reasonable judgement of the 125 Holland Developer, do not impose burdens on the 125 Holland Project which are materially adverse to the Developer or the ability of the 125 Holland Developer to complete the 125 Holland Project (which may include increased construction or operation costs or decreased maximum affordable sales prices). If any such amendment/s to the text of the Proposed 125 Holland Warrant Article do impose burdens on the 125 Holland Project as set forth in the preceding sentence, then Developer or the 125 Holland Developer shall so notify the Town in writing within seven (7) business days of the conclusion of Town Meeting, and in such case the provisions of Section 2(b) below shall automatically come into effect.

- b. Cash Option. Upon the occurrence of the Cash Trigger Conditions (as hereinafter defined), in lieu of the 125 Holland Project, the Developer shall fully satisfy all obligations arising under Section 4.08 or other operative provision of the Zoning By-law with respect to affordable housing by making a cash contribution to the Town's Affordable Housing Trust Fund (the "Cash Contribution") equal to Six Million Five Hundred Twenty Five Thousand Dollars (\$6,525,000) in two installments. Per Section 4.08 of the Town's Zoning By-Law, this obligation (minus the initial 25% payment if paid in advance) shall be secured at Developer's discretion via a recorded legal instrument or letter of credit satisfactory to the Community Development Division prior to issuance of a building permit for the Project. Fifty percent (50%) of the Cash Contribution shall be payable thirty days after the later of (i) the issuance of the first non-appealable building permit for the Project, and (ii) the occurrence of a Cash Trigger Condition. The balance of the Cash Contribution shall be due prior to the issuance of the final Certificate of Occupancy for the Project. Early advances on the 50% final payment may be made on a mutually agreed upon basis between the Select Board and Developer with incentives for early payments to be negotiated in good faith. Any unpaid balance 48 months following an appeal-free Special Permit shall accrue interest at an annual rate equal to the monthly 10-year U.S. Treasury rate.

As used herein, the term “Cash Trigger Conditions” shall mean and include either of the following: (1) the Town Meeting beginning in May, 2020 fails to approve the Proposed 125 Holland Warrant Article, or it is approved with one or more material adverse text amendments as set forth in Section 2(a) above, or the Attorney General does not approve it or the rescission thereof; or (2) the 125 Holland Developer fails to close on a construction loan by December 31, 2021.

3. WEST PARCEL

- a. Possible Acquisition of West Parcel by the Town. The Town agrees to take such actions as are required to cause there to be a vote of all the Town’s electorate by no later than May 8, 2020 to approve a so-called debt exclusion enabling the Town’s acquisition of the West Parcel for a purchase price (the “West Purchase Price”) equal to Fourteen Million Eight Hundred Thousand Dollars (\$14,800,000). In anticipation of that vote, the Town shall propose for the 2020 Annual Town Meeting the following warrant articles (collectively, the “Proposed West Parcel Warrant Articles”): (i) a warrant article authorizing the Town to acquire the West Parcel for the West Purchase Price, in the form of Exhibit H annexed hereto, and (ii) a warrant article authorizing the Town’s chosen method for financing the acquisition. If the Town electorate approves the debt exclusion by majority vote, the Developer and the Town shall negotiate in good faith to enter into a purchase and sale agreement for the conveyance of the West Parcel to the Town (the “West Parcel PSA”) for the West Purchase Price with a closing to take place no later than thirty (30) days after the satisfaction of the Town Meeting Approval Conditions (or as otherwise agreed to by the Parties), and on terms otherwise reasonably acceptable to the Parties. Developer shall carry commercially reasonable property insurance until closing to cover any potential property loss. Without limiting the generality of the foregoing, it is understood that the West Parcel shall be conveyed to the Town on an “as-is, where-is” basis without any representation or warranty as to the condition of the West Parcel or any improvements thereon or its potential development.
- b. Possible Profit Sharing Upon Sale of West Parcel. Upon the occurrence of any Profit Sharing Trigger Conditions (as hereinafter defined), the Developer shall commence and thereafter use commercially reasonable efforts to market the West Parcel for sale to a third party. Such commercially reasonable efforts may include, at Developer’s discretion, retaining a qualified real estate brokerage firm to assist with the marketing of the property in order to achieve the best possible price on terms and conditions that are acceptable to the Developer in its discretion. Developer shall send to the Town or its consultant for informational purposes only Welltower’s marketing and disposition plan for the West Parcel. It is understood and agreed that whether or not to sell the West Parcel, the identity of any purchaser, the timing of such sale, and all other terms and conditions of any such potential sale shall all be in the Developer’s sole discretion. If the purchase price Developer is willing to accept for the West Parcel in an arms-length transaction exceeds the West Purchase Price then Developer shall pay to the Town an amount (the “Town’s Share”) equal to the total of the “Incremental

Town Proceeds, as shown on the Chart entitled “Profit Sharing Structure – Newbury College West Side” and annexed hereto as Exhibit I, less the Developer’s out of pocket transaction costs incurred by the Developer in connection with the sale. The Town’s Share shall be paid by the Developer to the Town not later than seven (7) business days after the closing of such sale, and shall be deposited with the Town Treasurer and held in a separate account until a purpose is authorized. As used herein, Developer’s transaction costs shall include reasonable and customary costs and charges incurred by a seller of commercial property in the Commonwealth of Massachusetts and the Town of Brookline, including, without limitation, broker’s fees and commissions, all marketing costs, transfer taxes, costs to clear any title matters, attorneys’ and other consultants’ fees and expenses related to the sale.

The term Profit Sharing Trigger Conditions shall include any of the following: (i) the Town’s voters failing to approve the debt exclusion by May 8, 2020; (ii) the May, 2020 Town Meeting failing to approve the Proposed West Parcel Warrant Articles, or the Attorney General failing to approve the same or the rescission thereof; or (iii) the Parties, despite the exercise of good faith efforts, failing to agree upon the terms and enter into the West Parcel PSA by thirty (30) days after the approval by Town Meeting of the Proposed West Parcel Zoning Articles. It is understood and agreed that if the Parties enter into the West Parcel PSA and the Town subsequently defaults on its obligation to acquire the West Parcel, the same shall not be considered a Profit Sharing Trigger Condition. Rather, upon such a default, the Developer shall immediately be relieved of its obligations under this Section 3 to convey the West Parcel to the Town and any requirement to pay the Town’s Share (or any other amount) to the Town upon a sale or other disposition of the West Parcel, without the need for any further documentation to that effect.

Further, should the Developer elect to convey the West Parcel to an entity not subject to taxation by the Town, the Developer shall supply such tax-exempt purchaser with a copy of the Town’s Payment In Lieu of Taxes (PILOT) Policy (a copy of which is attached hereto as Exhibit J and require, as a condition of the Purchase and Sale Agreement with said tax-exempt purchaser, that the purchaser meet with the Town Administrator to discuss PILOT Payments prior to closing.

4. **FURTHER PERMITTING.** The Developer agrees to use all commercially reasonable efforts to diligently apply for and pursue all permits and approvals necessary to proceed with the Project subject to financing and economic conditions. It is understood that the Developer will be subject to the timeframes applied to the Project by the Proposed Project Zoning Amendment, including all sunset provisions. Further, it is of great importance to the Developer that it be able to commence construction of the Project as soon as possible. Accordingly, to the maximum extent permitted by law, the Town agrees to take such actions as may be reasonably necessary or appropriate to expedite review and approval of the Project so that Developer (or any affiliate thereof) can receive a building permit for the Project as soon as possible. Such actions shall include the formation by the Town of a Design Advisory Team (“DAT”) for the Project as a so-called “Major Impact Project” under the Town’s Zoning By-law within fifteen (15) days

after Town Meeting approval of the Proposed Project Warrant Article, and the Town will use best efforts to cause the DAT to begin its review of the Project by no later than June 30, 2020. It is further understood and agreed that the Design Guidelines to be used by the DAT in its review of the Project shall be substantially in accordance with the document attached as Exhibit K hereto. Representatives of the Town Planning Department and Town Counsel's office will use best efforts to attend all meetings of the Developer and Town Preservation Commission at which the Project is discussed, including without limitation, Developer's efforts to expedite the lifting of the stay of demolition of affected buildings on the East Parcel under the Town's Demolition Delay By-law.

5. RECORDING OF AGREEMENT AND EXECUTION OF TAX CERTAINTY AGREEMENT. Upon satisfaction of the Town Meeting Approval Conditions Developer shall immediately record this Agreement with the Registry at its own expense and shall provide evidence of such recording to Town Counsel; and ii) Developer and the Town shall execute the Tax Certainty Agreement and Developer shall deliver the same to a mutually agreed upon escrow agent to be held in escrow pursuant to mutually agreed upon conditions under the provisions of this Agreement (the "Escrow Agent"). In the event the Town Meeting Approval Conditions are not satisfied by December 31, 2020, and the Developer elects to abandon its permit application and relinquish its right to pursue the Project prior to the issuance of a Special Permit contemplated by the Proposed Project Zoning Amendment, this Agreement and the obligations set forth in the Tax Certainty Agreement shall become null and void and of no force and effect.
6. RECORDING OF TAX CERTAINTY AGREEMENT. In the event that the Special Permit and Other Required Approvals are satisfied, Developer shall deliver notice thereof to the Escrow Agent, who shall promptly thereafter record with the Registry the Tax Certainty Agreement. In the event that the Special Permit and Other Required Approvals are not satisfied, or Developer does not proceed with the Project, either party may deliver notice to the Escrow Agent (with a copy to the other party hereto), and the Escrow Agent shall thereafter immediately return the original copy of the Tax Certainty Agreement to Developer. In such case where the Tax Agreement is returned to the Developer, all further obligations set forth in this Agreement shall become null and void and of no force and effect.
7. TAXABLE PERSONAL PROPERTY. The Developer agrees to have the personal property associated with the Project held in entity taxable to the Town, and taxed at the applicable commercial rate. In the event of a conveyance of the Project to a third party in a bona fide transaction, the Developer shall take steps insure this standard remains in place, absent any changes to the applicable laws or regulations.
8. SUSTAINABLE DESIGN. Upon execution of this Agreement, the Town and the Developer agree to work in a voluntary partnership such that the development process of the Project will explore, pilot and innovate sustainable practices from conceptual design through full occupancy ("Voluntary Sustainability Partnership"). The purpose of this Voluntary Sustainability Partnership is to create replicable best practices that will be shared by the Town and the Developer, to the benefit of the Town, the Developer, and the larger community. Without limiting the generality of

the foregoing, the Developer will undertake the following in connection with the construction and operation of the Project (referred to herein as the “Sustainability Undertakings”)

- a. The Project will be constructed in a manner so as to be LEED-NCv4 Gold Certifiable.
 - b. The Project will not use natural gas or fuel oil except as necessary for the commercial kitchens, emergency generator, indoor swimming pool and domestic hot water.
 - c. Developer will implement certain sustainable design principals as follows
 - (i) Consider the use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. Overlook, and other site features where feasible.
 - (ii) Stormwater control measures will optimize on-site filtration using rain gardens and bioswales.
 - (iii) Installation of native and drought tolerant plants and bird- friendly and pollinator plants.
 - (iv) Use of Electric vehicles for on-site fleet of passenger vehicles for transporting Project residents, including providing electric vehicle charging stations in excess of current Town requirements for Project residents and guests. On-site fleet will be registered in Massachusetts and garaged at the property in a manner that allows the application of Town vehicle excise tax.
 - (v) Providing bicycle parking on site to accommodate residents, staff, and visitors with shower and dressing room access to be provided to employees who may choose to bike to work.
 - (vi) Use of full cut-off exterior light fixtures with LED lighting and pole mounted fixtures limited to surface parking areas.
 - (vii) Provide visual and physical access to vegetation.
 - (viii) General design spaces designed to support social connection.
 - d. To the extent feasible as reasonably determined by the Developer, it will implement so-called Passive House strategies to reduce energy use.
 - e. Developer will optimize energy efficiency of building systems, including
 - (i) Providing water-efficient plumbing fixtures,
 - (ii) Performing Building Commissioning, and
 - (iii) Training for Operations and Maintenance
 - f. To the extent feasible as reasonably determined by the Developer, Developer will implement WELL strategies to provide users with a healthy building, including
 - (i) Optimizing daylighting and views,
 - (ii) Specification of healthy building materials, and
 - (iii) Providing healthy indoor air quality measures
 - g. Developer will optimize the building for solar renewable energy measures and will consider photovoltaic and solar thermal where feasible.
9. **VOLUNTARY SPECIAL PERMIT CONDITIONS:** The Developer hereby acknowledges that the following conditions of the Special Permits for the Project shall be acceptable to the Developer and shall not be grounds for objection to the Special Permits granted by the Brookline Zoning Board of Appeals (Board of Appeals):

- a) To the fullest extent permitted by law, the Developer shall comply with all terms of this Memorandum of Agreement, as such Agreement may be amended from time to time, in accordance with the provisions herein.
- b) The Project will include a maximum of 160 units of which no more than 120 shall be a combination of independent living units (IL) and assisted living (AL) units, with the balance to be memory care (MC) units, it being understood that the precise unit mix may change from time to time in accordance with the provisions of this paragraph. The base numbers of 80 IL units and 40 AL units may vary such that there will be between 74 and 86 IL units and between 34 and 46 AL units, subject to the cap of a total of 120 IL and AL units. Further, to the extent there are fewer than 120 IL and AL units, the number of units below 120 may be MC units. Nothing in this paragraph shall preclude Developer from reducing the overall number of units in the Project (such as, by way of example, only combining separate units into a single unit). The following are examples only of permissible unit mixes: (1) 74 IL, 40 AL, 46 MC; (2) 74 IL, 46 AL, 40 MC; (3) 76 IL, 36 AL, 48 MC; (4) 70 IL, 30 AL, 40 MC.
- c) The Project will have bulk and dimensional limits meeting the requirements of the Proposed Project Zoning Amendment, and have parking provided for 98 vehicles, of which only 55 may be surface parking.
- d) In accordance with the Proposed Project Zoning Amendment, if Developer determines that the number of surface parking spaces (55) can be reduced without impacting the neighborhood it may seek a modification to the Special Permit to reduce the surface parking subject to review and approval by the Director of Engineering and Transportation.
- e) All illuminated exterior signage shall be designed and installed with the ability to be automatically dimmed after midnight.
- f) Developer will comply with the Sustainability Conditions.
- g) Unless otherwise agreed to by the Preservation Planners the applicant shall, using available records and to the extent it is feasible to do so, provide historic documentation of the following buildings on the East Parcel, prior to the issuance of a demolition or other building permit with respect to such buildings: _____ . Issuance of the demolition permit shall be evidence that this condition has been satisfied.
 - i. This documentation shall include:
 - 1. background information: the historic and common names of the property, documentation of date of construction, complete stylistic and/or architectural description of the resource, description of architectural and/or associative significance using reliable sources, contextual information that equates the significance of the

property, original and current function, and the name and biographical information of architect and/or builder.

2. drawings, maps, and historic images: site plan showing footprint of the subject resource and surrounding buildings; sketch floor plans of existing conditions of all levels of each building, or copies of original plans if available (8 ½ x 11 format or digital format); if available, clear copies of historic photographs; USGS quad/topo map indicating location of property with UTM's;
 3. photographs of: overall site showing context and setting; each exterior elevation of subject property; detail images of significant character-defining features, such as windows, doors, eave details, porches, balconies, etc.; general views of all significant interior spaces; detail images of significant structural details if building is of a rare construction method (i.e. post and beam, balloon framing, mortise and tenon joinery, etc.). All photos must be identified with a list of the photographs indicating property name, address (city, county), date of photograph(s), and view; unmounted.
 - ii. All non-photographic documentation shall be submitted in 8 ½ x 11 format and printed on archivally stable paper (25% cotton bond or better) and provided in digital format (min 300dpi).
 - iii. All photographic documentation shall be provided in 5x7 or 8x10 format using archival quality paper and provided in digital format (min 300 dpi).
- h) Developer shall propose a Transportation Demand Management Plan for approval by the Director of Engineering & Transportation and the Planning and Community Development Director (or designee).
 - i) The Project Operator will partner with the Council on Aging and/or Brookline CAN on various cultural, educational and/or musical/artistic events at least quarterly per year with the location and logistics of such events to be agreed to in advance by the Project Operator and the Director of the Council on Aging or Brookline CAN as the case may be. Such events shall be at either the Project Site or the Senior Center or other public place as mutually agreed upon. The Developer has also agreed to make a voluntary contribution of \$2500 per year to the Brookline Multi-Service Senior Center Corporation to support its programming for so long as the Developer or any affiliate thereof owns and operates the Project.
 - j) Developer will provide community space for meetings of local neighborhood associations or other Brookline non-profits a minimum of twelve times per year.
 - k) Developer will provide a landscaped buffer to abutters on the South side entry.
 - l) Developer will remove the existing curb cut on Holland Road to reduce traffic.

- m) Developer will provide a Public Easement Area to create a green buffer on Fisher Ave and maintain the existing trees on Fisher Ave (with an approximate current value of \$276,000). The Public Easement Area shall be subject to a Tree Protection Plan, which shall be submitted to the Tree Warden for his review and approval. Trees within the Public Easement Area shall be maintained at Developer's cost.
- n) On-site and off-site pedestrian and landscaping improvements equivalent to those shown and diagrammed on Exhibit B;
- o) Additional pedestrian, bicycle, and traffic infrastructure mitigation may be required subject to further study and analysis during the Major Impact Project review process. Such mitigation is anticipated by Developer to include the following:
 - i. bicycle parking on site to accommodate residents, staff, and visitors with shower and dressing room access to be provided to employees who may choose to bike to work.
 - ii. To the extent feasible, new on-site pedestrian walkways will provide connectivity to/from the existing public sidewalk and crosswalk network around the site to enhance pedestrian mobility for residents and employees.
- p) Developer will maintain the Mitton House and its addition for adaptive reuse in its Project design.
- q) The Project operator will hold a job fair at the Brookline Teen Center or other public venue, and to the extent permitted by law will give qualified Brookline residents preference for jobs at the facility. In order to make Brookline residents aware of job opportunities the Project operator will send a notice at reasonable intervals of such job opportunities to the Town's Director of Diversity and Inclusion and he/she may post and/or share with other interested parties. The Project operator will also work with the Brookline High School culinary arts and restaurant program to provide, from time to time paid or unpaid internship opportunities for students engaged in the culinary arts program at the High School.
- r) Developer will pay for the relocation and raising of the crosswalk on Fisher Avenue in front of the proposed development.
- s) Balfour Senior Living, or an affiliate thereof shall be the initial manager of the Project.

10. Standard Requirements:

All Parties to this Agreement agree that the Project shall not, by way of this Agreement or the Proposed Project Zoning Amendment, be exempt from any charges, fees monetary or otherwise, that have been promulgated as of the date hereof pursuant to statute, by-law, regulation or written policy.

11. Undertakings of the Town:

On _____, 2020 the Select Board voted favorable action on the Proposed Project Zoning Amendment, Tax Certainty Agreement, the Proposed West Parcel Warrant Articles and a Warrant Article related to the general authorization for this Memorandum of Agreement subject to the terms and conditions of this Agreement and shall convey its votes and favorable report to the Advisory Committee and in the Combined Reports which shall be delivered to all Town Meeting Members. The Select Board shall support and undertake action necessary to obtain the approval of the Attorney General of The Commonwealth of Massachusetts of the Proposed Project Zoning Amendment by Town Meeting. The Select Board shall also, to the extent appropriate, cooperate with the Developer and shall encourage Town staff to cooperate with the Developer in reviewing in a timely and expeditious manner any required permits and approvals for the Project.

11. Miscellaneous:

- a) It is the intent of the Parties that the obligations in this Agreement shall run with the land comprising the Project and be binding upon and inure to the benefit and burden of the Developer and its mortgage lenders and their heirs, successors and assigns during their respective periods of ownership of and/or interests in the Project and its components and shall survive any transfer of the Property or any portion thereof. The Developer agrees to provide a copy of this Agreement to any transferee of the Property or any portion thereof.
- b) Each of the Parties signing below hereby represents and warrants that it is authorized to enter into this Agreement and execute the same on behalf of, and to bind legally, such Party.
- c) All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Select Board
Town of Brookline
333 Washington Street
Brookline, MA 0 2445

with a copy to:

Town Counsel
Office of Town Counsel

333 Washington Street
Brookline, MA 02445

If to Developer addressed as follows:

Welltower Inc.
4500 Dorr Street
Toledo, OH 43615
Attention: General Counsel

with copies to:

Welltower Inc.
767 5th Avenue, 8th Floor
New York, NY 10153
Attention: Investment Team

Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110
Attention: Steven Schwartz, Esq.

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen, LLP
300 Washington Street
Brookline, MA 02445

Each of the Parties shall have the right by notice to the other to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means.

If and to the extent that either of the Parties is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the Parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof to confer the benefits to each respective party as contemplated by this Agreement. For purposes of this Agreement, the term force majeure shall mean any cause beyond the reasonable control of the affected party, including without limitation: acts of God, fire, earthquake, floods, explosion, actions of the elements,

war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation, strikes, lockouts; actions of labor unions; condemnation, laws or orders of governmental or military authorities, requirement of statute or regulation, action of any court, regulatory authority, or public authority having jurisdiction; or any other cause similar to the foregoing, not within the reasonable control of such party obligated to perform such obligation. With respect to any particular obligation of Developer only, the term force majeure shall include the denial or, refusal to grant or appeals of any permit or approval of any public or quasi-public granting authority related to the Town Meeting Approval Conditions and Special Permit and Other Required Approvals, and any litigation brought by a third party relating to any such obligation.

- d) Failure by the Developer to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the Developer fails to commence to cure, correct or remedy such failure within sixty (60) days of the receipt of written notice of such failure from the Town to the Developer and thereafter fails to complete such cure, correction or remedy within ninety (90) days of receipt of such written notice or, with respect to defaults which cannot reasonably be cured, corrected or remedied within such ninety (90) day period, within such additional period of time as is reasonably required to remedy such default, provided the Developer exercises due diligence in the remedying of such default and notifies the Town of the steps being taken to remedy the default.
- e) The Parties agree that time is of the essence with respect to the obligations of the Parties as set forth herein. Subject to market conditions and financing availability, the Developer agrees to use best efforts to diligently apply for the necessary special permits and then expeditiously as possible after the issuance of the Special Permit(s) for the Project to apply for all necessary building permit(s) and to diligently commence work on the Project subject to the terms herein. The Town agrees to request an expedited determination from the Office of the Attorney General with respect to the Proposed Project Zoning Amendment.
- f) The obligations of the Developer do not constitute the personal obligations of the Developer's employees, shareholders, members, directors or officers and the Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. In no event shall the Developer be liable for any incidental, indirect, punitive or special or consequential damages.
- g) Each Party agrees from time to time, upon not less than ten (10) days' prior written request from the other, to execute and deliver a statement in writing certifying that this Agreement is in full force and effect (or if there have been any modifications, setting them forth in reasonable detail), and that there are no uncured defaults of either Party under this Agreement (or, if not, specifying the respects in which the requesting party is not in compliance in reasonable detail), in form reasonably acceptable to and which may be relied upon by any prospective purchaser, tenant,

- mortgagee or other party having an interest in the Property and any component of the Project.
- h) Upon full performance by the Developer of its obligations hereunder, the Town, at the Developer's request shall issue a statement in a form appropriate for recording with the Registry stating that all of the terms of this Agreement have been satisfied.
 - i) Whenever the consent or approval of any party is required for another party to take an action under this Agreement, except where explicitly provided to the contrary, such consent or approval shall not unreasonably be withheld, delayed or conditioned.
 - j) This Agreement shall be deemed to have been executed within the Commonwealth of Massachusetts and the rights and obligations of the Parties shall be governed by Massachusetts law. Any action to enforce the terms of this Agreement shall be brought in Norfolk County Superior Court.
 - k) If any provision of this Agreement or the application of such provision to any person or circumstances shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement or the application of the provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected and shall be valid and enforceable to the fullest extent.
 - l) This Agreement and the accompanying 95-year Tax Certainty Agreement set forth the entire agreement of the Parties with respect to the subject matter thereto. The failure of any party to strictly enforce the provisions hereof shall not be construed as a waiver of any obligation hereunder. This Agreement may be modified only in a written instrument signed by the Select Board and the Developer.
 - m) Non-discrimination: Developer agrees to fully comply with the federal, state, and local nondiscrimination laws, including the provisions of Mass. Gen. Laws, Chapter 151B, in its employment practices, its contracting, and its procurement of goods and services. Developer further agrees that it will take commercially reasonable affirmative steps to establish fair access to employment opportunities at the project with the goal of attempting to create a workforce that is an accurate reflection of the demographics of the qualified available workforce in the Boston /Brookline /Newton geographic area or other area from which the type of employees sought are located.
 - n) M/WBE contracting/Procurement: Developer commits to work with the Brookline Office of Diversity, Inclusion, and Community Relations (the Diversity Office) (1) to identify minority and women contractors and subcontractors for the development of the project, (2) to identify minority and women vendors to provide goods and services to the project during construction and once it is operational, and (3) to establish goals for the number of contractors and subcontractors it will attempt to use and the amount of procurement from minority and women vendors and service providers it will attempt to purchase. Once a year Developer agrees to report to the Diversity Office the extent to which it succeeds in achieving its goals as stated above.

(The Remainder of this Page is Intentionally Left Blank – Signature Pages follow)

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

DEVELOPER

WELLTOWER INC.

By: _____

Its:

Title:

WELLTOWER TRS HOLDCO LLC

By: _____

Its:

Title:

Dated: _____

**TOWN OF BROOKLINE SELECT
BOARD**

Dated: _____

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, and provided identification in the form of _____, and who executed the foregoing as his free act and deed as _____ of _____.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, and provided identification in the form of _____, and who executed the foregoing as his free act and deed as _____ of _____.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2020, personally appeared the above named _____, _____, _____, _____, and _____, personally known to me and who executed the foregoing as their free act and deed as members of the Select Board of the Town of Brookline acting on behalf of the Town of Brookline.

Witness our hands and seals at Norfolk County, Brookline, Massachusetts, this ____ of _____, 2020.

Notary Public
My Commission Expires:

NOTE: FOLLOWING ARE DRAFT EXHIBITS AND/OR PLACEHOLDERS TO BE REPLACED AND/OR ADDED TO PRIOR TO FINAL EXECUTION.

EXHIBIT A-1

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence

NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence

SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence

SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;

EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;

SOUTHERLY by Tract II herein, 298.18 feet;

WESTERLY by Fisher Avenue, 323.75 feet;

NORTHWESTERLY by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

EXHIBIT A-2

PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY on Fisher Avenue, one hundred and fifty (150) feet;

NORTHERLY on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;

WESTERLY on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;

SOUTHEASTERLY on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and

SOUTHERLY on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;

NORTHERLY by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;

EASTERLY by a line, one hundred and eighty and 80/100 (180.80) feet;

SOUTHEASTERLY by a line, forty-eight and 30/100 (48.30) feet; and

SOUTHWESTERLY on land now or formerly of Judith Sprague, one hundred eighty- two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

EXHIBIT A-3

125 HOLLAND

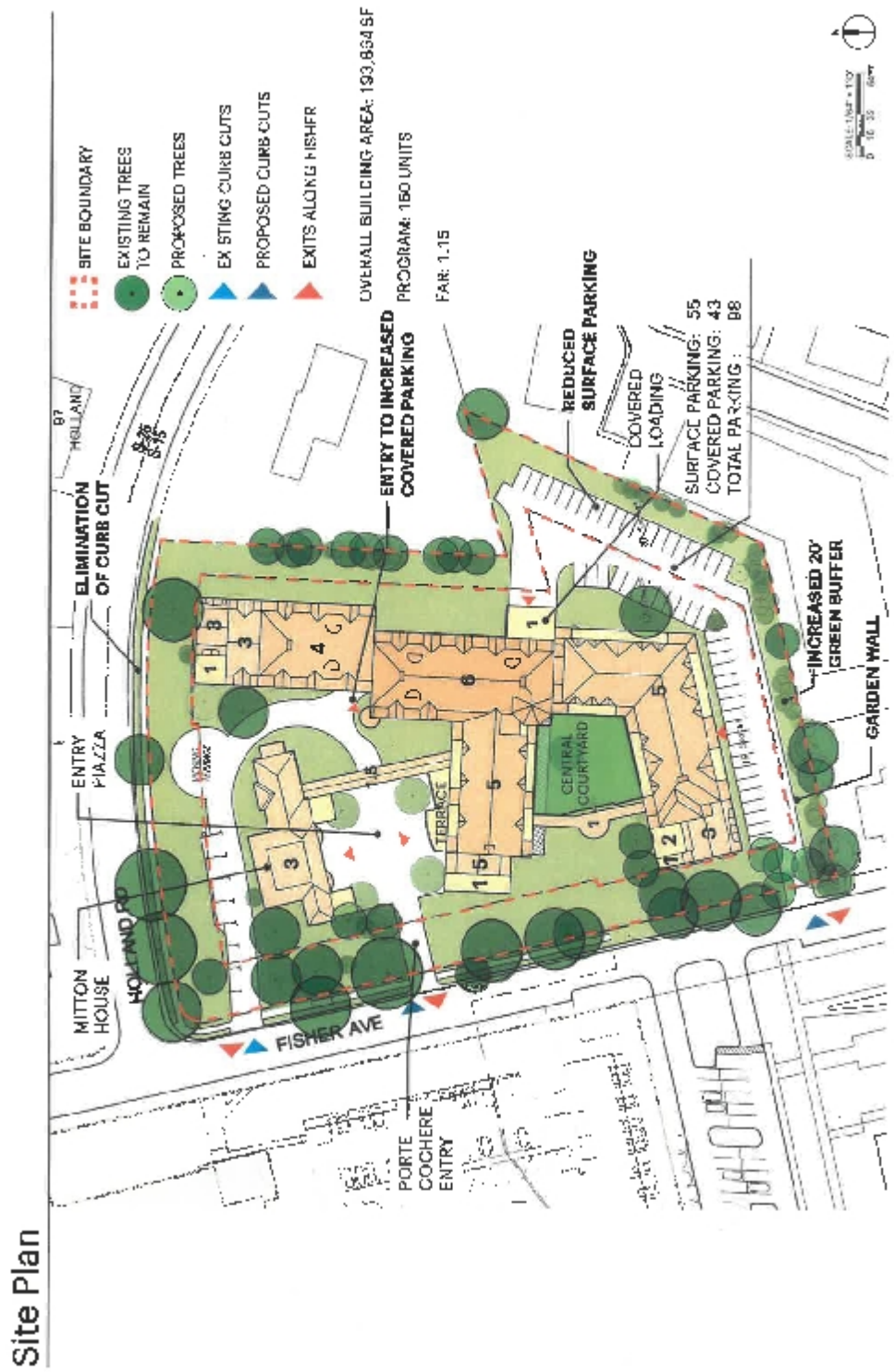
The premises at 125 Holland Road, Brookline, Massachusetts bounded and described as follows:

BEGINNING at a stone bound on the easterly side of Fisher Avenue about 15 feet northwesterly of Holland Road; thence running

NORTHWESTERLY	on said Fisher Avenue 127.50 feet; thence turning at a right angle and running
EASTERLY	by land now or late of Curtis and land now or late of Nash on two courses 215.82 feet and 53.10 feet; thence turning and running
SOUTHERLY	by land now, or late of Curtis 157.08 feet to Holland Road; thence turning and running
WESTERLY	on said Holland Road 224.12 feet to a stone bound, thence turning and running
NORTHERLY	on the street line 23.33 feet of beginning.

Containing 37,930 square feet of land, more or less, and being shown on plans by Ernest W. Bowditch, Engineer, recorded with said Registry in Book 807, Page 458; Book 1007, Page 553; and Book 1081, Page 378.

