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April 13, 2018

Nancy Glowa
City Solicitor's Office
795 Massachusetts Ave.
Cambridge, MA 02139

RE: Applicability of Ordinance Section 11.200 to
12 Arnold Circle, Cambridge MA

Dear Attorney Glowa:

I have been asked by Attorney Sean Hope ("Atty. Hope") to present you with a zoning opinion regarding the applicability of a certain Inclusionary Housing provision in Section 11.200 of the City of Cambridge Zoning Ordinance, to the multifamily dwelling at 12 Arnold Circle ("the Property"). Atty. Hope is seeking a determination that Section 11.200 does not lawfully apply to the Property.

Facts

As the facts have been explained to me, the Property contains twelve (12) dwelling units, altered circa 1961, from 8 apartments to 12 apartments. The conversion of the dwelling was authorized by a variance "to permit the conversion of eight (8) six-room apartments to ... a total of twelve (12) apartments only." See Exhibit 1, Variance in ZBA Case No.: 3439-BA, dated May 10, 1961. The conversion was then authorized by a building permit. See Exhibit 2, Building Permit No. 61054.¹

Thereafter, the Property changed owners several times. In 1974, the Property was acquired by Dr. Kenneth B. Krohn ("Krohn"). Krohn resided at the Property as his primary residence until several years ago, when the City of Cambridge ("City") ordered the dwelling vacated for safety concerns. Krohn, acting as his own legal counsel, has contested the validity of the City enforcement action and due to financial hardship, has not been able to remedy the health and safety issues to the satisfaction of the City. The Property is now in Receivership in the U.S. District Court, in a case captioned *Singanayagam v. Krohn v. Rossi and City of Cambridge*, 16-CV-11077-WGY. The Receivership commenced on or about October 2017 for the express purpose of remedying the health and safety violations at the Property via sale.

On February 20, 2018, Judge Young in the Federal District Court stayed the Receivership

¹ The increase from 8 apartments to 12 apartments also required a special permit for parking relief from the Cambridge Zoning Board of Appeal. See Exhibit 3, Special Permit in BZA Case No. 3439.

1. Section 11.200 regarding “Inclusionary Housing” does not apply to the Property.

G.L. c. 40A, s. 6, para. 1, sentence one states, in pertinent part, that “a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun...” There is no doubt that the dwelling on the Property has existed for more than 50 years. See Exhibit 1, Variance in ZBA Case No.: 3439-BA, and Exhibit 2, Building Permit No. 61054. Therefore, Section 11.200, which was adopted long after the structure was lawfully in existence, “shall not apply” to this dwelling.

For the same reason, all of the provisions contained within Section 11.200, including the threshold defining “Inclusionary Housing Project” in the definition: “(c) occupancy of existing buildings which have not been used for any residential use for a period of at least two (2) years...” also does not apply.

2. It is not relevant that the Property has not been used for two years.²

G.L. c. 40A, s. 6, para. 3, states:

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

By its plain language, this provision is intended to apply *only* to nonconforming uses and structures. When Section 11.200 incorporated this concept in subsection (c) - “occupancy of existing buildings which have not been used for any residential use for a period of at least two (2) years” – its intent was clearly to focus on the rebuilding of *nonconforming* structures.

However, the dwelling on the Property is not a nonconforming structure. The dwelling was authorized by a variance.³ A variance does not expire if the dwelling on the Property is not used for two years. The variance runs with the land to successors in interest, including Atty. Hope. The variance constitutes the zoning in effect for this particular Property.

Because the structure was authorized by a variance, two years of nonuse – if it occurred at all – is not relevant.

² If, in fact, that is the case. The litigation surrounding the Receivership may have acted to toll any period of nonuse, as well as the marketing of the property for residential purposes.

³ See, *Mendes v. Board of Appeals of Barnstable*, 28 Mass. App. Ct. 527, 531-32 (1990). “In view of the different approaches to the grant of a variance and a special permit, the former grudging and restricted, the latter anticipated and flexible, we do not think the Legislature intended in G. L. c. 40A, Section 6, to authorize the expansion of uses having their genesis in a variance pursuant to the more generous standard applicable to a special permit.” (footnote deleted)

Order and approved a Purchase and Sale Agreement (“P&S”) between Krohn and 12 Arnold Circle LLC c/o Sean D. Hope to convey the premises as twelve (12) non-income restricted units with a closing date of May 14, 2018. A copy of the P&S was submitted to the City of Cambridge Law Department via email prior to presenting it to the Court and receiving court approval.

Atty. Hope believed at that time that the Property was not an “Inclusionary Development Project” as defined by the Cambridge Zoning Ordinance based on numerous conversations with the Cambridge Building Commissioner, Ranjit Singanayagam (“Singanayagam”), starting in October of 2017. In reliance on these conversations, Atty. Hope expended substantial time, effort and financial resources towards acquiring the Property for the purpose of fully renovating it and curing all health and safety violations. He engaged a structural engineer, commissioned an architect to draft building permit drawings, and contacted several other professionals to expediently begin the process to obtain a building permit and commence construction. Specifically, Atty. Hope and Singanayagam discussed the language in the definition section of Section 11.200 which states, in pertinent part, that a building that has at least ten thousand or ten (10) dwelling units shall be considered an Inclusionary Development if *“(c) occupancy of existing buildings which [has] not been used for any residential use for a period of at least two (2) years...”* The full text of Section 11.200 of the Cambridge Zoning Ordinance (“CZO”) addresses “Incentive Zoning and Inclusionary Housing is attached hereto as Exhibit 4. It is Atty. Hope’s understanding that Singanayagam’s rationale for non-applicability of Section 11.200 was based on the conclusion that the property was authorized by a variance when it was converted to a twelve (12) unit building, the Special Permit in BZA Case No. 3439 granted parking relief such that it was protected from later zoning amendments, and, finally, that the intent of the provision was to apply to nonconforming structures (not structures authorized by a variance like the Property).

On February 27, 2018, Atty. Hope and his investor met with Singanayagam and again discussed the above-referenced provision. Singnayagam again confirmed that he believed that the provision relating to nonuse for two (2) years did not apply, but suggested that we confirm with Ms. Linda Prosnitz (“Prosnitz”) at the Cambridge Housing Department to be sure that the Department shared the same interpretation. On February 28, 2018, Atty. Hope sent an email to Prosnitz (See Exhibit 4) to confirm the project was not an Inclusionary Development. In the email to Prosnitz, Atty. Hope explained the rationale he and Singnayagam had discussed since October 2017 and how a contrary determination would make the project economically infeasible and likely result in continued litigation and a delayed renovation of the Property. On March 12, 2018, Singnayagam drafted an email to Atty. Hope contradicting all of their previous conversations regarding the applicability of the affordable housing section and further presented a new legal basis which was never previously communicated to Atty. Hope verbally or in writing.

