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Page: 1 of 61 04/24/2023 11:53 AM

**PRESERVATION RESTRICTION AGREEMENT**

The parties to this Preservation Restriction Agreement (this "Restriction"), dated 4/24 ~~2023~~, 2023, are NEWTON CEMETERY CORPORATION, a Massachusetts cemetery corporation located at 791 Walnut Street, Newton Center, MA 02459 (herein together with successors, administrators and assigns, "Grantor"), and the CITY OF NEWTON (alternatively, "Grantee" or the "City"), a Massachusetts municipal corporation with a place of business at 1000 Commonwealth Avenue, Newton, MA 02459, acting by and through the Newton Historical Commission.

**RECITALS**

WHEREAS, Grantor is owner in fee simple of certain real property located at 791 Walnut Street in the City of Newton, Massachusetts, by virtue of a deed from Rebecca P. Clarke dated May 15, 1855, recorded at the Middlesex South Registry of Deeds (the "Registry") in Book 714, Page 151, and a deed from Samuel Trowbridge dated October 6, 1855, recorded at the Registry in Book 728, Page 231 (hereinafter, the "Premises"), the aforesaid Premises being the original portion of the present-day Newton Cemetery;

WHEREAS, a portion of the Premises, known as Section K, Lot 154, and also known as the Whipple-Beal Lot (hereinafter, the "Protected Area") is more particularly described and delineated in Exhibit A attached hereto and incorporated herein, and is further depicted on a plan titled "Protected Area (Whipple-Beal Fence: Section K, Lot 154)", attached hereto and incorporated herein as Exhibit B (the "Plan");

WHEREAS, the Protected Area consists of a cemetery lot of approximately 294 square feet of land, with burial rights held by the Whipple-Beal family, and is improved by gravestones and a decorative cast-iron fence that encloses the cemetery lot;

WHEREAS, the Protected Area is further described in and depicted in a series of photographs and documents (together, "Baseline Documentation") incorporated herein and attached hereto as Exhibits A, B, C, D and E, which Baseline Documentation the parties agree provides an accurate representation of the Protected Area as of the date of this grant;

WHEREAS, the Baseline Documentation shall consist of the following:

- 1. Metes-and-Bounds Description of Protected Area (Exhibit A);

Newton Cemetery  
791 Walnut Street  
Newton, MA 02459

2. Plan of Protected Area (Exhibit B);
3. A series of sixteen (16) photographs taken April 23, 2019, April 25, 2019, June 12, 2019, September 28, 2020, and September 29, 2020, copies of which are also on file at the Newton Historical Commission, 1000 Commonwealth Ave., Newton Centre, MA 02459 (Exhibit C);
4. Massachusetts Historical Commission Inventory Form NWT.804 for Newton Cemetery dated March 2012, and prepared by Katy Hax Holmes (Exhibit D); and
5. Massachusetts Historical Commission Inventory Form NWT.805 for Whipple-Beal Plot K-154, dated March 2022 and prepared by Lara Kritzer (Exhibit E).

WHEREAS, the Premises, including the Protected Area, is an exemplar in the City of Newton of the nineteenth century rural cemetery movement, is historically significant for its architecture, associations and/or archaeology and qualifies for the protections of perpetual preservation restrictions under M.G.L. Chapter 184, Sections 31, 32 and 33 (the “Act”);

WHEREAS, the Protected Area is the site of the first interment at the Premises, and contains one of the last remaining examples of nineteenth century decorative cast-iron fencing within the Premises;

WHEREAS, the Premises, including the Protected Area, is included in the Inventory of Historic Assets of the Commonwealth of Massachusetts as Inventory Form NWT.804 (Exhibit D);

WHEREAS, Grantor is obligated to convey to Grantee a perpetual historic preservation restriction for the Protected Area in order to secure the release of certain Community Preservation Act grant funds used for the rehabilitation and repair of the decorative cast-iron fencing, all pursuant to that certain Community Preservation Funding Agreement Between Newton Cemetery and the City, Contract No. L-6410, dated March 28, 2018 (the “Funding Agreement”);

WHEREAS, the Whipple-Beal family, through its cemetery lot representative, Eliot Beal (the “Lot Representative”) acknowledges and consents to the creation and enforcement of a preservation restriction that preserves the decorative cast-iron fencing within the Protected Area, and in conjunction therewith, the Lot Representative has contributed money in the amount of \$7,450.00 for the rehabilitation and repair of said fencing; and

WHEREAS, the Act authorizes the creation and enforcement of preservation restrictions appropriate to the preservation of a site or structure for its historical significance, Grantor and Grantee recognize the historical, cultural, and aesthetic value and significance of the Protected Area, and have the common purpose of conserving and preserving its aforesaid value and significance. To that end, Grantor desires to grant to Grantee, and Grantee desires to accept, this Restriction, pursuant to the Act.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and for other good and valuable consideration, the receipt of which is acknowledged, Grantor does hereby grant, release and convey to Grantee, its successors and assigns a preservation restriction in perpetuity and for preservation purposes over the Protected

Area. Grantor herein declares that the Protected Area shall be held, mortgaged, encumbered, transferred, sold, conveyed, and used subject to the covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with the land in perpetuity and to burden the Protected Area in perpetuity, so long as they remain in force and effect, the Grantor conveys the following restrictions and covenants to the Grantee, as follows:

**1. PURPOSE**

1.1. Purpose. It is the purpose of this Restriction to assure that the historic, cultural and aesthetic features of the Protected Area will be retained and maintained forever substantially in its current condition or in a restored condition approved by Grantee for preservation purposes and to prevent any use or change to the Protected Area that will significantly impair or interfere with the Protected Area's preservation values.

**2. GRANTOR'S COVENANTS**

2.1. Covenant to Maintain. Subject to the terms and conditions of this Restriction, Grantor covenants at all times to maintain the Protected Area in a good and sound state of repair and in a sound structural condition in accordance with the provisions of The Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for the Treatment of Cultural Landscapes (36 CFR 67 and 68) as these may be amended from time to time (as so amended, the "Secretary's Standards"), and the terms of this Section 2.1 and Section 5. It is Grantor's intent that the Protected Area shall be maintained substantially in the physical appearance and material composition present as of the date of the granting of this Restriction. Pursuant to Section 5(b) of the Funding Agreement, Grantor's obligation to maintain the Protected Area shall include maintenance of the Whipple-Beal Fence as set forth in the "Maintenance Plan & Budget for Whipple Beal Fence," attached and incorporated into that certain letter sent to the City Community Preservation Committee by Mary Ann Buras on behalf of Grantor, entitled "Community Preservation Program Full Proposal Restoration of the Whipple/Beal Fence, Newton Cemetery", dated September 25, 2017 (the "Maintenance Plan"), attached hereto and incorporated herein as Exhibit F.

Should Grantor and Grantee disagree regarding either the need for maintenance or how such maintenance shall be done the parties agree to follow the dispute resolution provisions of Section 9 below.

2.2. New Construction. Excluding temporary structures erected in a manner consistent with the ordinary course of dealings on the Premises, no new barrier shall be constructed, erected or allowed to grow on the Protected Area which would impair the visibility of the Protected Area without the prior written approval of Grantee.

2.3. Cost of Maintenance. Grantor shall assume the total cost of continued maintenance, repairs and administration of the Protected Area in order to preserve the protected historic features, materials, appearance and workmanship of the Protected Area. Grantor covenants that it shall indemnify and hold Grantee harmless from and against any such costs. The foregoing shall not prohibit Grantor from seeking financial assistance for the foregoing

purposes from any sources available to it. The Grantee recognizes that Grantor relies on income from corporate operations at Newton Cemetery and investment returns to pay for such maintenance.

2.4. Prohibited Activities. The Protected Area or any part thereof shall not be demolished, removed, or razed (by affirmative action or through neglect or failure to repair and maintain), except as provided in Section 6.

### 3. GRANTOR'S CONDITIONAL RIGHTS

3.1. Conditional Rights Requiring Approval by Grantee. Grantor shall not make any changes to the decorative cast-iron fencing or to any gravestones installed before 1925 (see List of Burials in Whipple-Beal Lot, attached hereto and incorporated herein as Exhibit G), including additions to, alteration, partial removal, or other physical or structural change thereto, and any change in the design or material thereof, without Grantee's prior written consent. Activities by Grantor to maintain the decorative cast-iron fencing and gravestones installed before 1925, which are intended to be performed in accordance with Section 2.1 and which are minor in nature, shall not require Grantee's prior approval. For the purpose of this paragraph, the interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines, which are attached to this Agreement and incorporated herein as Exhibit H).

3.2. Review of the Grantor's Request for Approval. Grantor shall submit a written request for such approval which must include the following information identifying the proposed activity with reasonable specificity: a description of the proposed activity; plans; specifications; and designs, where appropriate. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within thirty (30) days of receipt of the Grantor's written request for approval hereunder, Grantee shall certify in writing that: (a) it approves the plan or request, (b) it approves the plan or request subject to certain conditions, or (c) it disapproves the plan or request. Any failure by Grantee to act within thirty (30) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted, so long as the submission or request sets forth the provisions of this Section 3.2 relating approval due to failure of the Grantee to act, provided, however, that nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

3.3. Archaeological Activities. The conduct of archaeological activities in the Protected Area, including, without limitation, survey, excavation and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by Grantor or caused to be prepared by Grantor and approved in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (M.G.L. c. 9, § 27C; 950 CMR 70.00 *et seq.*). Grantor shall report to Grantee any additional potentially historically significant features that are discovered through further maintenance and repair, ground disturbance or excavation.