EXHIBIT B – CONCEPT SITE PLAN AND BUILDING MASSING



Landscape Plan- Draft



VERDANT
LANDSCAPE ARCHITECTURE

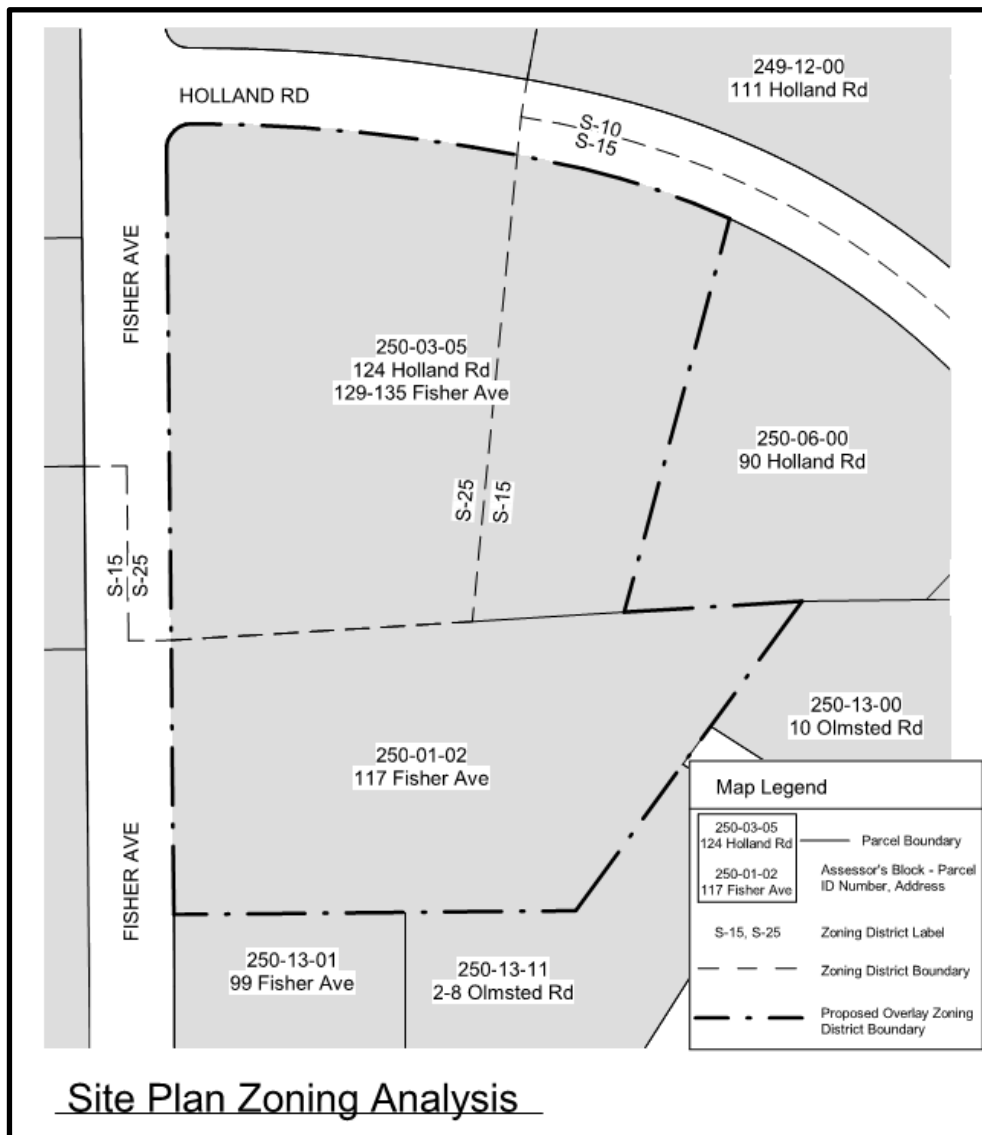
EXHIBIT C – Proposed Project Zoning Article

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ___: Fisher Hill Special Overlay District Zoning

To see if the Town will amend the Zoning By-Law and Zoning Map as follows:

- 1. By adopting the following map change, adding a Fisher Hill Special Overlay District as shown below, including: parcels with Tax Parcel Identifications 250-03-05 (124 Holland Road and 129-135 Fisher Avenue) and 250-01-02 (117 Fisher Avenue).**



2. By amending Section 3.01.4 by adding a new item at the end:

“g. Fisher Hill Special Overlay District”

3. By amending Section 4.07 – Table of Use Regulations – to allow for life care facilities on lots less than 5 acres but greater than 3 acres in the overlay district, by adding a sentence at the end of the description of Use 6A in the Use Table, underlined below:

Use 6A, Life care facilities, incorporating independent apartment living units for elders combined with supportive medical, nursing or other shared facilities.

*Allowed by special permit only on lots greater than 5 acres, but within the Fisher Hill Special Overlay District, the minimum lot size shall be 3 acres.

4. By amending Section 5.01 – Table of Dimensional Requirements – by adding Footnote 22 after the words “Any other structure or principal use” in the rows for the S-25 and S-15 Districts, which Footnote 22 shall also be added at the end of the Table and read as follows:

“22. See Section 5.06.4 – Special District Regulations, subsection 1. Fisher Hill Special Overlay District with respect to uses and all dimensional requirements.”

5. By amending Section 5.06.4 – Special Districts – by adding a new item as follows:

“1. Fisher Hill Special Overlay District

1) It has been determined through study of the former Newbury College campus that the potential exists for careful, planned redevelopment. It has further been determined that, due to the surrounding residential development pattern, and the municipal need for housing for an aging population, assisted living residential uses in a life care facility designed with a similar architectural character as the neighborhood are appropriate. Benefits to the community include maintenance for adaptive reuse of the Mitton House and creating a public easement along Fisher Avenue to preserve mature shade trees, and are significant reasons for why additional density may be allowed by Special Permit under the criteria of this section.

2) At any point prior to December 31, 2020, an applicant may seek relief by Special Permit under this Overlay District by completing the Design Review preapplication process as set forth in Section 5.09 (3)(a)(2) provided the proposed project includes the following requirements and limitations:

a. *Includes a minimum of three acres of contiguous land.*

b. *Includes a life care facility with a maximum of 160 units as its primary use including all related accessory uses.*

3) *The Board of Appeals may grant a Special Permit under this section allowing for a project that meets the following requirements and limitations. Conformance with said requirements and limitations shall be made conditions of the Special Permit.*

a. *Open Space*

i. *The project must dedicate a minimum of 40% of lot area towards Open Space. For the purposes of this requirement, Open Space shall include parts of a lot at ground level that are contiguous landscaped areas and walkways that include planted containers, landscaped beds, and/or street trees. Usable open space is not a requirement for this use.*

ii. *The open space requirements of **Table 5.01 — Table of Dimensional Requirements** may be reduced in accordance with Site Plan Review as noted in **Section 5.06.4.1.4** below.*

b. *Parking*

i. *98 parking spaces shall be provided with a minimum of 43 concealed.*

ii. *The number of parking spaces required per Article 6 of the Zoning By-Law may be reduced at the request of the applicant, following review of a parking study and favorable recommendation by the Planning Board.*

iii. *Parking area setback along the southern lot line shall be no less than 20 feet.*

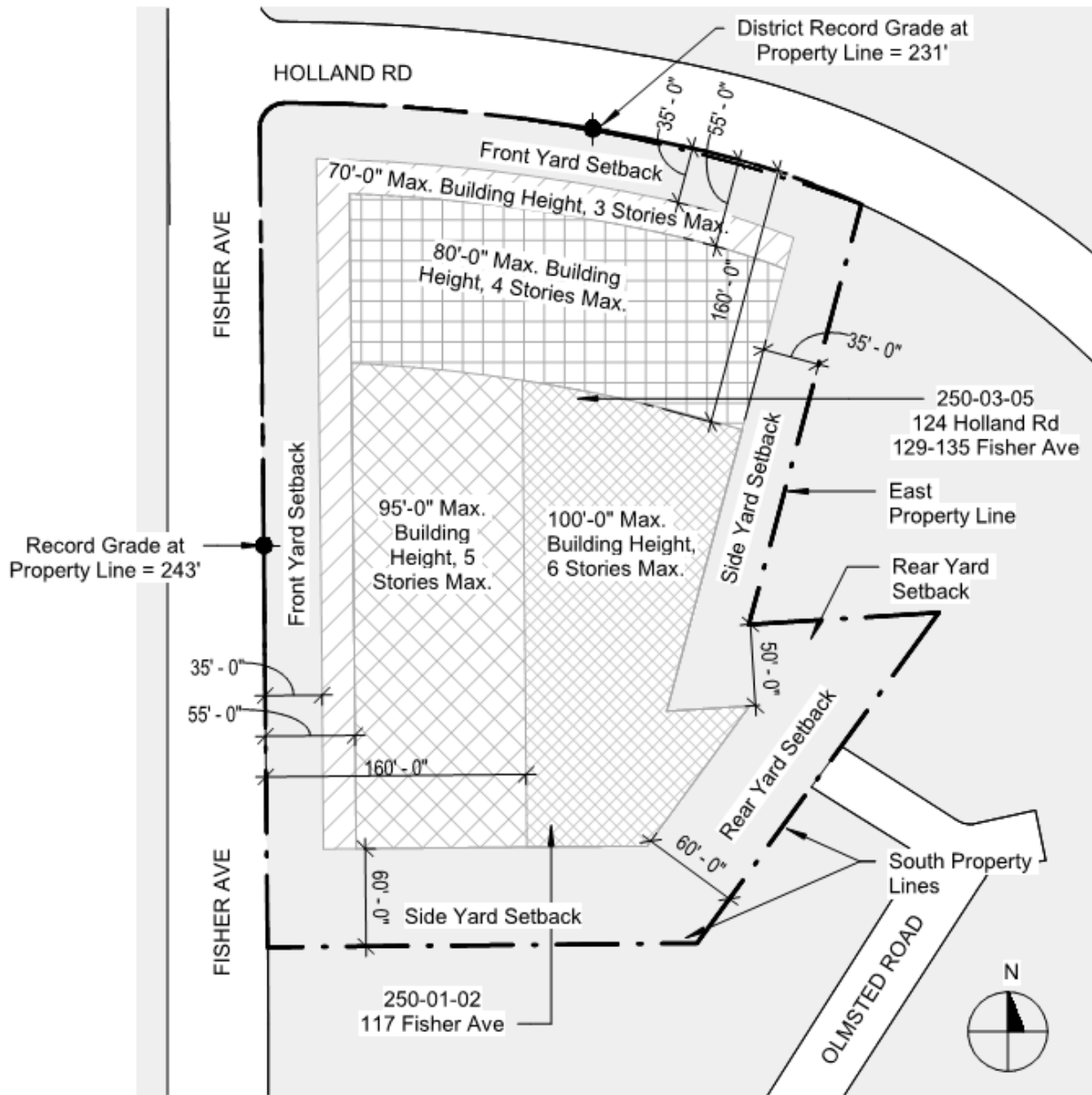
iv. *The parking and drive requirements under Section 6.04, including stall width and depth, aisle width, and width of entrance and exit drives, may be modified in accordance with Site Plan Review as noted in Section 5.06.4.1.4 below.*

v. *Once a minimum of five years have passed since the issuance of a Certificate of Occupancy for any project promulgated pursuant to a Special Permit granted under this Section, the holder of said Special Permit may seek modification of the Special Permit to allow the provision of fewer than 98 spaces, but only through a reduction in the number of non-concealed parking spaces and only*

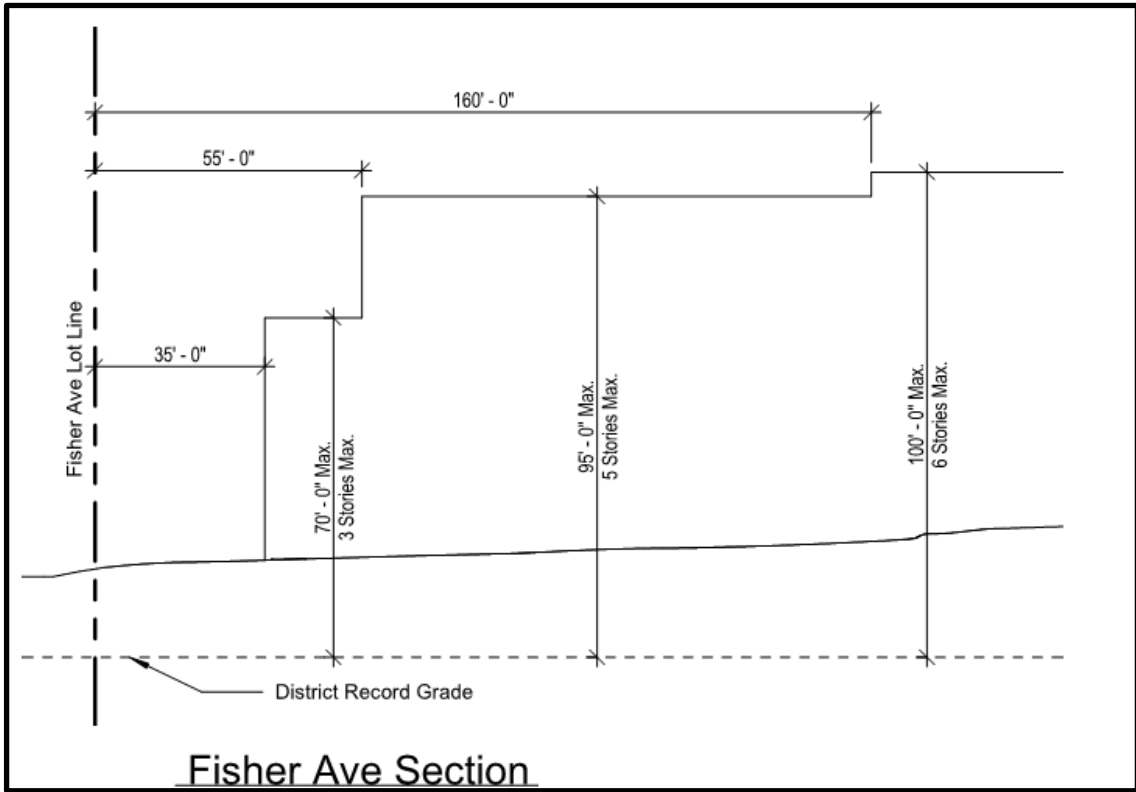
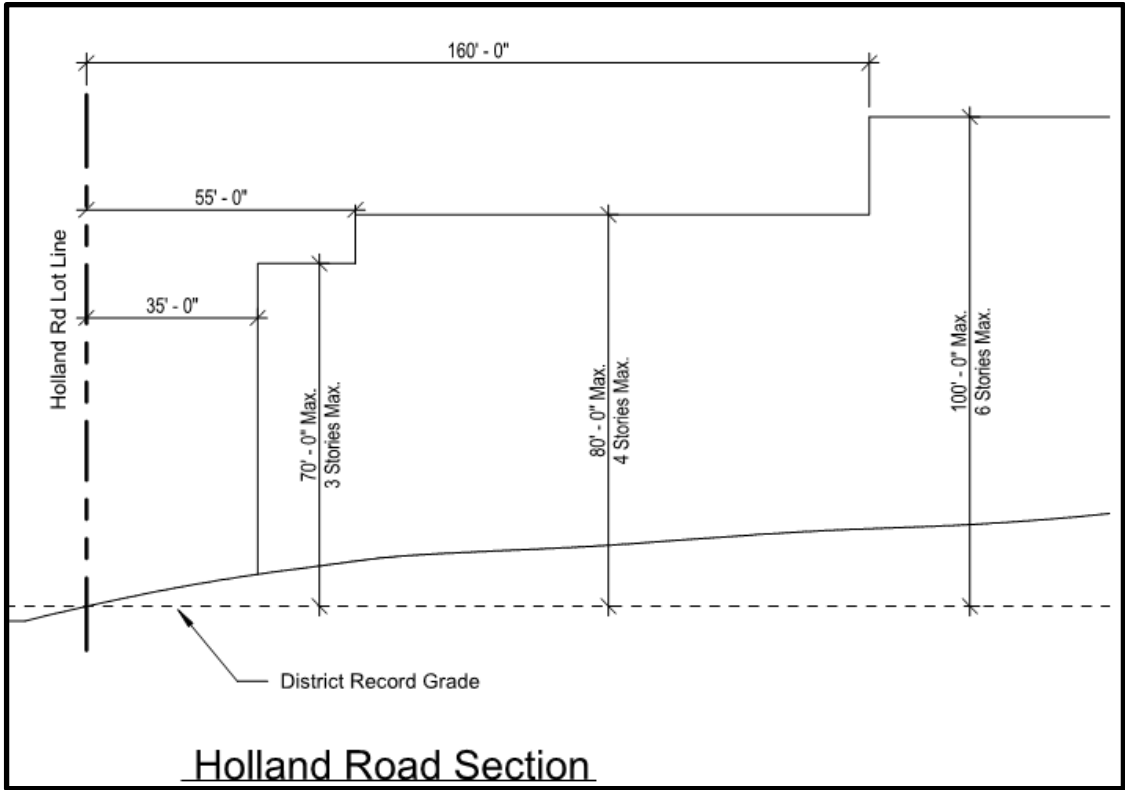
upon a showing to the Zoning Board of Appeals that such a reduction will not impact the neighborhood.

- c. The Gross Floor Area Ratio for a project permitted pursuant to this section shall not exceed 1.15.*

- d. The maximum building height shall be 70' and three stories max. for portions of a building that are within 55' of Fisher Avenue and Holland Road. The maximum building height shall be 80' and four stories max. for portions of a building that are within 160' of Holland Road. The maximum building height shall be 95' and five stories max for portions of a building that are within 160' of Fisher Avenue. Otherwise, the maximum building height is 100' and six stories max. The maximum number of stories does not include basements or means of egress. These maximum building heights do not include rooftop structures such as elevator penthouses, chimneys, mechanical equipment, and mechanical screens. Building heights shall be measured from the District Record Grade rather than as prescribed in Section 5.30. The District Record Grade shall be the record grade of the Holland Road property line at the midpoint of the Holland Road boundary of the Fisher Hill Overlay District. Refer to Building Height and Setback Diagram. The Board of Appeals may grant a Special Permit for projections into front yards that do not comply with Section 5.51.*



Building Height & Setback Diagram



- e. *The residential component of the project shall not include more than 160 living units. All 160 units may be market-rate.*
- f. *Notwithstanding anything to the contrary in Section 4.08, for the purposes of satisfying the requirements of Section 4.08 the applicant may provide eighteen (18) affordable units off-site within 100 yards of the boundary line of this overlay district or make a cash payment not to exceed Six Million Five Hundred and Twenty Five Million Dollars (\$6,525,000).*
- g. *Building setback requirements shall be as follows:*
 - From Fisher Avenue, no less than 35 feet;*
 - From Holland Avenue, no less than 35 feet;*
 - From east side lot line, no less than 35 feet;*
 - From southern side and southern rear lot lines, no less than 60 feet;*
 - From the rear lot line, no less than 50 feet.*
 - Refer to Building Height and Setback Diagram.*
- h. *Accessory Structures allowed within the site setbacks include retaining walls, fencing, and utility equipment- ie generator and transformer. Setback for all structures is 6' min. from any lot line. Where required for emergency vehicle access, retaining walls and fencing can encroach on front yard setbacks.*
- i. *Notwithstanding the provisions of Section 6.06.6, the number and size of required loading zones may be reduced in accordance with Site Plan Review as noted in Section 5.06.4.1.4 below. If the loading zone includes an area for trash and recycling this area for trash and recycling shall be enclosed. If the entire loading zone including the area for trash and recycling is fully enclosed, such area shall not count towards the project's total gross floor area.*
- j. *Design Standards: During their review of all proposed building designs, both the Design Advisory Team and Planning Board shall consult the Fisher Hill Special District Design Guidelines developed by the Newbury Zoning Committee for guidance on general exterior massing, scale and design.*

4) *Any application including new structures that seeks relief under this Overlay District shall:*

a. be subject to Site Plan Review by the Planning Board to ensure that there is adequate provision of access for fire and service equipment; ensure adequate provision for utilities and storm water storage and drainage; ensure adequate provision of loading zones; ensure adequate provision of parking; minimize impacts on wetland resource areas; minimize storm water flow from the site; minimize soil erosion; minimize the threat of air and water pollution; minimize groundwater contamination from on site disposal of hazardous substances; maximize pedestrian, bicycle and vehicle safety; screen parking, storage and outdoor service areas through landscaping or fencing; minimize headlight and other light intrusion; ensure compliance with the Brookline Zoning By Laws; maximize property enhancement with sufficient landscaping, lighting, street furniture and other site amenities; minimize impacts on adjacent property associated with hours of operation, deliveries, noise, rubbish and recycling removal and storage. All plans and maps submitted for site plan review shall be prepared, stamped, and signed by a Professional Engineer licensed to practice in Massachusetts. Pursuant to the site plan review process, applicants shall provide to the Planning Board and the Director of Engineering a site plan showing:

i. Demonstrated design compliance with any General By-Law related to erosion and sediment control and stormwater management;

ii. Property lines and physical features, including roads, driveways, parking for vehicles and bicycles, loading areas and trash storage for the project site; and

iii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, and exterior lighting.

b. be deemed a Major Impact Project with respect to Section 5.09, Design Review.

c. include as a condition of the special permit a Transportation Access Plan Agreement (“TAPA”) approved by the Director of Transportation that includes Transportation Demand Management (“TDM”) programs.

5) Allowing the additional density through the Special Permit contemplated by this Section has a potential benefit contemporaneous with its inclusion in the By-Law. However, planning objectives potentially achieved by this Section may not be met if substantial time elapses. Therefore, if upon closing the public hearing on the Special Permit contemplated herein, the Board of Appeals finds: (a) more than

two years has elapsed since the opening of the public hearing; and (b) the amount of elapsed time is, in the discretion of the Board, excessive and contravenes the planning objectives of this Section, the Board may deny the request for a Special Permit.

6. By amending Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements – by adding a new footnote as follows:

“4. For the Fisher Hill Special Overlay District, parking requirements shall be no less than 0.5 space per unit. Section 6.02.2.h shall not apply”.

7. By amending Section 7.07 – Sign By-Law – Exceptions to the Above – by adding to Section 7.07.1 a new item at the end:

“f. The Board of Appeals may by special permit grant relief to the requirements of Section 7.01 for signage for the buildings in the Fisher Hill Special Overlay District subject, however, to compliance with the Design Review Procedures set forth in Section 7.08 and the Design Guidelines adopted for this district.”

...or act upon anything else relative thereto.

EXHIBIT D -

TAX CERTAINTY AGREEMENT – March 5, 2020 version

**IN RE: The parcels known as 117 Fisher Avenue (Assessors' Parcel I.D. No. 250-01-02) and
124 Holland Road (Assessors' Parcel I.D. No. 250-03-05)
BROOKLINE, MASSACHUSETTS
TAX CERTAINTY AGREEMENT**

This Agreement between WELLTOWER INC. a Delaware corporation, having an office at 4500 Dorr Street, Toledo, Ohio 43615 (“Welltower”; Welltower and its successors and assigns in title or interest the Premises are hereinafter collectively referred to as “Developer”) and the Town of Brookline, a municipal corporation (“Town”), located in Norfolk County, Massachusetts and acting by and through its Select Board (the “Board”), (Developer and the Town being collectively referred to as the “Parties”) is executed this ___ day of _____, ____ (the “Execution Date”), and made effective upon the date this Agreement is recorded in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court (the “Effective Date”), upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

PREAMBLE

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land in the town and specifically at the former Newbury College site and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town’s existing property tax revenue; and

WHEREAS, Welltower owns the parcels of real property known as and numbered as 117 Fisher Avenue (Parcel I.D. No. 250-01-02) and 124 Holland Road (Parcel I.D. No.250-03-05) sometimes collectively referred herein collectively as the “East Parcel”, which was acquired by Developer pursuant to that certain Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the “Registry”) in Book 37136, Page 283, the legal descriptions of which are attached hereto as Exhibit A, which as of the date hereof consists of a several buildings and a parking lot;

WHEREAS, Welltower, Welltower TRS Holdco LLC, a Delaware limited liability company and the Town are parties to that certain Memorandum of Agreement by and between the Town of Brookline and Welltower Inc. and Welltower TRS Holdco LLC, dated as of [____], 2020 and recorded in the Registry in Book [____], Page [____] (the “Memorandum of Agreement”); Capitalized terms used in this Agreement and not otherwise defined shall have their respective meanings as set forth in the Memorandum of Agreement;

WHEREAS, as of the Effective Date, each of the Town Meeting Approval Conditions and Special Permit and Other Required Approvals have occurred and/or have been satisfied;

WHEREAS, in accordance with and pursuant to the Memorandum of Agreement, Developer and the Town agree to execute this Agreement as of the date hereof and record a copy thereof in the Registry;

WHEREAS, the Town and Developer seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may become exempt from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third or other applicable exemption; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and Developer have agreed that Developer to the Premises will make certain voluntary payments to the Town in certain circumstances in lieu of real estate taxes, as more particularly set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Developer and the Town agree as follows:

9. Developer Commitment to Voluntary Payment to the Town. **Commencing with the first fiscal tax year following the Assessment Date, and ending ninety-five (95) years after the Effective Date of this Agreement (the “Term”), if and to the extent Developer is not otherwise obligated to pay real estate taxes for the Premises by virtue of the Premises being used for one or more Exempt Uses or Developer’s tax-exempt status (the “Payment Conditions”), then, with respect to any fiscal tax year for which the Payment Conditions are satisfied Developer shall make a direct financial contribution to the Town in the amount equal to the real property taxes that would otherwise have been levied by the Town for all or any portion of the Premises were the Premises not used for one or more Exempt Uses or were Developer not precluded, based on its status, from the payment of real estate taxes under applicable law in such relevant fiscal tax year (the “Voluntary Payment”). In such event, the Town shall accept the Voluntary Payment in full satisfaction of Developer’s obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Section 2, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. As used herein the term “Assessment Date” shall mean January 1st or another date on which the Town Assessors by statute make the first determination of the value of real property following the Effective Date. As used herein the term “Exempt Use” or “Exempt Uses” shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law, whether currently in existence or adopted during the Term of this Agreement.**

10. Payment of the Voluntary Payment to the Town. **The Voluntary Payment shall be paid to the Town in quarterly installments on the date real property taxes are due for each fiscal tax year during the Term for which the Payment Conditions**

are satisfied, and the Town shall provide Developer with a written statement of the portion of any Voluntary Payment due not less than thirty (30) days prior to the due date. Developer shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided Developer shall, before commencing legal action, first use good faith efforts to mediate the issue of valuation with the Town's Assessors.

11. Termination of Agreement. The Town or Developer shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8, in the event that, at any time after the Effective Date the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by Developer of taxes, similar assessments or payments in lieu of such taxes on the Premises used for one or more Exempt Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or Developer, with the exception of a change that would have the effect of expanding the uses covered by the term "Exempt Uses". This Agreement shall not in any manner whatsoever restrict the Town's exercise of its police power. Upon transfer of title of the Premises, the grantor Developer's obligations under the Agreement shall automatically terminate and the grantee Developer (e.g., the successor owner of the Premises) shall be bound by the terms of this Agreement as more particularly described in Section 8(j) of this Agreement.

12. Period of Restrictions. It is the intent of the parties that the restrictions set forth herein be imposed for the duration of the Term, and Developer hereby agrees and acknowledges that (a) the restrictions set forth herein shall not be deemed to be "unlimited as to time" within the meaning of Massachusetts General Laws, Chapter 184, Section 23, (b) prior to the expiration of the initial thirty (30) years of the Term and prior to the expiration of any subsequent renewal period, this Agreement and the restrictions set forth herein may be renewed by the Town from time to time thereafter for additional periods not in excess of twenty (20) years each, such renewal to be effectuated in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 (as may be amended from time to time) or any successor statute.

13. Representations as to Authority.

i. ***The Town's Authority.*** As of the Execution Date, the Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town's Bylaws and under the laws of Massachusetts to execute, deliver, perform and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town's behalf are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on

the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

ii. ***Developer's Authority.*** As of the Execution Date, Developer represents that it is duly organized, validly existing and in good standing under the laws of the State of its incorporation, that it is qualified to do business in, and in good standing under the laws of, the State of Massachusetts and that has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. Developer represents that (i) the individual executing and delivering this Agreement on Developer's behalf has the authority to do so, and such signing authority has been authorized by all necessary corporate action taken by and on the part of Developer, (ii) the Agreement has been duly and validly authorized, executed and delivered by Developer, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of Developer, enforceable against Developer in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against Developer, Developer agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

14. **Lien/Collection Remedies.** Upon the failure of Developer to make any Voluntary Payment to the Town when the Payment Conditions were otherwise satisfied, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Within no more than ten (10) days following written request from time to time to the Town Tax Collector, the Tax Collector shall provide Developer (e.g., the record owner of the Premises) with a written statement to Developer and any potential purchaser of or lender to the Premises certifying Developer's and the Town's compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

15. **Deed Reference and Affirmation of Successor In Title.** Developer agrees that during the Term each successive deed of the Premises executed and delivered by the grantor shall contain the following statement:

“Reference is made to that certain Tax Certainty Agreement by and between Developer and the Town of Brookline dated _____, _____, recorded with Norfolk County Registry of Deeds in Book _____, Page _____ (together with all amendments duly made and recorded, the

“Tax Certainty Agreement”). By acceptance and recording of this deed, the Grantee (i) acknowledges and accepts the Tax Certainty Agreement, (ii) acknowledges that Grantor is hereby released in full from all obligations of “Developer” under the Tax Certainty Agreement and (iii) agrees that the Tax Certainty Agreement shall be binding and enforceable against the Grantee in accordance with its terms.”

Developer and such successors in title shall notify the Town in the manner provided in Section 8(j) hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 7.

16. Miscellaneous Provisions.

(a) **Notices.** All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:

If to Developer:

Welltower Inc.
4500 Dorr Street
Toledo, OH 43615
Attention: General Counsel

With a copy to:

Jennifer Dopazo Gilbert, Esq.
Law Office of Robert L. Allen Jr., LLP
300 Washington Street
Brookline, MA 02445

If to the Town:

Town of Brookline
Attn: Town Administrator
Brookline Town Hall
333 Washington Street
Brookline, MA 02445

With a copy to:

Town of Brookline
Attn: Town Counsel
333 Washington Street
Brookline, MA 02445

___ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

___ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

___ By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) Severability/Captions. The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those Developer obligations that otherwise would survive the Term shall end. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.

(c) Waivers/Time of Essence. The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.

(d) Amendments. This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.

(e) Whole Agreement/Survival. This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 5 and 9, survive the Term for so long as

applicable; and all of the provisions of this Section 9 shall also survive the Term in relation to any of this Agreement's other surviving provisions.

(f) Real Property. All references in this Agreement to real property or property owned by or of Developer shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.

(g) Reservations. The Town and Developer agree that this Agreement provides the Town with protection of its tax base, but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its police power or imposes any restrictions on Developer's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, one or more Exempt Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and Developer each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. Developer is entering into this Agreement voluntarily; and nothing in this Agreement or Developer's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by Developer of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by Developer for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by Developer under, and subject to all of the terms and conditions of, this Agreement.

(h) Counterparts. This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(i) Applicable Law. This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(j) Successor In Title. This Agreement shall bind Developer and its successors and assigns in title to the Premises and shall be deemed to "run with the land" for the duration of the Term. Any Developer, as

grantor of title to the Premises, shall be released from all obligations as “Developer” under this Agreement upon the execution by such Developer, and subsequent recordation in the Registry, of any deed transferring title of the Premises (a “Premises Deed”), which Premises Deed shall include the paragraph required pursuant paragraph 7 above. Simultaneously with the recording of a Premises Deed in the Registry, either grantor or grantee thereunder shall provide written notice to the Town of the recording of such Deed, the transfer of title to the Premises, and the notice addresses for grantee thereunder for purposes of notices under this Agreement, including, without limitation, Section 8(a).

(k) Recording. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court.

IN WITNESS whereof the parties have executed this Agreement under seal as of the Effective Date.

Welltower Inc.

Town of Brookline
Select Board:

By _____

Hereunto duly authorized

Date: _____

Hereunto duly authorized
Date:

County of Lucas

State of Ohio

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ of Welltower Inc. as _____ of _____ through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

Notary Public

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

My Commission

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this _____ day of _____ 20__, before me, the undersigned notary public, personally appeared _____, _____, _____ Select Board, of the Town of Brookline, proved to me through satisfactory evidence of identification to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose as the Board of Selectmen of the Town of Brookline.

Notary Public

Personally Known _____
Produced Identification _____
Expires: _____
Type of Identification _____

My Commission

Exhibit A

PARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

- NORTHEASTERLY: on said land at right angles with said Avenue, 264.02 feet to a monument; thence
- NORTHERLY: on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence
- SOUTHWESTERLY: by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence
- SOUTHERLY: by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

- NORTHERLY by Holland Road by two measurements, 260.70 feet and 102.00 feet;
- EASTERLY by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;
- SOUTHERLY by Tract II herein, 298.18 feet;

WESTERLY by Fisher Avenue, 323.75 feet;

NORTHWESTERLY by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.