Opinion

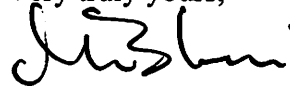
Based on statute and established case law, it is my opinion that Section 11.200 does not apply to the Property.

Conclusion

For all the reasons stated above, it is my opinion that the Property is not subject to the requirements of the 2017 Ordinance. Please let me know if you have any questions regarding this matter.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark Bobrowski', written in a cursive style.

Mark Bobrowski

cc: Atty. Hope

EXHIBIT 1



City of Cambridge

MASSACHUSETTS

BOARD OF APPEAL

May 10, 1961

In reference to the petition of Dunster Realty Corp., Melvin A. Fraiman, to vary the application of the Building Code of the City of Cambridge insofar as it pertains to the premises numbered 12 Arnold Circle, Cambridge, to permit the conversion of eight (8) six-room apartments to sixteen (16) four-room apartments, please be advised that the petition has been GRANTED for a total of twelve (12) apartments only, and a copy of the decision has been filed this day with the office of the City Clerk..

Lillian Novak
Secretary

Case No. 3439-Bldg.

CITY OF CAMBRIDGE

Board of Appeal

Case No. 3439-Ba

Decision by the Board of Appeal on the appeal and petition of Dunster Realty Corp., Melvin A. Fraiman, to vary the application of the Building Code of the City of Cambridge insofar as it pertains to the premises numbered 12 Arnold Circle, Cambridge, to permit the conversion of eight (8) six-room apartments to sixteen (16) four-room apartments.

Appeal is made upon notification by the Superintendent of Buildings to the petitioner that the proposed conversion is a violation of Part 13, Section 1303, Note 4 of the Building Code of the City of Cambridge.

Papers in this case are numbered 3439-B and all are made part of this record.

The case was not advertised, it being a matter of interpretation of the Building Code. Reasonable notices of the public hearing were sent to all those designated by the Board, including the Cambridge Planning Board.

At the public hearing held on Thursday, March 16, 1961, in City Council Chambers, City Hall, Cambridge, the Board of Appeal, with all members present, heard the appellant, and all those present who expressed a desire to be heard either in favor of or in opposition to the petition.

At the hearing the appellant presented the plans for the proposed conversion.

The Board finds that the exceptional circumstances peculiar to this specific case justify a relaxation of the requirements of the Building Code, and feels that a variance of the application of the same will not conflict with the spirit of the law, nor will it injure any person or property.

Therefore, the Board voted unanimously to GRANT permission for the above variance to convert eight (8) six-room apartments to a total of twelve (12) apartments only, and annuls the refusal of the Superintendent of Buildings and requests him to issue the necessary permit for the proposed conversion with the provision that in all other conditions, all materials and agencies meet the requirements of the Building Code of the City of Cambridge.

Richard C. Everts
CHAIRMAN

Arthur Brooks

Winnifred K. Kinsbury
Members of the Board of Appeal

Filed with the office of the City Clerk

on Lillian Novak
Secretary

61054

CITY OF CAMBRIDGE
BOARD OF ZONING APPEAL

Case No. 3432-2

PERMITTEE: 12 Arnold Circle, Cambridge - (Old Zone: M-2.1, Residential)
PETITIONER: Boston Health Corp. (Melia A. Freeman)

DATE OF SUBMISSION OF PERMIT BY SUPP. OF BUILDINGS: February 15, 1961.

DATE OF FILING OF PETITION: February 15, 1961.

DATING OF PUBLIC NOTICE: Feb. 13 and March 2, 1961 - Cambridge Chronicle.

DATE OF HEARING:

March 16, 1961.

VARIANCE APPLIED FOR:

Conversion from eight (8) six-room apartments to sixteen (16) four-room apartments.

VIOLATION: Article 6, Section 3, Part 1B (Zoning Ordinance of 1943)
Article 5, Section 2, Part 1 (Zoning Ordinance of 1961)

The Board finds that:

1. This is a special case where the requirements of the Ordinance would involve practical difficulty and demonstrable and substantial hardship.
2. There are special circumstances and conditions which are peculiar to the land for which the variance is sought, but these do not affect generally the zoning standard in which it is located.
3. The strict application of the standards of the Zoning Ordinance would deprive the petitioner of a reasonable use of the property.
4. The special variance requested is the minimum necessary to grant reasonable relief to the applicant and is necessary for a reasonable use of the land.
5. The granting of a special permit will be in harmony with the general purpose and intent of the Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

RECOMMENDATION: Special Permit GRANTED (by unanimous vote of the four members present) as follows:

Due to the location of the Board of Appeal (Building Code) regarding the request of the applicant from sixteen apartments to twelve (12) apartments which reduced the required parking area, thereby removing the zoning restriction pertinent to parking, the Board of Zoning Appeal therefore voted unanimously to grant a SPECIAL PERMIT allowing the parking of automobiles nearest the (5) foot zone and building as set at the previous numbered 12 Arnold Circle, Cambridge. Under these circumstances, the Board finds no further violation of the zoning Ordinance involved.

Handwritten signature and date:
March 16, 1961
[Signature]

