

Resolution No. R-20-2023
Adopted: November 8, 2023

A Resolution of the Mayor and Town Council of Kensington Accepting a Monetary Contribution in the amount of \$100,000 from Knowles Manor Senior Housing, LLC, to be used for Traffic and Parking Enforcement within the Town of Kensington.

WHEREAS, Article VI, "Powers of the Council", Section 602, "Specific Powers", Subsection (6), "Appropriation", of the Town Charter states that the Council shall have the power to appropriate municipal money for any purpose within the power of the Council; and

WHEREAS, Knowles Manor Senior Housing, LLC, located at 3910 Knowles Avenue, previously reached a Settlement Agreement and Mutual Release (EXHIBIT A) with the Neighbors for an Improved Kensington; and

WHEREAS, the Settlement Agreement and Mutual Release stipulates within Section 4, "Monetary Contributions", that Knowles Manor Senior Housing, LLC, shall pay into an escrow account the sum of one hundred thousand dollars (\$100,000) to be used for Traffic and Parking Enforcement; and

WHEREAS, the Contribution shall be released by the escrow agent to the Town of Kensington if and when the Town provides the escrow agent with a resolution stating its willingness to Accept the Contribution and use it to supplement Traffic and Parking Enforcement.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Town Council of Kensington Accept the Contribution in the amount of one hundred thousand dollars (\$100,000) as revenue and will appropriate the funds within the Fiscal Year 2024-2025 (FY25) Budget towards Traffic and Parking Enforcement.

ADOPTED by the Town Council of Kensington, Maryland, at the regular public meeting assembled on the 8th day of November, 2023.

EFFECTIVE the 8th day of November, 2023.

ATTEST: TOWN OF KENSINGTON, MARYLAND

By: 
Susan C. Engels, Clerk – Treasurer

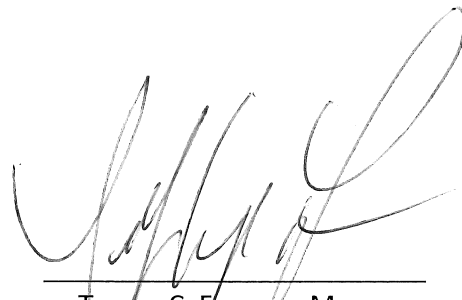

Tracey C. Furman, Mayor

EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement"), is entered into by and between Knowles Manor Senior Housing LLC ("Knowles Manor") and Neighbors for an Improved Kensington, Al Carr, Jim Cooper, Nathan Engle, Molly Hauck, Ruth Hoffman, Doug Lynott, Jennifer Loukissas, Jill McCrory, Seaborn McCrory, Jackie Pickard, Peter Pickard, and Pamela Smith (collectively, the "Neighbors") (Knowles Manor and Neighbors are collectively the "Parties"), and made effective as of this 12 day of January, 2020.

WITNESSETH:

WHEREAS, on February 11, 2019, Knowles Manor submitted Site Plan Application No. 820190080 ("Site Plan") and Preliminary Plan Application No. 120190140 ("Preliminary Plan") (collectively, the "Plans") contemplating redevelopment of certain property generally located at 3906 and 3910 Knowles Avenue in Kensington, Maryland ("Property"); and

WHEREAS, the Montgomery County Planning Board ("Board") considered the Plans at a hearing held on July 11, 2019, at which hearing a number of the Neighbors appeared in opposition as parties of record; and

WHEREAS, pursuant to the terms of Board Resolution No. 19-101 pertaining to the Preliminary Plan, and Board Resolution No. 19-102 pertaining to the Site Plan, both issued on July 30, 2019, the Board approved the Plans; and

WHEREAS, the approved Plans permit redevelopment of the Property with an approximately 94 unit senior housing facility with structured parking and a maximum height of sixty (60) feet ("Project"); and

WHEREAS, on August 29, 2019, Neighbors filed with the Circuit Court for Montgomery County, Maryland ("Circuit Court") a Petition for Judicial Review ("Petition") of the Board's approval of the Plans; and

WHEREAS, on October 4, 2019, Knowles Manor filed its Response to the Petition with the Circuit Court; and

WHEREAS, Knowles Manor has not yet obtained certification of its Site Plan ("Certified Site Plan"), which certification is required prior to record plat and building permits for the Project; and

WHEREAS, subsequent to the filing of the Petition, Knowles Manor and Neighbors entered into discussions for the purposes of reaching an agreement that would dispose of the Petition; and

WHEREAS, the Parties desire to resolve all outstanding disputes related to the Plans and the Petition and to avoid the burdens, costs and risks of litigation associated with the Petition, and any other legal disputes, without any of the Parties admitting liability or fault;

NOW THEREFORE, in consideration of the foregoing, of the mutual obligations and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF THE PREAMBLES.** The preambles set forth above are incorporated herein and made a part of this Agreement.