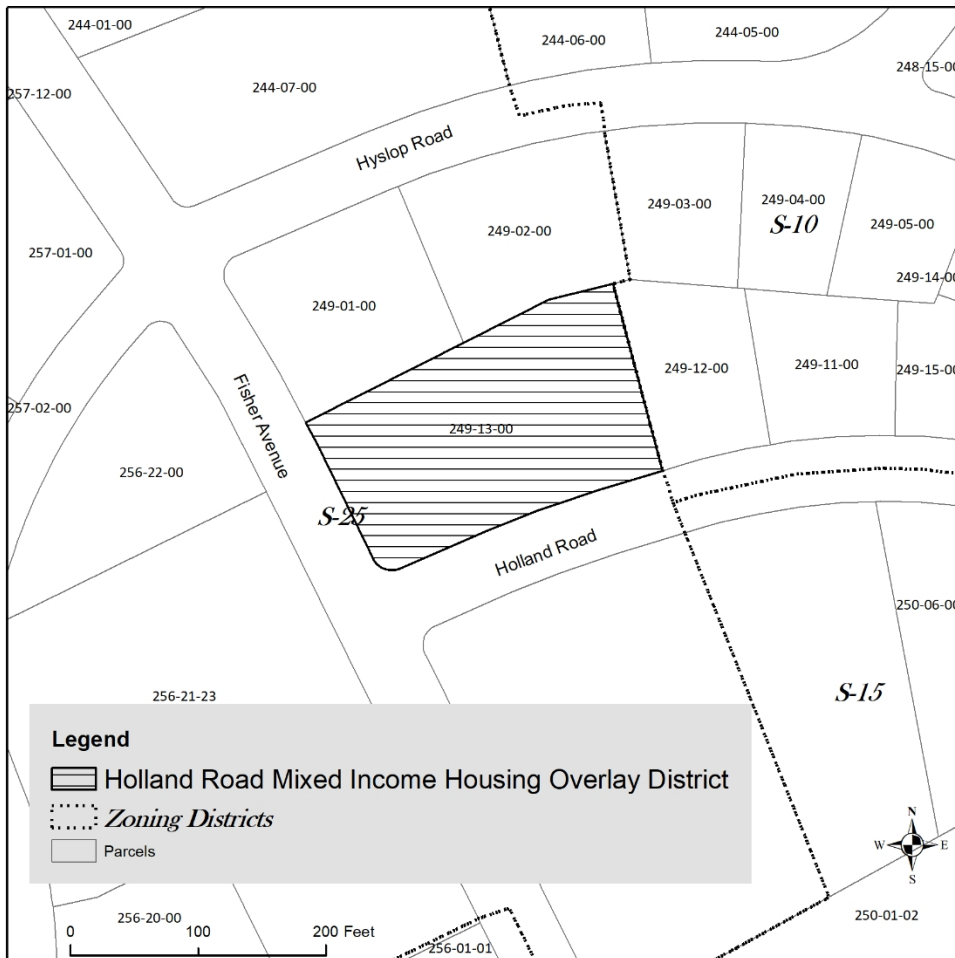
Exhibit E – 125 Holland Zoning Article

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article ____: Holland Road Mixed Income Housing Overlay District

To see if the Town will amend the Zoning By-law and Zoning Map as follows:

- 1. By adopting the following map change: adding a Holland Road Mixed Income Housing Overlay District including the parcel located at 125 Holland Road (Tax Parcel Identification #s 249-13-00), as shown in the map below.**



- 2. By amending Section 3.01.4 by inserting a new item “h” as follows:**

h. Holland Road Mixed Income Housing Overlay District

- 3. By amending Section 5.06.4 by inserting a new item “m” as follows:**

m. *Holland Road Mixed Income Housing Overlay District*

- 1) It is found that the parcel of land at 125 Holland Road, formerly a part of the Newbury College campus (the “Site”) has been identified by the Newbury Zoning Committee, based on a recommendation from the Housing Advisory Board, as an appropriate site for mixed-income affordable housing development. For this reason, a developer may opt to develop the Site in accordance with the requirements of this overlay district.
- 2) Any applicant may seek relief under this overlay, provided the applicant’s proposed development meets the following requirements:
 - a. It contains 18 Dwelling Units, contained in a single building.
 - b. Six (6) of the Dwelling Units on the Site must be Affordable Units (as defined in Section 4.08.2.c.) for households with incomes up to 80% of Median Income, defined in accordance with Section 4.08.2.f and which must also qualify for the Town’s Subsidized Housing Inventory as per Massachusetts General Laws Chapter 40B and 760 CMR 56. Six (6) of the Dwelling Units on the Site must be Affordable Units for households with incomes up to 100% of Median Income. Six (6) of the Dwelling Units on the Site must be Affordable Units for households with incomes up to 150% of Median Income.
 - c. It has a viable plan for maintaining affordability for the longest period permitted by law that has been approved by the Department of Planning and Community Development.
- 3) Multi-Family Dwellings. Superseding any conflicting restrictions in Section 4 of the Zoning Bylaw, any development proposed pursuant to the requirements of this overlay district:
 - a. may include Multi-Family Dwellings;
 - b. is not required to meet the requirements of Section 4.08, with the exception that the development must meet the “Standards” requirements listed under Section 4.08.6. With respect to the standard for unit sizes described in 4.08.6.c, any project proposed pursuant to this section will be deemed to meet the standard if the average unit size for the units with the applicable bedroom count meets or exceeds the listed square footage, so long as no individual unit has less than 95% of the prescribed square footage.
- 4) All applications in the Holland Road Mixed Income Housing Overlay District shall be subject to §5.09, Design Review, including any applicable Design Guidelines adopted by the Planning Board. Further, the Zoning Board of Appeals shall be empowered to require such other conditions as it deems necessary to bring the project into conformance with the goals of this overlay district, including a modification of the affordability requirements in 5.06.4.m2.b. The Zoning Board of Appeals may only grant a modification of the affordability requirements in 5.06.4.m.2.b that raises the applicable Median Income levels following a favorable recommendation from the Housing Advisory Board and in no case shall the affordability

requirements be modified to provide fewer than 4 Affordable Units for households with incomes up to 80% of Median Income and 4 Affordable Units for households with incomes up to 100% of Median Income, and in no case can any of the Affordable Units be available for households with incomes greater than 150% of Median Income.

- 5) Dimensional and Parking Requirements. Any development proposed pursuant to the requirements of this overlay district shall be subject to the dimensional requirements listed below, superseding any conflicting requirements in Sections 5 and 6 of the Zoning Bylaw for the underlying zoning district. Any dimensional requirements not specified below shall be required according to the requirements of the underlying zoning district.
- a. Lot size. A minimum lot size of 35,000 square feet shall be required.
 - b. Floor Area Ratio. An overall maximum Floor Area Ratio of 0.5 shall be permitted.
 - c. Height. A maximum height of 40 feet, measured from the record grade of the midpoint of the lot line along Holland Road, shall be permitted.
 - d. Setbacks. A minimum Front Yard setback of 30 feet, a minimum Side Yard setback of 40 feet, and a minimum Rear Yard setback of 40 feet shall be provided. Relief from these setback requirements may be sought under Section 5.43.
 - e. Open Space. A minimum amount of Landscaped Open Space of 40% of Gross Floor Area and a minimum amount of Usable Open Space of 10% of Gross Floor Area shall be provided.
 - f. Parking. Parking shall be provided at a minimum rate of 1 space per Dwelling Unit.

Or take any action thereto.

Exhibit F – Conceptual Site Plan – 125 Holland

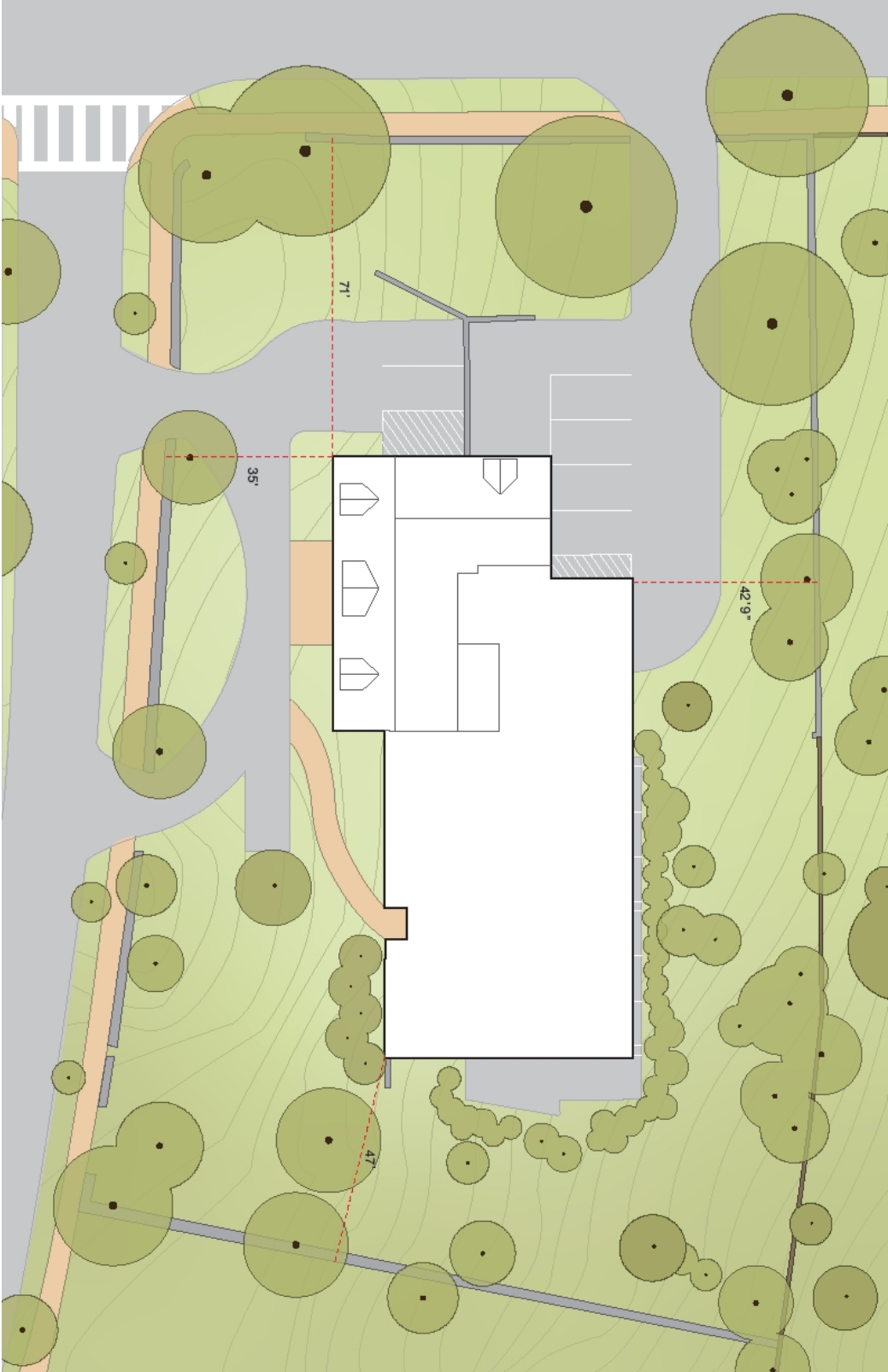


Exhibit G – Deed Restriction

[TO BE INCLUDED PRIOR TO EXECUTION]

Exhibit H – Article for Town to Acquire West Parcels

Petitioner: Paul Saner, on behalf of the Newbury Zoning Committee

Article___: Authorization to Acquire Former Newbury College West Campus

To see if the Town will vote to authorize the Select Board to acquire, by purchase, gift, eminent domain or otherwise, in fee simple, the parcels of land located at 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road (Tax Parcel Identification #s 255-01-01, 256-24-00, 256-21-23, and 256-20-00) including all buildings and structures thereon and all privileges and appurtenances thereto belonging, as well as all trees and shrubs thereon, for general municipal purposes, and for all purposes and uses accessory thereto, and that to meet such expenditure to appropriate a sum of money to be expended at the direction of the Select Board, to pay costs of acquiring said property, and for the payment of all costs incidental and related thereto, including refurbishment of the buildings thereon, and to determine whether such amount shall be raised by taxation, transfer from available funds, borrowing or otherwise; to authorize the Selectmen to apply for, accept and expend any grants from any source whatsoever that may be available to pay any portion of this project or to take any other action relative thereto.

Land Description:

PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

- EASTERLY on Fisher Avenue, one hundred and fifty (150) feet;
- NORTHERLY on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;
- WESTERLY on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;
- SOUTHEASTERLY on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and
- SOUTHERLY on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

PARCEL II - Tract II (146 Hyslop Road):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY on Hyslop Road by two curved lines, one measuring eighty-one and $\frac{6}{100}$ (81.06) feet, the other measuring thirty-eight and $\frac{68}{100}$ (38.68) feet;

NORTHERLY by two lines, one measuring thirty-five and $\frac{38}{100}$ (35.38) feet, the other measuring one hundred (100) feet;

EASTERLY by a line, one hundred and eighty and $\frac{80}{100}$ (180.80) feet;

SOUTHEASTERLY by a line, forty-eight and $\frac{30}{100}$ (48.30) feet; and

SOUTHWESTERLY on land now or formerly of Judith Sprague, one hundred eighty-two and $\frac{53}{100}$ (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH $26^{\circ} 17' 50''$ EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH $63^{\circ} 42' 10''$ WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH $39^{\circ} 28' 50''$ EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH $39^{\circ} 29' 50''$ EAST 86.35 feet to a stone bound; thence

NORTH $39^{\circ} 48' 50''$ EAST 39.39 feet to a stone bound; thence

NORTH $64^{\circ} 02' 30''$ EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The

Archbishop Cushing College," dated September 16, 1958, Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

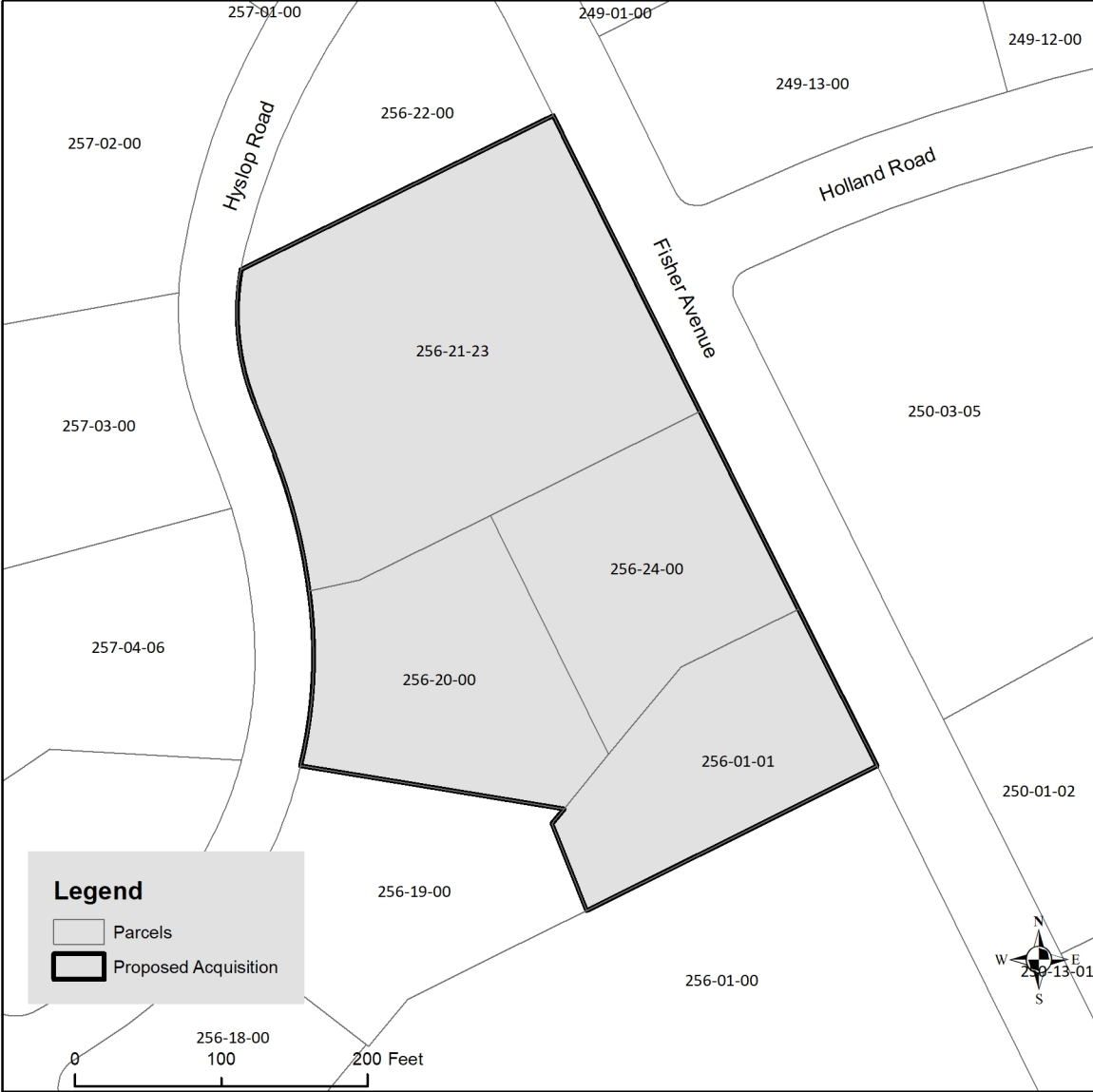


Exhibit I – West Parcel Profit Sharing Chart

Sale of West Parcel - Profit Sharing Framework					
Assume Sale Price of \$18,550,000*** (Colliers appraised value) and assume 2% cost of sale					
Assume Waterfall of Proceeds Sharing Above \$14,800,000 <i>net proceeds</i>					
Total Sale Price	Incremental Sale Proceeds	Incremental Welltower Proceeds		Incremental Town Proceeds	
		\$	%	\$	%
\$ 14,800,000	\$ 14,800,000	\$ 14,800,000	100%	\$ -	0%
\$ 15,800,000	\$ 1,000,000	\$ 371,000 *	0%	\$ 629,000	100%**
\$ 16,300,000	\$ 500,000	\$ 25,000	5%	\$ 475,000	95%
\$ 16,800,000	\$ 500,000	\$ 50,000	10%	\$ 450,000	90%
\$ 17,300,000	\$ 500,000	\$ 75,000	15%	\$ 425,000	85%
\$ 17,800,000	\$ 500,000	\$ 250,000	50%	\$ 250,000	50%
\$ 18,550,000	\$ 750,000	\$ 562,500	75%	\$ 187,500	25%
TOTAL:	\$ 18,550,000	\$ 16,133,500		\$ 2,416,500	

*NOTE 1: For the purpose of calculating cost of sale for this Exhibit, we assume a total sale price of \$18.55M is achieved. This figure is used for illustrative purposes only. Costs of sale will include all out of pocket costs incurred by Welltower in connection with the sale including, without limitation, brokerage commissions, all state and local transfer taxes, and attorneys' and consultants' fees and expenses that are customarily incurred for similar commercial transactions.

**NOTE 2: We assume the Town receives 100% of the initial \$1M in sale proceeds AFTER Welltower's cost of sale

***NOTE 3: Should Welltower achieve a sale price above \$18.55M the Town would propose to share in 10% of additional net proceeds

Exhibit J – Town PILOT Policy

Adopted 12/18/07

Amended 6/28/2011

The Town of Brookline Payment In Lieu of Tax (PILOT) Policy

Brookline is home to, and welcomes a diverse mix of property owners: residential, commercial, governmental and non-profit charitable and educational. The Town's vibrant and growing nonprofit sector both contributes to and benefits from the Town's overall quality of life. The Town provides a variety of critical services to all segments of the community, whether they are residents, businesses or non-profit organizations. While these services provide benefits to all, funding for town departments and services relies heavily on property tax revenues. In order to maintain the high standard of municipal services that Brookline has historically provided, the Board of Selectmen believes that all property owners should contribute a fair share toward the cost.

Overview

“Increasing the overall fiscal capacity of cities and towns turns out to be central to the future prosperity of the Commonwealth... providing communities with the resources to deliver the services and amenities is critical to the state's future development and prosperity ... (and) equally important is making sure that local municipalities have the ability to provide the economic and social environment that is attractive....” Revenue Sharing and the Future of the Massachusetts Economy by the Northeastern University Center for Urban and Regional Policy(2006)

The Town of Brookline, through its various departments, provides a variety of services to its residential and commercial taxpayers and non-profit organizations located or conducting business within the Town. While municipal service requirements vary among these diverse groups, all benefit from the overall enhanced quality of life enjoyed by the community. However, the cost of municipal services is substantial, and the Commonwealth of Massachusetts has limited the sources of revenue available to municipalities. The property tax provides approximately 75% of municipal revenue used to support services. Revenue generated from property taxes is determined by law (Proposition 2 ½), mix of land uses, and geography.

The Town is approximately 6.8 square miles in size and is fully built out; therefore any development is based almost entirely on re-use. The current makeup of the Town based on land use is approximately 55% taxable land and 45% non-taxable. The largest share of the non-taxable land is owned by the Town and used for public buildings, streets/sidewalks, open space and other public uses. Other owners include the state and federal government, a foreign government (Japan), the MBTA, private educational and religious institutions, and charitable and benevolent organizations.

A taxable parcel that becomes tax-exempt does not reduce the Town's total tax levy. Instead, it shifts the tax burden to all remaining taxable parcels. It is a primary goal of the Town to preserve its taxable land, while at the same time continuing to support its rich cultural diversity. It is also a

primary goal of the Town to have the cost burden of providing services borne by and shared among all residents, taxpayers, commercial entities and non-profit institutions, to the extent possible and reasonable.

The Commonwealth of Massachusetts and its political sub-divisions, including the Town of Brookline, have historically been recognized as leaders in the area of higher education, arts and culture, public health and religious freedom, and have encouraged non-profits to organize in the state to enrich the quality of life of its residents. The General Court of the Commonwealth created a series of property tax exemptions within the General Laws (M.G.L. Chapter 59 Section 5) as an incentive to support the often vital work of non-profit organizations.

The Town's location adjacent to Boston, and its easy access to mass transportation and major roadways, makes it attractive for non-profit institutions to locate in Brookline. This demand for land and buildings to operate non-profit organizations has absorbed taxable property in Brookline at an alarming rate. The Town is concerned that a continuing shift in tax burden to a diminishing tax base will have a negative impact on residents, local businesses and the overall Brookline community. In order to maintain a fair balance between the cost of town services and payment for those services, the Town has developed a policy to address the need for a payment-in-lieu-of-tax (PILOT) program for tax exempt properties.

Policy

Brookline recognizes that non-profit organizations contribute directly to the quality of life within the community and welcomes them to the town. In order to maintain the financial health of the community so as to continue to provide a range of quality services, the Town must preserve its existing tax base and expand that revenue source where reasonably possible. It is the Town policy to distribute the burden of cost in a fair method among all users of services: citizens, taxpayers and non-profit institutions.

M.G.L. Chapter 59 section 5 enables the granting of tax exempt status to certain non-profit organizations. Once an organization is granted an exemption, the Town can not legally require that organization to pay a property tax or bind that organization to give up the rights to these legal exemptions. Therefore:

1. The Town will seek voluntary PILOT Agreements with all tax exempt institutions within the community that own real property, or that rent real property from the Town (pursuant to MGL Chapter 59 section 5, sub-section 2B);
2. These PILOT Agreements should be based upon fair market value and tax levy. PILOT Agreements should be established on the basis that the non-profit organization's payment amount is equal to the percentage of tax levy that supports the critical services of the Town's Police, Fire and Public Works operations. The Town has determined that this share is equal to at least 25% of the full levy;
3. In the event that a non-profit organization enters into a voluntary PILOT agreement, the Town may offer to phase in the impact over a period of time. The Town expects to negotiate PILOT

agreements, whereby once the payment target is reached, the payment will annually increase by an escalation factor generally equal to the average historic growth in annual tax levy;

4. For smaller, community-based non-profit organizations with controlling interests in properties assessed at less than \$ 5 million in FY 2007 dollars, consideration for community service may be granted as part of an approach to establish the basis for a PILOT Agreement. This value ceiling would be inflated by 2.5% per year in subsequent years. The Town may base such a PILOT Agreement on less than 25% of the full levy.

5. A PILOT Agreement will remain in force for the entire tenure of its contractual term as long as the use and value established in the PILOT Agreement have not changed. All property under a PILOT Agreement must still meet all the requirements for eligibility for exempt status.

6. A PILOT Agreement does not replace the requirement that each organization seeking property tax exemption must file a "Return of Property Held for Charitable Purposes" form (State Tax Form #3ABC) with the Board of Assessors on or before March first of each year;

Guidelines for PILOT Agreements

Recognizing the financial limitations of non-profit organizations, the Town expects to initiate PILOT discussions with non-profit organizations when they are in the process of acquiring property or considering an expansion of existing real estate holdings or planning of new construction on existing property. This approach has the pragmatic advantage of allowing exempt institutions to include the cost of any PILOT Agreement in the financial planning of the new or expanded facility. Further, the Town may waive this approach in the event that a non-profit organization suffers an extraordinary or catastrophic loss, resulting in a financial hardship.

In the event that a non-profit organization acquires property and plans new construction or substantial reconstruction, the eligibility for tax exemption cannot be determined until the construction is completed and eligible exempt use is determined. The exemption would then be applied to the next fiscal year.

In the case of a significant physical change in the property resulting in a change in the property's fair market value that occurs after a PILOT Agreement has been established, the Town will adjust the PILOT Agreement to include a phased in change of the payment on the addition, per the agreement or per an agreed upon schedule.

In the event that there is a change in the use of property under a PILOT Agreement, the Town may review the eligibility of the exemption, and the terms and conditions of the PILOT Agreement and propose such changes as may be needed to reflect the change in the value of the property.

In the event that the non-profit gives up ownership of the parcel, the parcel will revert back to a taxable status. In the event that a non-profit organization purchases a parcel from a non-profit organization that has agreed to a PILOT Agreement, the parcel will revert back to a taxable status, pending submission of the state tax form (#3ABC), a determination by the Board of Assessors of its tax exemption eligibility, and the completion of a PILOT Agreement with the new owner. In this instance, the Town may elect to seek a voluntary PILOT agreement with the new non-profit acquirer of property.

Newbury College East Parcel Design Guidelines
Proposed to Newbury Zoning Committee

It has been determined by the Newbury Zoning Committee (NZC) that additional guidance is needed to ensure that all future buildings constructed in the Newbury College East Parcel are designed in a manner that reflects the vision and guiding principles established by the Committee. Both the Planning Board and Design Advisory Team should utilize this document to inform their discussions and decisions surrounding their design review of all buildings.

The Newbury College East Parcel is a unique property within the single-family zoning district for its prominence in the Fisher Hill neighborhood. It fronts on Fisher Avenue and the parcel is within the Fisher Hill national register historic district. It serves as a central parcel to the neighborhood at the peak of Fisher Hill and a prominent counterpoint to Reservoir Park. New buildings should be designed and built in a manner that reinforces a neighborhood scale at the street and activates the street edge with street level openness and plantings. Building design should strengthen the relationship between the built environment and the Historic neighborhood. Sustainability and harmony between existing and newly planned buildings should be emphasized.

In the Guidelines that follow, the Study Committee seeks to shape the visual and functional qualities of the buildings, to influence their relationship to neighboring buildings, and to underscore their contribution to the Fisher Hill historic fabric. We chose not to be overly prescriptive, believing that the excellence which we seek for this development will result from a rigorous Design Advisory Team process.

2) Setting

The design problems the site presents are numerous, but the site design priorities of this project should include:

- Scale and setbacks relative to existing Adjacent single- and multi-family residences
- Compatibility to existing Buildings on the site
- Scale along the streets: Fisher Ave and Holland Road
- FAR for the site
- Building Height

3) Buildings- General

Height and mass are the most critical features the NZC sought to address, and the design guidelines therefore encourage the use of intermediate elements to break down the massing and volume of the buildings.

- Human-Scaled Design Elements
 - Examples: bays, setbacks, stepbacks, dormers, porticos, porches, breezeway
 - Encourage the use of thoughtful articulation and intermediate design elements such as pilasters, decorative railings, architectural trim, window surrounds, etc.
 - Architectural elements should be used to provide scale to large building facades. Layout may correspond to architectural or structural bay dimensions.
 - Variation in building massing may include changes in wall plane or height and may relate to primary building entries, window openings, important corners, or other significant architectural features.
 - Variation in building massing and detail should relate to scale of surrounding buildings.
 - Pedestrian scale streetscape components are encouraged; this may include benches and site lighting.
- Materials
 - Consistent with and relatable to local neighborhood buildings.
 - Building materials should be selected with the objectives of quality and durability appropriate within its context, and sympathetic with materials used on local neighborhood buildings.
 - Scale and texture of architectural detailing is important to relate to the existing historic fabric.
 - To encourage human-scale buildings and to ensure the consistent use of high quality materials appropriate to this environment, buildings on this site may incorporate the following materials and detailing as appropriate:
 - Masonry such as stone, cast stone, brick or architectural precast concrete
 - Cladding and architectural trim may include wood to the extent feasible or aesthetic equivalent.
 - Architectural metals including metal sheets with expressed seams. Limited use of standing metal seam roofing may be used where photovoltaics are required.
 - Roofing materials may include slate or shingles to the extent feasible or aesthetic equivalent. Roof material should have some surface relief.
 - Carefully detailed selection of materials should reinforce architectural scaling and appropriate proportions.
- Roofs
 - Articulated roof forms are encouraged through changes in height and shape (hip and gambrel profiles) and the use of dormers, decks, eyebrows, chimneys and gutters.
 - Limited use of flat roofs.
 - All Rooftop equipment should be screened from the street in a way that integrates the building architecture in form and material. Screen all rooftop equipment for decreased visibility from the street.
 - The roof should complement the scale of the building and enhance the design qualities of base middle and top.
 - Roof decks to have detailing consistent with residential scale and style and high quality materiality.
- Fenestration
 - Residential scale, larger openings on more public ground floor spaces, smaller windows at upper floors.

- Vary scale of fenestration between living areas, bedrooms, etc.
 - Transparent glazing (non-tinted, non-colored) is encouraged as appropriate and to the extent feasible.
 - Location and patterns of glazing should enhance building function and scale.
 - Recessed glazing, glass framing, and mullion patterns should be used to provide depth and substance to building façade and should consider play of sunlight across façade where appropriate.
 - Glazing systems should utilize framing and mullion systems that provide scale and surface relief.
- Building Entries
- Use of porches, large openings, and canopies.
 - Primary building entries should be emphasized through changes in wall plane or building massing, a greater level of detail, quality of materials, and more articulated lighting.

4) Sustainable Design Elements

- a. Goal of LEED Gold Certifiable; includes but is not limited to elements listed below.
- b. Include elements of Passive House and WELL strategies
- c. Will comply with the intent of the Town's No Fossil Fuels Bylaw with the exception of the indoor pool.
- d. Implement Sustainable Site Measures which will include the following. See also Section 8: Landscaping.
 - (i) Stormwater control measures will optimize on-site filtration using rain gardens and bioswales.
 - (ii) Bicycle parking will be provided on site to accommodate residents, staff, and visitors. Shower and dressing room access will be provided.
 - (iii) Consider use of permeable pavements such as permeable asphalt for driveways and parking areas, and permeable concrete pavers for the vehicular entry plaza, Holland Rd. overlook, and other site features.
 - (iv) Install native and drought tolerant plants. Incorporate bird friendly and pollinator plants.
 - (v) Visual and physical access to vegetation.
 - (vi) Spaces designed to support social connection.
 - (vii) Full cut-off exterior light fixtures with LED lighting. Use of pole mounted fixtures limited to surface parking areas. Site lighting is encouraged to be installed at low elevation to adequately light the path of travel per code. All exterior lights will meet the required Backlight-Uplight-Glare rating. There will be no uplighting of landscaping or buildings.
 - (viii) Electric vehicles for on-site fleet of passenger vehicles. Electric vehicle charging stations will be provided in excess of Town requirements.
- e. Optimize Energy Efficiency of Building Systems
 - (i) Reduce energy demand - implement Passive House strategies to reduce energy use. Strategies include increased insulation at walls and roofs, tight building envelope, and high-performance windows.
 - (ii) Harvest Site Energy: Optimize the building for solar renewable energy measures, consider including photovoltaic and solar thermal.
 - (iii) Provide water-efficient plumbing fixtures

- (iv) Perform Building Commissioning for MEP systems and building envelope
 - (v) Provide training for Operations and Maintenance
 - f. Indoor Environmental Quality
 - (i) Optimize daylighting and views
 - (ii) Specify healthy building materials
 - (iii) Promote occupants' comfort and well-being by providing interior cross-contamination prevention measures and CO2 monitoring.
 - g. Implement WELL strategies to provide users with a healthy building:
 - (i) Aesthetic Circulation Network
 - (ii) Drinking Water Access
 - (iii) Restorative Room
 - (iv) Control Glare
- 5) New Buildings
- The new building (s) may incorporate the following measures to minimize its scale, establish compatible massing relationships with adjacent structures, and engage the streetscape:
- Generous first floor height
 - Public and common space on first floor
 - Diminishing verticality
 - Reduce footprint of building at top floor to create a diminished sense of scale – intermittent roofdecks at top floor is encouraged.
 - Building massing that is perpendicular to streets should be scaled down by reducing the building width at setbacks and creating smaller elements at the ends of massing, as demonstrated by the massing that was presented to the zoning committee on January 8th, 2020.
- 6) Historic Buildings
- Proposed changes to historic buildings are to be reviewed with the Town's Preservation Staff and Commission.
 - Propose a joint committee (architectural sub committee & preservation commission) for streamlining this process.
 - Where existing historic buildings on site are to be retained, their renovation will be consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties. This applies to exterior elements of the buildings.
 - Any new intervention for accessibility, connections to new buildings, etc. will be done in a historically sensitive manner to ensure consistency with existing historic elements.
- 7) Public Space and Streetscape
- Holland Road and Fisher Ave Public Space and Streetscape
 - o Preservation of existing Street Trees
 - o Protection of existing trees on site per Arborist Report
 - o Review of streetscape to determine whether there are opportune areas for public benches along the perimeter of the site. If provided, bench location and design to be integrated into the landscape design.
- 8) Vehicular Circulation, Access, and Parking

- Surface parking will be limited to the south end of the site. 20' setback will be maintained from property line to edge of surface parking areas for all adjacent properties to the south. 5' min. buffer to adjacent property line and fence will be provided at any vehicle turn-around areas.
- Eliminate Holland Road driveway and create an overlook
- Service and delivery activities should be separated whenever possible from the primary public access and screened from public view by means such as locating underground or locating internal to structures.
- Parking structures should utilize materials and architectural detailing found in the primary development being served.

9) Landscape

- Provide either fencing, berming, or landscape screening to buffer the south parking area from the adjacent Olmsted Hill development.
- Landscaped areas adjacent to the public streets will be designed to maintain soil and prevent runoff.
- Rain Gardens: Where feasible, rain gardens will be installed to collect drainage at the perimeter and interior of the project. Bioswales and other stormwater systems will be designed and maintained in a clean manner to enhance the view from the street.
- Predominant use of native and drought tolerant plantings will be used where possible.
- Site lighting design is to be integrated into the wayfinding and building identification.
- Irrigation design and maintenance consistent with LEED standards.
- Improve permeability of roadway with pavers and other pervious materials to the extent feasible.

10) Signage

- Signage design will conform to guidelines described in “A Guide to Sign and Façade Design”.

ARTICLE 12

Submitted by: Paul Saner, on behalf of the Newbury Zoning Committee

This article will authorize the Select Board to accept an easement from Welltower Inc. the developer of the so-called East Parcels at the former Newbury College site in order to maintain six trees and a green buffer on a portion of Fisher Avenue in connection with the proposed development of a senior living facility at the site. This easement will also allow for the linkage to the site for the Town’s Tax Certainty Agreement for the East Parcels.