#### **4. GRANTOR'S RESERVED RIGHTS**

Subject to the provisions of Sections 2 and 3, the following rights, uses, and activities of or by Grantor on, over, or under the Protected Area are permitted by this Restriction and by Grantee without further approval by Grantee:

a. the right to engage in all those activities and uses that (i) are permitted by governmental statute, regulation and ordinance; and (ii) are not inconsistent with the purpose of this Restriction, including, but not limited to:

i. use of the Protected Area in accordance with the Newton Cemetery Corporation's Rules and Regulations (the "Rules and Regulations"), as amended through June 23, 1999, and as may be amended hereafter. Such permitted uses include but are not limited to new interments, the installation of new gravestones or other funerary monumentation (hereinafter, collectively, "gravestones"); and new engravings on existing gravestones installed after 1925;

ii. use of the Protected Area for cultural and educational activities; and

iii. use of the Protected Area as a place of reflection and remembrance.

b. the right to maintain and repair the Protected Area as set forth in Section 2.1 of this Restriction.

#### **5. CASUALTY DAMAGE OR DESTRUCTION; INSURANCE**

5.1. Casualty Damage or Destruction. In the event that the Protected Area or any part thereof shall suffer major damage or destruction by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction or such reasonable time thereafter, depending upon the circumstances of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Protected Area and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within sixty (60) days of the date of damage or destruction, if required by Grantee, Grantor at Grantor's expense shall submit to Grantee a written report prepared by a qualified gravestone/monument and/or metal works conservator who is acceptable to Grantor and Grantee, which report shall include the following: (a) an assessment of the nature and extent of the damage; (b) a determination of the feasibility of the restoration of the Protected Area and/or reconstruction of damaged or destroyed portions of the Protected Area; and (c) a report of such restoration and/or reconstruction work necessary to return the Protected Area to the condition existing at the date hereof.

5.2. Review After Casualty or Destruction. If Grantor and Grantee agree that the purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Grantee

shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Protected Area in accordance with plans and specifications approved by the parties.

If Grantor and Grantee agree that restoration/reconstruction of the Protected Area is impractical or impossible, or agree that the purpose of this Restriction would not be served by such restoration/reconstruction, (i) Grantor shall assign to the City of Newton Community Preservation Fund a portion of the insurance proceeds equal to the total funding Grantor has received from that source, up to \$60,000; and (ii) if Grantor receives subsequent to the conveyance of this Restriction any additional funds for the rehabilitation of the Protected Area from the City, through its Community Preservation Fund or otherwise, Grantor shall and hereby agrees that in the event of an agreed-upon total loss of the Protected Area, it shall assign a proportionally increased amount of the insurance proceeds to the City.

If Grantor and Grantee are unable to agree that the purpose of this Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts's arbitration statute then in effect, and all other applicable laws, rules, regulations and ordinances. The arbitrator shall have experience in historic preservation matters.

5.3. Insurance. Grantor shall keep the Protected Area insured by an insurance company rated "A-" or better by Best's for the full replacement value against loss from perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition coverage, in form and amount sufficient to replace fully the damaged area without cost or expense to Grantor or contributor or coinsurance from Grantor. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request thereof, or as soon as is reasonably practicable thereafter, certificates of such insurance coverage.

## 6. EXTINGUISHMENT; CONDEMNATION

6.1. Extinguishment. Grantor and Grantee acknowledge the possibility that circumstances may arise in the future to render the purpose of this Restriction impossible to accomplish. In addition, both parties recognize that the possibility of condemnation and casualty always exist. In the event such circumstances do in fact arise, the parties agree that those provisions of this Restriction which are rendered impossible of performance by such circumstances, condemnation or casualty, may be extinguished. Such an extinguishment must meet all the requirements of the Act for extinguishment, including approvals following public hearings by the City and the Massachusetts Historical Commission to determine that such extinguishment is in the public interest.

6.2. Condemnation. If the Protected Area, or any substantial portion thereof, shall be made the subject of a procedure threatening a taking by eminent domain, or if Grantor shall receive notice from a governmental authority of the intent to institute such proceeding, Grantee shall immediately be given notice thereof by Grantor. Grantee shall have the right to enter its name as an additional party in eminent domain proceedings, pursuant to M.G.L. c. 79, § 5A, but shall not have the right to any monetary award which would diminish the award to be made to

Grantor resulting from such taking. In the event of such taking, Grantee shall have the right to enter onto the Protected Area (or the portion thereof subject to such taking) for the purpose of choosing and removing for posterity the decorative cast-iron fencing, or portions thereof, that Grantee desires to salvage, prior to the effective date of such taking.

## **7. TAXES; INDEMNIFICATION**

7.1. Taxes. Grantor shall pay on or before the due date all general taxes, special taxes, special assessments, and other charges, if any, which may become a lien on the Protected Area.

7.2. Indemnification. Grantor shall indemnify, defend with counsel, and hold Grantee harmless from and against any claims, liability, costs, attorneys' fees, judgments or expenses to Grantee or any officer, employee, agent or independent contractor of Grantee resulting from actions or claims of any nature by third parties arising in connection with or out of this Restriction, including without limitation claims related to the presence of oil or hazardous substances.

## **8. INSPECTION**

Grantee may inspect the Protected Area at least annually to ensure that Grantor is in compliance with the preservation restrictions hereby imposed. In addition, Grantee may inspect the Protected Area more frequently during periods of repair, renovation or reconstruction as Grantee deems appropriate for the nature of the work being conducted. Grantor agrees to grant Grantee free access to the Protected Area. Such inspections shall be made at reasonable hours and only after prior notice to Grantor. This right of inspection shall be assignable by Grantee to any governmental body or qualified non-profit entity whose purposes include preservation of structures or sites of historic significance. The failure of Grantee to exercise this right of inspection for any period of time, however, shall under no circumstances be construed as a waiver of such right.

## **9. DISPUTE RESOLUTION**

9.1. Submittal. For any dispute that shall arise between Grantor and Grantee concerning the terms or conditions of this Restriction or their application in any instance that is not covered by the provisions of Section 5.2 above, Grantor and Grantee shall first attempt to resolve such dispute through a mutually agreed upon, non-binding mediation in accordance with the provisions of this Section 9. The fees and expenses of the agreed upon mediation procedure shall be borne equally between Grantor and Grantee.

9.2. Violation and Objection Letters. Grantor and Grantee agree that in the event Grantee believes Grantor has failed to perform or observe any restriction, agreement or condition in this Restriction, Grantee shall give Grantor written notice of the violation ("Violation Letter"), sent in accordance with Section 12 of this Restriction.

In addition to describing the failure or violation, such Violation Letter shall inform Grantor of the following:

- a. its right to dispute the existence of such failure or violation;

- b. that if Grantor disputes such failure or violation, it must send a reply (“Objection Letter”) to Grantee not later than thirty (30) days from the date of the Violation Letter;
- c. that the Objection Letter must be sent to Grantee in accordance with Section 12 of this Restriction;
- d. that such dispute, if any, is subject in the first instance to mediation in accordance with this Section 9, the procedure for which shall be mutually agreed upon by Grantor and Grantee within ten (10) days from the date Grantee receives the Objection Letter, or such additional time as agreed to by the parties; and
- e. that failure to respond shall constitute an agreement on the part of Grantor with the contents of the Violation Letter and Grantor shall conclusively have waived all right thereafter to dispute the existence of such failure or violation.

In the event that the Violation Letter contains all the aforementioned statements and Grantor fails to send a timely Objection Letter, then Grantor shall conclusively be deemed to agree with the contents of the Violation Letter and to waive all right thereafter to dispute the existence of such failure.

9.3. Timelines. Grantor shall have thirty (30) days from the date of the Violation Letter to send its Objection Letter to Grantee. Grantor and Grantee shall have ten (10) days from the date that Grantee receives the Objection Letter to agree upon the mediation procedure. Grantor and Grantee shall have thirty (30) days from the date the mediation procedure is agreed upon to resolve the dispute. The parties can mutually agree upon extensions of time for any of the timelines set out in this Section 9.3.

If Grantor and Grantee reach an agreement, the parties shall execute a Memorandum of Understanding reflecting the agreed upon resolution of the dispute.

In the event that Grantor and Grantee fail to resolve the dispute in accordance with the timelines set out in this Section 9.3, or any extension of time agreed upon, Grantee may elect to seek injunctive relief or otherwise litigate the subject matter of such dispute in accordance with the provisions of Section 14 of this Restriction. The provisions of this Section 9 shall not limit Grantee’s rights pursuant to the provisions of Section 14.

9.4. Stand-Still Provision. In consideration for Grantee’s agreement to attempt to resolve disputes first through mediation, Grantor agrees that it will cease any activity cited in a Violation Letter sent to it in accordance with the provisions of Section 12. The Grantor shall cease such activity from the date the Violation Letter is received until the dispute is either resolved through mediation or the Grantor and Grantee fail to resolve the dispute in accordance with the timelines set out in Section 9.3.

9.5. Enforcement. Should Grantor and Grantee fail to resolve the dispute in accordance with the timelines set out in Section 9.3 or cease violative activities as set forth in Section 9.4, The Grantee shall have the right to enforce this Agreement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including,



without limitation, relief requiring restoration of the Protected Area to its condition prior to the time of the injury complained of (Grantor agreeing that Grantee has no adequate remedy at law if Grantor shall fail to perform or observe any restriction, agreement or condition contained in this Agreement). The foregoing shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee.

9.5.1 Grantor shall indemnify and hold harmless Grantee, and shall pay to Grantee on demand, all costs and expenses, including but without limitation attorneys' disbursements and fees, incurred by Grantee in connection with enforcement of this Agreement in which the Grantee is the prevailing party.