Case 3439 12 Arnold

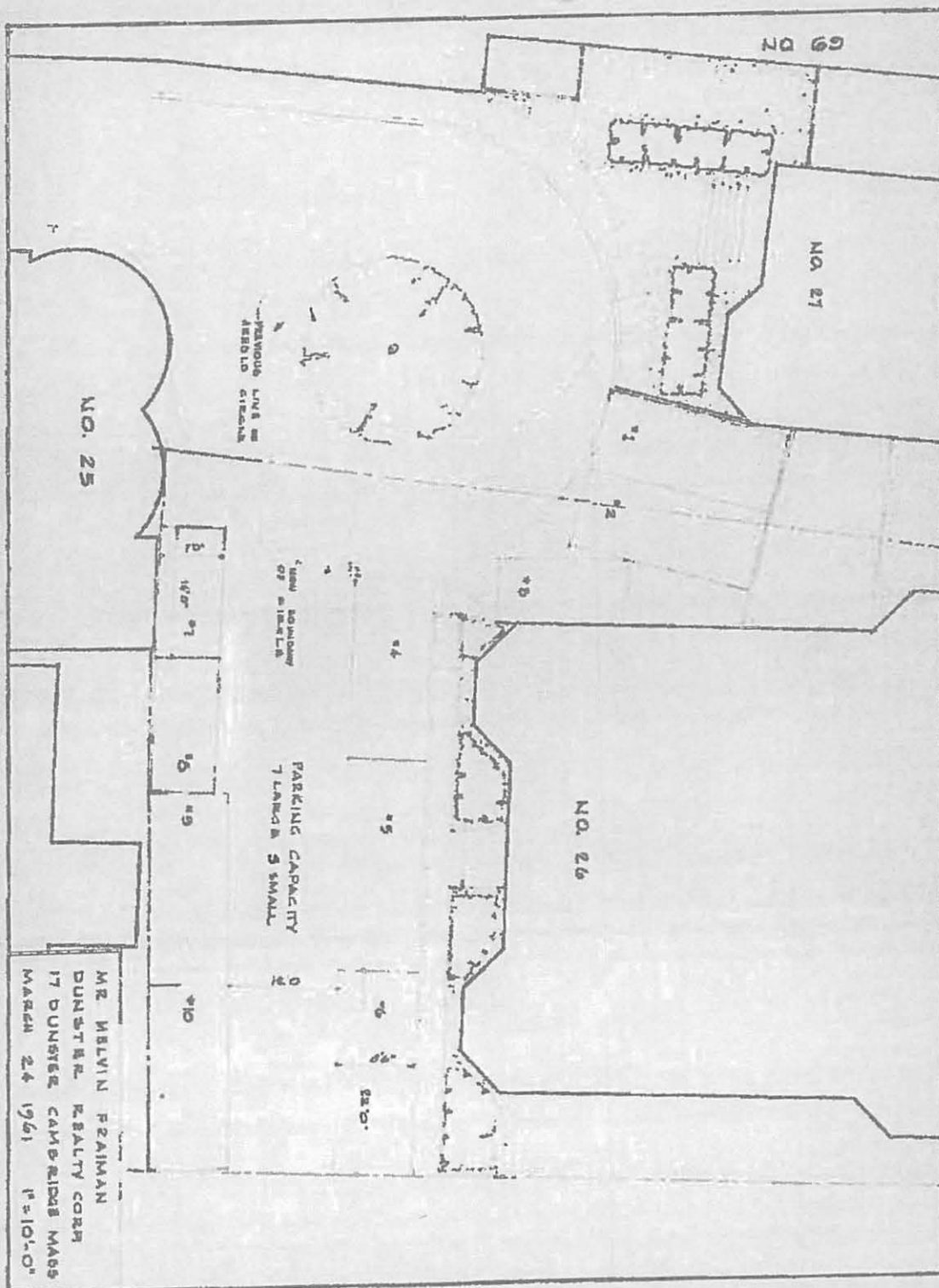


EXHIBIT 2

CITY OF CAMBRIDGE

Loc. 12 Arnold Circle Permit N61054

OwnerDunster Realty Corp. Date: SEP 14 1961

Arch: -----

Cont: Francis J. Roach

Descr.Alter 8 apts. to 12 apartments

4 additional units

Board of Appeal #3439B-Z

Permit aligned by: Francis J. Roach-757Som'l Ave.Som'l

PLAN IN BIN NO.- 345

\$10,000.

EXHIBIT 3

ORDINANCE NUMBER 1392

Final Publication Number 3436. First Publication in the Chronicle on March 23, 2017.

City of Cambridge

In the Year Two Thousand and Seventeen

AN ORDINANCE

In amendment to the Ordinance entitled "Zoning Ordinance of the City of Cambridge" be amended as follows:

Add the following definitions to Article 2.000 (in appropriate alphabetical locations):

Area Median Income (AMI). The Housing Area Median Family Income set forth in or calculated from regulations promulgated by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, determined for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area and adjusted for family size, or if such income standard no longer exists, such other equivalent income standard determined by the Community Development Department with the advice of the Affordable Housing Trust.

Dwelling Unit, Affordable. A dwelling unit for which occupancy is restricted to an Eligible Household and whose rent or initial sale price is established by (a) in the case of an Affordable Dwelling Unit in an Inclusionary Housing Project provided pursuant to Section 11.203.2, the provisions set forth in Sections 11.203.3 and 11.203.4, or (b) standards set forth in another applicable city, state, or federal housing program for Eligible Households.

Dwelling Unit, Family-Sized. A dwelling unit that contains three or more bedrooms and not less than one thousand one hundred (1,100) square feet of Dwelling Unit Net Floor Area.

Dwelling Unit, Studio. A dwelling unit in which there is no bedroom separated by a door or a change in story from the other living area, such as a living room and kitchen, within the dwelling unit.

Eligible Household. A household whose gross household income does not exceed (a) in the case of an Affordable Dwelling Unit in an Inclusionary Housing Project provided pursuant to Section 11.203.2, the amounts set forth in Section 11.203.4, or (b) amounts set forth in another applicable city, state, or federal housing program.

Floor Area, Dwelling Unit Net. Floor area contained within dwelling units or single rooms in a lodging house excluding common areas, such as lobbies, hallways, elevator cores, amenity spaces, common storage areas or parking facilities, exterior walls, walls dividing dwelling units from each other, or walls dividing dwelling units from common areas, or unenclosed spaces such as open-air porches, balconies, or decks.

Incentive Project Any new development that consists of at least thirty thousand (30,000) square feet of Gross Floor Area devoted to one or more of the following uses listed in Section 4.30 of the Zoning Ordinance: Sections 4.31 i-1 (Hotel or motel), 4.32 f (Radio and television studio), 4.33 b-5 (College or University not exempt by statute, specifically including those uses and facilities listed in Subsection 4.56 c-4, c-5, and c-6), 4.33 c (Noncommercial Research Facility), 4.33 d (Health Care Facilities), 4.33 e (Social Service Facilities), 4.34 (Office and Laboratory Use), 4.35 (Retail Business and Consumer Service Establishments), 4.36 (Open Air or Drive In Retail Service), 4.37 (Light Industry, Wholesale Business and Storage), and 4.38 (Heavy Industry). For the purpose of this definition, new development shall mean (1) construction of new buildings or additions to existing buildings to accommodate uses in the above list, (2) substantial rehabilitation of buildings to accommodate uses in the above list for which the buildings were not originally used, or (3) Gross Floor Area whose use is changed from a use not included in the above list to a use included in the above list. In no case shall Gross Floor Area devoted to a Municipal Service Facility or Other Government Facility be considered an Incentive Project.