This warrant article is one of seven warrant articles related to Welltower’s proposed development on the former Newbury College campus. For more information on how this warrant article fits into the larger package, please review the explanation for the warrant article titled “Fisher Hill Special Overlay District Zoning” proposing a rezoning of the east side of the former Newbury College campus.

ARTICLE 13

Submitted by: Paul Saner, on behalf of the Newbury Zoning Committee

This warrant article proposes the creation of a new overlay district, the Holland Road Mixed Income Housing Overlay District, and its establishment over the property at 125 Holland Road – a part of the former Newbury College campus. The overlay district allows an applicant to develop the land for the purpose of mixed-income housing provided it complies with the provisions of the overlay district. Those provisions include a requirement that the mixed-income housing development include exactly 18 units, six of which must be affordable to households with incomes up to 80% of median income, six of which must be affordable to households with incomes up to 100% of median income, and six of which must be affordable to households with incomes up to 150% of median income. These affordability requirements could be modified by the Zoning Board of Appeals if the Housing Advisory Board recommends doing so. The Overlay District also imposes a few dimensional requirements that are generally more restrictive, but in some cases less restrictive, than the existing underlying zoning. All developments proposed pursuant to this Overlay District would require Design Review with the Planning Board and a Special Permit from the Zoning Board of Appeals.

This warrant article is one of seven warrant articles related to Welltower’s proposed development on the former Newbury College campus. For more information on how this proposed rezoning fits into the larger package, please review the explanation for the warrant article titled “Fisher Hill Special Overlay District Zoning” proposing a rezoning of the east side of the former Newbury College campus.

ARTICLE 14

Submitted by: Paul Saner, on behalf of the Newbury Zoning Committee

This warrant article proposes the creation of a new overlay district, the Municipal Uses Overlay District, and its establishment over the 4 parcels that comprise the west side of the former Newbury College campus. The overlay district allows an applicant to use the land for the purposes of municipal or governmental offices and educational facilities by right and for the purposes of public libraries, museums, and recreational facilities by Special Permit. The overlay district also provides allowances for associated support services and uses commonly found in conjunction with the above uses, including, but not limited to, welder and carpenter workshops provided that they are contained within a building.

This warrant article is one of seven warrant articles related to Welltower’s proposed development on the former Newbury College campus. For more information on how this proposed rezoning fits into the larger package, please review the explanation for the warrant article titled “Authorization to Acquire Former Newbury College West Campus” proposing an acquisition of the west side of the former campus.

ARTICLE 15

Submitted by: Paul Saner, on behalf of the Newbury Zoning Committee

Summary

This article will enable the Town to acquire the former West Campus of Newbury College. The Town has been presented with an opportunity to acquire badly needed land with buildings at a discounted price for current and future municipal use. A debt exclusion question is being placed on the May 5 ballot to provide a funding source. While this potential acquisition is a component of the Welltower senior living proposal, its passage is not essential to the viability of the senior living project. If the package of warrant articles which enable the senior living proposal is approved and the Town does not acquire the former West Campus, the Town will share in the proceeds of the sale to another party above the Town agreed upon price of \$14.8 million. If the senior living package is not approved by Town Meeting, the offer to purchase (or share in the proceeds of a sale to another party) is rescinded and this article is moot.

A number of short term, low impact uses for the property have been identified and are described below. No long-term use for the parcels has been determined at this point; such a use would be the result of a multi-year study involving input from Town staff, boards and committees as well as the neighborhood and the community at large.

Pursuant to MGL c. 40, §14, any acquisition of land by a town's Select Board must be authorized by a two-thirds vote of Town Meeting. This Article authorizes the Select Board to acquire the parcels with the addresses 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road and appropriate the funds necessary for the acquisition of the property and attendant expenses.

The former West Campus of Newbury College

When Newbury College announced its decision to close, the Town recognized the opportunity this presented for acquisition of badly needed property for potential municipal and school uses. Before, during and after the almost unanimous April 2019 Town Meeting Resolution to pursue acquisition of the campus, the Town participated in the bidding process established by the college and under the purview of the State's Attorney General. The Town was not the winning bidder—in large measure due to the difficult requirements imposed by Newbury on prospective bidders. Upon designation as the selected bidder, Welltower Inc. offered the Town the opportunity to purchase the portion of the campus that is on the west side of Fisher Avenue. A more detailed description of the bidding process and the other components of the Welltower deal are contained in the explanation of Article X1, the Fisher Hill Special Overlay District.

The property that comprises the former West Campus of Newbury college consists of four parcels (110, 124 and 150 Fisher Avenue and 146 Hyslop Road) totaling 3.18 acres.



Figure 1: Site Plan. Proposed section for acquisition is on the west (left) side of Fisher Ave.

The site contains the former Academic Center and West Hall (each with dedicated parking) plus two parking areas for approximately 156 vehicles (according to the Newbury College Master Plan prepared by Stantec in 2014). The purchase price, established following a robust negotiation process between Welltower and representatives of the Town, has been set at \$14.8 million. A debt exclusion override referendum is being placed on the May 5, 2020 Town election ballot by the Select Board in order to provide the bonding capacity to purchase the property if authorized by Town Meeting. If the Town purchases the property, it will be “as is.”

The Academic Center, consisting of the main building constructed in 1957 and a library added in 1997, contains 30,940 square feet of program space distributed amongst three levels plus a partial basement consisting of classrooms/lab spaces, offices and a café as well as the library. It is the building on the campus best suited in its as-is condition for Town uses.



Figure 2: Academic Center view from Fisher Ave.



Figure 3: Rear of Academic Center showing 1997 Library addition

West Hall is a three-story building constructed as a private residence in 1920 consisting of 9,841 square feet. It had been used by Newbury College for classrooms, offices and a mail room. The building is in general disrepair, but in overall sound condition. It has no accessible features and internal circulation is awkward.



Figure 3: Rear View of West Hall

Summary of the Town’s due diligence on site conditions:

As part of the bidding process in spring 2019 and then subsequently as part of its decision-making process relative to purchasing the former West Campus, the Town undertook a significant amount of due diligence within a compressed time frame. In addition to commissioning a title search, the Town focused on the condition of the two buildings on the former West Campus as well as the status of public infrastructure serving the property. A Capital Needs Assessment was prepared for the Town by Commercial Construction Consulting, Inc. (CCC), a professional engineering firm experienced in the design, construction and operation of institutional buildings and office buildings. CCC evaluated the condition of all buildings on the entire campus and provided a ten-year capital forecast for the property. The buildings were also evaluated by the Public Buildings Division of the Building Department, which incorporated inspections by the Town’s sub-contractors, including but not limited to the condition and life-expectancy of life safety systems, HVAC, roofs, chimneys, windows, facades and availability and capacity of utilities. These studies concluded that neither the Academic Building nor West Hall **appear to have any** structural deficiencies.

How will the Town use the property?

The Town has not made any determinations as to the long term use(s) of the property. In the short term, the Town will use the properties essentially as-is while engaging in an inclusive process over the next three to five years relative to the long term use of the site. A vision of how the process would be conducted is described below.

Many municipal needs have been identified in the Town’s Strategic Asset Plan completed and adopted by the Select Board in 2018. The Strategic Asset Plan was designed to serve as a foundation for future planning relating to facilities and services to be provided to Brookline

residents and the commercial sector. The study is available here:

<https://www.brooklinema.gov/DocumentCenter/View/14147/Strategic-Asset-Plan-PDF>

Short-Term Uses

The Town has identified a number of short-term uses, most notably office and workshop space for the Building Department, which will be able to relocate from **substandard**, ill-suited and inefficient space at Larz Anderson Park. This will bring approximately 20 employees to the site. In addition to providing a centralized location for Building support services, Building Department personnel are the ideal tenants to provide a municipal presence within the building to oversee the building and activity. Further, since no interim uses are proposed for West Hall, Building Department personnel will be in a position to monitor the vacant building. The Academic Building will be available to meet other municipal space needs including overflow use for meetings, training and other programs. Given the site's location immediately adjacent to Reservoir Park, it could accommodate overflow parking. The Town Administrator is continuing to explore other possibilities for short-term uses that can be accommodated on the property with minimal impacts on the abutting residential neighborhood.

Long-Term Uses

No permanent use of the west campus has been determined. Given that the identification of an appropriate long-term use or uses for the west side warrants a significant and inclusive planning process, the Select Board will initiate a comprehensive planning process that is anticipated to take several years. That process will begin with the creation of a Land Use Committee consisting of Town officials, neighbors and residents with support from professional staff and outside experts, as necessary. The extended process will seek to capture input from all sectors of our community and include public hearings, social media engagement, and planning workshops and/or charrettes. Based on public input and professional analysis, the Land Use Committee will submit its recommendation to the Select Board, which will ultimately make its decision and seek Town Meeting approval.

The following is a partial list of potential uses:

- Affordable Housing
- Athletic Fields or Expanded Park Use
- Building Division Workshop and Offices
- Municipal/School Office Spaces
- Municipal/School Training Center
- Recreational Facilities (Pool, Rink, Gym)
- Satellite Senior Center
- School Classrooms or Educational Spaces

Some preliminary studies have already been conducted as part of the Town's exploration as to the feasibility and desirability of purchasing the former West Campus. The Town commissioned two architectural firms to perform very preliminary "test fits" of potential municipal and school

uses of the Academic Building as well as the entire west side property to determine if and the extent to which they could accommodate various municipal and school uses.

ICON Architecture was commissioned to test fit a number of municipal uses, most of which were identified in the Strategic Asset Plan, including:

1. Building Department operation and equipment storage needs
2. Recreation Department's Early Childhood Education and After School programs
3. Police Department training and storage needs
4. Sports and recreation fields
5. Multi-story indoor recreation facility
6. An indoor skating and hockey facility
7. An indoor /outdoor swimming facility

Several permutations involving shared deployment of the property by different uses were also identified and examined.

The study is available here: <https://www.brooklinema.gov/DocumentCenter/View/20621/Other-Municipal-Uses---NEWBURY-TESTFITs---103119?bidId=>

HMFH Architects studied potential elementary school uses at the following sizes:

2+++ Sections (Baldwin Program, 109,005 gross square feet)

3+++ Sections (136,682 gross square feet)

4+++ Sections (Driscoll Program, 158,432 GSF)

Note: +++ Indicates inclusion of:

- * 3 Pre-K classroom
- ** 3 RISE Special Education classrooms
- *** 3 English as a second language classrooms

The study is available here: <https://www.brooklinema.gov/DocumentCenter/View/20622/School--Newbury-Test-Fit-Presentation---103119?bidId=>

The studies prepared by architects (and based, in part, on the due diligence previously undertaken) represented preliminary and essentially conceptual analyses. The planning process to be established by the Select Board will be designed to explore additional uses identified by the community as well to generate more detailed plans upon which to make decisions.

Financing the Acquisition

The Select Board will be placing a debt exclusion question on the May 5 ballot for \$14.9 million dollars to finance the \$14.8 million purchase price plus provide \$100,000 for minor improvements and repairs to the site. The most significant repair which has been identified is a required upgrade to the fire alarm panel which is estimated to cost about \$15,000.

Debt Service for a \$14.9 million borrowing for 25 years at 4% is about \$953,778 per year. The Town's most recent long term borrowings have been **below** 3%. A \$14.9 million borrowing for 25 years at 3% is about \$855,675 per year.

Tax Impact of Debt Exclusion at 3%

TAX IMPACT OF DEBT EXCLUSION (LEVEL DEBT SERVICE)		
Project(s) Cost	\$14,900,000	
Town Share	\$14,900,000	
Term	25	
Interest Rate	3.00%	
Annual Debt Service	\$855,675	
Tax Impact on Median Single-Family Home	\$49	0.4%
Tax Impact on Median Condo	\$15	0.4%
Tax Impact on Median Commercial Prop	\$112	0.4%

Tax Impact of Debt Exclusion at 4%

TAX IMPACT OF DEBT EXCLUSION (LEVEL DEBT SERVICE)		
Project(s) Cost	\$14,900,000	
Town Share	\$14,900,000	
Term	25	
Interest Rate	4.00%	
Annual Debt Service	\$953,778	
Tax Impact on Median Single-Family Home	\$54	0.4%
Tax Impact on Median Condo	\$17	0.4%
Tax Impact on Median Commercial Prop	\$124	0.4%

The Public Buildings department estimates that the cost to the Town to own and maintain the property on an annual basis is approximately \$73,000.

Note that the property is currently generating tax revenue of about \$140,000 per year which will be lost if the Town purchases the property.

Town Proceeds Sharing in the event Fisher Hill Overlay District is approved and the Town does not Purchase the Former West Campus

If the package of warrant articles which enable the senior living proposal is approved and the Town does not acquire the former West Campus, the Town will share in the proceeds of the sale to another party above the Town agreed upon price of \$14.8 million. The proceeds will be shared in accordance with the following chart.

Sale of West Parcel - Profit Sharing Framework					
Assume Sale Price of \$18,550,000*** (Colliers appraised value) and assume 2% cost of sale					
Assume Waterfall of Proceeds Sharing Above \$14,800,000 net proceeds					
Total Sale Price	Incremental Sale Proceeds	Incremental Welltower Proceeds		Incremental Town Proceeds	
		\$	%	\$	%
\$ 14,800,000	\$ 14,800,000	\$ 14,800,000	100%	\$ -	0%
\$ 15,800,000	\$ 1,000,000	\$ 371,000 *	0%	\$ 629,000	100%**
\$ 16,300,000	\$ 500,000	\$ 25,000	5%	\$ 475,000	95%
\$ 16,800,000	\$ 500,000	\$ 50,000	10%	\$ 450,000	90%
\$ 17,300,000	\$ 500,000	\$ 75,000	15%	\$ 425,000	85%
\$ 17,800,000	\$ 500,000	\$ 250,000	50%	\$ 250,000	50%
\$ 18,550,000	\$ 750,000	\$ 562,500	75%	\$ 187,500	25%
TOTAL:	\$ 18,550,000	\$ 16,133,500		\$ 2,416,500	

*NOTE 1: For the purpose of calculating cost of sale for this Exhibit, we assume a total sale price of \$18.55M is achieved. This figure is used for illustrative purposes only. Costs of sale will include all out of pocket costs incurred by Welltower in connection with the sale including, without limitation, brokerage commissions, all state and local transfer taxes, and attorneys' and consultants' fees and expenses that are customarily incurred for similar commercial transactions.

**NOTE 2: We assume the Town receives 100% of the initial \$1M in sale proceeds AFTER Welltower's cost of sale

***NOTE 3: Should Welltower achieve a sale price above \$18.55M the Town would propose to share in 10% of additional net proceeds

ARTICLE 16

Submitted by: Janice S. Kahn, TMM P15

In furtherance of the proposed Baldwin School project, Town Meeting authorized the purchase of three residential condominiums at 15-19 Oak Street in December of 2018. The transaction was completed in early 2019 and the cost of debt service for the acquisition was incorporated into the debt exclusion ballot question that was rejected by Brookline voters at the Annual Town Election on May 7, 2019. Up to now the Town has only needed to pay interest on the loan, but in 2021, when amortization is required, the Town will need to begin to pay back principal as well as interest and so the cost of holding onto these properties will significantly increase.

A warrant article to preserve the Town's ability to sell the units and to ensure that this happens was filed for the November 2019 Town Meeting. The required 2/3 vote of town meeting members failed by a narrow margin. With new budgetary concerns, the matter of whether the Town should sell the properties is once again being raised since there are no immediate needs for these properties and there is at least one alternative use for the funds. This article is being refiled for the May 2020 Town Meeting to further that purpose.

New factors in recent months have brought into the focus the benefits to the Town of selling these properties. One is the Brookline Fiscal Advisory Committee's (BFAC) final report issued in February 2020 which has identified a concerning trajectory of the level of debt service the Town of Brookline is assuming as a result of multiple, costly overrides – debt exclusions for the former Devotion School, Brookline High School, Driscoll School, and a general operating override in recent years, as well as the debt exclusion ballot question being proposed on the current warrant to purchase land at the former Newbury College site, in addition to one in the offing for the possible renovation and expansion of the Pierce School. The debt service for the \$4.7 million for the purchase of the Oak Street properties that was entirely borrowed by the

Town in anticipation of passage of the May 2019 override can be eliminated by selling the Oak Street properties, freeing up hundreds of thousands of dollars.

If the debt service for the Oak Street properties were to be eliminated, that would free up capital, for instance, for the purchase of over 3 acres of land at the former Newbury College site if the voters approve that ballot question in May. In other words, the sale would lower the total cost of the debt exclusion for Newbury and the Town would own a much larger, more useful and flexible piece of property than the three attached townhouses on only .2 acres of land.

Sale of property requires an open and competitive process to realize the highest price possible. The petitioner of this article urges Town Meeting to authorize the Select Board to sell the Oak Street properties and further urges the Select Board to sell the properties as expeditiously as possible, thereby freeing up borrowing capacity and returning the properties to the tax rolls and treated as “new growth,” yielding approximately \$45,000 in real estate taxes.

ARTICLE 17

Submitted by: Select Board

The Town has begun to appropriate host community payments to departmental budgets to address the costs imposed upon the town by the marijuana operations. The projected mitigation payments are anticipated to be in excess of these preliminary recommendations. As the Town develops more experience in this new industry there will be additional recommendations that can be addressed. Marijuana legislation allows the town to create a stabilization fund that provides a mechanism for the town to dedicate these payments to a special fund for later appropriation for particular purposes. The Board anticipates that the Cannabis Mitigation Advisory Committee would develop spending proposals for Town Meeting to consider.

ARTICLE 18

Submitted by: Planning Department

Prior to 2005, towns seeking to create affordable housing trusts needed home rule approval. In 1986, Town Meeting authorized the Select Board to file a home rule petition seeking authorization to establish a “Housing Trust Fund and an Open Space Fund.” *November 1986 Special Town Meeting, Article 21.* The petition, embodied in House Bill 6578, was never passed. In 1987, Town Meeting voted to adopt Article XI-C of the Town’s General By-laws, with the intention of creating the Brookline Housing Advisory Board and the Brookline Housing Trust. *December 1987 Special Town Meeting, Article 12.* The By-law was approved by the Attorney General. Article XI-C, now Section 3.13.3 of the Town’s General By-laws, states that the Town’s Housing Trust may accept “gifts, grants, aid, reimbursements, payments and appropriations for the purposes set forth in Section 3.13.1...” This language mirrors, in part, the language in M.G.L. c. 44 s. 53A that authorizes town officers or departments to accept certain grants or gifts of funds with the approval of the Select Board.

In 2005, the state legislature passed M.G.L. c. 44, s. 55C, the Municipal Affordable Housing Trust Fund law, which simplified the process of establishing local housing trust funds by requiring only a simple majority vote of Town Meeting to accept the statute. In line with this process and in order to ensure the broadest ability of the Town to accept and use trust funds for their intended purpose, this Article seeks such acceptance.

ARTICLE 19

Submitted by: Planning Department

Article 19, a companion to Article 18, authorizes Brookline to accept the terms of Massachusetts General Laws Chapter 44, Section 55C, thereby establishing a trust known as the Brookline Affordable Housing Trust Fund. Article 19 enables Brookline to implement its acceptance of MGL Chapter 44, Section 55C by amending the applicable Section 3.13 of the Town's Bylaws such that Brookline's local Bylaw will align properly with the uniform provisions and requirements of the state statute applicable to municipal housing trust funds.

Specific amendments contained in this Article that will bring Section 3.13 into alignment with MGL Chapter 44, Section 55C include:

1. Reducing the terms of Housing Advisory Board members from their current three-year staggered terms to the maximum two-year terms prescribed in Section 55C. Terms will continue to be staggered.
2. Increasing the number of Housing Advisory Board members from seven to eight in order to meet Section 55C's requirement that Trust Fund trustees include a Select Board member. Housing Advisory Board members serve, and will continue to serve, as trustees of the Brookline Affordable Housing Trust Fund.
3. Omitting reference to "upper moderate" in order to comply with Section 55C that Affordable Housing Trust Funds may be used in support only of "low and moderate income" persons, households, families and housing, which includes household incomes not exceeding 100% of the Boston Area Median Income (AMI).

None of the above amendments will impede the ability of the Housing Advisory Board to fulfill the above-stated purposes for which it was created in 1987 under Section 3.13, including as Trustees of the Affordable Housing Trust.

In adding a Select Board member to the Housing Advisory Board, there was the option either of replacing one of the existing HAB member seats or creating an additional seat. The HAB recommends the creation of an additional seat.

Section 3.13 directs the Select Board to appoint individual HAB members who have "*knowledge or experience in government housing programs, housing or real estate finances, affordable housing development, design or urban planning [and] real estate law*". Further,

three of the seven HAB seats must be filled at all times by a Planning Board member, a Housing Authority Board member, and a low- or moderate-income tenant.

With this combination of appointed and mandated seats and targeted skillsets, HAB members over many years have included the identified range of professional knowledge and experience. Adding a Select Board member to the existing seven-person roster will enable the HAB to retain the robust range of skills and experience needed to advance its mission on behalf of the Town.

Finally, reducing HAB member terms from three to two years will entail no significant administrative burden nor will it impede the HAB's ability to function effectively.

ARTICLE 20

Submitted by: Roger Blood

Brookline's Inclusionary Zoning Bylaw, Section 4.08, is a long and complex regulation, originally adopted over 30 years ago with the phaseout of rent control. Accompanying the new Inclusionary Zoning Bylaw at that time was the creation of the Housing Advisory Board (HAB) and authorization for the Town's Affordable Housing Trust Fund.

Since its inception, Inclusionary Zoning has received one formal review and update, including increased Trust Fund fees (2004). In November 2018 the HAB initiated a review of the current I.Z. Bylaw with an eye toward recommending appropriate improvements.

A key objective of this review has been to evaluate whether Inclusionary Zoning requirements under recent local market conditions might be amended to generate additional affordable housing resources, while not over-reaching such as to discourage new housing production by causing it to become financially infeasible.

In 2019, the HAB sought and received from the Select Board funding approval to retain real estate and financial consultant Pamela McKinney to undertake a financial analysis of our current I.Z. affordable housing requirements and offer recommendations for improvement.

Article 12 authorizes the adoption of an expanded and increased fee schedule for required developer contributions to the Affordable Housing Trust; also, an adjustment to the range of household income that defines "affordable housing" to include so-called "workforce housing".

Article 12 is very brief. In short, it amends the 2700+ word Section 4.08 of the Zoning Bylaw simply by changing three numerical citations:

1. The maximum household income that defines "affordable housing" is increased from 100% to 120% of the Boston Area Median Income in order to recognize "workforce" affordable housing";
2. The minimum number of units in a project that triggers a required developer contribution to the Town's Affordable Housing Trust is adjusted from "six" to "four", and

3. The size range of projects subject to the required developer contribution to the Affordable Housing Trust is expanded from "six to fifteen" to "four to nineteen".

These several numeric adjustments follow Pam McKinney's recommendations. They will authorize her recommended 1/3 increase in the existing fee schedule for projects with six to fifteen units, while allowing adoption of new fees for four- and five-unit projects. The addition of workforce housing is consistent with state and federal affordable housing programs that designate workforce housing at income limits up to 120% of Boston's Median Area Income.

Passage of Article 12 is timely because (1) the Housing Trust needs additional funds that it does not currently have to support anticipated affordable housing developments by both non-profit sponsors and the Brookline Housing Authority; and (2) current housing development, including smaller multifamily projects, is especially active; the current Inclusionary Zoning fee schedule can be expanded and increased without reducing housing production. Delaying this simple warrant article by even six months will mean significant lost resources for the Housing Trust.

ARTICLE 21

Submitted by: Select Board

The purpose of Article 21 is to define Short-Term Rentals and other related terms and to add Short-Term Rentals as an allowed use under the Table of Use Regulations of the Zoning By-law. The use would be allowed in all zoning districts but limited to the three types of Short-Term Rentals described under the new definition to be added to Section 2.19, and limited to Short-Term Rentals in possession of a valid Certificate of Registration and operating in accordance with a new Section 4.14. The new Section 4.14 is dedicated to Short-Term Rental uses and simply puts forth basic requirements for the use. The vast majority of the regulations pertaining to the operation of Short-Term Rentals would be added to the General By-law under Article 22. See the explanation under that Article for more information.

ARTICLE 22

Submitted by: Select Board

The purpose of Article 22 is to create regulations allowing for Short-Term Rentals in Brookline under a specific set of circumstances and to establish policies and procedures that operators of Short-Term Rentals must follow. These regulations also provide a basis on which health and safety rules can be enforced.

What are Short-Term Rentals and why are they relevant to Brookline?

Short-Term Rentals are a relatively new concept that has emerged from the convenience of online booking platforms. The most well-known of these platforms is AirBnB, though many others exist including VRBO, booking.com, and Homeaway. Although there is no exact data on the number of Short-Term Rentals being offered currently in Brookline (online platforms display listings in various formats that make this data very difficult to retrieve), data estimates show that

the number could range between 300 to 400 units at any given time. The term “Short-Term Rental” can have numerous interpretations, but the Commonwealth of Massachusetts has defined it as an occupied property that is not a hotel, motel, lodging house or bed and breakfast establishment, where at least 1 room or unit is rented out by an operator through the use of advance reservations. A Short-Term Rental may include an apartment, house, cottage, or condominium. It does not include property that is rented out through tenancies at will or month-to-month leases. It also does not include time-share property. A Short-Term Rental is a rental that is not for more than 31 consecutive calendar days.

Brookline’s geographic location close to Boston leads to a high demand for visitors seeking Short-Term Rental accommodations and visitors have ranged from patients seeking medical visits and treatment at Longwood Medical Area, medical professionals coming to do research or residency programs at area hospitals, families coming to tour local colleges, business professionals attending work conferences, tourists, etc., as described by current Brookline hosts. The demand for Short-Term Rentals in Brookline appears to be very high and this demand has been met by many Brookline residents who have interest in renting out their homes, or portions of their homes, as Short-Term Rental units.

What is the status of Short-Term Rentals in Brookline today?

As Short-Term Rental units have begun to proliferate in Brookline, it has become apparent that the Town currently has no regulations covering this topic. A lack of regulations has led to uncertainty surrounding this subject and a lack of clarity for Short-Term Rental hosts, Brookline residents who are not hosts, guests, and Town officials and staff. Brookline’s Zoning By-law contains Table 4.07, Table of Use Regulations, which outlines all allowed uses. This table is inclusive only, meaning that only the uses explicitly listed in the table are allowed and any use not explicitly allowed in the table is not allowed. This interpretation of the use table is currently used by the Building Commissioner when he makes interpretations of allowed uses in Brookline.

Because the Zoning By-law is silent on the topic of Short-Term Rentals, they are currently considered prohibited in Brookline. However, the Town’s ability to enforce this has been limited because there is no written explanation of the Town’s stance towards Short-Term Rentals. The Zoning By-law’s silence on this topic has made enforcement and regulation very difficult. Currently, the Building Department is handling enforcement on a complaint-driven basis. In speaking to current Short-Term Rental hosts, nearly all were unaware that Brookline prohibited such a use because there is no written language codifying this stance and information regarding this prohibition is not searchable or findable.

Despite the recent trend and shift towards short-term renting, the renting of rooms within units is not actually a new concept in Brookline. Use #51 has long appeared in the Zoning By-law’s Table of Use Regulations. Use #51 allows residents to rent up to two bedrooms within their home for up to two lodgers (one per room) for single-occupancy stays. The language of Use #51 does not specify how long these lodgers may rent these rooms for. However, as Short-Term Rentals have gained popularity, the Building Commissioner has made the interpretation that Use #51 is intended for long-term lodgers rather than Short-Term Rental guests. Therefore, currently, a resident who may be renting out up to two bedrooms within their home may do so but only for

long-term tenants which would be a tenant staying longer than 31 consecutive days. Any resident who may be allowing lodgers to stay in bedrooms within their unit for 31 days or less would currently be in violation of the Zoning By-law, although it does not state in writing anywhere that this distinction exists.

The Town is therefore aware that the renting of rooms within one's unit exists in Brookline and has been practiced by some residents for many decades. The ease with which residents can now connect with interested short-term guests has only continued to gain popularity due to the ease of popular platforms such as AirBnB. As stated above, data estimates show that as many as 400 units may be currently offered for short-term rent, though this number would include people renting out entire units and not solely bedrooms within units.

What will these regulations allow or not allow?

Creating Short-Term Rental regulations will set forth policies covering a few main areas: 1) the types of units eligible to be listed as Short-Term Rentals (any unit type that does not follow under one of the types listed cannot be registered as a Short-Term Rental), 2) a registration process for Short-Term Rental operators to provide information to the Town, proof of compliance, a fee and a required in-unit inspection, 3) requirements hosts (aka "operators) of Short-Term Rentals must follow in the operation of their units and 4) policies for complaints, enforcement and violations.

The proposed amendments to the General By-law and Zoning By-law will allow three types of Short-Term Rentals. The first type is the renting of a room within the operator's primary residence (defined as the dwelling unit where the operator resides for at least 183 days per year) while the operator is present in the unit. The second type is the renting of an entire dwelling unit while the operator is not present in the unit. The third type is the renting of an entire unit in a 2-family building where the operator resides in one of the other units and is present during the rental. There are additional restrictions on these types including limits on the number of guests at any given time. A fourth type of Short-Term Rental was explicitly left out of the proposed regulations (and would therefore remain prohibited): professionally-managed units. Professionally-managed units are units that are not the primary residence of the operator nor does the operator live in the building. Typically, operators of professionally-managed units manage a portfolio of units in several different buildings. These types of Short-Term Rentals would be prohibited primarily because of their negative impact on the availability of year-round housing units if they were permitted.

Any operator who wishes to engage in one of the three allowed types of Short-Term Rentals described above would be required to file for a Certificate of Registration. Along with an application for the Certificate, any operator would be required to submit a variety of documents, including but not limited to, a proof of primary residence, floor plans, contact information, and proof of compliance with applicable leases and/or condominium documents. The registration process would be handled by the Select Board's Office and prior to the issuance of any Certificate for a Short-Term Rental, inspections would be conducted by the Health Department, Fire Department, and Building Department. These inspections would confirm the eligibility of the unit for the operation of a Short-Term Rental and inform any additional conditions the Select

Board Office might see fit to attach to the Certificate. The proposed regulations require that all Short-Term Rentals include a variety of safety-related items, including hard-wired smoke alarms and fire extinguishers, diagrams showing the location of safety equipment, and information on trash disposal and parking regulations. The proposed regulations also allow for the revocation of Certificates if violations are found or for other good causes, and allow for the Select Board to issue further regulations for the implementation of the By-law, including for the establishment of any appeal process.

It is important to note that the Town would like to ensure that only operators of Short-Term Rentals who have permission to operate are able to do so. Without any current regulations, the Town has very little control over who operates a Short-Term Rental. It is also important to note that even with the proposed Short-Term Rental regulations in place, the requirements of a condominium association through its by-laws or condo documents and the provisions of a rental lease always supersede these regulations.

In listening to public feedback, Town staff and officials have heard that many condominiums in Brookline, for example, do not have condominium documents that address the topic of Short-Term Rentals and therefore cannot be used to prevent such activity within the building. Many condo documents and by-laws were drafted prior to the popularity of Short-Term Rentals. The Town would recommend to any condominium association that is concerned with how it will regulate Short-Term Rentals review its condo documents and update them to explicitly reflect its desired policy on how it will treat individual unit owners who may wish to register a Short-Term Rental unit.

What about the negative impacts of Short-Term Rentals?

In Spring 2018, the Planning Department worked with AirBnB to create a survey available to Brookline AirBnB hosts asking to collect information on hosts' experiences. The survey sought to better understand why hosts are renting out their units (or parts of their units), how they benefit from being a host, how they operate their Short-Term Rental, any concerns or negative experiences they have had and any thoughts they had on potential regulations. A total of 46 Short-Term Rental Operators responded to the survey, which was linked to the AirBnB host platform website as well as on the Planning Department's website. The results provided insight into the landscape of existing Short-Term Rentals in Brookline. The Town did not use any information collected from operators to issue violations or enact enforcement against operators. 76% of respondents stated that they use the extra income from short-term renting to pay their mortgage/rent and 43% responded that they use it to pay student loans or save for education. 41% responded that they use the income for repairs to their home.

Currently, any Short-Term Rental operating in Brookline is operating in violation of zoning, despite the fact that most hosts are unaware of this. The Building Commissioner is handling violations on a complaint-driven basis and the number of overall complaints has been relatively low. Since 2015, the total number of complaints submitted against a Short-Term Rental operator has been approximately 30. The nature of these complaints has included the operation of a business, violation of condo rules and regulations, and questions about whether Short-Term Rentals are legal in Brookline.

The number of overall complaints against Short-Term Rentals has been low (particularly compared to the overall estimate of total units) but has allowed the Town to gain an understanding of the most common complaints and negative impacts arising from Short-Term Rentals. The Town recognizes that the operation of Short-Term Rentals, particularly in large quantities, is not without negative impacts on neighbors and neighborhoods. The most common issues that have been brought to the attention of Town staff and officials have included late-night and early-morning arrivals, trash disposal, knocking on the wrong door, car doors slamming at odd hours, and noises in halls and corridors.

Staff has also recognized that without any regulations in place, it's not possible to set out specific requirements for rules and guidelines that all Short-Term Rentals hosts must follow and to enforce such rules accordingly. A benefit of setting up regulations is that it allows the Town to establish robust requirements for Short-Term Rental operators which it currently lacks in any form.

Why change the status quo?

Although Short-Term Rentals have been operating in Brookline for some time without regulation and with a relatively low number of official complaints, the Town has numerous reasons for enacting regulations in a timely manner.