2. **MUTUAL CONSIDERATION.** Knowles Manor agrees to pursue a Certified Site Plan that relocates the layby along Knowles Avenue eastward, so that it is centered along the Property's frontage and separated from the vehicular entrance to the Property, and commit to other requirements relating to parking and loading as described more fully in Paragraphs 3 and 4 below. In consideration for Knowles Manor's performance of the terms of this Agreement, Neighbors agree to support the approval of the Certified Site Plan, withdraw the Petition in accordance with this Agreement, and not pursue any other actions challenging the validity of the Plans. Neighbors also agree to refrain from any further appeals relating to the Project's Plans so long as they are consistent with the Certified Site Plan. Neighbors shall notify Knowles Manor directly regarding any issues they may have with regard to implementation of the Plans. Knowles Manor also agrees to notify Neighbors directly before filing any future amendments to the Plans.

3. **PROJECT COMMITMENTS.** In connection with the development of the Project, and in addition to fulfillment of the conditions of approval for both the Preliminary Plan and Site Plan, Knowles Manor further agrees to the following:

a. All on-site staff associated with the Project shall be required to park at off-site locations. No parking for staff will be provided on-site.

b. At least eight (8) parking spaces within the Project's garage will be reserved, via appropriate signage, for visitor use only.

c. As part of the construction plan and associated construction contracts for the Project, Knowles Manor will prohibit construction vehicles from blocking or otherwise occupying any travel lanes along Knowles Avenue between the hours of 3 p.m. and 8 p.m. on weekdays, except as allowed and required pursuant to the approved building plans and permits to construct improvements within the Knowles Avenue right-of-way, including, but not limited to, utilities and public improvements. Additionally, at no time shall construction vehicles be allowed to block or otherwise occupy any neighboring streets, including, but not limited to, Detrick Avenue and Warner Street.

d. Knowles Manor, through effective on-site management, will prevent vehicles from standing or parking along the eastbound lanes of the Property's Knowles Avenue frontage, outside of the Project's lay-by lane, at all times. Knowles Manor will also pursue the State Highway Administration's ("SHA") approval of "No Parking" signage to be installed by Knowles Manor along the entirety of the Property's frontage, including along the lay-by lane.

e. Knowles Manor will develop and enforce, through effective on-site management, a loading plan that incorporates, at a minimum, the following elements:

i. All vendors making or expected to make deliveries to the Property shall be informed both verbally and in writing of the business hours of the Project and hours during which the building will be accessible to receive deliveries.

ii. Knowles Manor's contracts with trash and recycling vendors shall require that such vendors access to the Project shall be strictly limited to the interior loading area.

iii. Any deliveries from vehicles illegally parked on the Property or along Knowles Avenue will be rejected and the associated delivery personnel denied access to the Project.

iv. On-site staff will report illegally parked vehicles to the appropriate authority and will cooperate to enforce any relevant parking laws.

v. Within the Project's parking structure, Knowles Manor will install and maintain a package concierge kiosk and require all package vendors, including, without limitation, Amazon and Fed-Ex, to make package deliveries to that kiosk.

4. **MONETARY CONTRIBUTION.** In addition to the foregoing, Knowles Manor shall pay into an escrow account the sum of one hundred thousand dollars (\$100,000.00) to be used for traffic and parking enforcement purposes within the Town of Kensington (the "Contribution"). Knowles Manor shall deliver the Contribution, in immediately available funds, to the escrow agent of its choosing upon the earlier of Knowles Manor's closing on the purchase of the Property, or August 1, 2021. The Contribution shall be nonrefundable to Knowles Manor and shall be released by the escrow agent to the Town of Kensington if and when the Town provides the escrow agent with a resolution stating its willingness to accept the Contribution and use it to supplement traffic and parking enforcement. If all or any part of the Contribution is not claimed within six (6) years of the date of its deposit in the escrow account, the remaining funds shall be released to an agreed-upon entity of the Montgomery County, Maryland government, with the intent that such funds be used for the planning, design, constructions and/ or operation of a community recreation center in Kensington.