Inclusionary Housing Project. Any development of detached single-family, two-family, multifamily, and townhouse housing, elderly oriented congregate housing, and lodging houses as set forth in Sections 4.31 a-h and i-3, or development which includes any such residential use and at least one non-residential use, that creates at least ten (10) dwelling units or at least ten thousand (10,000) square feet of residential Gross Floor Area on one (1) lot or Development Parcel or two (2) or more adjoining lots in common ownership or under common control at any time within five (5) years following the first date of application for any special or building permit for development on the lot or lots or at any time within the twelve (12) months immediately preceding the first date of application for any special or building permit. For the purpose of this definition, development shall include (1) construction of new buildings or additions; (2) increasing the number of dwelling units or amount of residential Gross Floor Area within an existing residential building; (3) occupancy of existing buildings which have not been used for any residential use for a period of at least two (2) years; or (4) conversion of Gross Floor Area in existing buildings from non-residential to residential use. Development of fewer than ten (10) dwelling units and fewer than ten thousand (10,000) square feet of residential Gross Floor Area may be an Inclusionary Housing Project where the owner chooses voluntarily to comply with the provisions of Section 11.203.

1. Delete the existing Sections 11.200 to 11.206 and replace with new Sections 11.200 to 11.206 as set forth below:

11.200 INCENTIVE ZONING AND INCLUSIONARY HOUSING

11.201 Purposes.

The purposes of Sections 11.200 to 11.206 are to promote the public health, safety, and welfare by accommodating the expansion of commercial and residential opportunities throughout the city; by providing for a full range of housing choices throughout the City for households of all incomes, ages, and

sizes in order to meet the City's goal of preserving diversity by mitigating the impacts of commercial and residential development on the availability and cost of housing and especially housing affordable to low and moderate income households; by increasing the production of affordable housing to meet anticipated housing and employment needs throughout the city; by providing a mechanism through which commercial and residential development can contribute in a direct way to increasing the supply of affordable housing in exchange for a greater density or intensity of development than that otherwise permitted as a matter of right; and by establishing standards for the use of such contributions from the application of incentive zoning and inclusionary housing provisions.

11.202 Incentive Zoning. The developer or owner of an Incentive Project shall make a Housing Contribution in accordance with this Section 11.202.

- (a) *Calculation of Housing Contribution.* The Housing Contribution shall be calculated by multiplying the Gross Floor Area devoted to the uses that qualify the new development as an Incentive Project by the Housing Contribution Rate effective at the time the Superintendent of Buildings issues the first building permit for the Incentive Project. If a building permit is not required, the Housing Contribution Rate shall be the rate effective at the time the Housing Contribution is provided.
- (b) *Housing Contribution Rate.* The Housing Contribution Rate effective on September 28, 2015 shall be twelve dollars (\$12.00) per square foot of Gross Floor Area devoted to the uses that qualify the new development as an Incentive Project. The effective rate shall be subject to annual escalation equal to annual percentage increases in the Consumer Price Index (CPI) Housing Index for Boston-Brockton-Nashua, MA-NH-ME-CT or similar index to reflect changes in dollar values over time; however, annual decreases in CPI shall not cause the contribution rate to be decreased. In addition, on September 28 each year from 2016 to 2018 inclusive, the Housing Contribution Rate shall increase by one dollar (\$1.00). The table below sets forth the Housing Contribution Rate over time.

Effective Date	Housing Contribution Rate
September 28, 2015	\$12.00 per square foot.
September 28, 2016 (Annual Adjustment)	\$13.00 per square foot.
November 16, 2016 (CPI Adjustment)	\$13.50 per square foot.

- (c) *Timing of Payment.* The developer or owner of an Incentive Project shall provide the Housing Contribution to the Managing Trustee of the Affordable Housing Trust or its designee, who shall certify to the Superintendent of Buildings that the requirements of this Section are met prior to issuance of a certificate of occupancy for the Incentive Project. If the Gross Floor Area of an Incentive Project is subsequently increased accommodating uses that qualify as Incentive Project uses, then notwithstanding the size of the increase, a Housing Contribution calculated in the manner set forth in this Section shall be provided for every square foot of that increase.
- (d) *Reevaluation of Housing Contribution Rate.* The City shall initiate a reevaluation of the Housing Contribution Rate and any other aspect of these Incentive Zoning Provisions at an interval of no less than three (3) years from the time the rate was last amended by the City Council. Such reevaluation shall include a report provided to the City Council reviewing economic factors including but not limited to development activity, commercial rents per square foot, employment
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growth, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, and prices for dwelling units, and the nexus between Incentive Projects and housing.

11.203 *Inclusionary Housing.*

11.203.1 *Applicability.*

- (a) Except as otherwise provided, this Section 11.203 shall apply in all zoning districts throughout the city.
- (b) The requirements of this Section 11.203 shall apply to any Inclusionary Housing Project issued a special permit or, if no special permit has been issued, a building permit on or after December 1, 2016, (the date of the first advertisement of the most recent amendment to this Section 11.203)
- (c) For any Inclusionary Housing Project that has been issued a Special Permit for a Planned Unit Development by the Planning Board prior to December 1, 2016, (the date of the first advertisement of the most recent amendment to this Section 11.203), an amendment to that Special Permit that relates to modification of the street layout or other aspects of the Final Development Plan directly resulting from a delay, cancellation, or change in a state controlled infrastructure project shall be subject to the Inclusionary Housing provisions in effect at the time of the issuance of the original Special Permit or any amendment thereto issued prior to December 1, 2016, (the date of the first advertisement of the most recent amendment to this Section 11.203.) In no case shall this provision allow an increase of gross floor area, an increase in the number of units above what is allowed by the Special Permit, or an increase of the maximum height allowed by zoning for the Project.

11.203.2 *Inclusionary Housing Requirement.*

- (a) For Inclusionary Housing Projects issued a special permit or, if no special permit has been issued, a building permit on or after December 1, 2016 (the date of the first advertisement of the most recent amendment to this Section 11.203) but on or before June 30, 2017, fifteen percent (15%) of the total Dwelling Unit Net Floor Area within the project shall be devoted to Affordable Dwelling Units.
- (b) For Inclusionary Housing Projects issued a special permit or, if no special permit has been issued, a building permit after June 30, 2017, twenty percent (20%) of the total Dwelling Unit Net Floor Area within the project shall be devoted to Affordable Dwelling Units.
- (c) The City shall initiate a reevaluation of the Inclusionary Housing Requirement at an interval of no more than five (5) years from the time the Inclusionary Housing Requirement was last amended. Such reevaluation shall include a report provided to the City Council reviewing factors such as changes in demographic characteristics and residential development activity, housing trends measured in terms of, but not limited to, vacancy rates, production statistics, prices for dwelling units, and affordability, and the relationship between Inclusionary Housing Projects and all housing in Cambridge. The Community Development Department shall also conduct an annual review and report on the Inclusionary Housing Program.