The first and most important reason is in response to action at the State level. On December 28, 2018, the legislature approved 2018 Mass. Acts Ch. 337, "An Act Regulating and Insuring Short-Term Rentals" (the "Act"). The Act (which took effect on July 1, 2019) provides for the creation of a State registry of "operators" of certain types of lodging accommodations, including Short-Term Rentals. The Act amended the local option room tax to include Short-Term Rentals as among the lodging accommodations that are subject to the room tax. Municipalities such as the Town of Brookline that previously accepted the local option room tax do not need to take any additional steps to recoup the room tax from Short-Term Rentals. The Act also established certain safety and insurance requirements, while enabling Cities and Towns to enact local regulations, license/registration requirements, and health and safety inspections.

As a result of this new legislation, the State is now collecting a state excise tax of 5.7% as well as a local option room tax of 6.0% from all operators of Short-Term Rentals. This tax will then be remitted to the municipality in the same way the current room tax is collected and remitted for hotels, bed and breakfasts, etc. Effective July 1st, 2019, Brookline Short-Term Rental hosts must register with the State and begin reporting and submitting this tax to the Department of Revenue (platforms such as AirBnB will do this for the operator) and shortly thereafter, Brookline will begin receiving the collected taxes. Town staff believes that it is undesirable for the Town to be collecting tax on a use that is currently prohibited in Brookline and that in order to reasonably justify the benefits being received from this tax collection, the Town should put in place regulations to allow Short-Term Rentals in a way that will encourage operators to register their units with the State and submit the proper taxes accordingly.

Second, surrounding communities have adopted regulations for Short-Term Rentals. Cambridge adopted regulations in Spring 2017, Boston adopted their own set of regulations in Summer 2018, Somerville passed regulations in Spring 2019, and Newton has passed regulations in September 2019. With all surrounding communities having either established or considering establishing regulations, Brookline has numerous models to look to for precedent on what has been successful in communities that have similar landscapes, as well as similar challenges when it comes to the popularity of Short-Term Rentals. With many Short-Term Rental options in the region, Brookline should seek to remain competitive in this market, while maintaining a balance of strict regulation, as other communities have. Another benefit to the town from Short-Term Rentals is likely the impact on business and retail – many Short-Term Rental guests eat and shop in our business districts during their stays in Brookline. 87% of hosts who responded to the survey stated that they provide their guests with a local business guide to shops and restaurants that direct guests to get out and explore everything Brookline has to offer.

Third, by regulating the landscape of Short-Term Rentals, Brookline will be able to control numerous aspects of the Short-Term Rental market that it currently is unable to. There are some types of Short-Term Rentals that are less desirable and that the Town would not like to see continue to operate within Brookline. Currently, without regulations, any type of Short-Term Rental is able to operate unless a formal complaint has been filed against the operator. Specifically, Brookline would like to ensure that Short-Term Rentals do not have any negative impacts on the housing stock and the rental market. These negative market impacts take place when Short-Term Rental operators who are not the primary resident purchase units that they do not reside in for the sole purpose of renting them out as Short-Term Rentals. These types of units are often referred to as “professionally managed,” which means an off-site manager manages the unit and the bookings but does not reside within the unit or the building. Investors can purchase numerous units across Brookline for this purpose, or even an entire building. This type of Short-Term Rental results in apartment units that would otherwise be available for long-term leases being removed from the rental market and makes them unavailable to people looking for permanent housing in Brookline. This type of unit model would be prohibited under these regulations.

Lastly, regulations will allow the Town to set up a mechanism to monitor, track and enforce against both units that have not followed the required registration process AND units who have registered but are not following the required provisions. Currently, due to the unclear nature of the Town’s regulations, enforcement against Short-Term Rental options has been challenging. There are no specifications on what Short-Term Rental hosts can and cannot do and there are no specific penalties in place, because Brookline is currently silent on the topic overall. By explicitly setting forth rules and regulations pertaining solely to this use, the Town will be in a much stronger position to take action against any operators that are not following protocol.

Are there any financial impacts to the Town?

Staff of the Select Board Office, Planning Department, Building Department, Health Department, and Fire Department all contributed to the drafting of this warrant article. One of the drafting priorities was ensuring that the proposed regulations would not impose a heavy burden on any of the involved departments. The cost of initial inspections conducted by the

Building Department, Health Department, and Fire Department will be included in the application fee for a Certificate of Registration and any additional necessary inspections will involve a re-inspection fee. The processing of applications will be handled by an existing employee of the Select Board's Office that currently handles the licensing process for other uses. Therefore, Town staff does not expect the proposed regulations to incur significant additional costs, and any costs that are incurred will be more than accounted for by the room tax received from the state and the application fee, which the Select Board can adjust at will.

What kind of outreach has the Town done to create these regulations in a way that is fair to all stakeholders?

Town staff has made strong efforts to learn about the existing practice of (usually illegal) short-term rentals in Brookline by reaching out to a wide group of stakeholders to gain feedback and a nuanced understanding on the various positions towards Short-Term Rentals.

Whether there is a need to legalize and regulate STRs has been an intermittent discussion over five years with the Liquor License Review Committee, the Zoning By-Law Committee, and other Boards and Commissions in Town. Following meetings with the Zoning By-Law Committee in Fall 2018, most Committee members stated they thought that Town Meeting would favor legalizing some manner of Short-Term Rentals. However, they agreed with the staff's suggestion that further outreach should be done with a variety of voices, including property managers, condo associations, neighborhood associations, Short-Term Rental operators, hotels and inns, etc.

When the state law passed regarding rooms tax for short-term rentals in Winter 2018, the Select Board Chair requested staff immediately work on a zoning by-law that would legalize short-term rentals on an interim basis. However, we did not move forward submitting a by-law to Town Meeting for two reasons: doing so could create "grandfathered" nonconforming uses if and when additional study and analysis led to a Town Meeting vote that restricted or banned some types of short-term rentals in Brookline. Additionally, the state legislation did not require municipalities to legalize the use prior to collecting tax revenue from those operators that self-registered with the state.

Focus groups included two sessions with Short-Term Rental operators (Summer 2019), a Brookline Neighborhood Alliance Public forum (October 2019), and a meeting with condo associations and property managers (November 2019).

Additionally, one-on-one meetings in Fall of 2019 included a conversation with MASCO, two meetings with three of our bed and breakfast operators, and multiple meetings with STARS of Boston. Below are summaries of those discussions and the positions of those stakeholders:

Short-Term Rental Operators: Most hosts have been interested in speaking with staff and are in support of regulations because they would like to be able to operate legally and do not want to be in fear of shutting down. Some hosts have already been shut down and would like to be able to

operate in the future. Some hosts only host guests for greater than 30 days and would therefore not be subject to these regulations. However, those that host guests for shorter amounts of time have seemed generally receptive of regulations including the proposed fees, inspection and registration process. They would like as few limitations as possible. Many operators are seniors or empty nesters who rely on this income to stay in their homes.

Innkeepers: Three innkeepers stated that AirBnB/other platforms are not their competition and not a main concern. Some of these inns use AirBnB to advertise their own rooms. Larger concerns for their businesses are the online comparison booking sites like Expedia or Hotels.com where prices are compared between various accommodations and they are rarely the least expensive and thus lose business. Additionally, they are very interested in pursuing with the Town ways that they could be regulated more like Short-Term Rentals than lodging houses – especially their current requirement to have a room dedicated for an “on-site manager” 24 hours/day. If Short-Term Rentals were legalized, they thought that the Town would likely have more resources and prioritization to regulate these operations. They would like for smaller inns to be regulated and taxed at the same rate as short-term rentals.

Brookline Neighborhood Association: The BNA did not make any specific comments or input on the regulations.

STARs: STARs is a business operating in Brookline and surrounding areas that manages numerous units and connects STR guests with units for stays often relating to medical treatment at local hospitals. STARs manages these units and provides cleaning, servicing, etc. (including the new jobs created that came with this business model). However, because STARs professionally manages these unit and is NOT the primary resident or owner of any of them, they would not be allowed to operate under the proposed regulations. Due to their close network with many property managers in Town, staff has suggested numerous ways that STARs could adjust their business model to identify a primary resident AND still charge an operating/permitting/cleaning/advertising fee to rent the space out when the primary resident is not using the space. Alternatively, STARs could help broker and manage apartments that are leased to a corporate entity (such as traveling nurses’ associations). Additionally, STARs has told us they are working with individual Council members in Cambridge and Boston to provide an exemption for uses associated and supporting medical patients and the Longwood Medical Area; no specific legislation has yet been proposed that we are aware of. Staff is concerned about the practical ability for Town enforcement operations to discern Short-Term Rental operators that are servicing medical patients.

Condo Owners and Property Managers: Numerous residents expressed concern with how property managers who oversee condo associations would deal with Short-Term Rentals. Short-Term Rental regulations will NOT supersede condo by-laws/policies. The informational meeting was helpful to those condo owners and property managers, and a local attorney offered some specific suggestions for how condo associations could handle STRs (whether or not they are legalized in Brookline). Additionally, the group suggested that the language should not rely on definitions such as “primary residence” and instead include the number of days/year that a rental can occur.

From this outreach, the proposed draft legislation changed primarily in the following three ways:

- Creation of specific public health and fire safety regulations within the registration process beyond those otherwise necessarily required in the Building Code
- Allowance for renters to also be able to host short-term rentals (not just property owners)
- Addition of limit on number of days a short-term rental can be rented
- Limitation of owner-adjacent units to 2-family buildings
- Increased minimum rental period to 24 hours
- Required that condo association board certify that STRs are allowed under the condominium documents.

ARTICLE 23

Submitted by: Select Board

The purpose of Article 23 is to establish the Building Commissioner, Director of Health and Human Services, the Fire Chief, and the Town Administrator as enforcement agencies as it relates to the proposed Article 5.11 (Short-Term Rentals). It should be noted that the Police Department is, by default, an enforcing agency for Article 5.11. Further information on the proposed Article 5.11 can be found under Article 22.

ARTICLE 24

Submitted by: Land Bank Study Committee, Heather Hamilton, Chair

Community Preservation Act (MGL Ch 44b) Summary

The Massachusetts Community Preservation Act (CPA), MGL Chapter 44B , was approved on September 14, 2000. The CPA allows communities to spend money for:

- Acquisition, creation and preservation of open space;
- Acquisition, preservation, rehabilitation and restoration of historic resources;
- Acquisition, creation and preservation of land for recreational use;
- Creation, preservation and support of community housing;
- Rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created with CPA funds.

The acceptance of the CPA by Town Meeting and the subsequent acceptance by the town's registered voters of a ballot question are the prerequisites to the CPA taking effect. The CPA allows a community the discretion to enact a surcharge of not more than 3% of the annual real

estate tax levy. The amount of the surcharge on the real estate tax levy is not included in the calculation of total taxes assessed for purposes of determining the Proposition 2½ limit.

The CPA exempts from the property tax surcharge those taxpayers receiving an exemption authorized by M.G.L. c. 59 or any other law, such as, charitable institutions, the Commonwealth, cities and towns, certain classes of qualified elderly, widows and veterans, etc. (These are statutory exemptions.)

The statute allows a town to include optional exemptions of \$100,000 for each residential property, an exemption for owner-occupants who would qualify for low income housing (80% of area median income) or low and moderate-income senior housing (80% or 100% of area median income). If a town chooses to do so, a town may also exempt class three, commercial, and class four, industrial taxpayers in those cities or towns with classified tax rates, with or without a \$100,000 exemption.

Under the terms of the CPA statute the Select Board must appoint a Community Preservation Committee (CPC). The statute charges this committee with evaluating proposals and recommending CPA spending to Town Meeting. The statute requires that Town Meeting appropriate, or set aside for later spending, not less than 10% of the annual CPA revenues in the Community Preservation Funds (CPF) for each of the three categories: Open space/recreation land, historic preservation, and affordable housing. The remaining 70%, less up to 5% appropriated for administration, may be distributed beyond the required 10% among these three CPA categories, in accordance with the recommendations of the CPC and the approval of Town Meeting. Up to 5% of the annual revenues can be used for administrative expenses related to carrying out the community preservation program. CPA funds may be used as the local match for other grants that would fund CPA eligible projects

Upon the acceptance of the CPA, a town must establish a CPC composed of not less than five members from designated town boards (conservation commission, historical commission, parks and recreation commission, housing authority, and planning board) and up to four additional members selected through procedures to be established by the town. The CPC recommends annually to Town Meeting for approval of the various eligible projects or properties for which the CPF funds are to be expended. The CPA requires the CPC to consult with the various boards and commissions in order to determine what recommendations to make during the year. The CPC may make recommendations to Town Meeting for expenditure of funds for the purposes designated in the CPA. The Legislature amended the CPA, effective April 7, 2005, to allow a city or town to appropriate money in any year from the CPF to an affordable housing trust fund (AHTF). If Town Meeting rejects the CPC recommendation for distribution of funds for a particular project, the unspent funds go back into the CPF. One of the principal guidelines set out in the CPA for the spending of funds is that the funds cannot be used to replace existing operating funds but only to augment them. The Department of Revenue has interpreted this guideline as prohibiting the use of CPA funds to supplant operating funds that already have been appropriated.

In addition to the funds raised through the application of the surcharge, the town will receive funds from the Massachusetts Community Preservation Trust Fund distributed in three stages: matching, equity, and surplus. The principal stage is the first-round matching distribution in

which the town will receive an amount not less than 5% and not more than 100% to match the funds raised by the town through the surcharge. The funds received from the State are derived from the surcharge fee added onto all document recording fees (except for the filing of declarations of homestead) at the county registry of deeds in which the community accepting the CPA is located. The amount of the funds distributed annually by the State to the town is based upon the amount which the town has raised annually through June 30 of each fiscal year as a result of the town's surcharge and certified to the State. (When, as happened this last year, Massachusetts ends with a surplus, the Commonwealth may allocate some of this surplus to the CPA Trust Fund. For the 2020 distribution, for example, the Commonwealth added \$20 million to the amount raised from recording fees.)

A community that accepts the CPA may revoke its acceptance any time after five years of its acceptance by the same manner in which the CPA was accepted. During the five years, if the community wishes to amend the amount of the surcharge or change the exemptions, they must do so by the same process by which the CPA was accepted. The surcharge, in the five-year period, however, may be reduced by the community to an amount that is greater than zero, e.g., 0.01%.

Community Preservation Act exemptions

The Community Preservation Act mandates certain statutory exemptions, as follows:

Chart 1: Typical Number of Statutory Exemptions Granted in Brookline

Description	Ch.59, Sec.5 Clause	FY2017 #Granted
Surviving Spouse	17D	5
Veteran (10% Disability)	22	46
Veteran (loss of one hand, foot or eye)	22A	0
Veteran (loss of two hands, feet or eyes)	22B	0
Veteran (special housing)	22C	0
Veteran (certain widows of soldiers)	22D	0
Veteran (100% disability, cannot work)	22E	10
Blind	37A	37
Elderly	41C	11

The CPA also allows additional discretionary exemptions as explained in the summary, above. The Land Bank Study Committee, the petitioner, voted to recommend in this article exemptions for owner-occupants who would qualify for low income housing (80% of area median income) or low and moderate-income senior housing (80% or 100% of area median income).

DISCUSSION

The Brookline Housing Authority needs substantial amounts of money for new housing. A balanced additional affordable housing approach should also be providing more funds for open space, parks and playgrounds. With many significant historic structures in Town, historic preservation and possibly adaptive re-use of historic structures is an important goal to many Brookline residents. Adopting the Community Preservation Act, by providing a dedicated source of funds for these purposes, may free up money in the town budget for other priorities.

Brookline faces difficult budget choices over the next five years, which will almost certainly mean requests for further overrides and debt exclusions. Additional overrides and debt exclusions impose a particular hardship on low-income residents, who are already struggling to pay taxes rising at rates well above 2.5% due to overrides and debt exclusions already in the pipeline.

Unlike an override, the CPA surcharge on Tax Bills is structured in such a way that low/moderate-income households are entitled to apply for exemption from the surcharge. Also, CPA revenue is matched by the state's Community Preservation Trust Fund, which for the current fiscal year is expected to be at a rate of 31%. Money for the CPA state match comes from fees and taxes paid by residents and business firms in every city and town, including Brookline. Brookline currently gets nothing back from the funds (\$162,560 in 2019) deposited in the CPA Trust Fund, but would if Brookline adopts the CPA.

Boston, Cambridge, and Newton are among 176 municipalities that have adopted the CPA. Adopters include one-half the municipalities in Massachusetts but well over one-half of taxpayers either by number or by state and local taxes paid.

In order to estimate the revenue from the CPA surcharge, adjustments must be made to take into account the financial impact of the allowed exemptions. This involves estimating the number of residents who are granted exemptions. Chart 1 lists the number of statutory exemptions granted in Brookline in a typical year. Eligibility for the low/moderate-income exemptions, on the other hand, is a function of household size, household income, and the area median income (AMI) threshold that applies for each household, either 80% of AMI or 100% of AMI. The number of eligible households, among Brookline's approximately 12,500 owner occupied households cannot be readily determined from available information. If this number were known, an estimate of the number of potentially eligible households, and the number who would actually apply and be granted an exemption, would help to reduce uncertainty regarding the financial impact of the low-income exemptions. But due to the lack of this required information such a method is neither preferable nor feasible.

Therefore, rather than relying on such a method, instead, Chart 2 shows a projection based on Massachusetts Department of Revenue data for communities that only allow the statutory exemption, and for communities that offer, in addition, the low/moderate-income exemptions (Chart 4). Based on these data for 11 communities offering the low/moderate-income exemptions, the median shrinkage due this exemption is 0.68%. For Brookline, this 0.68% projected shrinkage in CPA revenue would be \$15,940. Adding to this projection to the \$11,720 median experience for 19 communities with statutory exemptions only, the shrinkage contemplated by this warrant article would total 1.88% or \$27,660. This amount, subtracted from

the proposed surcharge, and then including an estimated 31% state match, results in estimated net CPA revenue of \$3,034,536.

Chart 3 estimates the impact of the CPA surcharge, with the statutory and low/moderate-income exemptions on various property classes, with and without the residential exemption. (The chart also indicates the possible impact of the further \$100,000 assessed value exemption allowed by the CPA, but this is for information purposes only because this exemption is not contemplated for this article.)

Chart 4 shows of data for CPA participating communities that offer no exemptions beyond the statutory and communities that offer both the statutory and the low/moderate-income exemptions. The median for the 11 communities that offer low/moderate-income exemptions is 1.18% and the median for the 19 communities that offer no exemptions beyond statutory is 0.50%. (The difference, 0.68% (1.18 – 0.50), would be an estimate of the change in the shrinkage due to the additional low/moderate-income exemptions.)

Chart 5 lists CPA experience for a number of neighboring communities.

Chart 2: Projected Revenue for Brookline from a 1% CPA Surcharge

Based on the FY20 Levy and anticipated state match.	1% Surcharge with statutory exemptions only	1% Surcharge with statutory & low-income exemptions (recommended)
FY20 Total Tax Levy on Real Property	\$234,410,004	\$234,410,004
Proposed 1% CPA Surcharge	\$2,344,100	\$2,344,100
Shrinkage due to Statutory Exemptions, Abatements, Senior work-off (estimated at 0.50% based on experience of 19 towns with no other exemptions)	\$11,720	\$11,720
Shrinkage due to Low/Moderate Income Exemptions (estimated at 0.68% based on experience of 11 additional towns with the low/moderate-income exemptions but no other except for those above)		\$15,940
Estimated reduction in	\$11,720	\$27,660

revenue due to
exemptions (estimated
at 1.18% for
combined statutory
and low/moderate-
income)

Net Funds from Surcharge	\$2,332,380	\$2,316,440
State Match at 31%	\$723,038	\$718,096
Estimate of CPA funds available	\$3,055,417	\$3,034,536

Chart 3: Impact of the Proposed 1% CPA Surcharge on Tax Bills in Brookline

With and without a first \$100,000 of value exemption.	Median Value SF Home with Residential Exemption	Median Value Condo with Residential Exemption	Median Value SF & Condo with Residential Exemption	Median Value 2 Family with Residential Exemption	Median Value 3 Family with Residential Exemption
FY20 Assessed Value	\$1,719,250	\$747,300	\$911,600	\$1,818,700	\$1,918,000
Less Residential Exemption	\$292,060	\$292,060	\$292,060	\$292,060	\$292,060
Equals Taxable Value	\$1,427,190	\$445,240	\$619,540	\$1,526,640	\$1,625,940
Times Tax Rate	0.945%	0.945%	0.945%	0.945%	0.945%
Equals Tax Bill	\$13,487	\$4,302	\$5,855	\$14,427	\$15,365
RE Tax as% of Ass. Value	0.784%	0.576%	0.642%	0.793%	0.801%
1% CPA Surcharge	\$135	\$43	\$59	\$144	\$154
	\$9.45	\$9.45	\$9.45	\$9.45	\$9.45
Surcharge w. 100K Exemption	\$125	\$34	\$49	\$135	\$144
RE Tax+ CPA SC as % of Ass. Val.	0.792%	0.580%	0.648%	0.801%	0.809%
Change due to CPA surcharge	0.007%	0.004%	0.005%	0.007%	0.008%
	Median Value SF Home without Residential Exemption	Median Value Condo without Residential Exemption	Median Value SF & Condo no Residential Exemption	Median Value 2 Family without Residential Exemption	Median Value 3 Family without Residential Exemption.
FY20 Assessed Value	\$1,719,250	747,300	\$911,600	\$1,818,700	\$1,918,000
Times Tax Rate	0.945%	0.945%	0.945%	0.945%	0.945%
Equals Tax Bill	\$16,247	\$7,062	\$8,615	\$17,187	\$18,125
Tax Bill as% of Ass. Value	0.945%	0.945%	0.945%	0.945%	0.945%
1% CPA Surcharge	\$162	\$71	\$86	\$172	\$181
Less Value of 100K exemption	\$9.45	\$9.45	\$9.45	\$9.45	\$9.45
Surcharge w. 100K Exemption	\$153	\$61	\$77	\$162	\$172
RE Tax+ CPA SC as% of Ass. Val.	0.954%	0.953%	0.953%	0.954%	0.954%
Change due to surcharge	0.009%	0.008%	0.008%	0.009%	0.009%
	Median Value Small Apt. Bldg w.o. Res. Ex.	Median Value Large Apt. Bldg w.o. Res. Ex.	Median Assessed Value Per unit, Small Apt. Bldg (4 units)	Median Assessed Value Per unit, Large Apt. Bldg (20 units)	
FY20 Assessed Value	\$2,822,600	\$7,416,650	\$526,663	\$350,692	
Times Tax Rate	0.945%	0.945%	0.945%	0.945%	
Equals Tax Bill	\$26,674	\$70,087	\$4,977	\$3,314	
RE Tax as% of Ass. Value	0.945%	0.945%	0.945%	0.945%	
1% CPA Surcharge	\$267	\$701	\$50	\$33	
Less Value of 100K exemption	\$9.45	\$9.45	\$2.36	\$0.47	
Surcharge w. 100K Exemption	\$257	\$691	\$47	\$33	
RE Tax+ CPA SC as % of Ass. Val.	0.954%	0.954%	0.954%	0.954%	
Change due to surcharge	0.009%	0.009%	0.009%	0.009%	

Chart 4: Data on Municipalities that have adopted the CPA with the low income or with no exemptions beyond those required by statute (data for FY19)

	Real Property Tax Levy	Surcharge Rate	Exemptions (beyond statutory)	Surcharge with no Exemptions	Surcharge Raised	Shrinkage due to Exemptions	% Shrinkage
Agawam	53,276,820	1.00%	low income	532,768	529,429	3,339	0.63%
Ayer	19,093,589	1.00%	low income	190,936	189,916	1,020	0.53%
Boxborough	18,490,234	1.00%	low income	184,902	183,464	1,438	0.78%
Dracut	48,746,712	2.00%	low income	974,934	964,944	9,990	1.02%
Dunstable	9,168,977	3.00%	low income	275,069	274,408	661	0.24%
Goshen	2,311,789	3.00%	low income	69,354	68,535	819	1.18%
Hull	28,876,173	1.50%	low income	433,143	428,027	5,116	1.18%
Millis	21,961,654	1.00%	low income	219,617	163,954	55,663	25.35%
Rehoboth	23,833,271	1.00%	low income	238,333	233,720	4,613	1.94%
Rowley	15,397,843	3.00%	low income	461,935	455,101	6,834	1.48%
Watertown	105,860,455	2.00%	low income	2,117,209	2,085,274	31,935	1.51%
						Median	1.18%
Barnstable	120,431,812	3.00%	none	3,612,954	3,596,331	16,623	0.46%
Bourne	48,504,661	3.00%	none	1,455,140	1,445,843	9,297	0.64%
Brewster	33,406,663	3.00%	none	1,002,200	997,502	4,698	0.47%
Dennis	43,026,351	3.00%	none	1,290,791	1,287,571	3,220	0.25%
Eastham	24,083,901	3.00%	none	722,517	719,164	3,353	0.46%
Falmouth	101,117,566	3.00%	none	3,033,527	3,010,745	22,782	0.75%
Harvard	21,084,669	1.10%	none	231,931	231,935	-4	0.00%
Harwich	48,466,005	3.00%	none	1,453,980	1,445,653	8,327	0.57%
Hudson	51,768,015	1.00%	none	517,680	515,080	2,600	0.50%
Mashpee	47,340,155	3.00%	none	1,420,205	1,412,734	7,471	0.53%
Newton	337,781,126	1.00%	none	3,377,811	3,381,289	-3,478	-0.10%
Orleans	29,859,176	3.00%	none	895,775	893,294	2,481	0.28%
Peabody	105,219,469	1.00%	none	1,052,195	883,904	168,291	15.99%
Plymouth	168,793,464	1.50%	none	2,531,902	2,519,026	12,876	0.51%
Sandwich	58,752,307	3.00%	none	1,762,569	1,755,347	7,222	0.41%
Truro	16,097,655	3.00%	none	482,930	479,830	3,100	0.64%
Wellfleet	17,549,368	3.00%	none	526,481	525,614	867	0.16%
Westport	27,744,626	2.00%	none	554,893	551,830	3,063	0.55%
Yarmouth	59,444,529	3.00%	none	1,783,336	1,767,530	15,806	0.89%
						Median	0.50%

Source: Massachusetts Department of Revenue, Municipal Data

Chart 5: Data on Neighboring Municipalities that have Adopted the Community

Preservation Act (data for FY19)

	Real Property Tax Levy	Surcharge Rate	Exemptions (See key below)	Surcharge with no Exemptions	Surcharge Raised	Shrinkage due to Exemptions	% Shrinkage
Newton	337,781,126	1.00%	A	3,377,811	3,381,219	-3,408	-0.10%
Watertown*	105,860,455	2.00%	B	2,117,209	2,085,274	31,935	1.51%
Wellesley	139,638,307	1.00%	C	1,396,383	1,299,725	96,658	6.92%
Belmont	91,315,374	1.50%	C	1,369,731	1,213,313	156,418	11.42%
Cambridge*	387,938,476	3.00%	C	11,638,154	11,319,727	318,427	2.74%
Concord	387,938,476	1.50%	C	5,819,077	1,232,570	4,586,507	78.82%
Lexington	387,938,476	3.00%	C	11,638,154	4,911,223	6,726,931	57.80%
Needham	387,938,476	2.00%	C	7,758,770	2,476,655	5,282,115	68.08%
Arlington	122,677,165	1.50%	D	1,840,157	1,565,229	274,928	14.94%
Boston*	2,183,812,102	1.00%	D	21,838,121	20,218,071	1,620,050	7.42%
Waltham*	169,964,212	2.00%	D	3,399,284	3,010,831	388,453	11.43%

A: No exemptions beyond those required of all CPA communities

B: Low income

C: Low income, first \$100,000 residential

D: Low income, first \$100,000 residential, first \$100,000 commercial

*Among 15 Massachusetts municipalities that have adopted the residential exemption

Source: Massachusetts Department of Revenue, Municipal Data

Accomplishments among 176 CPA communities

Town Meeting members may be interested in browsing a sitewide database of hundreds of completed CPA funded projects arranged alphabetically by town. (Source: The Community Preservation Coalition)

<https://www.communitypreservation.org/databank/projectsdatabase/access>

Fiscal impact on Town department expenses

The CPA allows the Town to appropriate up to 5% of CPA revenue for administration, which would be approximately \$150,000, to defray Town expenses. The impact is likely to fall on certain departments, specifically to provide support for the Community Preservation Act Committee processing of project applications, awards, and monitoring. The assessor processes eligibility for exemption applications and tax bill adjustments.

Chart 6 shows demographic characteristics of Arlington, Watertown, and Brookline, the CPA Surcharge Rate and the number of CPA low-income exemptions for the former two, and whether these municipalities have a residential exemption. Arlington has between 90 and 100 applications for the CPA low-income exemption and Watertown has 87.

Based on the experience of these two fairly comparable municipalities, we might expect Brookline to have between 100 and 150 applications for the low-income exemption. The number could, of course, be much higher, or it could be lower for Brookline.

Chart 6:

Data for Arlington, Watertown, and Brookline on Demographics and the number of Low-Income exemptions from the CPA Surcharge

	Arlington	Watertown	Brookline
Number of Owner-Occupied Housing Units	11,349	7,910	12,574
Median Household Income of Owner-Occ. HH's	\$136,998	\$112,067	\$148,631
% of Own.Occ. HH's for which Housing costs exceed 30% of Income	24%	31%	27%
CPA Surcharge Rate	2.00%	1.50%	1.00%*
Number of low-income exemption applications	90-100	87	
as % of Own.Occ. HH's	0.84%	1.20%	
Residential Exemption	No	Yes	Yes

*CPA Surcharge Proposed for Brookline

(Source of Demographic Data: U.S. Bureau of the Census, American Fact Finder, Community Facts. Data are for the average of five years 2013-2017, with Income adjusted to 2017 dollars.

Staff from Planning and Community Development and Finance have reviewed this proposed article. Here is an estimate of resources needed for support.

Chart 7: Estimate for the CPA administration budget

CPA Administration					
POSITION	GRADE	# OF POSITIONS	SALARY	TOTAL SALARY	
Planner	T-6	1	68,886	68,886	
Office Assistant	C-5	0.50	47,440	23,404	18.5 hrs/wk
<i>PERSONNEL SUB-TOTAL</i>		<i>1.5</i>		<i>92,289</i>	
Fringe				32,301	Assumes 35% fringe
Advertising				5,000	
Supplies				2,000	
Dues				8,000	
<i>NON- PERSONNEL SUB-TOTAL</i>				<i>15,000</i>	
TOTAL				139,591	

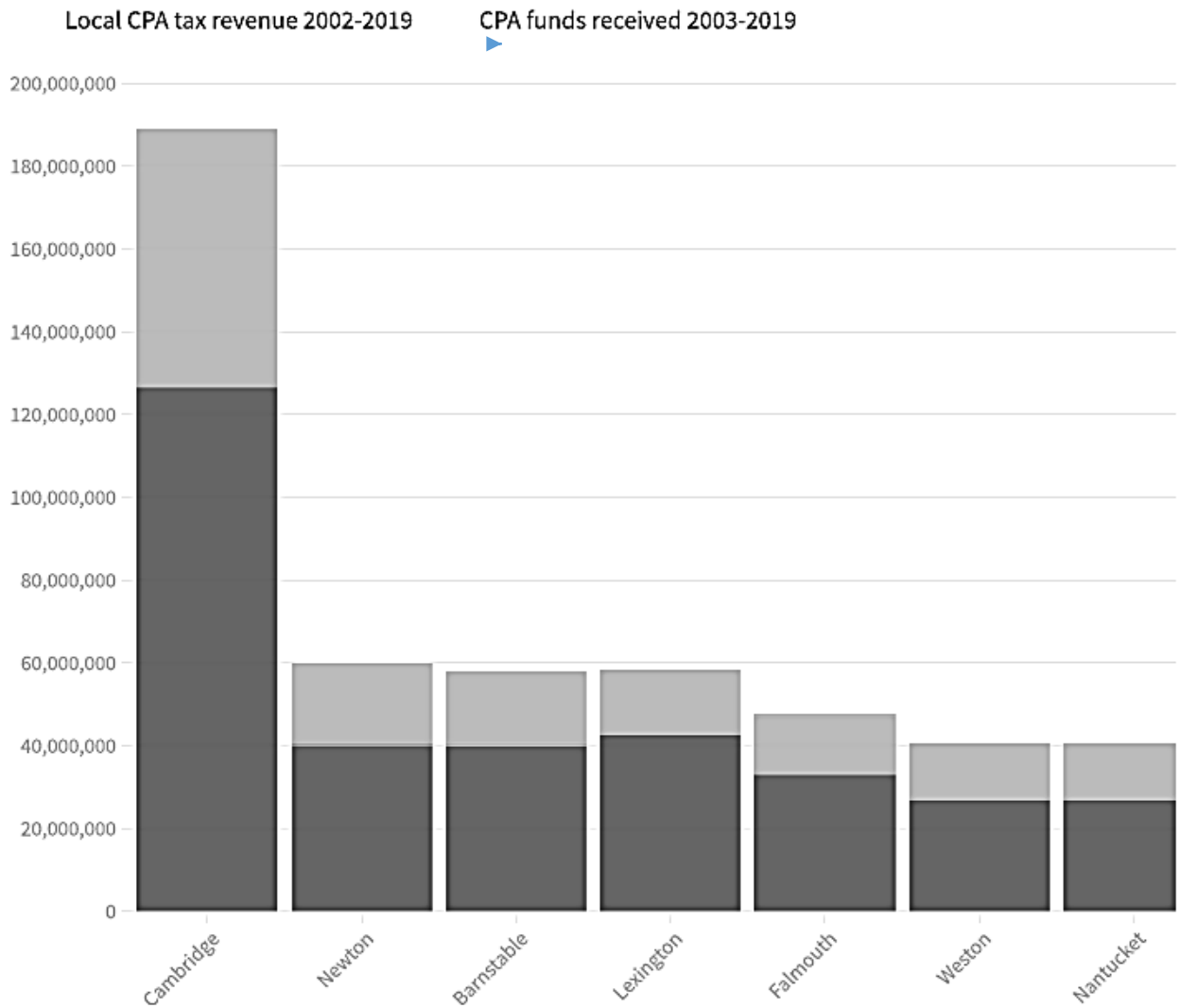
Given the limited time for review, staff estimates were based on previous experience working in CPA communities and knowledge of existing staffing in CPA communities. We did not include existing staff support, but only new resources that would be needed to manage this new program. Knowing how process-orientated Brookline is, the staffing estimate may be lower than what is actually needed (especially if the CPA committee and the AC review project recommendations). The Assessing staff believe if the exemptions are in the 100-150 range that it could be managed with existing resources, but depending on the requirements of the exemption and volume it could require more staff. It also may not be realistic to rely on a tax work off volunteer given the sensitive nature of the material needed to verify exemptions.