## **10. NO WAIVER**

Failure of Grantee to complain of any act or omission on the part of Grantor, no matter how long the same may continue, shall not be deemed to be a waiver by Grantee of any of its rights hereunder. No waiver by Grantor at any time, express or implied, of any breach of any provision of this Restriction shall be deemed a waiver of a breach of any other provision of this Restriction or a consent to any subsequent breach of the same or any other provision. No waiver by Grantee at any time of the requirements for submittal of a request for approval or issuance of a recordable approval for an activity as required under Section 3 shall be deemed a waiver of such requirements as to such activity at any other time or as to any other activity. Any and all rights and remedies which Grantee may have under this Restriction or by operation of law, either at law or in equity, upon any breach shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by Grantee or not, shall be deemed to be in exclusion of any other such rights and remedies being exercisable at the same time.

## **11. TRANSFERS**

11.1. Restriction Runs with the Land. Notwithstanding anything to the contrary contained in any other section of this Restriction, the burden of this Restriction shall constitute a binding servitude and shall run with the land in perpetuity and shall be binding on Grantor's successors and assigns.

11.2. Insertion in Subsequent Instruments. Grantor shall insert a reference to this Restriction, such reference to include Registry book and page number of this Restriction, into any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Protected Area. Concurrently, with its entering into any such deed or other legal instrument, Grantor shall give written notice to Grantee of the same. Failure by Grantor to comply with the requirements of this Subsection 11.2 shall not affect the validity, enforceability or priority of this Restriction or any lien arising hereunder.

11.3. Written Acceptance. Before taking legal possession of the Protected Area or any portion thereof, each new owner of the Protected Area shall indicate its acceptance of these preservation restrictions contained herein by a letter to Grantee. Such acceptance shall include a promise to maintain at all times and in good condition, the significant historical, cultural and aesthetic characteristics of the Protected Area. Failure by any new owner to so indicate, and

failure by Grantee to demand such indication, shall not affect the validity, enforceability or priority of this Restriction or any lien arising hereunder.

11.4. Assignment. All of the rights and restrictions enforceable by Grantee pursuant to this Restriction shall be assignable by Grantee for preservation purposes only and without consideration, to any governmental body or any charitable corporation or trust qualified to hold perpetual preservation restrictions under M.G.L. Chapter 184, section 32, whose purposes include the preservation of buildings or sites of historical significance.

## 12. NOTICES

Every notice, request, demand, consent, waiver or other communication which either party hereto may be required to give to the other party pursuant to this Restriction, shall be in writing and shall be given either by postage prepaid registered or certified U.S. mail with return receipt requested or by a national overnight delivery service with acknowledgement of receipt required.

If to Grantor:

791 Walnut Street  
Newton Center, MA 02459  
Attn: Cemetery President

and to Lot Representative:

Eliot Beal  
255 Clapp Road  
Scituate, MA 02066

If to Grantee:

Chair, Newton Historical Commission  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

And to

City Solicitor  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Each party may change its address set forth herein by written notice to such effect to the other party. Such notice, etc., shall be deemed given as of the sooner of the date of signed receipt or the date when delivery was first attempted.

**13. SUBORDINATION OF PRIOR LIENS**

Grantor represents and warrants to Grantee that the Protected Area is subject to no mortgages, liens, leases, restrictions, easements or encumbrances that are prior in right to this Restriction. Grantor covenants and warrants that this Restriction shall never be subordinated to any mortgage or other encumbrance.

**14. VENUE AND JURISDICTION**

Grantor hereby irrevocably consents and agrees that any legal action, suit or proceeding arising out of or in any way in connection with this Restriction may be instituted or brought in the courts of the Commonwealth of Massachusetts, including, but without limitation, the United States District Court for Massachusetts, or in the courts of any other jurisdiction wherein Grantee's business office(s) may be located, as Grantee may elect. By execution and delivery of this Restriction, Grantor irrevocably accepts and submits to the non-exclusive jurisdiction of any such court and to service of any summons, complaint and/or legal process by registered or certified United States mail, postage prepaid, to Grantor at the address listed below, such method of service to constitute, in every respect, sufficient and effective service of process in any legal action or proceeding. Grantor shall not seek a trial by jury in any lawsuit, proceeding, counterclaim or any litigation procedure based upon or arising out of this Restriction or the dealings or the relationship between Grantee and Grantor, or any person claiming by, through or under Grantor.

**15. MISCELLANEOUS**

15.1. Counterparts. This Restriction, with all exhibits hereto, may be executed in counterparts, one of which may be retained by Grantor, and the other, after recording, to be retained by Grantee. In the event of any discrepancy between the counterparts produced, the recorded counterpart shall in all cases govern. In the event of any discrepancy between two copies of any documentation retained by the parties, the copy retained by Grantee shall control.

15.2. Strict Construction. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this Agreement and this Agreement shall be interpreted broadly to effect its purposes, and the restrictions herein contained.

15.3. Amendment. For purposes of furthering the preservation of the Protected Area and of furthering the other purposes of this Restriction, and of meeting changing conditions, Grantor and Grantee are free to amend jointly the terms of this Restriction in writing, and such amendment shall become effective upon recording with the Registry, and the requirements of the Act have been satisfied, provided however that no amendment shall be made that will adversely affect the qualifications of the Restriction or the status of Grantee under the Act. Any such amendment shall be consistent with the protection of the Preservation Values of the Protected Area and the Purpose of the Restriction; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the Preservation Values protected by the Restriction. Nothing in this paragraph shall require Grantor and Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

15.4. Validity of Agreement. This Restriction is made pursuant to the Act, but the invalidity of such statutes or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their heirs, successors, administrators and assigns in perpetuity to each clause of this Restriction whether it be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto. This Restriction may be re-recorded at any time by any person if the effect of such re-recording is to make more certain enforcement of this Restriction or any part thereof. The invalidity or unenforceability of any provision of this Restriction shall not affect the validity or enforceability of any other provision of this Restriction or any ancillary or supplementary agreement relating to the subject matter herein.

15.5. Captions. The captions used as headings for the various Sections and Subsections of this Restriction are used only as matter of convenience for reference, and are not to be considered a part of this Restriction or used in determining the intent of the parties to this Restriction.

15.6. No Warranty. The approval by Grantee of any action by Grantor shall not constitute a warranty, representation or acknowledgment that any action taken in conformity with such approval shall comply with any law, regulation, order, ordinance, code or by-law or shall be suitable for any particular purpose, and Grantor shall be solely responsible for its own actions.

15.7. Time. Where a specific number of days are stated for an activity to occur, time is of the essence. If any act required under this Restriction becomes due on a Saturday, Sunday or legal holiday in the Commonwealth of Massachusetts, then such act shall be due on the immediate following business day.

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IN WITNESS WHEREOF, the parties hereto have executed this Restriction under seal as of the date first set forth above.

**WITNESS:**

**GRANTOR:**

NEWTON CEMETERY CORPORATION, a  
Massachusetts cemetery corporation

  
\_\_\_\_\_

  
\_\_\_\_\_

By: Mary Ann Buras  
Its: President

  
\_\_\_\_\_

  
\_\_\_\_\_

By: Adrian Bresler  
Its: Treasurer

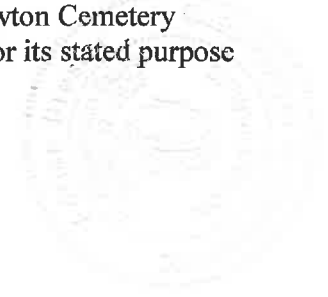
*[Grantor notary blocks on following page]*

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 14<sup>th</sup> day of March, 2023 before me, the undersigned notary public, personally appeared Mary Ann Buras, proved to me through satisfactory evidence of identification, which was a<sup>MA</sup> drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she is President of the Newton Cemetery Corporation as set forth beneath her name above, and signed it voluntarily for its stated purpose in such capacity.

Adrian Bresler  
Notary Public  
My commission expires: 3/17/2028



COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 15<sup>th</sup> day of March, 2023 before me, the undersigned notary public, personally appeared Adrian Bresler, proved to me through satisfactory evidence of identification, which was MA Drivers License to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she is Treasurer of the Newton Cemetery Corporation as set forth beneath her name above, and signed it voluntarily for its stated purpose in such capacity.

Shatia Cinelli  
Notary Public  
My commission expires:



[Lot Representative acknowledgement and consent follows]

**Acknowledgement and Consent**

The undersigned, as Lot Representative for the Whipple-Beal Family cemetery lot, designated as the Protected Area herein, acknowledges and grants his consent to the terms and conditions of this Restriction.

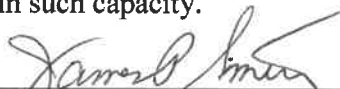
LOT REPRESENTATIVE

  
Eliot Beal 3.31.2023

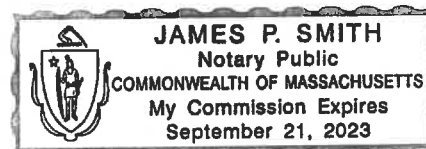
COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this 31 day of March, 2023, before me, the undersigned notary public, personally appeared Eliot Beal, in his individual capacity, proved to me through satisfactory evidence of identification, which was Driver S15788943, 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 in such capacity.