11.203.3 *Standards for Providing Affordable Dwelling Units Created through Inclusionary Housing.*

- (a) Affordable Dwelling Units shall be provided on-site.
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- (b) Affordable Dwelling Units shall be similar in size, layout, construction materials, fixtures, amenities, and interior and exterior finishes to comparable non-Affordable Dwelling Units in the project.
 - (c) Affordable Dwelling Units shall have similar access to common areas, facilities, and services as that enjoyed by comparable non-Affordable Dwelling Units in the project including but not limited to outdoor spaces, amenity spaces, storage, parking, bicycle parking facilities, and resident services.
 - (d) Affordable Dwelling Units shall be dispersed throughout the project rather than concentrated on particular floors, within sections of a building, or within particular buildings in a project with multiple buildings.
 - (e) Except as specified below for Family-Sized Dwelling Units, the proportionate amounts of Affordable Dwelling Units defined by size and number of bedrooms within the total amount of Affordable Dwelling Units shall be similar to the proportionate amounts of non-Affordable Dwelling Units defined by size and number of bedrooms within the total amount of non-Affordable Dwelling Units in the project.
 - (f) The ratio of Family-Sized Affordable Dwelling Units to all Affordable Dwelling Units shall be greater than or equal to the ratio of non-Affordable Family-Sized Dwelling Units to all non-Affordable Dwelling Units in the project, notwithstanding that in some cases this may result in a smaller proportion of Affordable Dwelling Units that are not Family-Sized Dwelling Units in the project and a smaller proportion of total Affordable Dwelling Units in the project in order to meet the required percentage of Dwelling Unit Net Floor Area devoted to Affordable Dwelling Units in the project.
 - (g) Townhouse or multifamily residential projects of at least thirty thousand (30,000) square feet of Dwelling Unit Net Floor Area shall provide Family-Sized Affordable Dwelling Units at a ratio of at least one dwelling unit per every six thousand (6,000) square feet of required Affordable Dwelling Unit Net Floor Area in the project, rounded to the nearest whole unit with fractions of 0.5 unit or more rounded up and fractions of less than 0.5 unit rounded down, or the ratio derived from paragraph (f) above, whichever is greater.
 - (h) The ratio of rental to owner-occupied Affordable Dwelling Units shall mirror the ratio of rental to owner-occupied non-Affordable Dwelling Units in the project except that no Affordable Dwelling Units shall be rental Affordable Dwelling Units where a majority of all dwelling units in the project are initially offered for sale.
 - (i) In cases where the owner and the Community Development Department agree that the above standards, as applied, result in a total Dwelling Unit Net Floor Area of all Affordable Dwelling Units that is less than the Affordable Dwelling Unit Net Floor Area required to be provided pursuant to the Inclusionary Housing Requirement, the remainder of the Inclusionary Housing Requirement shall be met through a monetary contribution to the Affordable Housing Trust equal to the amount of subsidy necessary to create an equivalent amount of Affordable Dwelling Unit Net Floor Area in a project assisted by the Affordable Housing Trust. The Affordable Housing Trust shall periodically provide to the Community Development Department a report on projects it has assisted from which the Community Development Department shall calculate the amount of subsidy necessary to create a square foot of Dwelling Unit Net Floor Area in an affordable housing project assisted by the Affordable Housing Trust. Such calculation may be adjusted by the Community Development Department from time to time. Prior to issuance of a building permit for the project, the Community Development Department shall multiply the calculated per-
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square-foot amount by the outstanding Affordable Dwelling Unit Net Floor Area necessary to satisfy the Inclusionary Housing Requirement to determine the necessary monetary contribution, which shall be made prior to the issuance of any certificate of occupancy for the project.

11.203.4 Standards for Eligibility, Rent, Initial Sale Price, and Parking Fees for Affordable Dwelling Units Created through Inclusionary Housing.

- (a) Affordable Dwelling Units shall be rented or sold only to Eligible Households, with preference given to Cambridge residents, in accordance with standards and procedures related to selection, transfers, asset limits, and marketing established by the Community Development Department.
 - (b) Affordable Dwelling Units shall be created and conveyed subject to recorded covenants guaranteeing the permanent availability of the Affordable Dwelling Units for Eligible Households.
 - (c) For rental Affordable Dwelling Units:
 - (i) The gross household income of an Eligible Household upon initial occupancy shall be at least fifty percent (50%) and no more than eighty percent (80%) of AMI. A gross household income less than fifty percent (50%) of AMI may be permitted in the case of an Eligible Household having a rental subsidy allowing it to pay a rent equivalent to that paid by an Eligible Household with a gross household income within the range set forth above.
 - (ii) Rent, including utilities and any other fees routinely charged to tenants and approved by the Community Development Department, shall not exceed thirty percent (30%) of the gross household income of the Eligible Household occupying the Affordable Dwelling Unit, except that in the case of Affordable Studio Dwelling Units, rent shall not exceed twenty-five percent (25%) of the gross household income of the Eligible Household occupying the Affordable Dwelling Unit.
 - (iii) After initial occupancy, the gross household income of an Eligible Household shall be verified annually to determine continued eligibility and rent, in accordance with policies, standards, and procedures established by the Community Development Department.
 - (iv) An Eligible Household may continue to rent an Affordable Dwelling Unit after initial occupancy even if the Eligible Household's gross household income exceeds eighty percent (80%) of AMI, but if the Eligible Household's gross household income exceeds one hundred percent (100%) of AMI, or a percentage promulgated in a regulation by the Community Development Department from time to time, for more than one year after that Eligible Household's gross household income has been verified to exceed such percentage, the dwelling unit shall no longer qualify as an Affordable Dwelling Unit and either the dwelling unit must be rented to a new Eligible Household or a comparable non-Affordable Dwelling Unit in the project must become an Affordable Dwelling Unit.
 - (v) An Eligible Household may continue to rent an Affordable Dwelling Unit after initial occupancy even if the Eligible Household's gross household income falls below fifty percent (50%) of AMI, but the Eligible Household shall pay a rent that is no less than thirty percent (30%) of forty percent (40%) of AMI or, in the case of an Affordable Studio Dwelling Unit, the Eligible Household shall pay a rent that is no less than twenty-five percent (25%) of forty percent (40%) of AMI.
 - (vi) Where an optional parking fee exists, it shall not exceed the lesser of the following amounts for Affordable Dwelling Units:
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- (1) an amount calculated by applying to the rent of the Affordable Dwelling Unit the ratio of optional parking fee to rent for comparable non-Affordable Dwelling Units with the lowest non-affordable rent in the project, or
 - (2) an amount which, when added to the rent for an Affordable Dwelling Unit, shall not exceed thirty-three percent (33%) of the renting Eligible Household's gross household income or, in the case of an Affordable Studio Dwelling Unit, twenty-eight percent (28%) of the renting Eligible Household's gross household income.
- (vii) Notwithstanding the requirements set forth in (i) through (vi) above, an owner may voluntarily choose to charge a lower rent than as provided herein for Affordable Dwelling Units or to rent Affordable Dwelling Units to Eligible Households with lower gross household incomes than as provided herein.
- (d) For owner-occupied Affordable Dwelling Units:
- (i) The gross household income of an Eligible Household upon initial occupancy shall be no more than one hundred percent (100%) of AML.
 - (ii) The initial sale price of an Affordable Dwelling Unit shall be determined to ensure that the monthly housing payment (which shall include debt service at prevailing mortgage loan interest rates, utilities, condominium or related fees, insurance, real estate taxes, and parking fees, if any) shall not exceed thirty percent (30%) of ninety percent (90%) of monthly AML, except that in the case of an Affordable Studio Dwelling Unit, the monthly housing payment shall not exceed twenty-five percent (25%) of ninety percent (90%) of monthly AML.