Obviously, the more spent on administration, the less for grants. On the other hand, when the Town budget is stressed, the CPA does allow the Town to recover at least 5% for overhead.

Chart 8:

CPA Top 10 Communities

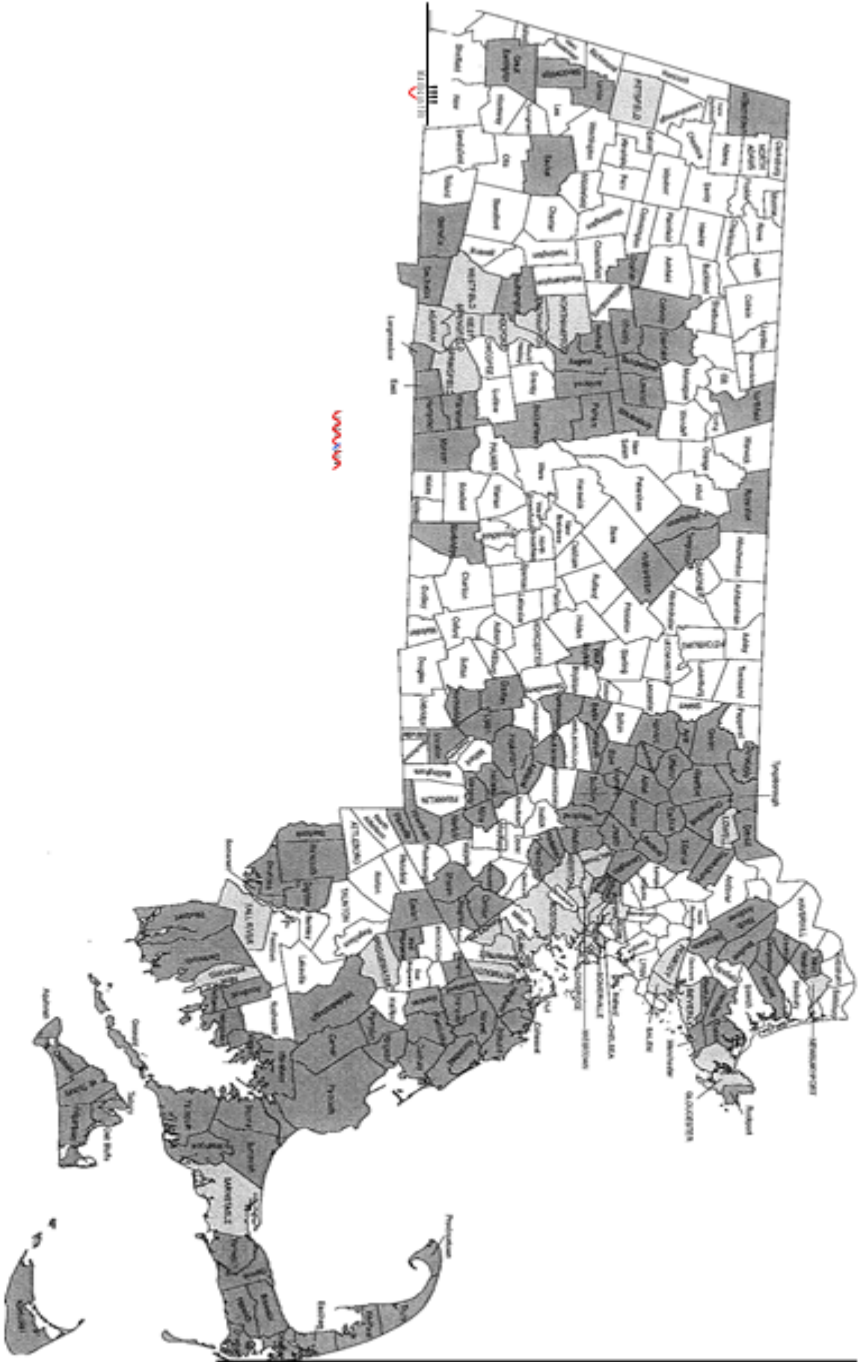
Municipalities to receive the most CPA funds since it started



** Top of bar (smaller): CPA matching funds received 2002 - 2019

*** Bottom of bar (larger): Local CPA Revenue 2002 – 2019

Community Preservation Act Adoption November 2019





NORFOLK COUNTY REGISTRY OF DEEDS
COMMUNITY PRESERVATION ACT (CPA)
SURCHARGES BY TOWN FOR CALENDAR YEAR 2019

TOWN	TOTAL
AVON	\$19,945
BELLINGHAM	\$74,615
BRAINTREE	\$143,415
BROOKLINE	\$162,560
CANTON	\$92,585
COHASSET	\$43,625
DEDHAM	\$95,680
DOVER	\$25,515
FOXBOROUGH	\$60,995
FRANKLIN	\$126,230
HOLBROOK	\$45,280
MEDFIELD	\$52,215
MEDWAY	\$52,215
MILLIS	\$35,195
MILTON	\$95,750
NEEDHAM	\$116,460
NORFOLK	\$42,300
NORWOOD	\$91,890
PLAINVILLE	- \$-30,500-
QUINCY	\$257,605
RANDOLPH	\$104,350
SHARON	\$60,715
STOUGHTON	\$105,130
WALPOLE	\$98,430
WELLESLEY	\$93,550
WESTWOOD	\$61,725
WEYMOUTH	\$205,230
WRENTHAM	\$52,960

ARTICLE 25

Submitted by: Sam Glasgow and other residents including members of the Small Business Development Committee

In the fall of 2017, Town Meeting authorized the Select Board to petition the state for 35 additional liquor licenses. A year later, the Legislature granted the Town 12 special liquor licenses, which were allotted to four "Target Commercial Areas": Brookline Village (3), Coolidge Corner (5), JFK Crossing (1), and Washington Square (3). These full-liquor licenses were granted with two important stipulations: the licenses will expire on October 11, 2020 (i.e.

two years after the authorizing legislation's effective date) and cannot be utilized outside of the Target Commercial Area to which they were allocated.

As of February 28, 2020, two of the three special liquor licenses originally allocated to Washington Square remain unused. Two Washington Square restaurants have expressed interest in obtaining one of these special liquor licenses, however, just ten months shy of the October 2020 deadline, no restaurants have officially begun the process of obtaining a special liquor license. To ensure that these remaining special liquor licenses do not go unused, the Small Business Development Committee proposes that the Town petition the Legislature for approval to redistribute any remaining special liquor licenses originally allocated to Washington Square to Coolidge Corner and/or Brookline Village, where there is greater demand for liquor licenses. All of the special liquor licenses allocated to Brookline Village and Coolidge Corner, Brookline's largest commercial areas, were claimed within a year.

This warrant article proposes that any remaining special liquor licenses in Washington Square be reallocated to Coolidge Corner and/or Brookline Village, and that the deadline for issuing any reallocated liquor licenses be extended by two years.

There are five possible permutations of how the Washington Square liquor licenses could be reallocated:

- In the event that two Washington Square liquor licenses remain:
 - o Scenario 1: Redistribute one license to Brookline Village and one license to Coolidge Corner
 - o Scenario 2: Redistribute two licenses to Coolidge Corner
 - o Scenario 3: Redistribute two licenses to Brookline Village

- In the event that only one Washington Square liquor license remains:
 - o Scenario 4: Redistribute one license to Brookline Village
 - o Scenario 5: Redistribute one license to Coolidge Corner

Through this warrant article, the Select Board would be authorized to file a petition reflecting one of the five possible permutations for redistributing any remaining special liquor licenses with the General Court in the following form, the final version of which is anticipated to be included in the Town Meeting Combined Report:

To see if the Town will authorize and empower the Select Board to file a petition, in substantially the following form, with the General Court:

AN ACT AMENDING CHAPTER 268 OF THE ACTS OF 2018 TO REALLOCATE [INSERT NUMBER OF REMAINING WASHINGTON SQUARE SPECIAL LIQUOR LICENSES] REMAINING LIQUOR LICENSES FROM THE WASHINGTON SQUARE TARGET COMMERCIAL AREA TO BROOKLINE VILLAGE TARGET COMMERCIAL AREA AND THE COOLIDGE CORNER TARGET COMMERCIAL AREA

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. (A) Section 1 Paragraph (b)(1) of Chapter 268 of the Acts of 2018 is hereby amended by striking out the word “Three” and inserting in place thereof the following word – “[INSERT REVISED NUMBER]”.

(B) Section 1 Paragraph (b)(2) of Chapter 268 of the Acts of 2018 is hereby amended by striking out the word “Five” and inserting in place thereof the following word – “[INSERT REVISED NUMBER]”.

(C) Section 1 Paragraph (b)(4) of Chapter 268 of the Acts of 2018 is hereby amended by striking out the word “Three” and inserting in place thereof the following word – “[INSERT REVISED NUMBER]”.

(D) Section 1 Paragraph (f) of Chapter 268 of the Acts of 2018 is hereby amended by striking out the number “2” and inserting in place thereof the following number – “4”.

SECTION 2. This act shall take effect upon its passage.

The General Court may make vary the form and substance of the requested legislation within the scope of the general public objectives of this petition. Or act on anything relative thereto.

ARTICLE 26

Submitted by: Moderator's Committee on Elderly Tax Relief, contact Susan Granoff

This warrant article is the result of nearly two years of work by the Moderator's Committee on Elderly Tax Relief, which was created by a vote of the 2018 Annual Town Meeting. The Committee was asked to investigate ways to use Brookline's tax policies to deal with the dilemma faced by those elderly Brookline homeowners on fixed incomes who are finding it increasingly difficult to pay their rising property taxes and yet still want to continue living in their Brookline home; to study the extent of need among Brookline's senior homeowners; to identify those senior homeowners who especially needed additional property tax relief; to develop one or more new, fiscally responsible programs that went beyond existing Brookline senior tax relief programs in order to help needy seniors who were not being helped (or helped enough) by current town programs; and to report back to Town Meeting.

The new program that the Committee is proposing in this warrant article is modeled after the highly successful Means-Tested Senior Tax Exemption program that has been in effect in Sudbury since 2014, but Brookline's program would have one additional qualification requirement.

The proposed program would work as follows:

No Brookline senior homeowner who qualified would be required to pay property taxes on their home or condo greater than 10 percent of their total household income so long as they paid at least 50 percent of their total property tax bill after application of the Town's residential exemption.

In order to qualify:

- The residence must be owned and occupied by an age 65 or older senior whose prior

year's income would make the person eligible for the Massachusetts Circuit Breaker Income Tax Credit (*currently, the qualifying incomes for the Tax Year 2019 Circuit Breaker Tax Credit are \$60,000 for a single senior taxpayer, \$75,000 for a head of household, and \$90,000 for a married couple filing jointly*);

- If there is a joint owner, the joint owner must be at least 60 years of age;
- The applicant or joint owner must have resided in Brookline for at least ten consecutive years;
- The assessed value of the domicile is no greater than the prior year's average assessed value of a Brookline single-family residence (including both condos and single-family homes) plus 10 percent (*currently, that assessed value cap would be \$1,340,992*);
- The applicant must not own “excessive assets” that place the applicant outside of the intended recipients of this exemption;
- The application must be timely filed and complete; and
- The applicant must be unable to qualify for Brookline's Senior Tax Deferral for that year.¹⁸

Most senior homeowners who are likely to qualify for the new program would also likely qualify for the Town's Senior Tax Deferral Program. The one probable exception are those senior homeowners who have a conventional mortgage on their home. This is because the town is required by state law to hold a first lien on a Tax Deferral Program participant's home, while, under federal law, banks and other mortgage holders are required to hold first lien on all properties with conventional mortgages that are sold on the secondary market, and neither may waive this requirement. As a result, these senior homeowners are unable to obtain the written approval to participate in the Tax Deferral Program from all persons having a legal interest in their property that is required by the Tax Deferral and Recovery Agreement, the contract between the Town and each Tax Deferral Program participant.

Based on the Committee's analysis of micro-data collected by the American Community Survey (a part of the US Census Bureau), during the years 2013-2017, an estimated 100 Brookline senior homeowner households with low and modest incomes likely would have been unable to participate in the Town's Senior Tax Deferral Program because their home had a conventional mortgage. Additional data indicates that approximately 90% of these households were spending 50% or more of their total household income on housing costs, a percentage that is considered by most economists to be a sign of serious financial distress.

The proposed new program would be revenue neutral; it would not increase the Town's total

¹⁸ A majority of the Committee wanted to add the Tax Deferral requirement because they strongly believe that, if a senior homeowner can qualify to participate in the Town's Tax Deferral Program and thereby tap into the appreciated value of their home, the Town should not grant that senior homeowner any exemption. A minority of the Committee (40 percent) disagreed with what they considered to be an unduly restrictive requirement and would have preferred that the proposed program not include this added qualification.

revenues, costs, or budget. It would authorize a reduction in real property taxes for certain low to moderate income seniors which would be offset by a modest redistribution of the property tax burden within the residential class, resulting in a very small increase in the residential tax rate from 0.25 percent (a quarter of 1 percent) in the first year of the program's operation to between 0.25 percent to 1 percent in subsequent years, as set by the Select Board each year. Based on the town's current (FY2020) residential tax levy of \$196,322,386, a 0.25 increase would result in an annual property tax bill increase of \$11 for the median assessed-value condo and an increase of \$34 for the median assessed-value single-family home. The costs of the new exemption program would be unlikely to require more than a 0.25 surcharge. Any excess amount raised in any year that was not distributed as exemptions under the proposed program would be returned to the town.

We estimate that ultimately a maximum of about 100 Brookline seniors might qualify and that the maximum total amount of the exemptions granted would be about \$490,000, which would be equal to 0.25 percent of the town's current residential tax levy.

EXPLANATION

One of the many qualities that makes Brookline so special is that we as a community value diversity in all of its many forms, including age and economic diversity. We pride ourselves on being a community that values its senior residents, many of whom have contributed enormously to Brookline during the decades that they have lived here and many of whom continue to make invaluable contributions to our community, through their hundreds of hours of volunteer activities and the historical memory that our long-term Brookline residents provide. For this reason, the Town and various organizations such as Brookline's Council on Aging, the Brookline Community Aging Network, and the Senior Center have worked to provide programs that make it easier for our senior residents to age in place. These are some of the reasons that Brookline has been designated as an internationally recognized "age-friendly" community.

But, even in a generally affluent town such as Brookline, there are hundreds of seniors who are having increasing difficulty paying their real estate taxes. Many purchased their homes or condos decades ago, when they were employed full-time and their household incomes were much higher (and Brookline real estate taxes and fees were much lower). They love Brookline and the neighborhoods where they live and don't want to sell the residences they love and in which they have lived for decades.

This is often a hidden problem. Some of our senior neighbors may already be struggling with paying Brookline's rising real estate taxes and water/sewer fees, and yet they are too embarrassed to discuss this openly. To pay for these expenses, they may have been putting off needed home repairs or medical care or living very bare-boned lives. However, the problems they face are real and will only get worse if, as it appears likely, Brookline voters approve two or more additional tax overrides and debt exclusions during the next few years to meet the educational needs of our expanding school-age population.

The statistical data that our Committee examined indicates that the Brookline senior homeowners most in need and most likely to benefit from this warrant article proposal are unmarried senior women, living alone, particularly those 80 years of age and older.

According to our Committee's analysis of micro-data collected by the American Community

Survey for the years 2013-2017, nearly 12 percent of Brookline's senior homeowner households (about 475 households) had household incomes low enough to qualify them for the Massachusetts Senior Circuit Breaker Income Tax Credit on their state income taxes during those years and had a median annual household income of \$27,400. This group of senior homeowners were predominantly female (77 percent), unmarried (72 percent), living alone (63 percent), and quite elderly (50 percent were age 80 and over). Nearly 22 percent of these 475 households (103) had a mortgage on their home, and over 73 percent spent 30 percent or more of their total household income on regularly recurring housing costs (such as property taxes, mortgage payments, condo fees, utilities, and home insurance, but not including repairs or other extraordinary costs). Over 39 percent of these households (186) spent 50 percent or more of their total household income on housing costs (an amount that economists generally consider to be indicative of severe financial stress), and, of this group, 49 percent had a mortgage on their home.

The new program proposed in this warrant article would make a significant difference in the lives of many of these struggling senior homeowners.

It also has many other advantages:

- It's based on a time-tested model which has been in operation in Sudbury since 2014, and our Town would be able to benefit from Sudbury's experience with it.
- It's popular. Sudbury's voters overwhelmingly voted in favor of continuing its program in 2016, and other communities such as Concord have adopted a version of this plan or have petitioned the state legislature to do so.
- It would help senior homeowners with low and modest incomes and high housing expenses who can't qualify for the Tax Deferral Program and are clearly in need of additional assistance.
- It could assist an estimated 100 or more senior households currently, and perhaps more in the future.
- It would have a fixed, knowable, and relatively modest cost (about \$491,000 at 0.25%).
- It would be familiar to state legislators and, as a result, more likely to get legislative approval.
- It has been drafted in a way that gives the Town an opportunity to test out the Sudbury program in Brookline on a small scale and then, should Town Meeting choose, to extend Brookline's program to cover more seniors at a later date without having to undergo the time-consuming process of getting new approval by the state legislature.
- It would be flexible and able to take account of future overrides, debt exclusions, and inflation.
- It has the potential of providing much needed property tax assistance to more Brookline seniors than are currently participating in all of Brookline's current tax assistance programs combined.

The Moderator's Committee on Elderly Tax Relief spent nearly two years studying senior tax relief programs in other communities throughout Massachusetts and in other states. We were most impressed with the Sudbury program. For all of the above reasons, we believe that this proposed new Sudbury-modeled Brookline program has enormous potential for the Town and would provide welcome financial relief to a significant number of needy senior homeowners who are not being helped by the Town's current programs.

ARTICLE 27

Submitted by: Anthony Ishak, Kate Silbaugh TMM1, Maura Toomey TMM8, Nancy Daly TMM12

Tobacco is the only product that, when used as intended, will kill you. In an effort to protect all inhabitants, this warrant article proposes to reduce the potential impact of tobacco on future generations and stay ahead of tobacco's attempts to addict new users. This warrant article helps to prevent the future targeting of not only underage users but the extended social circle that can possibly provide increased access (NYTS 2018 study).

As society incrementally increases tobacco restrictions, youth initiation has decreased. This is another step towards preventing underage users from starting and helping the most motivated demographics to quit (AM J Prev Med 2015 Dec; 49(6):939-44). Seventy percent of adult smokers want to quit (Morbidity and Mortality Weekly Report. 2017; 65 (52):1457-64) and this warrant article can increase their chances of success. Commonly known as Generation X, those born after 1976 have experienced the most education against the toxic effects of tobacco, but may have been exposed to it underage (90% of tobacco initiation occurs underage) at a time when they are most vulnerable to making bad decisions thus leading to addiction. Studies have frequently shown that brain development continues beyond the age of 21 (multiple studies, Neuropsychiatr dis treat 2013; 9:449-61) which is the current legal age to purchase tobacco. Under current law tobacco use may be initiated at a time when the brain has not fully developed to make the decisions that can impact us for the rest of our lives. However, smoking cessation before the age of 40 has been shown to reduce the risk of death to nearly the same level as non-smokers (N Engl J Med 2013; 368:341-50). The demographics that most frequently try to stop smoking are those under the age of 44 but they also have low success rates—this warrant article aims to help those groups that may have already experienced the full effect of education, want to stop this toxic habit, and allow them to regain years that might have been stolen due to a decision made when they were vulnerable. It also helps to close loopholes where frequent violators of current law can continue to profit without concern for possible loss of license. It helps strengthen the town Department of Public Health and allows those retailers that abide by the laws to have a level playing field. This warrant article is the next reasonable step to help our town defend itself against the tobacco industry's continued attempt to find new ways of addicting new, vulnerable users. It is with these reasons that the bylaw should be changed to prevent the sale of tobacco products to anyone born after January 1, 1976.

ARTICLE 28

Submitted by: Mariah Nobrega

This warrant article is a home rule petition seeking authorization from the state legislature to allow for recall of townwide officials. This mechanism is intended for use in only the most grievous of circumstances; to provide some context, a chronological list of recalls in Massachusetts, as well as the circumstances in which each recall was sought, is available at https://ballotpedia.org/Recall_campaigns_in_Massachusetts. These cases illustrate why Brookline should have access to the recall mechanism, and why we must act *before* there is a need.

The language is based on a similar home rule petition from the Town of Westport that was successful in 2019. The Westport bill and legislative history can be seen at <https://malegislature.gov/Bills/191/S2275>. There are four principal differences between the proposed language and the Westport bill:

1. The original affidavit must have 500 signatures instead of 200, reflecting Brookline's larger population (60,000 versus Westport's 15,000)
2. The paper petition blanks must be provided for 2x the number of required signatures instead of 5x, which attempts to reduce the amount of paper used (a green measure).
3. A mechanism has been provided for petitioners to collect more signatures for either the affidavit or recall petition if they are found during the signature certification process to not have sufficient signatures.
4. The date for the election is set for 64-90 days from when the official is notified, instead of 64-90 days from when the Select Board choose to hold it.
5. The official being recalled may not also appear as a candidate (voters who wish the official to remain in office may do so by voting against the recall.) This is in response to what occurred in the recall of Jasiel Correia, in Fall River last year, in which a majority voted to recall him but because there were several people running against him, his opponents split the vote, leading to him receiving a slight plurality and being re-elected.

The hurdles for filing a recall election are significant, as are the hurdles to remove an official from office. As outlined in the legislation above, there would need to be:

1. 500 registered voters who sign an affidavit to request a recall petition.
2. 10% of registered voters who sign a recall petition. As of Dec 2019 this was nearly 38,000 voters, so the petition would require signatures from a corresponding nearly 3,800 voters.
3. a majority of those voting actually vote for the recall.

ARTICLE 29

Submitted by: Neil Gordon, TMM1

It is common practice in Brookline for polls to be “dressed” in advance of election day. Under cover of darkness on election eve, supporters of candidates and/or ballot questions scurry from polling place to polling place, signs, staples and step stools at the ready. On election day, voters are greeted by an array of signs which, in the aggregate, say to us, “This is what democracy looks like.”

Common practice in Brookline, yes. Legal practice in Brookline, no.

The sign bylaw is clear: “No person shall erect, display or maintain a temporary or permanent sign upon any property owned by the Town of Brookline or upon the public way of any other governmental body.” On election day, by custom, those charged with enforcement simply look the other way.

The proposed bylaw amendment codifies what’s implicitly allowed by custom. The change will protect us (i) against strict enforcement of the sign bylaw, by elected officials and Town employees, (ii) against demands for enforcement from members of the public, and especially against enforcement and demands for enforcement that may be arbitrary and/or partisan, and (iii) from allegations of viewpoint discrimination in the manner in which the current bylaw is arbitrarily enforced.

As drafted, the proposed bylaw amendment goes beyond our current custom, and would allow signs to be displayed (i) at schools and libraries that are not polling places, a practice that, arguably, might increase voter turnout, and, (ii) “at any other place,” as a general placeholder.

There are no costs associated with codifying our current practice. Expansion of current practice to allow signs at other than polling places, might add modest costs related to the removal of abandoned signs.

ARTICLE 30

Submitted by: Jonathan J. Margolis

In resolving at least some disputes, the Town has sought to have those who bring claims against it agree that they will not disclose the terms of settlement agreements or discuss them publicly, and also that they will not disparage—that is, criticize—Town officials or employees. Such non-disclosure agreements contradict the vital premises of accountability and open government.

To begin with, taxpayers should know how their money is being spent, so the terms of settlements should not be concealed. At least equally important, those whom the town is willing to pay in settlement should be able to tell the citizens of the Town (and the world) what happened that caused them to bring claims. Allowing those who allege wrongdoing by the Town to speak out may well deter future bad acts, and it will allow the public to have the facts necessary for a full evaluation of how the Town operates. As Justice Brandeis noted, “Sunlight is the best disinfectant.”

In some instances, however, claimants may have interests in privacy that rightly exceed the public’s right to know. That is particularly true in cases where violations of civil rights involve highly personal information, or in which public disclosure could make it difficult or impossible for claimants to find employment in the future. For that reason, the proposed article includes an exception for claims brought under employment discrimination and civil rights laws (including but not limited to sexual harassment).

The arguments that have been raised against similar proposals in the past generally involve red herrings. For instance, it has been suggested that the public records laws permit disclosure; that is true, but they require only that certain documents be opened up—the individual may still be

kept from explaining what happened or how s/he was harmed. Similarly, the excuse that the Town could not answer allegations because personnel records are private ignores the fact that the Town could seek permission of accused employees to respond to charges, and that those employees could themselves speak out.

ARTICLE 31

Submitted by: Hadassah Margolis, TMM8, Michael Burstein, TMM12, Neil Gordon, TMM1

“There's not a man I meet but doth salute me / As if I were **their** well-acquainted friend” — Shakespeare, *Comedy of Errors*

In November, 2017, Town Meeting passed a resolution calling for the use of gender-neutral language in the conduct of Town business. Concurrently, Town Meeting amended the General and Zoning By-laws, changing all references to “Board of Selectmen” to “Select Board,” and “Selectmen” to “Select Board members.”

Consistent with the November, 2017 resolution, in November, 2019, Town Meeting further amended the General By-laws, changing all references to “Chairman” and one reference to “Chairperson” (i.e., of boards, committees and commissions) to the gender-neutral “Chair.”

This proposed by-law amendment, changing pronouns in the General By-laws to gender neutral, is a natural next step.

A companion article amends the Zoning By-law, in similar fashion.

A gender neutral (sometimes referred to as “gender inclusive”) pronoun is a pronoun which does not associate a gender with an individual. Traditional English does not, for the most part, provide gender neutral alternatives, but that’s quickly evolving. This from Merriam-Webster:

“More recently..., **they** has also been used to refer to one person whose gender identity is nonbinary, a sense that is increasingly common in published, edited text, as well as social media and in daily personal interactions between English speakers. There’s no doubt that its use is established in the English language, which is why it was added to the Merriam-Webster.com dictionary this past September.” (They was Merriam-Webster’s Word of the Year for 2019.)

A review of the General By-laws shows the following:

90 uses of "his"
27 uses of "his or hers"
23 uses of just "he"
14 uses of "his/her"
8 uses of "him"
6 uses of "he or she"

1 use of "her," as follows: "If the dog officer determines that a dog in her oestrus cycle"...

There are no significant costs associated with this proposed By-law change.

ARTICLE 32

Submitted by: Hadassah Margolis, TMM8, Michael Burstein, TMM12, Neil Gordon, TMM1

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A gender neutral (sometimes referred to as “gender inclusive”) pronoun is a pronoun which does not associate a gender with an individual. Traditional English does not, for the most part, provide gender neutral alternatives, but that’s quickly evolving. This from Merriam-Webster:

“More recently..., **they** has also been used to refer to one person whose gender identity is nonbinary, a sense that is increasingly common in published, edited text, as well as social media and in daily personal interactions between English speakers. There's no doubt that its use is established in the English language, which is why it was added to the Merriam-Webster.com dictionary this past September.” (They was Merriam-Webster’s Word of the Year for 2019.)

A review of the Zoning By-laws shows the following:

1 use of "he"

18 uses of "his/her"

There are no significant costs associated with this proposed By-law change.

ARTICLE 33

Submitted by: The Long-Term Policy and Planning Sub-Committee of the Advisory Committee

In its final report, the Brookline Fiscal Advisory Committee (“BFAC”) recommended that the Town amend Section 2.1.14 of the Town By-Laws to include the requirement that every three years, all Town Meeting Members attend at least one informational/training meeting that covers the Town budgeting process and financial matters and is conducted by Town Hall staff and/or a small group of Advisory Committee members. BFAC made this recommendation for two reasons. First, during their year-long research, which included many conversations and multiple meetings, BFAC members came to the realization that the level of comfort and degree of familiarity that members of Town boards, committees, and commissions have with financial terminology, concepts, and topics varies significantly. It is important that any analysis or discussion of Town finances presented in reports, at committee meetings, and at Town Meeting be understood by participants with varying levels of financial literacy. Second, BFAC members are of the strong belief that any elected or appointed individual should have at least a basic understanding of financial matters impacting the Town.

This warrant article asks Town Meeting both to accept the recommendation of BFAC and to expand the education requirement to include all members of the Advisory Committee as well as to all Elected and Appointed Officials appointed to any Board or Commission that has or could reasonably be expected to have input into any matter affecting the financial situation of the Town.

ARTICLE 34

Submitted by: Neil Gordon, TMM1

GENERAL DUTIES:

Most recently, a number of members of the Advisory Committee have questioned the value to Town Meeting of the Committee’s recommendations with regard to warrant articles where the Committee has no better insight or expertise than Town Meeting as a whole. Articles relating to the renaming of the Coolidge Corner School are a recent example. The question of the value added by an AC review invariably leads to the question of whether the general bylaw requires the Advisory Committee to take a position, pro or con, on every article, or whether the Advisory Committee’s recommendation can be, in effect, “use your own judgment.”

The current bylaw states that, “The Committee shall consider any and all municipal questions, including appropriation requests and proposed action under all articles in the warrant for a Town Meeting, for the purpose of making reports **AND** recommendations to the Town.” This is in contrast with state law, which uses identical language but for using the words “... reports **OR** recommendations...” (In each case, emphasis added.)

The proposed change, which would conform the general bylaw to state law, would clarify the charge of the Advisory Committee regarding its consideration of warrant articles. Petitioner believes this minor but meaningful change would still require the Advisory Committee to consider all warrant articles, but that such consideration could include questioning whether or not the Committee would (i) make a recommendation to Town Meeting, or more simply, (ii) report to Town Meeting that it was not making a recommendation.

Petitioner anticipates that early in its process of reviewing warrant articles, the Advisory Committee would hold a public hearing solely on the question of which Articles to further review and to what extent, and decide accordingly.

RECORDED VOTES:

Article 26 of the May, 2002 Annual Town Meeting, *inter alia*, asked that, “the Combined Reports shall include, with each recommendation of the ... Advisory Committee, a statement of the number of members voting for and against the recommendation and a roll-call showing the vote of each member.”

Article 11 of the November 2010 Special Town Meeting, *inter alia*, asked that, “the Combined Reports shall include, with each recommendation of the ... the Advisory Committee, ... a roll-call showing the vote of each member.”

Years later, the arguments presented in 2002 and 2010 are familiar to us:

Pro: “Town Meeting has the right to know how the members of its principal standing committee voted on the recommendations presented.”

“The vote of each member of the Advisory Committee ... provides additional information for each Town Meeting Member. For some Articles, this may prove useful.”

“This change in the bylaws would further increase transparency and help Town Meeting to make the best decision possible on each Article in the Warrant.”

Con: “... the publishing of a roll call vote on every recommendation would unintentionally emphasize the recommendation of the Advisory Committee to an extent greater than its analysis...”

“A published roll call would introduce a level of politics into the Advisory Committee that doesn’t currently exist.”

“Town Meeting should not focus how individual Advisory Committee members vote; rather, Town Meeting should be concerned with their deliberation, thoughtful analysis, and independent recommendation to Town Meeting.”

“... relying on a personalized scorecard risks diminishing the quality of the objective deliberative process and may in fact prove a distraction...”

In weighing the above arguments, Petitioner notes that Advisory Committee members, for the most part, are not apolitical. Most are elected Town Meeting members who are often elected in contested elections.

To the extent Advisory Committee members’ Town Meeting votes are recorded, and to the extent they otherwise publicly support or oppose various candidates for town wide office, ballot questions, and more, we already know about Advisory Committee members’ political views. We learn where, in general, those views align with ours, and where they diverge. Many of us form our own opinions, accordingly.

Knowing how individual Advisory Committees vote on recommendations to Town Meeting will better inform Town Meeting. The benefit to Town Meeting, in terms of transparency, is well worth the modest added administrative effort.

ARTICLE 35

Submitted by: Michael Zoorob, Lara Jarrell, Shira Fischer

This Warrant Article eliminates parking minimums for residential uses in the Transit Parking Overlay District (TPOD; see Figure 1 below). In 2016, Town Meeting created the TPOD, defined as parcels which are between 0 and 0.5 miles from a Green Line Stop, with slightly reduced parking requirements: 1 spot per studio, 1.4 spots per 1 bedroom, and 2 spots for two-bedroom units. This area has good bus service, wider sidewalks, more numerous bike lanes, and greater walking distance access to amenities such as grocery stores, cafes, restaurants, and jobs. According to the American Community Survey 2013-2018 estimate, about 25% of residents in the TPOD do not own a car and 70% of residents in the TPOD live in households with 1 or fewer cars.¹⁹ About 66% of TPOD residents who work do not commute by car, compared to just 15% nationwide. Yet our current residential parking minimums in the TPOD exceed those in the city of Houston.²⁰

FIGURE 1: The Transit Parking Overlay District (shaded gray)

¹⁹ These numbers come from the 10 Census Tracts (Norfolk County 4001-4010) falling entirely or primarily within the TPOD. Brookline comprises these 10 Census Tracts in the TPOD and two others (4011 and 4012) in South Brookline, outside of the TPOD, where vehicle ownership and car commuting is much higher.