  
Notary Public  
My commission expires:

[Grantee signature follows]

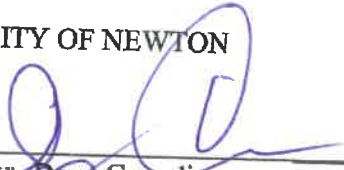


**WITNESS:**

  
\_\_\_\_\_


**GRANTEE:**

CITY OF NEWTON

  
\_\_\_\_\_

By: Doug Cornelius  
Acting Chair, Newton Historical Commission

**APPROVED:**

  
\_\_\_\_\_

Ruthanne Fuller, Mayor

Approved as to legal character and form:

  
\_\_\_\_\_

Alissa Giuliani, City Solicitor

*[Grantee notary blocks on following page]*

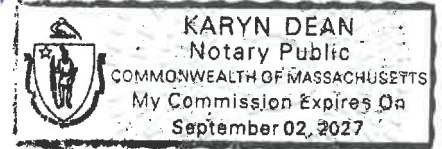


COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 30 day of Sept, 2022, before me, the undersigned notary public, personally appeared Doug Cornelius, proved to me through satisfactory evidence of identification, which was MA License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he is the Acting Chair of the Newton Historical Commission and signed it voluntarily for its stated purpose in such capacity.

Karyn Dean  
Notary Public  
My commission expires: 9/2/27

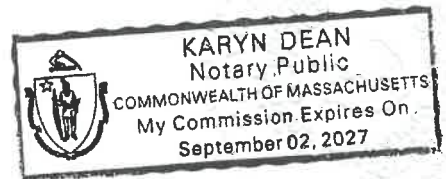


COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 30 day of September, 2022, before me, the undersigned notary public, personally appeared Ruthanne Fuller, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she is the Mayor of the City of Newton and signed it voluntarily for its stated purpose in such capacity.

Karyn Dean  
Notary Public  
My commission expires: 9/2/27



**APPROVAL BY MASSACHUSETTS HISTORICAL COMMISSION  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that the foregoing preservation restriction has been approved pursuant to Massachusetts General Law, chapter 184, section 32.

*Brona Simon*

\_\_\_\_\_  
Brona Simon  
Executive Director and Clerk  
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

On this 7<sup>th</sup> day of April, 2023, before me, the undersigned notary public, personally appeared the above-named Brona Simon, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Executive Director and Clerk for the Massachusetts Historical Commission.

*Joshua N. Dorin*

\_\_\_\_\_  
Notary Public

My Commission expires: 9/15/28



**JOSHUA N. DORIN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
September 15, 2028



## EXHIBIT A

### Metes-and-Bounds Description of Protected Area

A certain portion of land, known as the Whipple Beal Lot section K lot 154, located within the land of the Newton Cemetery Corporation located in The City of Newton, Middlesex County, Commonwealth of Massachusetts, more particularly described as follows;

Commencing at a drilled hole in the center of a stone bound on the westerly sideline of Walnut Street, said bound being approximately 106 feet, along a curve, northeasterly from the northerly sideline of Beacon Street. Thence running along said westerly sideline of Walnut Street N 13°11'13" W, a distance of 893.41 feet to an angle point in said sideline of Walnut Street, thence turning and running S 83°57'51"W, a distance of 1602.40 feet to the corner of a wrought iron fence and the point of beginning;

Thence running along said fence S 64°42'07" W, a distance of 14.77 feet;

Thence turning and running along said fence N 26°26'50" W, a distance of 19.56 feet;

Thence turning and running along said fence N 61°18'20" E, a distance of 14.68 feet;

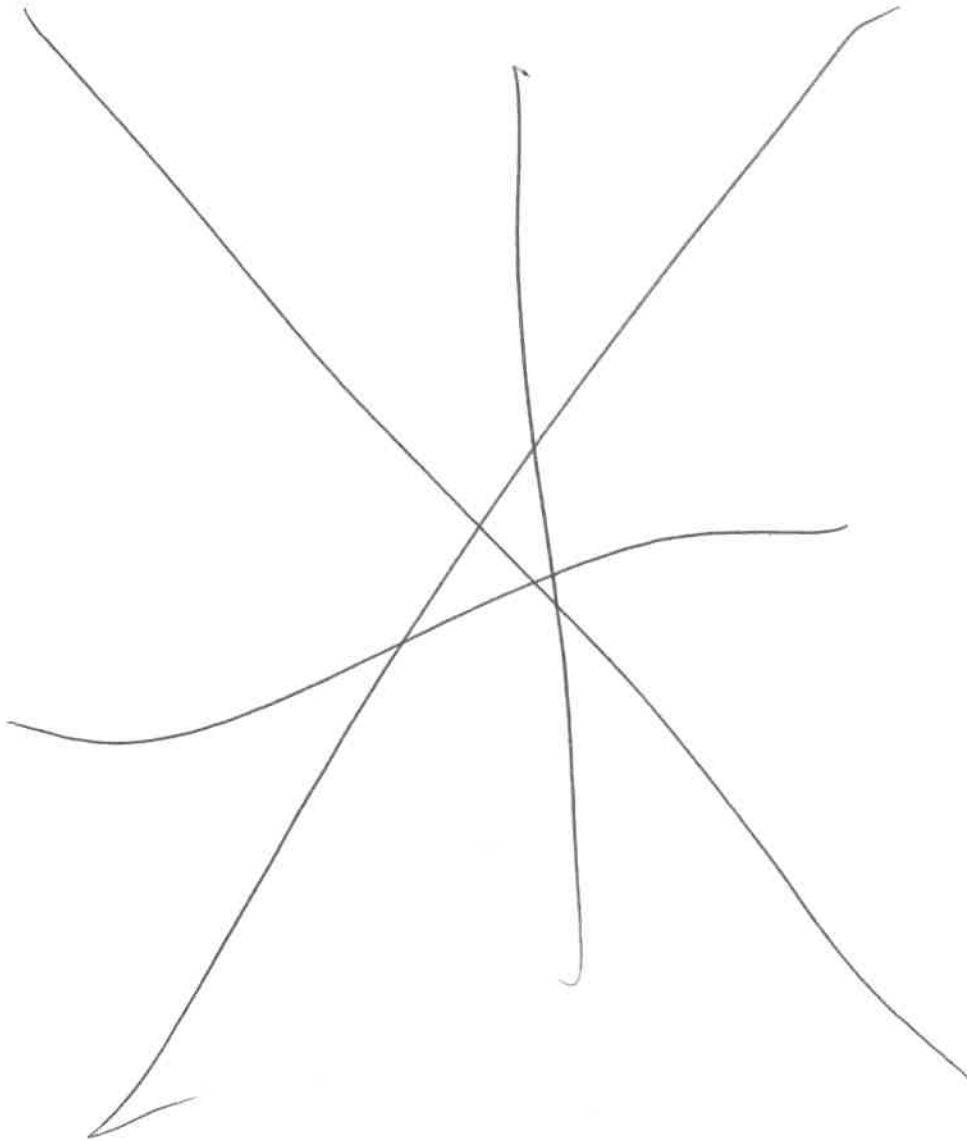
Thence turning and running along said fence S 26°42'11" E, a distance of 20.43 feet to the point of beginning.

Containing an area of 294 square feet more or less.

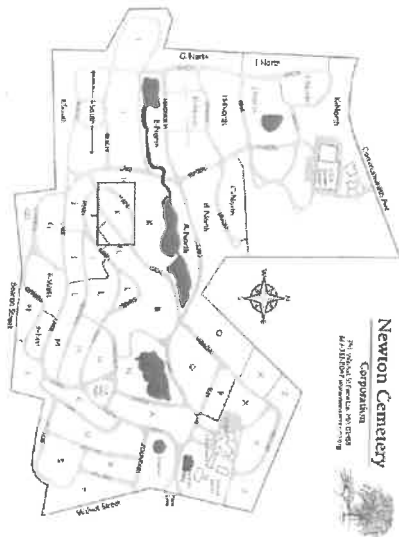
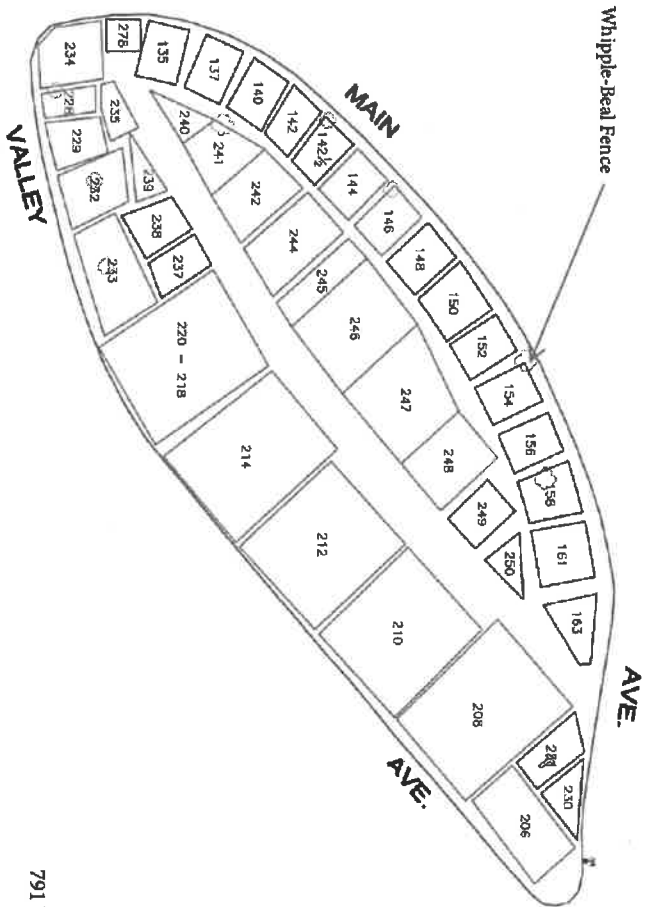
**EXHIBIT B**

**Plan of Protected Area**

[see attached]