11.203.5 Relaxation of Dimensional Requirements for Inclusionary Housing Projects.

The following relaxations of the dimensional requirements in any zoning district, including base or overlay zoning districts, shall be permitted as-of-right for an Inclusionary Housing Project:

- (a) The Gross Floor Area permitted by the applicable zoning may be increased by thirty percent (30%), as long as such additional Gross Floor Area is used for residential uses not including hotel or motel use.
- (b) The number of dwelling units permitted by the applicable zoning through rules for minimum lot area per dwelling unit or other applicable rules may be increased by thirty percent (30%).
- (c) The additional Gross Floor Area or dwelling units permitted herein shall be counted toward the determination of any applicable threshold triggering the requirement of a special permit, including but not limited to Section 19.20 Project Review Special Permit, Section 4.26 Multifamily Special Permit, and Section 11.10 Townhouse Development Special Permit.

11.204 Implementation of Incentive Zoning and Inclusionary Housing.

- (a) The City Manager shall have the authority to promulgate regulations for the implementation of the provisions of Sections 11.200 to 11.205. There shall be a thirty day review period, including a public meeting, to receive public comments on draft regulations before final promulgation.
- (b) The Community Development Department may develop standards and procedures appropriate to and consistent with the provisions of Sections 11.200 to 11.205.

11.205 Enforcement of Incentive Zoning and Inclusionary Housing.

The Community Development Department shall certify in writing to the Superintendent of Buildings that all applicable provisions of Sections 11.200 to 11.205 have been met before issuance of any building permit for any Incentive Project or Inclusionary Housing Project, and shall further certify in writing to the Superintendent of Buildings that all documents have been filed and all actions taken necessary to fulfill the requirements of Sections 11.200 to 11.205 before the issuance of any certificate of occupancy for any such project.

11.206 *Affordable Housing Trust.*

The entity "Cambridge Affordable Housing Trust Fund" was established by Chapter 482 of the Acts of 1991, and has been thereafter identified and known as the Cambridge Affordable Housing Trust or the Affordable Housing Trust.

11.206.1 *Board of Trustees.*

- (a) The City Manager shall appoint and chair a nine (9) member Board of Trustees of the Affordable Housing Trust. The Board of Trustees shall be composed of the City Manager and representatives from different sectors of the community concerned with housing policy, including members of City boards and agencies, individuals affiliated with Cambridge non-profit housing organizations, and Cambridge community representatives.
- (b) The Trustees shall establish regulations for the operations of the Trust.
- (c) The Trustees shall administer the Affordable Housing Trust, whose activities shall include but not be limited to the following:
 - (i) Disburse funds and property pursuant to the provisions of Sections 11.200 to 11.206;
 - (ii) Review and approve or disapprove proposals submitted for use of funds and property;
 - (iii) Advise on the establishment of new programs designed to meet the City's affordable housing needs;
 - (iv) Provide assistance and reports where appropriate to any special permit granting authority authorized to issue a special permit for any development making use of funds from the Affordable Housing Trust; and
 - (v) Advise on policies, standards, and procedures for the implementation of the provisions of Sections 11.200 to 11.206.

11.206.2 *Receipt and Use of Funds and Property.*

- (a) The Affordable Housing Trust may receive funds and property generated by the provisions of Sections 11.200 to 11.206 as well as funds and property generated from other sources.
 - (b) The funds and property of the Affordable Housing Trust may be used for, but shall not be limited to, the following:
 - (i) Creation of rental or owner-occupied Affordable Dwelling Units through such mechanisms as favorable financing terms, capital grants to write down project costs, subsidies for land acquisition, subsidies for acquisition of existing structures, and subsidies for acquisition of Affordable Dwelling Units within a larger development;
 - (ii) Substantial rehabilitation of distressed multifamily residential properties in a manner that preserves the affordability of units through favorable financing terms or capital grants to
-

write down project costs, interest rate subsidies, and loan guarantees with priority funding consideration given to multifamily housing owned by non-profit housing entities that ensure maximum long-term affordability;

- (iii) Acquisition and rehabilitation of potential limited equity housing cooperatives or condominium conversions using low interest loans, share loans, or capital grants to write down project costs;
- (iv) Preservation of existing affordable housing by providing acquisition and/or financing assistance for Affordable Dwelling Units that are part of a larger development; and
- (v) Reasonable administrative expenses necessary to support Affordable Housing Trust activities, including but not limited to payment for consulting services such as legal, appraising, or engineering services, and other project related expenses.

In City Council April 3, 2017.

Passed to be ordained by a yea and nay vote:-

Yeas 9; Nays 0; Absent 0.

Attest:- Donna P. Lopez, City Clerk.