²⁰ Houston requires 1.66 parking spots per two-bedroom apartment and has no residential parking minimums in three central neighborhoods. Scherer, Jasper. "Houston may ease parking requirements in parts of EaDo, Midtown." *Houston Chronicle*



Our current approach to parking neither reflects the history of our Town nor its vision of a sustainable future. For most of this Town’s history—from its incorporation as a separate municipality in 1705 until 1941—there was no requirement that housing provide off-street automobile parking.²¹ If Brookline started over with today’s parking minimums—the product of increases in 1962, 1977, 1987, and 2000—we would not get our vibrant, walkable neighborhoods like Coolidge Corner and Washington Square because so-many defining residential and mixed-use buildings could no longer be built: they do not have any or enough parking.²² Our neighborhoods enjoy long, uninterrupted sidewalks, greenspace, and walkable mixed-use commercial districts precisely because they do not have the asphalt and driveways required by our current zoning. We have the Brookline we love because planning and design substantially predated the dominance of the automobile.

Zoning shapes the future of our Town by molding the construction that will be part of Brookline for the next 100 years. Our Town has committed again and again to climate change mitigation and sustainable living. In November 2019, Town Meeting passed Warrant Article 21 prohibiting the installation of new fossil fuel infrastructure for heating, yet our current parking minimums *require* fossil fuel infrastructure even in our most transit-rich, walkable, and bikeable neighborhoods (the average car in the US emits 4.6 metric tons of carbon dioxide *per year*, according to the Environmental Protection Association).²³ In November, Town Meeting also passed Article 31, which enshrined our commitment to transportation of people, rather than automobiles, urging that, by 2050, only 25 percent of trips in Brookline would be made by

²¹ Bolton, Craig. “Vehicle Parking in Brookline.” <https://www.brooklinema.gov/DocumentCenter/View/2348/2000-Vehicle-Parking-in-Brookline-by-Craig-Bolon?bidId=>

²² Writing before the most recent increase in parking quotas, Bolton (2000) noted that “Few buildings from before 1987 have the amounts of parking now considered necessary.”

²³ <https://www.epa.gov/greenvehicles/greenhouse-gas-emissions-typical-passenger-vehicle>

single-occupant or single-passenger cars or trucks. Requiring a parking spot for every studio apartment and two parking spots for every two-bedroom residence in our transit-rich, walkable, and bikeable neighborhoods is not consistent with this goal. Scholarly research suggests that “when cities require parking with residential development, they increase vehicle ownership and use,” and these effects are more pronounced for housing near public transit.²⁴

Eliminating residential parking minimums in the TPOD is not a radical proposition. Professional groups, including the American Planning Association and Greater Boston’s Metropolitan Area Planning Council, have advocated for eliminating off-street residential parking minimums, as did the Obama Administration’s Housing Development Toolkit.²⁵ This policy does not eliminate existing parking spots, nor does it ban the construction of new parking spots; it only eliminates a rigid requirement that new housing development include at-least a particular quantity of private car parking, and only does so in areas of Brookline with particularly good options for travel via means other than private cars, and where many existing housing developments predate and do not conform with current car parking requirements. The primary impact this policy is that new housing has less parking. In 2012, Seattle eliminated required parking in some neighborhoods near transit; housing built over the next 5 years in the impacted neighborhoods included about 40% fewer parking spots than the city had previously required, saving about \$537 million in construction cost.²⁶

Municipalities around the country have eliminated their parking minimums, both near public transit and even citywide. Sacramento, San Diego, Atlanta, and Somerville have all eliminated parking minimums near public transit; the latter two having also imposed *parking maximums* within 0.5 miles of public transit. Other municipalities—including Buffalo, Hartford, Minneapolis, and San Francisco—have no parking minimums anywhere at all (many smaller towns, like South Burlington, Vermont, also do not have parking spot quotas for housing). While Brookline has been a leader on many issues related to climate change, on this one we are forced to play catch-up. This Warrant Article does not take the stronger stances of cities like San Francisco or Buffalo, which have no parking minimums anywhere, or Atlanta and Somerville, which have imposed parking maximums within 0.5 miles of public transit. Instead, it takes the middle ground: making it legal, within 0.5 miles of public transit, to build housing units with as much parking as makes sense for that project. The city of Houston, which has no residential parking minimums in three of its more walkable neighborhoods, calls this policy “market-based parking.”²⁷

²⁴ Manville, Michael. 2017. “Bundled parking and vehicle ownership: Evidence from the American Housing Survey.” *The Journal of Transport and Land Use*, 10(1), 27-55.

²⁵ **Spivak Jeffrey. 2018. “People Over Parking.” American Planning Association.** <https://www.planning.org/planning/2018/oct/peopleoverparking> **MAPC. 2019. “Metro Boston Perfect Fit Parking Initiative.”**

<https://perfectfitparking.mapc.org/assets/documents/Final%20Perfect%20Fit%20Report.pdf> **“Housing Development Toolkit.” September 2016.**

https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf

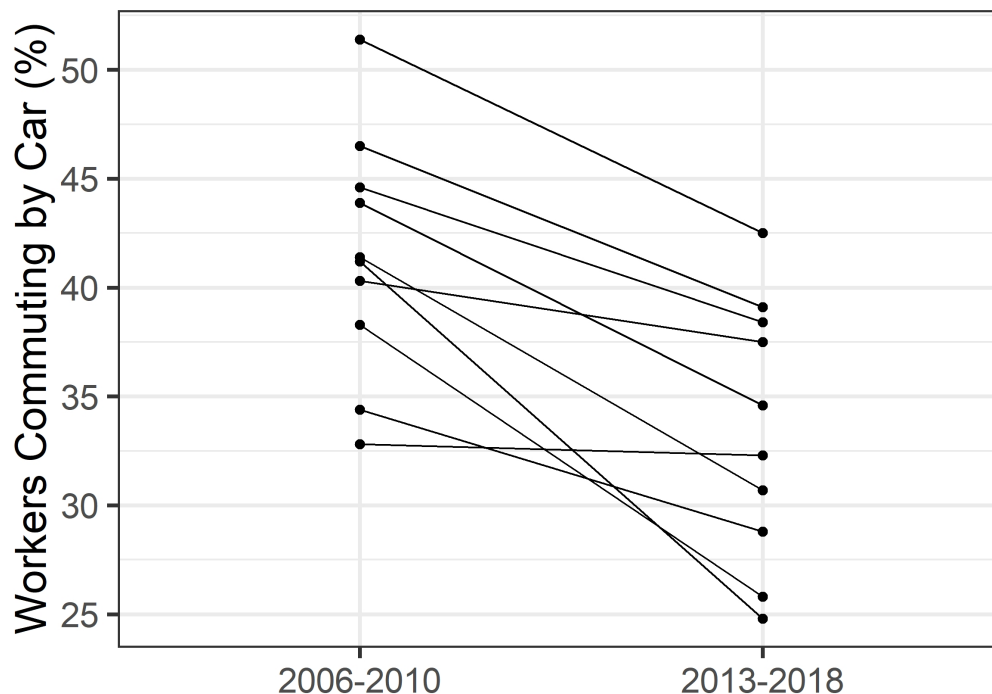
²⁶ Gabbe, CJ, Gregory Pierce, and Gordon Clowers. 2020. “Parking policy: The effects of residential minimum parking requirements in Seattle.” *Land Use Policy*, 91.

²⁷ Scherer, Jasper. “Houston lifts minimum parking requirements in EaDo, Midtown.” *Houston Chronicle*

Our current parking minimums fail to reflect the diversity of parking needs within the TPOD, imposing a “one-size fits all” on parking. In the TPOD, about 66% of Brookline residents who work commute without a car (via mass-transit, walking, cycling, etc.) and 25% of households do not possess any cars, according to the American Community Survey 2013-2018 estimates. In two north Brookline Census Tracts (4001 and 4002), 37% and 35% of households, respectively, do not own a car; and among renters, these numbers are even higher: 58.2% and 66.1%. But even in these areas, and even for rental housing, our zoning requires all housing to be equipped with car parking infrastructure. Empowered by state law to ignore local zoning, many 40B developers build much less than the required parking in the TPOD. At 45 Marion St, a Coolidge Corner development completed in 2014, 64 residential units were built with just 21 parking spots. At 217 Kent St, a planned 40B includes 99 residential units and just 44 parking spots. Our zoning near public transit creates more asphalt, traffic congestion, and fossil fuel infrastructure than the market demands. As Harvard economics professor Edward Glaeser writes, “Reducing (or eliminating) minimum parking requirements is one of those unusual cases where the ardent environmentalist and the libertarian economist see eye-to-eye.”²⁸

Despite our high parking minimums, the number of cars registered in Brookline has declined every year since 2013, according to the tax receipts from the Town Assessor’s Office. In 2013, there were 34,259 vehicles registered in Brookline; by 2018, despite several new housing developments, the number of vehicles had declined to 33,210.²⁹ The data do not bear out concerns of a residential parking crisis. Survey data from the American Community Survey further demonstrate declining vehicle needs in the TPOD. In each of the 10 Census Tracts comprising the TPOD, the share of workers commuting by car, van, or truck declined between the 2010 5-year survey and the 2018 survey, as shown in Figure 2.

FIGURE 2: DECLINING VEHICLE USAGE IN TPOD CENSUS TRACTS



²⁸ Glaeser, Edward. 2013. “Don't require more spaces; price curbside ones properly.” *Boston Globe*

²⁹ Brookline Assessor’s Office. “Looking at Excise Mailings and Commitments 11-19-2019.” Document obtained via open records request to the Town Clerk’s Office.

Data Source: American Community Survey 5-year estimates

In addition to the negative impacts of parking quotas on the environment, requiring parking also makes housing much less affordable. A January 2020 report to Brookline’s Housing Advisory Board from Pam McKinney, a consultant contracted by the Town to examine housing production costs, states that building one above-ground garage parking spot costs \$35,000, while one underground parking spot costs \$100,000. Consequently, current requirements—1.6 parking spots for 1-bedroom apartments and 2 parking spots for 2-bedroom apartments in the TPOD—substantially inflate the price of housing. According to the Victoria Transport Policy Institute, one parking spot increases the cost of housing by 12.5% and two parking spots increases the cost of housing by about 25%.³⁰ In Minneapolis and Miami, reductions in parking minimums have spurred the growth of relatively affordable apartment buildings with limited parking, according to media reports in both cities.³¹ Given the increasing unaffordability of housing in Brookline, it makes little sense for our zoning to preclude the construction of less expensive housing options.

Ultimately, this Warrant Article is about creating the option to build housing responsive to people with different automobile needs. It neither removes existing parking nor prohibits new parking from being built. In the TPOD, many residents do not own a car, and a growing majority of residents do not commute to work by car. Requiring all new construction to include an arbitrary number of parking spots neither reflects our Town’s history as a streetcar suburb nor its future as an environmentally sustainable community.

TABLE 1: SAMPLING OF CITIES WITH NO PARKING MINIMUMS

City	Parking Policy	Maximums	Date
Buffalo, NY	No minimums citywide		1/13/2017
Hartford, CT	No minimums citywide		12/13/2017
South Burlington, VT	No minimums citywide		10/15/2019
Minneapolis, MN	No minimums citywide		12/12/2018
San Francisco, CA	No minimums citywide		12/17/2018
Houston, TX	No minimums certain neighborhoods		7/19/2019
Sacramento, CA	No minimums near transit (<0.25 miles)		12/13/2018
San Diego, CA	No minimums near transit (<0.5 miles)		3/6/2019
Atlanta, GA	No minimums near transit (<0.5 miles)	Yes	11/2/2019
Somerville, MA	No minimums near transit (<0.5 miles)	Yes	12/16/2019

ARTICLE 36

³⁰ Littman, Todd. 2019. “Parking Requirement Impacts on Housing Affordability.” Victoria Transport Policy Institute.

³¹ Schmitt, Angie. “How Parking Mandates Tilt the Market Toward ‘Luxury’ Housing.”

<https://usa.streetsblog.org/2018/02/01/how-parking-mandates-tilt-the-market-toward-luxury-housing/> San Juan, Rebecca. 2020. “Small-scale urban developments starting to sprout. Thank a change in the parking code.” *Miami Herald*.

<https://www.miamiherald.com/news/business/real-estate-news/article238937913.html>

Submitted by: Amie Lindenboim TMM5, Michael Zoorob, Neil Gordon TMM1, Wendy MacMillan TMM4

This Article amends the General By-Laws to provide notice to non-property-owning residents and businesses (typically tenants). This Article intends to give all Brookline residents equal opportunity to be informed about planned and proposed actions that could affect their life as a tenant or resident of a street, neighborhood, or (more broadly) of the Town.

The words of our Town By-Laws define how we view the role of Town government and whom Town government serves. Property ownership is no longer a prerequisite for voting or holding office, yet our Town By-Laws consider only the owners of land—regardless of whether they live in the Town—and not resident tenants as deserving consideration in and notification for land use issues such as property demolition, noise control, and wetland protection.

Renters are Residents Too!

Should contractors working for the Department of Public Works inform renters at the same time they notify property owners when planned routine maintenance will shut off their water and sewer access for the day?

Should a renter be informed that the neighbor 10 feet from her bedroom window has applied for a demolition permit?

Should a renter be informed that there has been a rat problem in the neighborhood, and what the Town has been doing to address it?

In many instances, Brookline’s General By-Laws require that “abutters” receive written notification of activity in the public way or on public or private property in close proximity to the abutter. Unfortunately, in many cases only the property owner receives the required notice; tenants and occupants only receive this notice if the property owner passes the information along to them. In most cases, property owners have no legal obligation to pass these notices along to their tenants. Particularly where a property owner resides out of the area, it may not even be possible for the owner to relay the content of the mailed notice to their tenants in a timely manner.

Examples of activities where notice is required include, but are not limited to:

- (a) notice of construction or repair activity that is anticipated to be particularly noisy;
- (b) notice of construction or repair activity that is expected to disrupt parking or vehicular or pedestrian access;
- (c) notice of a planned utility service interruption;
- (d) notice of street hydrant flushing;
- (e) notice of application for an exemption to the leaf blower by-law;
- (e) notice of an application for a demolition permit.

(The list above does not include notices required under the Zoning By-Law, which is expected to be the subject of a separate warrant article)

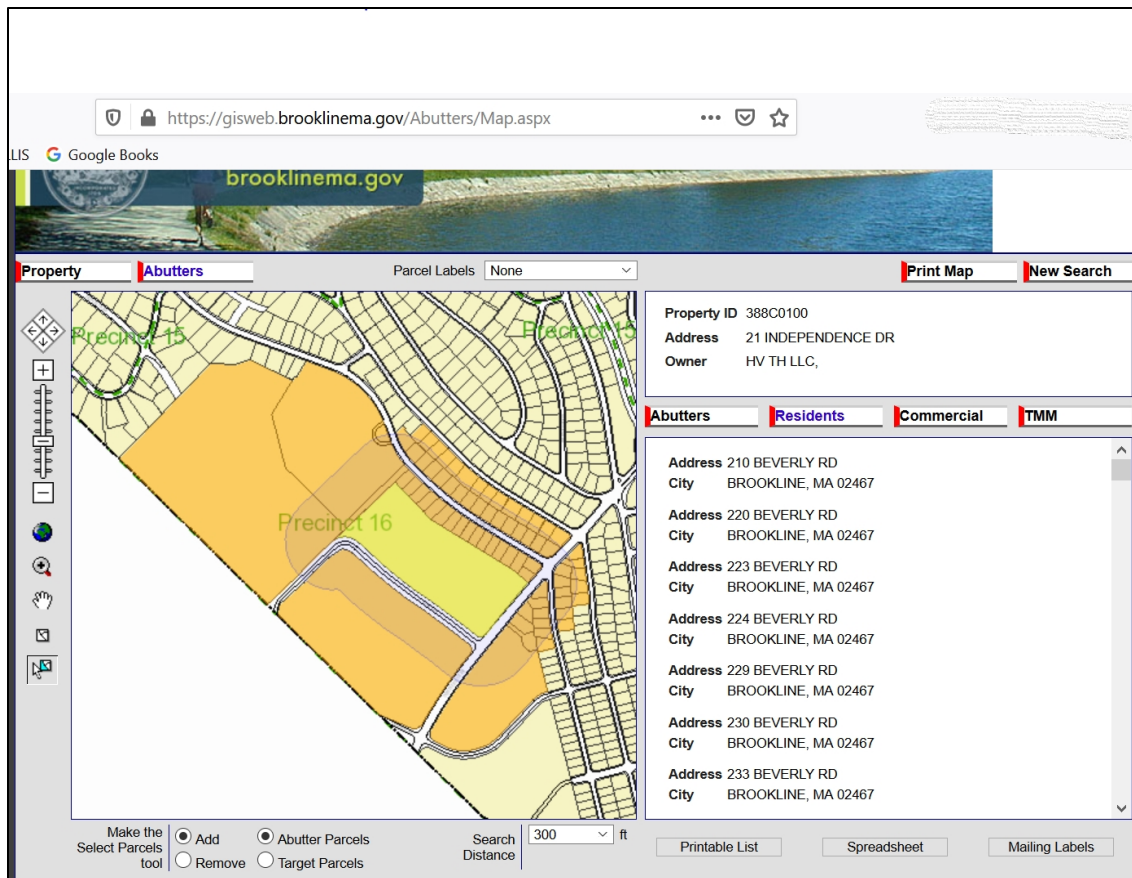
Some of the notices listed above are described in the General By-Laws; others are part of the rules, policies, and procedures of various Town departments, boards, and commissions. Some of the notices already reference “tenants of abutters;” others do not. Sometimes notice may be provided to all occupants of an abutting property or neighborhood, but even where rules, policies, or procedures reference “tenants,” notice has been inconsistent. The proposed amendments to the Town’s General By-Laws are intended to be incorporated into the rules, policies, and procedures carried out by various Town entities.

If approved by Town Meeting, the effect of this warrant article would be to clarify and codify the provision of information and notice to all residents who would be similarly impacted by a planned or proposed action, not just property owners.

The Town has an “Abutters Application” which identifies all of the abutting properties of any address that the user searches.³² This application is already equipped to identify the addresses for all residential units and businesses of abutting properties; one merely clicks a different button in the application to obtain the addresses of all residences or businesses. Consequently, this Warrant Article can be implemented without substantial change in existing protocol. While some additional staff time will be needed to mail a larger number of notices, and the Town may incur some additional costs for postage, these are relatively small burdens that are outweighed by the public benefit of equitable treatment and timely notice of all impacted parties. Moreover, many of the projects which require mailings are fee-based; the Town collects fees from applicants, and the Town can adjust fees accordingly.

If approved by Town Meeting, the effect of this warrant article would be to clarify and codify the provision of information and notice to all tenants and residents who would be similarly impacted by a planned or proposed action under the General By-Laws, not just property owners.

³² <https://gisweb.brooklinema.gov/Abutters/>



ARTICLE 37

Submitted by: Amie Lindenboim TMM5, Michael Zoorob, Neil Gordon TMM1, Wendy MacMillan TMM4

This Article amends the Zoning By-Law to provide notice to non-property-owning residents and businesses (typically tenants). This Article intends to give all Brookline residents equal opportunity to be informed about planned and proposed zoning actions that could affect their life as a tenant or resident of a street, neighborhood, or (more broadly) of the Town.

The words of our Town By-Laws define how we view the role of Town government and whom Town government serves. Property ownership is no longer a prerequisite for voting or holding office, yet our Town By-Laws consider only the owners of land—regardless of their residence in Town—and not residents or businesses as deserving consideration of a whole host land issues involving special permits and variances, ranging from new housing development to marijuana dispensaries. This Article helps remedy that problem by requiring the Town to notify both property owners *and* tenants.

In many instances, Brookline’s Zoning By-Law requires that “abutters” receive written notification of activity in the public way or on public or private property in close proximity to the abutter. While this mirrors the state zoning law, the effect in Brookline is to deny approximately half of the Town’s residents the common courtesy of notice of proposed or planned changes to their neighborhood. Rather than building community and respecting all Brookline residents, excluding residents who do not have the means to purchase property in Brookline from receiving

information about proposed or planned zoning actions on abutting parcels serves to reinforce outdated notions of class and citizenship. We no longer require that voters own property in order to vote; why do we maintain such discrimination in the Zoning By-Law?

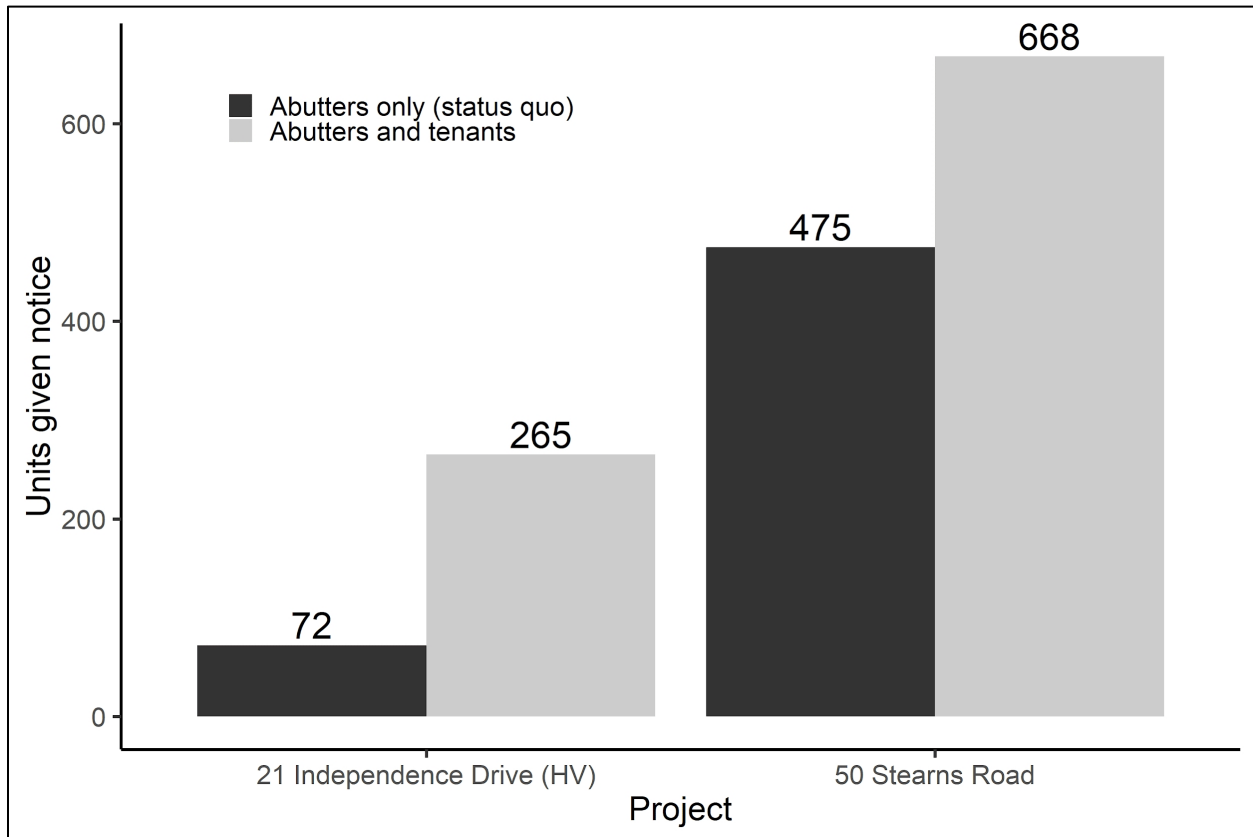
In many cases, notice requirements are not discussed with specificity in the Zoning By-Law, but are set forth in rules, regulations, and guidelines authorized by the Zoning By-Law. These include, but are not limited to Zoning Maps, Subdivision Regulations, Planning Board Rules and Regulations, Zoning Board of Appeals Rules and Regulations, Sign and Facade Guidelines, and Major Impact Project Design Guidelines.

The proposed amendments to the Town's Zoning By-law are intended to be incorporated into the rules, policies, and regulations authorized by the Zoning By-Law.

The Town has an "Abutters Application" which identifies all of the abutting properties of any address that the user searches.³³ This application is already equipped to identify the addresses for all residential units and businesses of abutting properties; one merely clicks a different button in the application to obtain the addresses of all residences or businesses. Consequently, this Warrant Article can be implemented without substantial change in existing protocol. While some additional staff time will be needed to mail a larger number of notices, and the Town will incur some additional costs for postage, these are relatively small burdens that are outweighed by the public benefit of equitable treatment and timely notice of all impacted parties. Moreover, many of the projects which require mailings are fee-based, and the Town can adjust fees accordingly.

³³ <https://gisweb.brooklinema.gov/Abutters/>

FIGURE 1: IMPACT OF TENANT NOTIFICATION



To quantify the impact of these changes, the petitioners used the Town’s Abutters Application to calculate the number of units which require notice under the status quo and the proposed changes for two recent projects requiring notice: 21 Independence Drive (Hancock Village; Precinct 16), and 50 Stearns Road (Precinct 3). To do this, we calculated the number of abutters, residential units, and businesses within 300 feet of the property boundaries of the proposed projects (300 feet is the radius required for notice for projects such as demolitions, antennas, and comprehensive permits). Then, we removed duplicate addresses corresponding to residential units that matched the addresses of property owners to obtain the number of unique units receiving notice under the proposed changes. The results of these analyses are shown in Figure 1. At Hancock Village, 72 abutters received notice from the Town under the status quo; expanding the notice to include tenant notification would raise the number of notified units to 265. The additional 193 units which would receive notice comprise *existing rental units of Hancock Village*, the residents most impacted by the new development. At 50 Stearns Road, because of the large number of nearby condominiums, the Town notified 475 abutters under the status quo. Adding the tenants of abutting properties would result in 193 additional notices, bringing the total number of notices to 668.

If approved by Town Meeting, the effect of this warrant article would be to clarify and codify the provision of information and notice to all tenants and residents who would be similarly impacted by a planned or proposed action under the Zoning By-Law, not just property owners.

ARTICLE 38

Submitted by: C. Scott Ananian, TMM 10

These articles bring back Warrant Article 6 from the November/December 2019 Special Town Meeting with the following modest changes, suggested by the review and Town Meeting debate of those articles:

1. The gap between stipend for chair and regular members has been narrowed to address concerns it was too large and would introduce financial incentives to run for chair.
2. The overall amounts modestly lowered to reflect the Town's financial situation as reported by the BFAC committee, without jeopardizing the ability of the stipend to effect positive change.
3. The School Committee has been added to address concerns that providing a stipend only to the Select Board was inequitable. As there are 9 members of the School Committee to share the work, the proposed stipend for the School Committee is roughly 5/9ths of the stipend provided for the 5-member Select Board. As several TMMs have argued strongly for only one or the other of these articles, I have submitted the School Committee stipend as an independent Warrant Article to allow Town Meeting to debate and vote on each individually.
4. Language was added ("total cost of compensation") to address potential pension obligations.
5. This article is being brought forward at the Annual Town Meeting in the Spring, as recommended by BFAC for articles with budget implication.

The primary objectives for these articles are:

1. **To professionalize the board and compensate for increased expectations**, at a cost of only .04% of the FY2021 combined Town and School budget for the Select Board stipend and .11% of the FY2021 School budget for the School Committee stipend. Stipends would increase the overall Select Board budget from \$706,626 (FY2021) to \$843,126 (19%) and would increase the overall School Committee budget from \$123,324 (FY2021) to \$263,324 (114%).
2. **Remove a major barrier to participation at the executive level of town government and attract a broader array of candidates.** The stipend would allow Town residents of modest means to serve in Town government without requiring (further) burdensome sacrifices by their families. It would pay for child care for members with small children, and would allow professionals to dedicate one day a week entirely to Town business with less effect on their income.
3. **This begins to implement our Town commitment to inclusion in Spring 2019 warrant article 29.** Resolutions do nothing but make us feel good until we make steps that actually cost money to implement them.

The interested Town Meeting Member should be certain to read the combined reports on WA 6 in the 2019 STM for further background information, including the analysis which led to the original Select Board stipend levels. The petitioner is grateful for the work done by the original petitioners for WA6 as well as the Advisory Committee and Town Meeting members who

participated in the warrant review process for WA6. Warrant Article 6 failed to receive a majority by an extremely thin margin, 100-103-12, and it is hoped that, rather than a wholesale return to the drawing board, these modest changes will suffice to gain a majority this year.

The 2019 Special Town Meeting explanation and reports on WA 6 begin on page 47 of

<https://www.brooklinema.gov/DocumentCenter/View/20751/Combined-Reports-November-2019-Brookline-Special-Town-Meeting-with-Supplements>

ARTICLE 39

Submitted by: C. Scott Ananian, TMM 10

The explanation for this article is contained within the explanation for the article regarding the Select Board stipend. As several Town Meeting Members have expressed strong opinions regarding only one or the other of the Select Board and School Committee stipends, the petitioner has brought the stipends as independent articles to allow Town Meeting to vote on each separately.

ARTICLE 40

Submitted by: Stanley Spiegel, TMM2, Neil Gordon, TMM1

The residential exemption is one of the few tools that we have to provide a level of progressive taxation in Brookline. Perhaps we could use it more effectively. We ask that the Select Board consider a substantial increase the Residential Exemption from the currently percentage up to the maximum amount allowed by law, when it sets the residential property tax rate for FY 2021 and thereafter.

Increasing the residential exemption may be particularly appropriate at times when the tax rate (relative to assessed values) has risen, or is expected to rise, in response to operating overrides and debt exclusions.

From the Town website (emphasis added): “Each year, at the option of the Select Board, an exemption of not more than 35% of the average assessed value of all Class 1 residential parcels may be applied to residential parcels that are the principal residence of the taxpayer as of January 1. The intent of the exemption is to promote owner occupancy and is designed to provide a proportionately greater benefit to lower valued homes.”

In FY2020, for which the Select Board has set the exemption at 21%, every qualified homeowner will have \$292,060 deducted from their property's assessed value for purposes of calculating their tax bill. For properties assessed at \$800,000, that's more than one-third of the assessed value. For a five million dollar property, it's less than a six percent offset.

Based on the same assessed values as above, at the maximum rate of 35%, every qualified homeowner would have \$486,767 deducted from their property's assessed value. For properties assessed at \$800,000, that's over 60% of the assessed value. And for a five million dollar property, the residential exemption would rise to less than 10% of assessed value.

Of nine urban residential exemption communities, six are at 30% or above: Boston (35%); Somerville (35%); Waltham (35%); Chelsea (31%); Cambridge (30%); and Malden (30%). Of the remaining three, Everett is at 25%, Watertown is at 24%, and Brookline is at 21%.

ARTICLE 41

Submitted by: Jeff Wachter (primary), Lara Jarrell, TMM P7, Shira Fischer, TMM P11, Robert Volk, TMM P4, Deborah Brown, TMM P1, Meggan Levene, TMM P3, David Lescohier, TMM P11; Lisa Shatz; Eric Coles; Jeffrey Benson, TMM P3; Amanda Zimmerman

According to the 2016 Brookline Housing Production Plan, the gap between Brookline’s market-rate housing and the prices that lower-income residents can afford has widened considerably over the past decade. Middle-income households are hard-pressed to find housing they can afford, too.”³⁴ The result of this housing affordability strain on families and neighbors throughout Brookline has been disruptive to the fabric of our communities by pushing young families, seniors, teachers, and other municipal employees out of Brookline as rents climb and home ownership moves further out of reach. This has created an environment where Brookline is increasingly becoming a community of the super-rich, middle-class people who were fortunate enough to buy real estate in Brookline a generation or two ago, and the handful of low-income people lucky enough to win the housing lottery.

Our middle-income housing shortage has played a major role in our runaway housing costs. Zoning restrictions and excessive regulatory hurdles have resulted in decades of underbuilding, exacerbated by multiple rounds of downzoning – making 2 family housing and larger illegal in more of our neighborhoods. One result of high housing costs is unacceptably high rates of cost burden - 47% of renters spend more than 30% of their income on rent, with 23% of renters spending more than half their income simply to live in Brookline.³⁵

Our housing shortage, while not entirely of our own making, has been made worse by the choices we’ve made and the zoning policies that have made it difficult to build adequate housing supply. And while this is a regional issue as well as a local one, Brookline needs to do our part to address housing unaffordability.

The good news is that this is a problem we can actually address if we can muster the policy creativity and urgency to do so. New multi-family housing can have a material impact on average rent - a recent paper from the Philadelphia Federal Reserve Bank and The Upjohn Institute found “new buildings slow local rent increases.”³⁶ The Seattle Times reported that increased housing supply there actually led to a slight decline in condo and single family home prices, providing relief to buyers for the first time in over a decade.³⁷ And we have to combine

³⁴ RKG Associates, Inc. JM Goldon. Metropolitan Area Planning Council. *Brookline Housing Production Plan*. Brookline, MA: Town of Brookline, 2016.
https://www.brooklinema.gov/DocumentCenter/View/10337/RKG_Brookline-HPP-101216-FINAL?bidId= 2 Mar. 2020.

³⁵ U.S. Census Bureau American Community Survey, 2014-2018 5-year estimates. Table B25070: Gross rent as percentage of household income in the past 12 months.