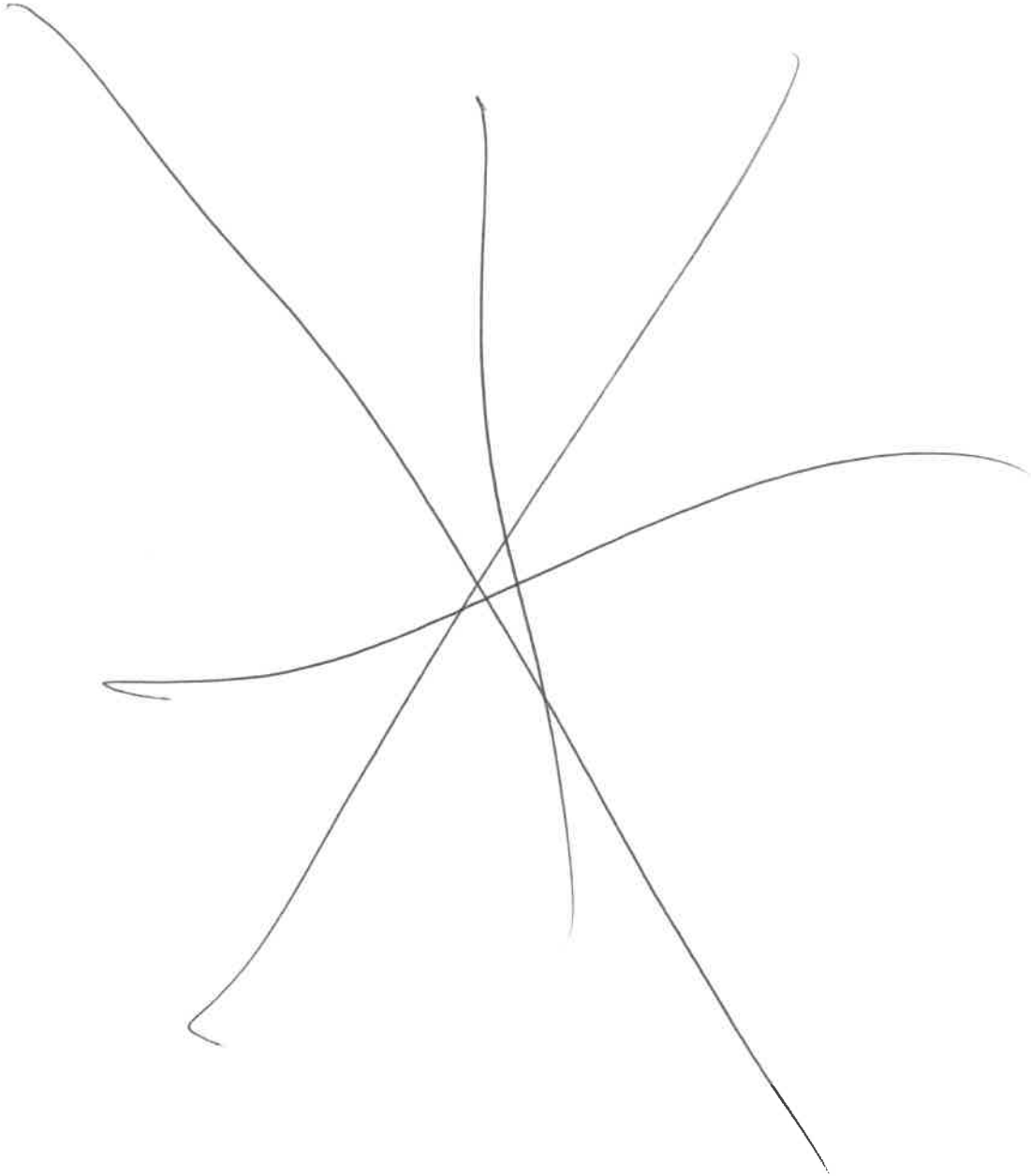


**EXHIBIT B**  
**Protected Area**  
**(Whipple-Beal Fence: Section K, Lot 154)**



 **Newton Cemetery**  
**Arborium**  
 791 Walnut Street, Newton Centre, MA 02459  
 617-332-0047 [www.newcemcorp.org](http://www.newcemcorp.org)

**EXHIBIT C**  
**Baseline Photographs**  
[see attached]





**Photo #:** 1

**Description:** Whipple-Beal Fence, East Elevation Looking West

**Date Taken:** 4/25/2019



**Photo #:** 2

**Description:** Whipple-Beal Fence, North (Front) Elevation Looking South

**Date Taken:** 4/23/2019





**Photo #:** 3

**Description:** Whipple-Beal Fence, South (Back) Elevation Looking North

**Date Taken:** 6/12/2019



**Photo #:** 4  
**Description:** Whipple-Beal Fence, West Elevation, Looking East  
**Date Taken:** 4/23/2019



**Photo #:** 5

**Description:** Whipple-Beal Fence, Detail at Top of Medallion

**Date Taken:** 4/23/2019



**Photo #:** 6  
**Description:** Whipple-Beal Fence, Post Detail  
**Date Taken:** 4/23/2019



**Photo #:** 7

**Description:** Whipple-Beal Fence, Post Top Detail

**Date Taken:** 4/23/2019



**Photo #:** 8

**Description:** Whipple-Beal Fence, Medallion Detail

**Date Taken:** 4/23/2019

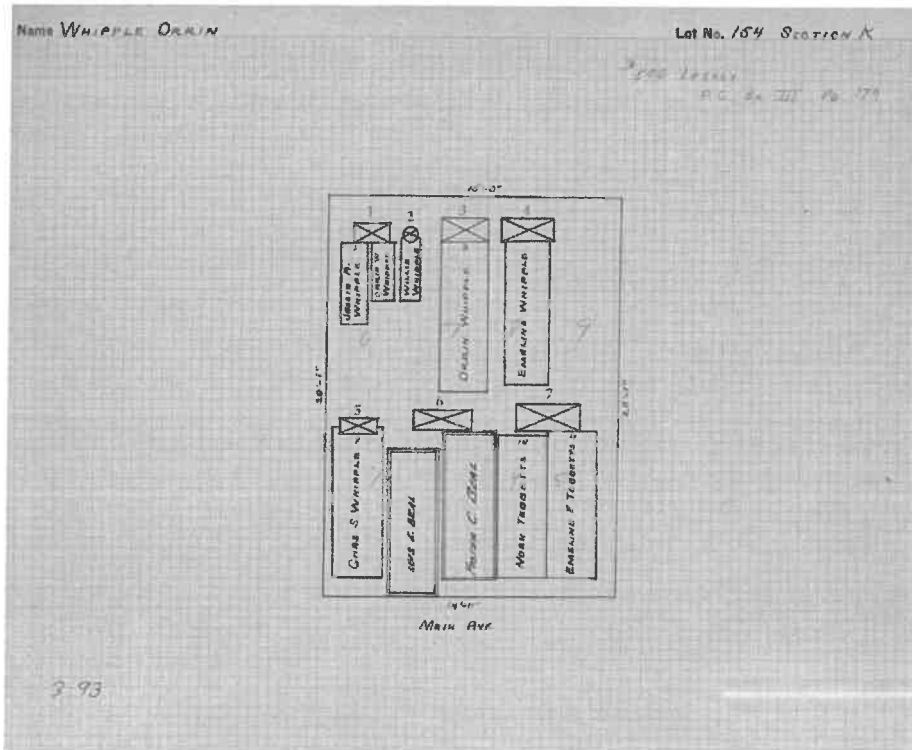


Photo #: 9

Description: Newton Cemetery Lot Card, Section K Lot #154: "Whipple-Beal Lot"

Date Taken: 9/29/2020



Photo #: 10

Description: Headstone of Jessie Annie Whipple, Jul. 13, 1886–Oct. 18, 1856, 1<sup>st</sup> burial in Newton Cemetery, infant daughter of lot owner Orrin Whipple

(Reference Photo #9, Lot Card, Item #1)

Date Taken: 9/28/2020



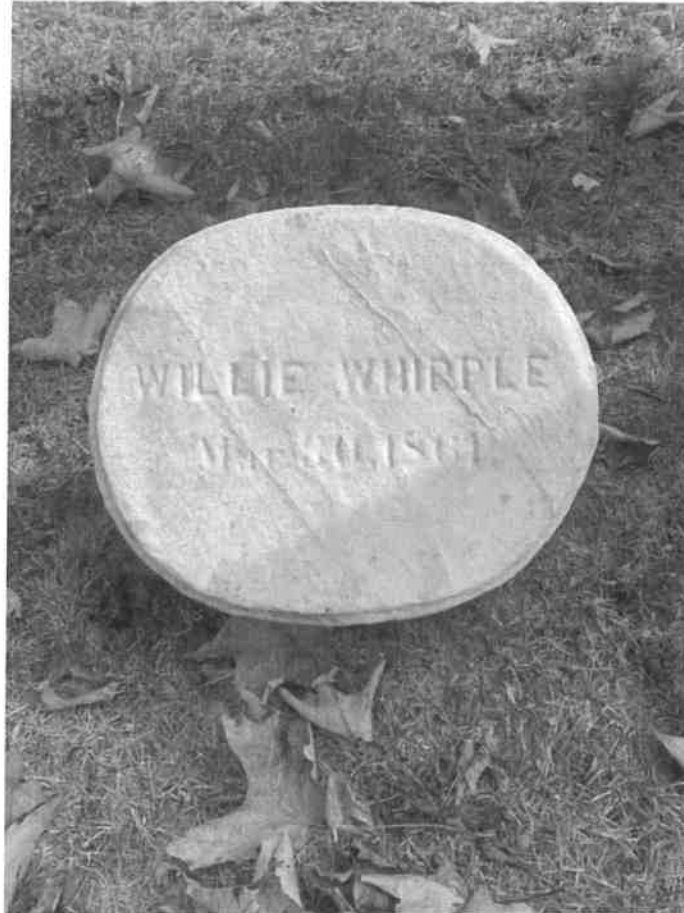


Photo #: 11

Description: Headstone of Willie Whipple, Mar. 30, 1861–Mar. 31, 1861, brother of Jessie Annie Whipple, son of Orrin Whipple (Lot Owner)