A true copy;

ATTEST:-

Donna P. Lopez
City Clerk

EXHIBIT 4



Sean Hope <sdhope77@gmail.com>

12 Arnold Circle (PLEASE READ!)

Sean Hope <sdhope77@gmail.com>

Wed, Feb 28, 2018 at 12:23 PM

To: "Prosnitz, Linda" <lprosnitz@cambridgema.gov>

Cc: "Cotter, Chris" <ccotter@cambridgema.gov>, nglowa@cambridgema.gov

Bcc: "Singanayagam, Ranjit" <ranjits@cambridgema.gov>

Hi Linda,

Thanks for taking my call. As I mentioned I have the property at 12 Arnold Circle under agreement to purchase. The property is a legal 12 unit building that was approved by Variance in 1961. I have been working with ISD since October 2017 and was under the impression that the property was not an Inclusionary Housing Project. As I mentioned on the phone my P&S agreement with the Seller requires a large (95K) non-refundable deposit that is due today. I would greatly appreciate confirmation that the interior renovation of 12 Arnold Circle via duly authorized building permit is not a Inclusionary housing project. I have included a short summary of details of the property and the analysis I discussed with Inspectional Services.

The building at 12 Arnold Circle (the "Property") is approximately 15,000sf gross and contains twelve (12) legal units and parking approved by Variance BZA Case No. 3439 1961 (see attached). I've met with Ranjit several times since October regarding this property to establish the zoning compliance and what would be needed to renovate this property as a 12 unit dwelling. He confirmed that because of the 1961 Variance the building contains Twelve (12) Legal units and could be renovated with a building permit and no need for zoning relief provided there is no increase in GFA or any new dimensional violations, essentially staying within the foot print of the structure.

Further, he stated that despite the size of the building and the number of units the project is not an inclusionary development project. The Inclusionary provision in question is the definition section that states "*occupancy of existing buildings which have not been used for any residential for a period of at least two years*". Ranjit's opinion was that provision was intended to focus on properties like Vail court that had been "legally Abandoned" and there was no intention of occupying the property for residential purposes for at least two years. In the case of Arnold Circle the Owner had always maintained his intention of renovating the property and resuming occupancy. Although under Chapter 40A, Section 6, "A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more. Case law has established that the abandonment of a nonconforming use results from the concurrence of two factors; (1) the intent to abandon and (2) the voluntary conduct that carries the implication of abandonment. *Pioneer Insulation and Modernization Corp. v. Lynn*, 331 Mass. 560 (1954); *Dobbs v. Board of Appeals of Northampton*, 339 Mass. 684 (1959); *Derby Refining Co. v. Chelsea*, 407 Mass. 703 (1990). Most importantly, in this case the property was made Conforming by Variance in 1961 and further there was never intent by the Owner to abandon which is evidenced by the numerous court pleadings and appeals over the past decade. In fact the Owner to his own detriment maintained that he could raise the funds to repair the structure and continue to occupy as his primary residence with renters.

I can understand why the inclusionary definition is intentionally broad but if a legally conforming building could be subject to inclusionary housing then any large building under construction for a period of two years would be subject to this provision. I do not think that was the intention. If 12 Arnold didn't receive a Variance and the same set of facts applied then Ranjit said that the building would be considered pre-existing nonconforming, would likely need zoning relief and the inclusionary provisions may apply in order to have twelve (12) units.

From a practical perspective it has taken years to finally get the Owner to agree to sell the property. If this provision applied I could foresee several years of more litigation and a delay with the renovation of the property. Additionally I wouldn't be able to make the project work and would have to terminate the contract. Given the time sensitive nature of this I appreciate anything you could do to help me quickly get a response today. I can be reached on my cell at 617.953.8369

Sean D. Hope Esq.

4/2/2018

Gmail - 12 Arnold Circle (PLEASE READ!)

Hope Legal Law Offices

675 Massachusetts Avenue

5th Floor

Cambridge, MA 02139

Phone: (617) 492-0220

Fax: (617) 492-3131

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 **BZA Variance Decision (12 Arnold Circle).pdf**
317K

BZA APPLICATION FORM

GENERAL INFORMATION

2018 APR 20 AM 10: 05

OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

The undersigned hereby petitions the Board of Zoning Appeal for the following:

Special Permit: _____ Variance: _____

PETITIONER: 12 Arnold Circle LLC c/o Sean D. Hope

PETITIONER'S ADDRESS: 675 Massachusetts Avenue Cambridge, MA

LOCATION OF PROPERTY: 12 Arnold Circle

TYPE OF OCCUPANCY: Multifamily ZONING DISTRICT: _____

REASON FOR PETITION:

_____ Additions	_____ New Structure
_____ Change in Use/Occupancy	_____ Parking
_____ Conversion to Addi'l Dwelling Unit's	_____ Sign
_____ Dormer	_____ Subdivision
_____ Other: _____	

DESCRIPTION OF PETITIONER'S PROPOSAL:

Petitioner requests an Appeal of the decision by the Cambridge Building Commissioner that the property at 12 Arnold Circle is subject to the Inclusionary Housing Provision Section 11.200 including the threshold defining "Inclusionary Housing "Project" .

SECTIONS OF ZONING ORDINANCE CITED:

Article 10 Section 10.20 (Appeal)

Article _____ Section _____

Article _____ Section _____

Applicants for a **Variance** must complete Pages 1-5

Applicants for a **Special Permit** must complete Pages 1-4 and 6

Applicants for an **Appeal** to the BZA of a Zoning determination by the Inspectional Services Department must attach a statement concerning the reasons for the appeal

Original Signature(s): 12 Arnold Circle LLC
(Petitioner(s)/Owner)
Sean D. Hope
(Print Name)