³⁶ Asquith, Brian J., Evan Mast, and Davin Reed. 2019. "Supply Shock Versus Demand Shock: The Local Effects of New Housing in Low-Income Areas." Upjohn Institute Working Paper 19-316. Kalamazoo, MI: W. E. Upjohn Institute for Employment Research. <https://doi.org/10.17848/wp19-316>

these efforts, along with other strategies that can diversify the housing stock, with creating real revenue streams to fund affordable housing for our lowest income friends and neighbors.

We can begin to make the serious policy changes necessary to address our housing challenges by seizing this opportunity to set realistic targets for housing production growth. Various organizations have set regional targets. The Metro Mayors Coalition Regional Housing Task Force set an estimated target of 185,000 new units by 2030.³⁸ The UMass Donahue Institute (UMDI) set a target of 320,000 units needed between 2010 and 2025, or 21,333 new units per year (a pace with which we're collectively way behind). According to the Boston Foundation's 2019 Greater Boston Housing Report Card, Brookline's contribution to the UMDI annual target was only 9.6% of the town's proportional share. Using UMDI's analysis, Brookline's proportionate share is 333 units per year.³⁹

From 2010 through 2018, Brookline only issued 279 building permits for new housing units, in total. Currently, the 40B process is the primary avenue for approving new units, with multiple projects at various stages. The ZBA has approved 862 units over the past 3 years, with another 290 in the pipeline. These projects could add as many as 1,152 new units, assuming legal action and other changes don't decrease their scope. If all of these units are built, they would account for 35% of our stated target of 3,330 new units built, still leaving us significantly short. To reach our target for new units added, the town will need to take a serious look at how our neighborhoods are zoned, where the optimal places to build more homes are, and the best strategies to achieve this goal.

Brookline and our neighbors across the region all need to do our part to address housing affordability. Brookline can, and should, once again show itself to be a progressive leader for the region and beyond by taking a stand and making the necessary changes, especially when those changes can have such a positive impact on the future of the town.

Brookline's Housing Production Hasn't Kept up with Regional Growth

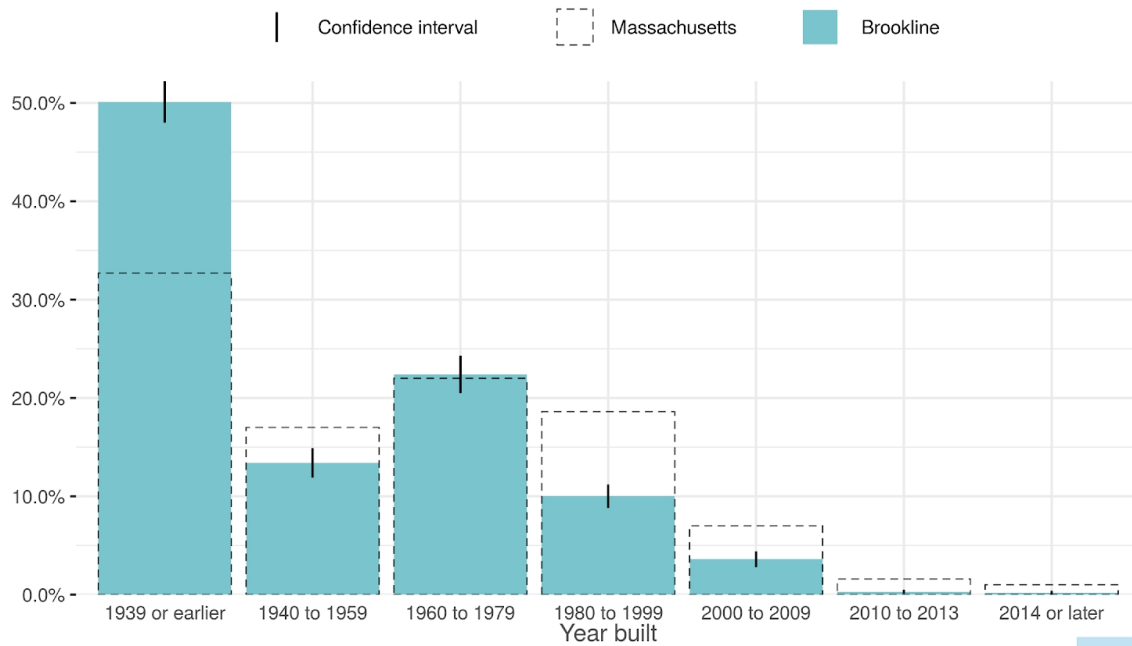
The housing stock chart below shows that Brookline essentially stopped building sufficient new housing around 1980, falling behind state level production after this point. Less than 15% of our current housing stock was built after 1980. Housing production in the state has failed to keep up with regional employment and population growth over the past 30 years and Brookline has fallen even further behind than the Commonwealth at large.

³⁷ Rosenberg, Mike. "Relief for Seattle-area condo buyers as prices drop amid flood of new units." *The Seattle Times* 5 Apr. 2019: n. pag. Web. 15 Feb 2020.

³⁸ "Housing Metro Boston." *Regional Housing Task Force*. Metropolitan Area Planning Council. Web. 29 Jan. 2020. <https://housingtaskforce.mapc.org/>

³⁹ ACS 2013-2017 average building permits per year is 32. 32 units divided by Brookline's 9.6% of the town's proportional share of housing need equals 333.

Housing stock by year built Brookline v. State

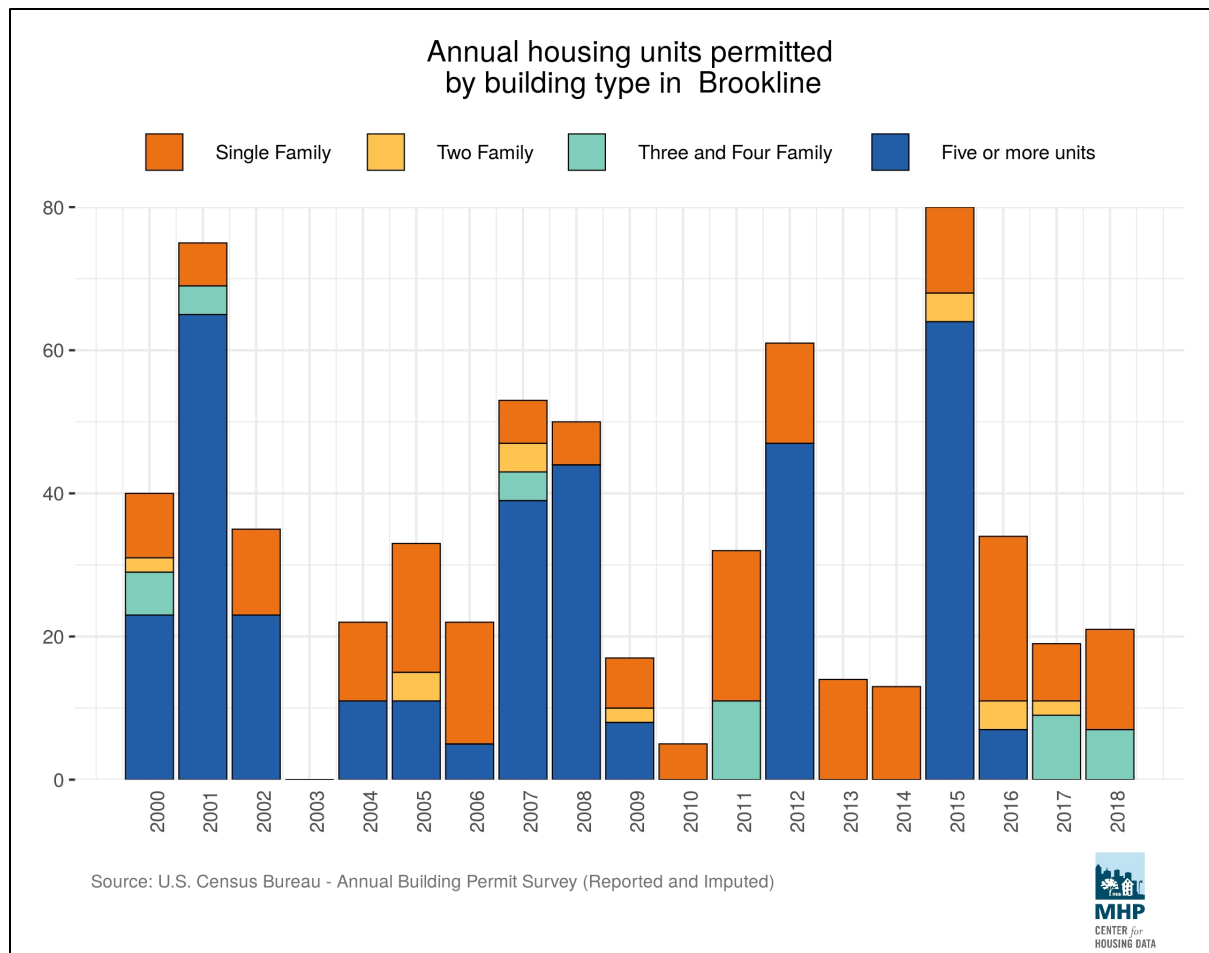


Source: U.S. Census Bureau American Community Survey, 2014-2018 5-year estimates
Table S2504: Physical Housing Characteristics for Occupied Housing Units



As you can see from the housing permit chart below, Brookline has not issued building permits for more than 80 housing units in any year since 2000, with most years permitting fewer than 40 units. This period of very low housing construction coincided with massive employment growth in the region, with 110,000 new residents and 148,000 new jobs since 2010. If Brookline and the greater Boston metro area had proactively allowed more housing to be built over this same period,

our current housing affordability challenges would likely have been lessened.



Will Building Housing Help?

Economists have shown that a significant component of our current housing problems come back to a lack of supply. According to The Greater Boston Housing Report Card released by The Boston Foundation, “Greater Boston hasn’t been permitting enough housing to meet its needs since the 1980s.”⁴⁰ The region has been adding tens of thousands of new, high paying jobs in a diverse array of economic sectors, but we’ve simply not built enough homes to house these people. According to the Metro Mayors Coalition Regional Housing Task Force the region has added 110,000 new residents and 148,000 new jobs - but only 32,500 new housing units.⁴¹ It’s no wonder prices have risen so substantially in the past decade with so many people bidding up prices.

Jenny Schuetz, an economist at The Brookings Institution’s Metropolitan Policy Program has proposed a “three-legged stool” based on her research to address the problem of housing

⁴⁰ Modestino, Alicia Sasser, et al. *The Greater Boston Housing Report Card 2019: Supply, Demand and the Challenge of Local Control*. Boston: The Boston Foundation, 2019. Web. 22 Feb. 2020.

⁴¹ “Housing Metro Boston.” Regional Housing Task Force. Metropolitan Area Planning Council. Web. 29 Jan. 2020. <https://housingtaskforce.mapc.org/>

affordability. The three legs are “reforming land use regulation to allow smaller, more compact housing; increasing taxes on expensive, underused land; and expanding housing subsidies to low-income households.”⁴² While tax reform options are extremely limited by Beacon Hill, Brookline does have opportunities to address the other 2 points. New policy proposals for revenue streams for subsidies for low-income housing are currently in process on multiple fronts in Brookline - from updating the Inclusionary Zoning by-laws to a real estate transfer tax to another shot at passing the Community Preservation Act. Brookline is blessed to already have examples of great “missing middle” housing options - walk-up apartment buildings, 2 and 3 family homes on small lots, and rowhouses. Current zoning significantly limits where we can build new versions of this type of housing, let alone larger apartment and condo buildings along our major corridors, and requires single-family homes in much of the geographic area of the town. These zoning restrictions will likely need to be reassessed to some extent in order to allow the housing production we need in Brookline.

Economist Evan Mast of the Upjohn Institute recently released a research paper that found “evidence that new market-rate construction substantially loosens the market for middle- and low-income housing by inducing a series of moves that reduces demand for these areas... [H]ouseholds who would have otherwise occupied cheaper units move into new units, reducing demand and lowering prices for the units they leave vacant.”⁴³ Mast tracked tens of thousands of residents who moved from lower cost, older units into new construction buildings, and then the thousands of people who filled those lower cost units from subsequently lower cost units. This research corroborates multiple studies from 1965 through today. This filtering opens up housing units affordable at various income levels, including in the “bottom-quintile income areas.”⁴⁴ The practical implications for this research is to allow housing in expensive, desirable neighborhoods to encourage those who can afford the new construction there to move in, opening up units in less expensive neighborhoods and housing units.

While government subsidized affordable housing is the best way to address lower income housing shortages, the private market has a role to play as well. A study from Freddie Mac released in January 2020 argued that “Private markets provide affordable housing primarily through a process in which, on average, homes filter down to lower-income households as they age.”⁴⁵ This process of downward filtering breaks when housing supply is artificially constrained by zoning and other regulations, leading high income individuals to bid up the prices of older homes, rather than moving into new housing. The authors conclude that “policy makers [should] adopt policies that would increase the elasticity of supply, driving down prices and allowing filtering to increase the available affordable housing.”⁴⁶

Climate Change Impact of Density and Multi-Family Housing

⁴² Schuetz, Jenny. “To improve housing affordability, we need better alignment of zoning, taxes, and subsidies.” *Policy 2020 Brookings* Jan. 2020: n. pag. Web. 27 Feb. 2020.

⁴³ Mast, Evan. 2019. “The Effect of New Market-Rate Housing Construction on the Low-Income Housing Market.” Upjohn Institute Working Paper 19-307. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. <https://doi.org/10.17848/wp19-307>

⁴⁴ Mast, Evan. 2019. “The Effect of New Market-Rate Housing Construction on the Low-Income Housing Market.”

⁴⁵ Liu, Liyi and McManus, Douglas A. and Yannopoulos, Elias, “Geographic and Temporal Variation in Housing Filtering Rates” (January 27, 2020). Available at SSRN: <https://ssrn.com/abstract=3527800>

⁴⁶ Liu, Liyi and McManus, Douglas A. and Yannopoulos, Elias, “Geographic and Temporal Variation in Housing Filtering Rates” (January 27, 2020). Available at SSRN: <https://ssrn.com/abstract=3527800>

In Brookline's Climate Action Plan of 2018,⁴⁷ the town outlined 5 strategies to mitigate the impact of climate change by reducing emissions. These strategies included a focus on greater energy efficiency and reducing transportation related emissions. Increasing housing supply in transit-accessible communities near major job centers, like Brookline, is a crucial component of any serious climate change policy. Metro Boston's vibrant and growing economy is a great thing - bringing more people, and a more diverse group of people, to the region. Because of Brookline's proximity to Boston, and our public transportation options, Brookline is uniquely positioned to provide housing that significantly diminishes the region's carbon footprint, by undercutting the overuse of private cars. Brookline's capacity to increase our housing stock in proximity to trains and buses helps preserve open spaces for the entire region, and for generations to come.

Using the Cool Climate Network analysis from UC Berkeley, the average household in the zip code 02446 has a carbon footprint of 41.9 metric tons of CO₂, while zip code 02445 has an average of 50 metric tons of CO₂. Boston neighborhoods like Fenway, Back Bay, and East Boston have even lower carbon footprints⁴⁸. Comparing Brookline's carbon footprint to suburban communities like Sudbury (77.6), Dover (86), or Lexington (65) makes clear that denser, transit-rich areas play a significant role on lower household carbon footprints. Building new housing in Brookline allows more people to decrease their carbon footprints, while neglecting to add housing will lead to more people living carbon-intensive lifestyles.

According to the UN Emissions Gap 2019 report, "multifamily and urban residences tend to be smaller than single family, suburban, and rural residences... Several studies show that future floor area demand is a crucial variable for GHG emissions and that more intensive use can result in significant reductions of both material and energy related emissions... In some locations, spatial planning prevents the construction of multifamily residences and locks in suburban forms at high social and environmental costs."⁴⁹ In fact, apartments in buildings with 5 or more units use about 40% as much energy as single-family detached homes, with 2-4 unit buildings using on average about 60%, according to the U.S. Energy Information Administration⁵⁰. Smaller multi-family homes, with lower energy usage and shared utilities, have lower emissions than single-family homes, and should be heavily considered as a greener way to add housing capacity.

Zoning and Racial Segregation and Exclusion

As early as the 1910s, and accelerating after the 1917 Supreme Court decision *Buchanan v. Warley*, which ruled racial zoning laws violated constitutionally protected property rights, comprehensive zoning ordinances were created "to reserve middle-class neighborhoods for single-family homes that lower-income families of all races could not afford."⁵¹ Prior to the *Buchanan* decision, economic based zoning was rare, but in subsequent years they became common practice. While supposedly race-neutral, the ordinances were clearly meant as local

⁴⁷ Town of Brookline. *Climate Action Plan 2018*. Brookline, MA: 2017.

https://www.brooklinema.gov/DocumentCenter/View/17563/CAP_public_0202-2018_aug2018-v2

⁴⁸ UC Berkeley CoolClimate Network. <https://coolclimate.org/maps>

⁴⁹ United Nations. UN Environment Programme. *Emissions Gap Report 2019*. 26 November 2019.

<https://www.unenvironment.org/resources/emissions-gap-report-2019>

⁵⁰ U.S. Energy Information Administration. "Apartments in buildings with 5 or more units use less energy than other home types." 18 June 2013. <https://www.eia.gov/todayinenergy/detail.php?id=11731>

⁵¹ Rothstein, Richard. *The Color of Law: A forgotten history of how our government segregated America*. Liveright Publishing, 2017.

alternatives to explicit race-based sale restrictions. President Harding's administration in the early 1920s encouraged comprehensive zoning ordinances, and provided guides explaining why and how to create them. The committee that created the guides "was composed of outspoken segregationists," including Frederick Law Olmsted Jr., who told the National Conference on City Planning in 1918 that "any housing developments which are to succeed...racial divisions...have to be taken into account...if you try to force the mingling of people who are not yet ready to mingle, and don't want to mingle, a development cannot succeed economically."⁵²

In Brookline, racially restrictive deeds became common in the late 19th century, "forb[idding the] resale of property to 'any negro or native of Ireland.'"⁵³ In 1914, the Brookline Planning Board was established, chaired by none other than Frederick Law Olmsted, Jr. In 1920, the state authorized communities to establish comprehensive zoning by-laws, and in 1922 Brookline was one of the first to do so.

The Home Owners Loan Corporation (HOLC) in the 1930s created what are now known as redlining maps. In Brookline, the impact of those maps are still felt today. The HOLC graded neighborhoods as Green ("Best"), Blue ("Still Desirable"), Yellow ("Definitely Declining"), and Red ("Hazardous"). The only red section on Brookline's map was described at the time as "The so-called slum area of Brookline. A small congested area of Block houses primarily located around Village square."⁵⁴ Today, the only part of Brookline that is more than 20% African American coincides with the part of town redlined more than 80 years ago.⁵⁵

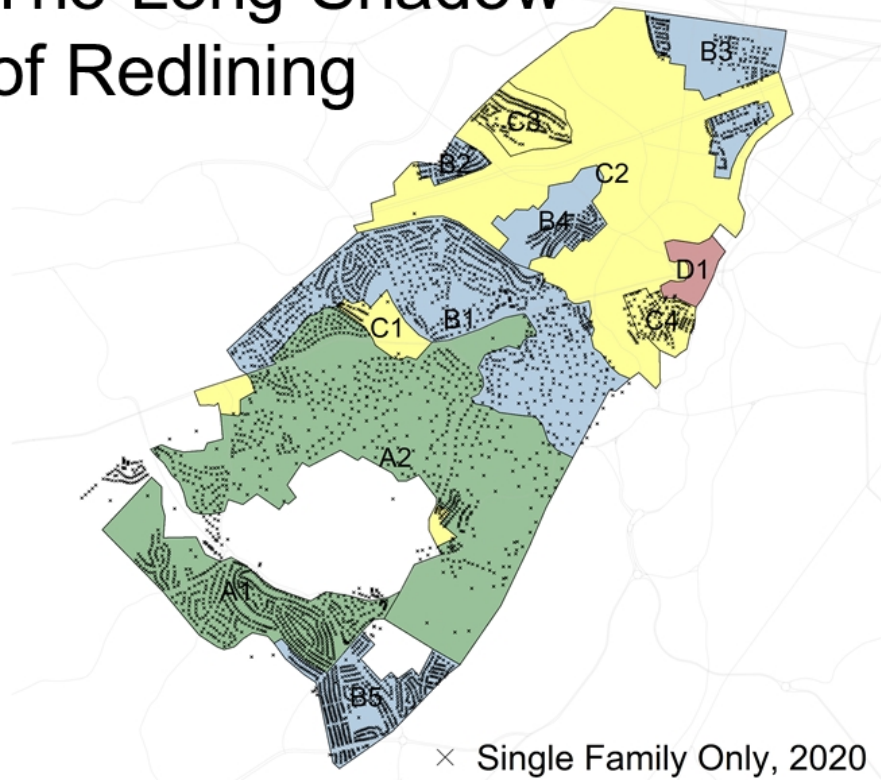
⁵² Rothstein, Richard. *The Color of Law*.

⁵³ Rothstein, Richard. *The Color of Law*.

⁵⁴ University of Richmond. "Mapping Inequality: Redlining in New Deal America."
<https://dsl.richmond.edu/panorama/redlining/#loc=14/42.332/-71.157&city=brookline-ma&area=D1>

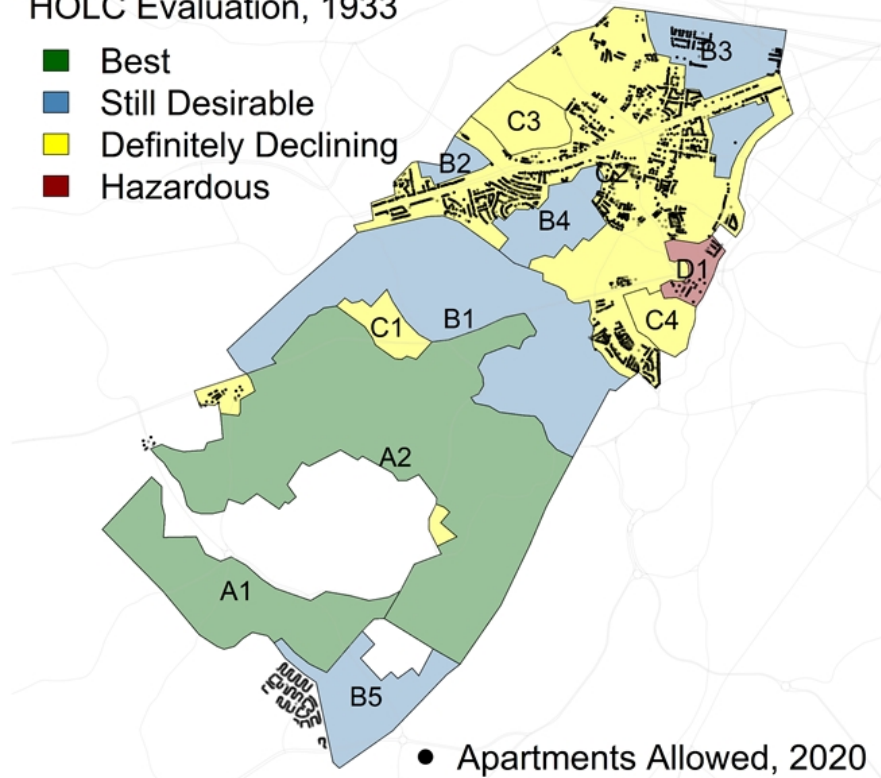
⁵⁵ Town of Brookline. *Town of Brookline Climate Vulnerability Assessment and Action Plan*. Brookline, MA: 2017.
<https://www.mass.gov/files/documents/2017/12/22/Brookline%20Climate%20Vulnerability%20Assessment.pdf>

The Long Shadow of Redlining



HOLC Evaluation, 1933

- Best
- Still Desirable
- Definitely Declining
- Hazardous



Racial exclusion is deeply baked into American housing and land use policies and impacts the town of Brookline to this day. The redlining map above shows that the areas deemed “Best” are still zoned exclusively for single-family zoning, and the 2nd best “Still Desirable” areas are restricted to prevent the construction of apartment buildings. The esteemed historian Richard Rothstein summed up the impact racially exclusive zoning has had on our communities: “[I]t can fairly be said that there would be many fewer segregated suburbs than there are today were it not for an unconstitutional desire, shared by local officials and by the national leaders who urged them on, to keep African Americans from being white families’ neighbors.”⁵⁶

Housing, Affordability, Density, and Economic Development

Housing’s impact on economic development and the vibrancy of our business districts plays out in multiple ways. For retail growth, increasing the number of people within walking or easy biking distance from stores can increase overall sales. A study from the San Francisco County Transportation Authority found that people walking or taking transit to business districts “spend more per month than those traveling by car as they come more frequently.”⁵⁷ The Brookings Institution’s Metropolitan Policy Program also notes that “[a]dding more homes—and thus more neighbors—to low-density neighborhoods can help support local retail businesses that depend heavily on foot traffic, like hardware stores, bakeries, and restaurants.”⁵⁸ Many of the housing types discussed as possible additions to Brookline - particularly micro-units, smaller 1 bedroom apartments or condos, and senior housing - could result in many more residents in close proximity to the shops and restaurants that make our business districts unique.

Adding density near our business districts also is likely to have a positive impact on tax value per acre of land. This notion was corroborated by the 2020 Brookline Fiscal Advisory committee report’s recommendation for “significant zoning changes to incentivize new development, [and] encourage density in designated areas.”⁵⁹ While the BFAC recommendation focused mostly on commercial development, the report also acknowledged a need for more housing. Development resulting from zoning changes that promotes commercial projects will likely be mixed-use including housing, and those developments will come with built-in shoppers and maybe even employees for the commercial portions of the building.

From a business owners’ perspective, the unaffordability of housing both in Brookline and regionally makes it difficult to hire and retain employees. This idea is supported by a 2017 report from the Massachusetts Housing Partnership, which found that “[a] large majority of...survey [respondents are] not only struggling to recruit and retain talented employees, but see[s] the increasing economic burden of housing as an important barrier to sustaining a qualified and educated workforce.”⁶⁰ As we seek to expand our tax base through commercial development, Brookline can be a more attractive place for companies to move to if we’re being proactive about supporting the housing needs of our population.

⁵⁶ Rothstein, Richard. *The Color of Law*

⁵⁷ San Francisco County Transportation Authority. *Modal Choices and Spending Patterns of Travelers to Downtown San Francisco: Impacts of Congestion Pricing on Retail Trade*. 1 Aug 2008. https://archive.sfcta.org/sites/default/files/content/Planning/CongestionPricingFeasibilityStudy/PDFs/SF-ModalChoices-SpendingPatterns_RevisedFinal.pdf

⁵⁸ Baca, Alex, Patrick McAnaney, and Jenny Schuetz. “Gentle’ density can save our neighborhoods.” *Brookings*. 4 Dec 2019. <https://www.brookings.edu/research/gentle-density-can-save-our-neighborhoods/>

⁵⁹ Town of Brookline. Brookline Fiscal Advisory Committee. *Brookline Fiscal Advisory Committee Final Report*. 5 Feb 2020. <https://www.brooklinema.gov/DocumentCenter/View/21168/February-5-Final-BFAC-Report>.

Housing Production Plan⁶¹

In 2016, to “assess demographic and housing data, identify local housing needs... identify housing development barriers, and identify specific locations and sites that meet the sustainability criteria for affordable and mixed income housing development,” and to allow for a one year moratorium on 40B development, the town of Brookline undertook the development of a Housing Production Plan. As part of the process, the Town hired planning consultants and had a public engagement process, including interviews with residents, people with knowledge of Brookline’s housing needs, developers, neighborhood activists, town staff and others, including three rounds of focus groups and four community workshops. In the end, 18 strategies were recommended to produce additional housing and improve housing affordability to get us closer to the 10% threshold to avoid future unfriendly 40B permitting. A few of the highlights are paraphrased below:

- 1) Amend zoning in opportunity nodes and corridors to encourage multi-family or mixed use development (e.g. increasing FAR, lowering height restrictions, reducing parking requirements, or expedited permitting)
- 2) Amend zoning to provide more incentives to create affordable units beyond the minimum required by Inclusionary Zoning,⁶² with particular emphasis on incentives that developers can qualify for “as of right.”
- 3) Amend zoning to encourage more diversity of housing units, such as microunits, artist live/work, or accessory dwelling units.
- 4) Expand local funds available for the creation and preservation of public housing units
- 5) Increase cooperation with community development corporations and non-profit developers to facilitate more affordable and mixed income housing developments
- 6) Establish local taxation policies to increase the financial feasibility for creating or preserving affordable housing (e.g. property tax reductions in exchange for affordable rental units)

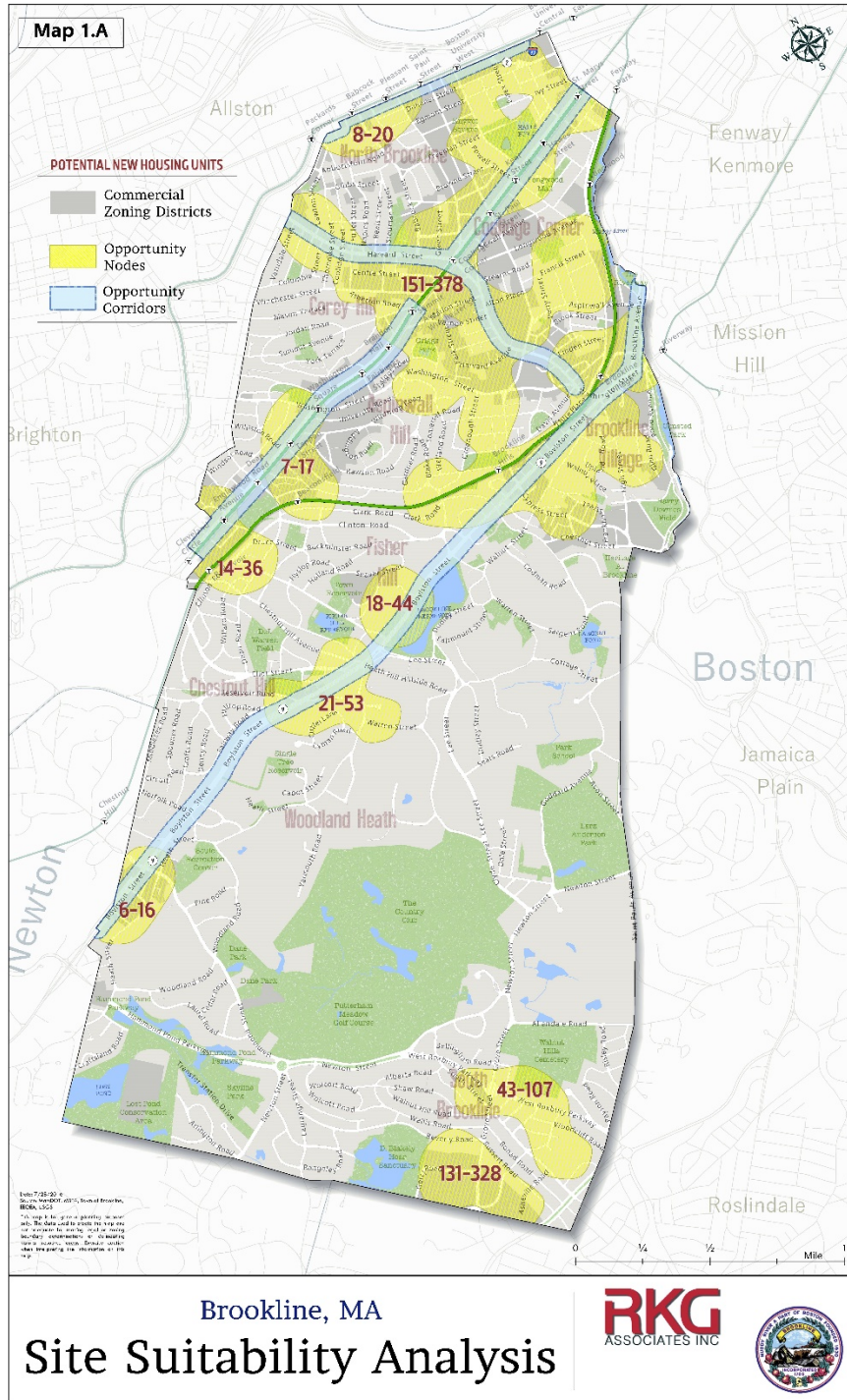
Up to this point, the Housing Production Plan has been underutilized by the town. Many of the proposed ideas should be pursued in a more serious manner, though the basic premise of the report was to develop strategies to allow Brookline to simply reach the 10% Subsidized Housing Inventory (SHI) threshold necessary to avoid unfriendly 40B projects. To confront our housing shortage in a serious manner, the town should take a second look at the report and use it as a foundation for concrete zoning and regulatory reform necessary to allow sufficient housing production in Brookline - both market rate and subsidized.

The proposed opportunity nodes and corridors can be seen in the map below.

⁶⁰ Altali, Wael, Jonathan Hillman, and Sarah Tekleab. *Assessing Affordable Housing Availability and its Effects on Employers’ Ability to Recruit and Retain Employees in Greater Boston*. Massachusetts Housing Partnership, 2017. https://www.mhp.net/writable/resources/documents/MHP-Report-Final_042817.pdf

⁶¹ More details on the 2016 Housing Production Plan can be found here: <https://www.brooklinema.gov/1299/Housing-Production-Plan>

⁶² The Inclusionary Zoning by-law in Brookline currently requires projects with 6 to 15 units to contribute a cash contribution to the Affordable Housing Trust and projects with more than 15 units to allocate 15% of onsite units as affordable.



ARTICLE 42

Any reports from Town Officers and Committees are included under this article in the Combined Reports. Town Meeting action is not required on any of the reports.