(Reference Photo #9, Lot Card, Item #2)

Date Taken: 9/28/2020



**Photo #:** 12

**Description:** Headstone of Orrin Whipple, Apr. 15, 1818–Apr. 4, 1882, Whipple-Beal Lot Owner  
(Section K, Lot 154)

(Reference Photo #9, Lot Card, Item #3)

**Date Taken:** 9/28/2020



Photo #: 13

Description: Headstone of Emeline Winslow, Nov. 4, 1820–Jul. 1, 1909, Wife of Orrin Whipple  
(Whipple-Beal Lot Owner)

(Reference Photo #9, Lot Card, Item #4)

Date Taken: 9/28/2020



a.) Front



b.) Back

**Photo #:** 14a, 14b

**Description:** Headstone of Charles Sumner Whipple, Nov. 6, 1850–Apr. 18, 1886, Son of Orrin Whipple (Whipple-Beal Lot Owner) & Emeline Winslow

(Reference Photo #9, Lot Card, Item #5)

**Date Taken:** 9/28/2020



a.) Front

b.) Back

Photo #: 15a, 15b

Description: Headstone of Foster Cushman Beal, Jun. 6, 1915-Oct. 22, 1995 (Great grandson of lot owner Orrin Whipple and Emeline Winslow) and Lois Eliot McKechnie, Aug. 14, 1915-Jun 6, 1996

(Reference Photo #9, Lot Card, Item #6)

Date Taken: 9/28/2020



Photo #: 16

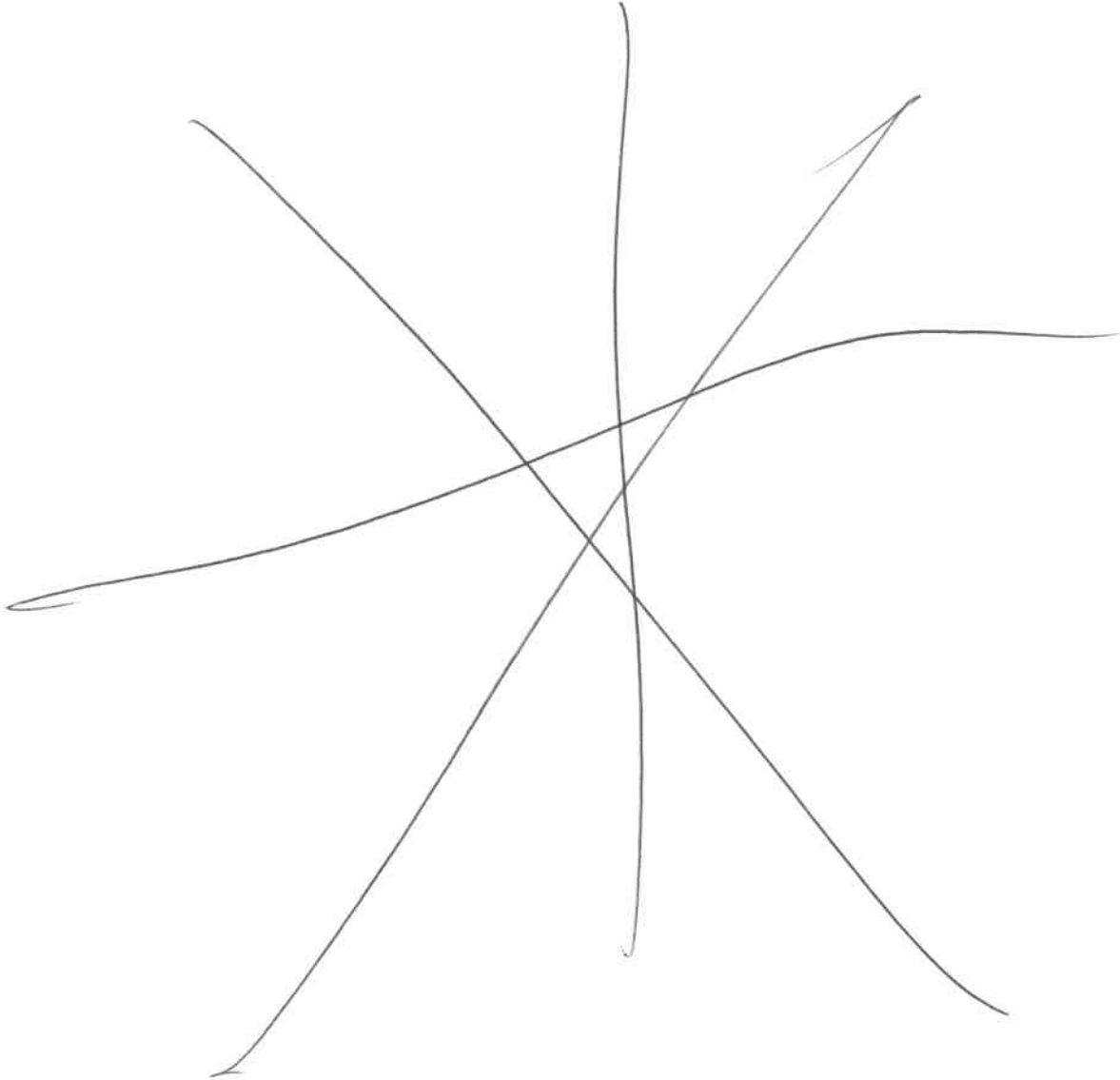
Description: Headstone of Noah Tebbetts, Sep. 11, 1844–May 31, 1909 (son of lot owner Orrin Whipple and Emeline Winslow) and Emeline Frances Whipple, Feb. 4, 1843–Oct. 30, 1904  
(Reference Photo #9, Lot Card, Item #7)

Date Taken: 9/28/2020

**EXHIBIT D**

**MHC Inventory Form NWT.804**

[see attached]



**FORM E – BURIAL GROUND**

MASSACHUSETTS HISTORICAL COMMISSION  
MASSACHUSETTS ARCHIVES BUILDING  
220 MORRISSEY BOULEVARD  
BOSTON, MASSACHUSETTS 02125

Assessor's Number    USGS Quad    Area(s)    Form Number

64003 0009	Newton		NWT.804
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**Town:** Newton

**Place:** Newton Center

**Photograph**



**Address or Location:** 791 Walnut Street

**Name:** Newton Cemetery

**Ownership:**  Public     Private

**Approximate Number of Stones:** 2000+

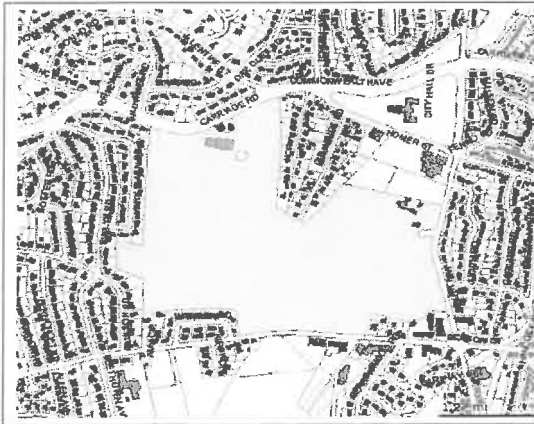
**Earliest Death Date:** 1856 (Jessie Annie Whipple)

**Latest Death Date:** ongoing

**Landscape Architect:** Marshall S. Rice, Town Surveyor

**Condition:** Good

**Locus Map**



**Acreage:** 97.6 acres

**Setting:** Rolling, manicured landscape bisected by ponds created from Cold Spring Brook; stone bridges, paved roadways through the cemetery. Thirty different specimen trees planted throughout. Elm trees line the oldest roadways. Several cemetery buildings onsite.

**Recorded by:** Katy Hax Holmes

**Organization:** City of Newton

**Date:** 3/2012

**RECEIVED**

**MAR 19 2012**

**MASS. HIST. COMM.**



**INVENTORY FORM E CONTINUATION SHEET**

Newton

791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWT.804

 Recommended for listing in the National Register of Historic Places.*Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.***VISUAL/DESIGN ASSESSMENT***Describe landscape features, gravestone materials, designs, motifs, and symbols that are either common. Note any known carvers.*

The Newton Cemetery is comprised of rolling, manicured terrain and is laterally bisected by four small ponds created historically from Cold Spring Brook. Dedicated in 1855, the Newton Cemetery is located in what was a rural, now suburban, center of Newton and is bordered by four public roads: Beacon Street to the south, Evelyn Road to the west, Commonwealth Avenue (formerly Homer Street) to the north; and Walnut Street on the east side. The principal entrance to the cemetery is now Walnut Street, but the original entrance was from Homer Street to the north. Mature trees of several different species dot the cemetery, with mature elms lining a few of the paved roadways. A stone wall lines the east border of the cemetery along Walnut Street. The three other boundaries are enclosed by tall, metal chain link fencing in various stages of repair. The cemetery is comprised of stone markers predominantly in the form of headstones, statuary, nameplates, crypts, and obelisks. Slate is not a material found here, most notably because this material fell out of favor for use as headstones by the time the cemetery was founded (1855).