5. **WITHDRAWAL OF PETITION.** Within five (5) business days of the certification of the Site Plan, as described in Section 2 above, Neighbors shall file with the Circuit Court a Notice of Withdrawal of the Petition. All costs of the Petition shall be the responsibility of Neighbors.

6. **EVENTS OF DEFAULT.** It shall be an Event of Default if any Party breaches any obligation required of it by this Agreement and does not cure said breach within five (5) business days of receipt of written notice of said breach. The Parties shall have all remedies available at law or in equity for an event of Default by the other Party, including, without limitation, injunctive relief and the right to recover actual damages, consequential damages, special damages, and attorney's fees and legal costs associated with the opposing party's Event of Default.

7. **MUTUAL RELEASE.** Knowles Manor and Neighbors ("Released Parties") release each other of and from any and all claims and causes of actions, demands, obligations, agreements, promises, liabilities, damages, costs and fees arising out of or relating to the Petition filed by Neighbors on August 29, 2019 with the Circuit Court for Montgomery County, Maryland for Judicial Review of the Board's approval of the Plans.

8. **INTEGRATION.** The Parties agree that this Agreement supersedes all prior agreements and constitutes the sole and complete agreement between the Parties, and may be

amended only by written instrument signed by or on behalf of the Parties. This Agreement is the result of joint efforts of the Parties and their counsel, and any questions of doubtful interpretation of any term or provision hereof shall not be resolved by any rule or interpretation against the draftsman, but rather in accordance with the fair meaning thereof, having due regard for the benefits and rights intended to be conferred upon the Parties and the limitations and restrictions upon such rights and benefits intended to be provided.

9. **REPRESENTATIONS AND WARRANTIES.** The Parties represent and acknowledge that: (i) they have read this Agreement; (ii) they have made such investigation of the matters pertaining to this Agreement as they deem necessary and find the terms of the Agreement to be satisfactory; (iii) they understand all of the terms of this Agreement; (iv) they execute this Agreement freely, voluntarily and without coercion, with full knowledge of its significance and the legal consequences thereof; (v) they have been represented by counsel and have had an adequate opportunity to review and consider the terms of the Agreement; and (v) the promises which are made to induce this Agreement are limited to those set forth herein.

10. **CHOICE OF LAW.** This Agreement shall be construed in accordance with the laws of the state of Maryland.

11. **COOPERATION.** Each party agrees to execute and deliver any and all documents reasonably required by the other party in order to carry out the terms of this Agreement and to give full effect thereto.

12. **TIME IS OF THE ESSENCE.** The parties agree that time is of the essence in relation to all actions contemplated in this Agreement.

13. **BINDING EFFECT.** This Agreement is made in settlement of the Petition and related dispute between the Parties and by entering into this Agreement no party makes any admission as to the validity of the claims or defenses asserted by any other party. By execution of this Agreement, each party expressly acknowledges that this Agreement is validly executed by an authorized officer or agent of such party and is binding upon and enforceable against such party in accordance with its terms. This agreement is binding upon, and shall inure to the benefit of, the Parties and their successors and assigns.

14. **SEVERABILITY.** If any provision of this Agreement, or any portion thereof, shall be declared by a court having jurisdiction over this Agreement and the Parties hereto to be invalid or unenforceable under applicable statute, regulation, ordinance, executive order, other rule of law (including common law), such provision or portion hereof, shall be deemed reformed or deleted, but only to the extent necessary to comply with the statute, regulation, ordinance, order or rule, and the remaining provisions of this Agreement shall remain in full force and effect.

15. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, and shall be effective when all Parties have signed a counterpart hereof. The Parties agree that signatures by facsimile, including scanned signatures transmitted electronically, shall be acceptable for all purposes and deemed to be the same as original ink signatures.

[SIGNATURE PAGES FOLLOW]