Address: 675 Massachusetts Avenue
Cambridge, MA 02139

Tel. No.: 617-492-0220

E-Mail Address: sean@hopelegal.com

Date: April 17, 2018

12 Arnold Circle

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Petitioner

117-5
GREENBERG, STEVEN & AVRA GOLDMAN
106 HANCOCK ST #1
CAMBRIDGE, MA 02139

117-5
BALDWIN, BLAIR F. JR & LINDSAY HYDE
102 HANCOCK ST., UNIT #3
CAMBRIDGE, MA 02139

SEAN D. HOPE, ESQ.
675 MASS AVENUE
CAMBRIDGE, MA 02139

117-5
ROMAN, JORGE
102 HANCOCK ST., #5
CAMBRIDGE, MA 02139

117-5
MCDONALD, CHRISTIE A. &
MICHAEL D. ROSENGARTEN
104 HANCOCK ST UNIT #6
CAMBRIDGE, MA 02139

117-5
WOLITZKY, ALEXANDER GREENBERG &
SANDRA ULLMAN WOLITZKY
104 HANCOCK ST., #7
CAMBRIDGE, MA 02139

117-20
NGUYEN, HA D.
15 LEE STREET, #1
CAMBRIDGE, MA 02139

117-20
DOYLE, SANDRA
15 LEE ST, UNIT# 2
CAMBRIDGE, MA 02139

117-20
HARRIS, BARBARA,
TRUSTEE THE BARBARA L. HARRIS REV TR
15 LEE ST., #3
CAMBRIDGE, MA 02139

117-20
HWANG, MIIN
15 LEE STREET, UNIT #4
CAMBRIDGE, MA 02139

117-20
DERRAH, THOMAS L.
15 LEE ST., UNIT #5
CAMBRIDGE, MA 02139

117-20
17 LEE STREET REALTY LLC
15-17 LEE ST., #6
CAMBRIDGE, MA 02139

117-20
HALL, CURTIS W. & ELIZABETH J. HALL
17 LEE ST. UNIT#7
CAMBRIDGE, MA 02148

117-20
CHARM, TAMARA B. & OREN L. WEISBERG
48A DANA ST.
CAMBRIDGE, MA 02139

117-20
KOCHHAR, SANDEEP
15-17 LEE ST., #T2
CAMBRIDGE, MA 02139

117-20
BERENSON, KATHY LASHAY
15-17 LEE ST, #T3
CAMBRIDGE, MA 02139

117-20
BERENSON, MARSHALL
15-17 LEE ST., UNIT #T4
CAMBRIDGE, MA 02139

117-20
MASSICOTTE, MATTHEW & TANIA SLYWYNSKYJ
15 LEE ST., #T5
CAMBRIDGE, MA 02139

117-20
VINER, ARON C. & MARIA PANCHENKO
15 LEE ST., #T6
CAMBRIDGE, MA 02139

117-23
MAHOGANY, LLC
C/O STEPHEN WOLFBERG
1010 MEMORIAL DR #17A
CAMBRIDGE, MA 02138

117-24
897 MASSACHUSETTS AVENUE, L.L.C
C/O ERIC MANKIN
7 MARSH ST
BELMONT, MA 02478

117-25
REIFMAN, BEVERLY
47 WENDELL ST. APT #2
CAMBRIDGE, MA 02138

117-26
KROHN, KENNETH B.
12 ARNOLD CIRCLE
CAMBRIDGE, MA 02139

117-27
LEIB, RENA
10 ARNOLD CIR., #1
CAMBRIDGE, MA 02139

117-27
GILCHRIST, SIMON G.
10 ARNOLD CIR. UNIT#2
CAMBRIDGE, MA 02139

117-27
KELLEHER, MAUREEN
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117-27
MACPHERSON, BRIAN R. &
CAROLEEN V. MACPHERSON
10 ARNOLD CIR., #4
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117-58
SHINE, ANNA N. P.,
TR OF C/O NEW ENGLAND SCHOOL OF ENGLISH
36 JFK ST/BOX 12
CAMBRIDGE, MA 02138

117-59
COELHO, MARY
9 LEE ST
CAMBRIDGE, MA 02139

117-64
MOSKOW, ABRAHAM & MICHAEL B. MOSKOW,
TRUSTEES OF NEWTOWNE TRUST
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BOSTON, MA 02116

117-69
HOU, TAI-YUAN, YUAN-WANG HOU &
STEPHEN MING-CHANG HOU
88 HANCOCK ST. UNIT1
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117-69
DABAR, GEORGE R. & PEGGY DABAR
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P.O.BOX 400354
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117-69
CAMBRIDGE HOUSING AUTHORITY
675 MASSACHUSETTS AVE
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117-69
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228 OLD COUNTY RD.
E.SANDWICH, MA 02537

117-69
LIPMAN, JAMIE
88 HANCOCK ST., #5
CAMBRIDGE, MA 02139

117-69
FREER, KIMBERLY D. & JAMES P. WOODARD
88 HANCOCK ST., #6
CAMBRIDGE, MA 02139

117-5
HEACOCK, SHELLY A.
102 HANCOCK ST., #4
CAMBRIDGE, MA 02139

117-69
321-88 LLC
15 CENTRE ST.
CAMBRIDGE, MA 02139

117-69
GRIPPO, CHRISTIAN P.
31 LOPEZ ST.
CAMBRIDGE, MA 02139

117-69
FABRE, HILARY & THOMAS ROGERS
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88 HANCOCK ST #10
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117-69
HAROLD, RICHARD S.
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117-69
LEDERER, BRUCE & SANDRA MACHSON
88 HANCOCK ST., #12
CAMBRIDGE, MA 02139

117-69
SEPTOFF, PETER L.
88 HANCOCK ST., UNIT #14
CAMBRIDGE, MA 02139

117-69
BERENS, JEFFREY M. & ANNE E. BERENS
88 HANCOCK ST., #15
CAMBRIDGE, MA 02139

117-69
KARAYORGIS, PANDELIS & JULIA WERNITZ
27 VALENTINE ST
CAMBRIDGE, MA 02139

117-69
SCHREIBER, GEORGE G. &
KATHERINE A. SCHREIBER
3 FIELDS LANE
WAYLAND, MA 01778

117-74
MAJOR, APRIL J. & DONALD W. MAJOR
98 HANCOCK ST #1
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117-74
C/O BROADWAY LANDMALLS INC.
339 BROADWAY
CAMBRIDGE, MA 02139

117-74
BROADWAY LANDMALLS INC.
339 BROADWAY
CAMBRIDGE, MA 02139

117-76
GREELEY,ROBIN ADELE & MICHAEL R. ORWICZ
21 LEE ST., UNIT#5
CAMBRIDGE, MA 02139

117-76
LESLIE, DONALD M., JR. &
KATHLEEN M. PUCKETT-LESLIE, TRS
21 LEE ST., #6
CAMBRIDGE, MA 02139

117-76
PUCKETT, JULIE M.
21 LEE ST. UNIT#7
CAMBRIDGE, MA 02139

117-76
LUSKSTEVEN J.
21 LEE ST 1L
CAMBRIDGE, MA 02139

117-76
CHANG, PAMELA R.
21 LEE ST., #2R
CAMBRIDGE, MA 02139

117-76
SHARMA, SANDEEP & AMRITA SINGH
21 LEE ST., #3L
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117-76
BREGMAN, LAWRENCE D. &
ADEANE H. BREGMAN
21 LEE STREET #4R
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117-104
HEAD, MARTHA S.
2 ARNOKLD CIR #1
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117-104
PARIC, VALERIE
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117-104
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117-104
TRAINOR, MARY M.
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12 Arnold circle

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117-104
WHITNEY, DAVID L.
2 ARNOLD CIRCLE #5
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117-104
BABOOLAL, HERMANTH A.
404 MANOR RIDGE DR
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117-3
HARWOOD, PAULA M.
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