**HISTORICAL NARRATIVE***Explain religious affiliations, major period of use, and evaluate historical association of this burial ground with the community.*

Though not the oldest cemetery in Newton, the Newton Cemetery is the largest and most active of the five best-known Newton cemeteries. Historically, parcels of land at this location changed hands numerous times before Dr. Henry Bigelow, Marshall S. Rice (the town surveyor and clerk) and ten other citizens chose the current site for a cemetery in 1854. These twelve citizens incorporated themselves at that time as the Newton Cemetery Association, and elected a seven-member Board of Trustees. This Board was entrusted with acquiring the land necessary to build what was known initially as Grove Hill Cemetery, beginning with 22 acres of land located along the southern edge of Homer Street. Homer Street was the only formal roadway bordering the cemetery land at the time, as Beacon and Walnut Streets were not yet officially platted. A leather factory with associated outbuildings and a pond was located on the north portion of what is now the cemetery, including an access road leading north to Homer Street. Mill stones associated with this factory are still found in the Cemetery, located just south of the western-most pond in Section E-North. Once the factory was abandoned, the access road off Homer was purchased by the Association and was renamed Cemetery Avenue, which led to the sole entrance gate to the cemetery. This entrance was closed permanently in 1871, when the new gate was constructed on the Walnut Street side. With the reorientation of the principal entrance from Cemetery Avenue to Walnut Street, this small access road was subsequently sold and became Cummings Road. Cummings Road became known colloquially as Cork City for the number of Irish immigrants who settled there.

Marshall S. Rice (1800-1879) surveyed and platted Grove Hill Cemetery in the 1850s. Serving in the capacity of town clerk and surveyor in Newton from 1846 to 1873 (not to mention purveyor of the Boarding School for Boys in Newton Center for 23 years), Rice figured prominently in the future physical appearance of Newton. Rice worked with numerous Newton landowners in the early to mid-19<sup>th</sup> century to survey development projects consistent with the tenets of the early Parks Movement, most notably Washington Park in Newtonville (NWT.FG). The rural setting chosen for the cemetery was also in keeping with the prevailing belief at the time that fresh air and proximity to natural settings ensured the health and vitality of families, neighborhoods, and the economy, even when it came to burying their dead. Many early landowner/developers in Newton such as Dustin Lancey, William Claflin, Henry F. Ross, William Jackson, Edward T. Trofitter and others, profited measurably from this concept. Thus the Parks Movement had a devoted following in Newton as early as the 1840s, and is largely responsible for the appearance of the city, and Newton Cemetery, today.

*Continuation sheet 1*

**INVENTORY FORM E CONTINUATION SHEET**

Newton

791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWT.804

Minor adjustments made over time to the roadways inside the cemetery represent minimal deviations from the original cemetery plan. The cemetery was formally consecrated on June 10, 1857. In 1860, the cemetery formally adopted the name Newton Cemetery, and William McIntyre was employed as the first caretaker of the grounds. McIntyre did not remain in the job for long, because Henry Ross soon replaced him and remained in the job for 39 years until his death in 1899.

The early focus on its landscape was intrinsic to the long-term success of Newton Cemetery. For a brief period the Cemetery Corporation allowed low walls, cast iron fencing, and decorative stonework around monuments, but by 1876 found them to be too intrusive to the overall rural setting. All were removed, with the exception of a low cast-iron fence with a willow motif surrounding the gravesite and those of family members of the oldest burial in the cemetery, that of the infant Jessie A. Whipple. Jessie was the infant daughter of Orrin Whipple, a Newton selectman. Stone monuments in the early 20<sup>th</sup> century were also limited in size to 1' 6" long, to 1' 6" high, for much the same reason: larger stones infringed on views of the overall setting. Areas of the cemetery developed during this period are easy to identify because the size of the headstones corresponds to this restriction.

The cemetery was slow to fill after its consecration in 1857, but the town recognized its importance; in about the same year the town purchased 60 plots as a means by which to support the cemetery. Six years later, the town decided to erect a monument to the Civil War dead at Newton Cemetery, which prompted the town to exchange its holdings of 60 disparate plots to one large plot near the east-side entrance. To this day, this lot serves as the site of the Soldier's Monument and continues to be owned and maintained by the City.

The first war burial took place in Newton Cemetery for William R. Benson, a Newton soldier killed on May 5<sup>th</sup>, 1862 at Williamsburg, Virginia. A survey of the 61 soldiers listed on the Soldiers Monument found that many are buried elsewhere or in the cemetery, but not at the Soldier's Monument; there are no tombs or remains interred there.

Erected in 1864 to commemorate Newton men lost in the Civil War, the Newton Soldier's Monument is the only previously surveyed monument in the cemetery (NWT.979). A Newton Cemetery publication from 1907 states that the Newton Soldier's Monument was the second to be erected in Massachusetts, but does not identify the first by name. In any case, this monument is one of the earliest in the Northeast to be completed for Civil War dead and to have been erected while the Civil War conflict was still in progress. Commissioned by a group of concerned citizens led by J. Wiley Edmands, the Soldier's Monument was designed and built by Chester Mitchell of the Mitchell Granite Company of Quincy, Massachusetts. Edmands had two sons in the war, both of whom survived, and was sensitive to the ongoing loss of local men in the town. Other members of the Board of Trustees and prominent local citizens had sons serving in the conflict as well, including Marshall Rice, who reportedly lost his youngest son William in the Civil War. William's name is inscribed on the monument.

Over time, the Association (later, the Corporation) did concede to some changes in burial practices. In 1864, the Newton Cemetery allowed catacomb tombs to be built, the first being for William Claflin, former Governor and Lieutenant Governor of Massachusetts, and former resident of a house that stood on the grounds of the current Newton North High School. In keeping with the intent to preserve the rural, park-like setting of the cemetery, the tombs were built into the east side of the oldest and highest knoll in the cemetery. By the late 1860s, the cemetery became more socially prominent and at least 30 previously interred bodies were moved to the Newton Cemetery from other Newton cemeteries and towns.

In 1868 a parcel on the west side of Walnut Street was purchased for the formal entrance gate, which stands at this location today. George F. Meacham, architect, is credited with designing the original Gothic stone gate to the Walnut Street entrance, which was erected between 1869 and 1871. The Gothic, ivy-covered gate topped by a cross was still in place in 1905, when the cemetery celebrated its 50<sup>th</sup> anniversary. Following a formal proposal to demolish the gate in 1952, the gate was removed in the late 1950s.

The highest point of land in Newton Cemetery, located in the southeast corner near the intersection of Beacon and Walnut Streets, contains the oldest burials. In c.1870, the Trustees purchased an additional 35 acres of land located to the west of this

*Continuation sheet 2*

**INVENTORY FORM E CONTINUATION SHEET**

Newton

791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
 220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

	NWT.804
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oldest knoll, increasing the acreage of the cemetery to approximately sixty acres. On the original 22 acres, Marshall Rice platted the undulating avenues which correspond to the southern profiles of the four ponds. The two west-side ponds were created from Cold Spring Brook and were known collectively as Crystal Lake. Rice's plan was emulated over time when additional avenues in the cemetery were laid out after each land purchase. By 1914, Lake Avenue, a cemetery road, skirted the ponds to the north but was not yet platted for burials. The one exception was the new Soldier's Burial Lot, created during World War I on a parcel located on the north side of Lake Avenue above the eastern-most pond. This plot is nearly full.

The cemetery grew in size over time to approximately 115 acres, with land added north of the ponds on the west side, and Elm Avenue and associated land to the east, just north of the entrance. The Cemetery remained this size until the late 1990s. Land located on the east side of Walnut Street was also briefly owned by the Cemetery in order to supply clean fill and gravel for roadway and landscaping purposes. This land was later sold for house lots and is now developed. In the early 1990s, the City took nearly 20 acres by eminent domain to erect the current Newton Free Library and parking lot.

The current map of Newton Cemetery designates areas of the cemetery using letters of the alphabet, with the letter A indicating the oldest portion. Subsequent alphabetical letters generally show how the cemetery evolved over time. The most recent acquisition of land is located north of the ponds on the northwest side, which is indicated on current maps as A-North, B-North, and so on.

With the increase in land acquisition and numbers of stone markers, the Board decided that provisions had to be made for their long-term maintenance. Beginning in 1872, and with a donation of \$100 from the estate of Elisha Field, all lots were sold with a provision for perpetual care, which meant that an additional fee was assessed along with the sale price of the lot. By 1905, the Perpetual Care Fund held over \$151,000. There are 172 burial plots which contained interred remains prior to 1872 and thus preceded this provision.

The year 1885 brought new development of cemetery buildings and a renewed effort to beautify the grounds. In 1885, a Gothic chapel and conservatory, known as the Bigelow Mortuary Chapel, was constructed with funding from John S. Farlow and designed by George Meacham in memory of Dr. Henry F. Bigelow, who served as the first president of the Newton Cemetery Board of Trustees. John Farlow was a state representative and one of the original sponsors of the Newton Free Library. The decorative stone chapel and glass conservatory were built on a site located on the north side of Walnut Avenue inside the cemetery and just north of the Soldier's Memorial site. In 1925 the old chapel was reinforced with iron rods, but by 1941 the chapel was demolished. The present chapel was built in 1941 and opened in 1943. The original receiving tomb was located near the old chapel, but was later moved to be closer to the new chapel. The current chapel, crematory and columbarium were built in 1942 on the north side of Elm Street near the front entrance to the cemetery. The current administration building was designed by Kendall, Taylor and Company and erected c.1914, also on Elm Street.

Sending Newton's sons off to the Civil War and the subsequent construction of the Soldier's Monument imbued the City with a new appreciation for its military heritage. Four years after the cemetery began its new phase of improvement (1889), the City of Newton, with the help of Charles Ward Post of the Grand Army of the Republic (GAR), bought land in the cemetery suitable for burial of up to 100 fallen soldiers. This site has been expanded over time and is now nearly full, and is marked by a flagpole visible from the entrance to the cemetery. Many notable tenants are buried in this section of the cemetery, including Charles S. Redding, an African American sailor in the Civil War who was raised in Newton and survived until his early seventies. There are also at least two recipients of the Medal of Honor buried in this section of the cemetery.

Persons of note in the history of Newton, the nation, and the world have also been buried here over time. Local notables include Seth Davis, who lived to be 100 years old and was instrumental to the educational and structural development of West Newton; Henry F. Ross, a prominent local citizen councilman; Samuel Francis Smith, clergyman and author of 'My Country 'Tis of Thee'; Sara Gilbert, early writer and artist; Freelan O. and Francis E. Stanley, founders of the Stanley Steamer; Otis Pettee, son of a founder of Upper Falls industry; Morrie Schwartz, former professor at Brandeis who was the subject of the book Tuesdays With Morrie; B.F. Keith, owner of the vaudeville theatre Keith Memorial Theatre, in Boston, who ran the first movie theatre in the

Continuation sheet 3

**INVENTORY FORM E CONTINUATION SHEET**

Newton

791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWT.804

country; and Louis Fabian Bachrach, whose family founded the world's oldest continuously running photography studio and took the only photo of the Gettysburg Address, as well as every official presidential portrait since Abraham Lincoln. The studio was also responsible for taking famous portraits of Albert Einstein and many others.

Statuary notable in Newton Cemetery for its artistry is found throughout the grounds. One of the most strikingly beautiful monuments is that of the Bachrach family, located in Section O just north of Lake Avenue in the cemetery. The bronze panel on the front of the monument was created by noted sculptor Ephraim Keyser (1850-1937), who resided in Baltimore. Keyser is also known as the sculptor of World War I - era monuments, President Chester Arthur's monument at Albany Rural Cemetery, as well as the bronze statue of General DeKalb, which stands before the State House in Annapolis, MD. The Miller Family monument, constructed of pink quartz with a bronze relief, was created by local artist Charles H. Pizzano (1893-1987), whose religious works can be found in the National Cathedral in Washington D.C., and churches in Baltimore, Philadelphia, Detroit, and the Boston area. His more notable non-secular work is in the form of a 10-foot high Union soldier mounted atop Memorial Hall in Foxborough, MA. Memorial Hall was built in 1868 and listed on the National Register of Historic Places in 1983 (FOX.11). He also sculpted *Christoforo Columbus* in 1949 for a library in Westerly, R.I. A last example of notable statuary in Newton Cemetery is the Cary Monument, created for Isaac Cary by his brother Alpheus Cary, a leading monument maker in Boston at the time. Isaac Cary was also a well-known and respected jewelry maker and silversmith. Alpheus Cary always signed his stonework, which was unusual for the time but helps to easily identify his works. Over 800 monuments signed by Cary have been identified in the United States and Nova Scotia.

**BIBLIOGRAPHY and/or REFERENCES**

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Fleishman, Thelma. "Newton's Garden Cemetery est. 1855." Published by the Newton Historical Society: 2010.

Jackson Homestead, Newton, MA. Archival information on statuary artists and sculptors, Newton Cemetery. Sarah Goldberg, Archivist. P:

Land deed, "Lot for a Monument," dated February 12, 1864. On file with City Clerk, Newton City Hall, Newton, MA.

Monuments, Tablets, and Other Memorials Erected in Massachusetts to Commemorate the Services of Her Sons in the War of the Rebellion 1861-1865. Collected by Alfred S. Roe. Wright & Potter Printing Company, State Printers: Boston. 1910.

Newton City Directory, 1871-1872. Kept in archive at Jackson Homestead.

*Newton Graphic*, Friday, May 24, 1912, "The Silent City: The Second Article on the Newton Cemetery Written Expressly for the *Newton Graphic*." On microfilm in Newton Free Library. Excerpts copied and kept on file at Jackson Homestead.

*Newton Graphic*, Friday, May 31, 1912. The Silent City: The Third Article About the Newton Cemetery Written Expressly for the *Newton Graphic*." On microfilm in Newton Free Library. Excerpts copied and kept on file at Jackson Homestead.

Robinson, Rhiannon. Manager of Accounts and Records, Newton Cemetery Corporation. [www.newcemcorp.org](http://www.newcemcorp.org).

Continuation sheet 4

**INVENTORY FORM E CONTINUATION SHEET**

Newton

791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWT.804

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Roe, Alfred S. Monuments, Tablets and Other Memorials Erected in Massachusetts to Commemorate the Services of Her Sons in the War of the Rebellion 1861-1865. Collection arranged by Alfred S. Roe, Commander, Grand Army of the Republic, Department of Massachusetts 1908-1909. Wright & Potter Printing Company, State Printers: Boston, Massachusetts. 1910.

Rowe, Henry K. Tercentenary History of Newton: 1630-1930. Published by City of Newton: 1930.

Smith, Samuel Francis. History of Newton, Massachusetts. The American Logotype Company: Boston. 1880.

Sweetsier, Moses Foster. King's Handbook of Newton. Moses King Corporation: Boston. 1889.

[www.thomascranclibrary.org](http://www.thomascranclibrary.org): online reference to Mount Wollaston Cemetery Monument, also designed and built by Chester Mitchell, Mitchell Granite Company, Quincy, Massachusetts. Monument dedicated June 25, 1868.

Water records, Engineering Department, Newton City Hall. 791 Walnut Street, Newton Cemetery.

[www.rootsweb.ancestry.com](http://www.rootsweb.ancestry.com): John Wiley Edmands (1809-1877).

*Continuation sheet 5*

**INVENTORY FORM E CONTINUATION SHEET**

Newton

791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWT.804



**Newton Cemetery Chapel, 1941**



**Newton Cemetery Administration Building, 1914**

*Continuation sheet 6*

**INVENTORY FORM E CONTINUATION SHEET**

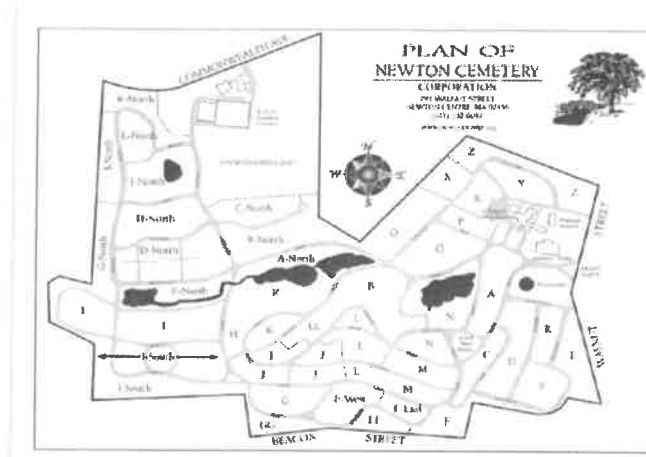
Newton

791 WALNUT STREET

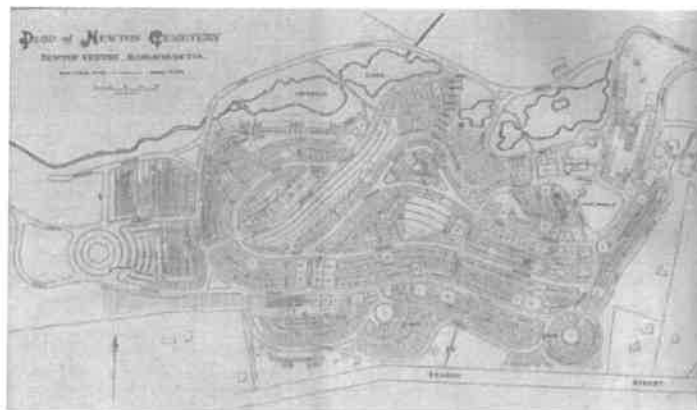
MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWT.804



**Map of Newton Cemetery, current**



**Map of Newton Cemetery, 1914**

*Continuation sheet 7*

**INVENTORY FORM E CONTINUATION SHEET**

Newton

791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWT.804



**One of two mill stones from former factory on  
Newton Cemetery property, Section E-North.**



**Bachrach Gravestone designed by Ephraim  
Keyser (1850-1937), Section O**

*Continuation sheet 8*



**INVENTORY FORM E CONTINUATION SHEET**

Newton

791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWT.804



**Soldiers' Burial Lot , c. 1889, Newton Cemetery**



**Soldier's Monument, 1864, Newton Cemetery**

*Continuation sheet 9*

FOR MHC USE ONLY	
Original (pink) form to CLG file	
One copy to the following:	
Eligibility file	
Inventory form	<input checked="" type="checkbox"/>
Town file (with correspondence)	
MACRIS Coordinator	
National Register Director	

Community: Newton

**CLG OPINION: ELIGIBILITY FOR NATIONAL REGISTER**

Date Received:	Date Due:	Date Reviewed:
Type: Individual <input type="checkbox"/> No <input checked="" type="checkbox"/> District (attach map indicating boundaries) Yes <input type="checkbox"/>		
Property Name: <u>Newton Cemetery</u>	MHC Inv Form #: <u>OVER</u>	
Prop. Address: <u>791 Walnut Street, Newton Cemetery, Newton, MA 02459</u>		

Action	Honor	Yes	ITC	No	Grant	No
	CLGC initiated	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	Other	<input type="checkbox"/>

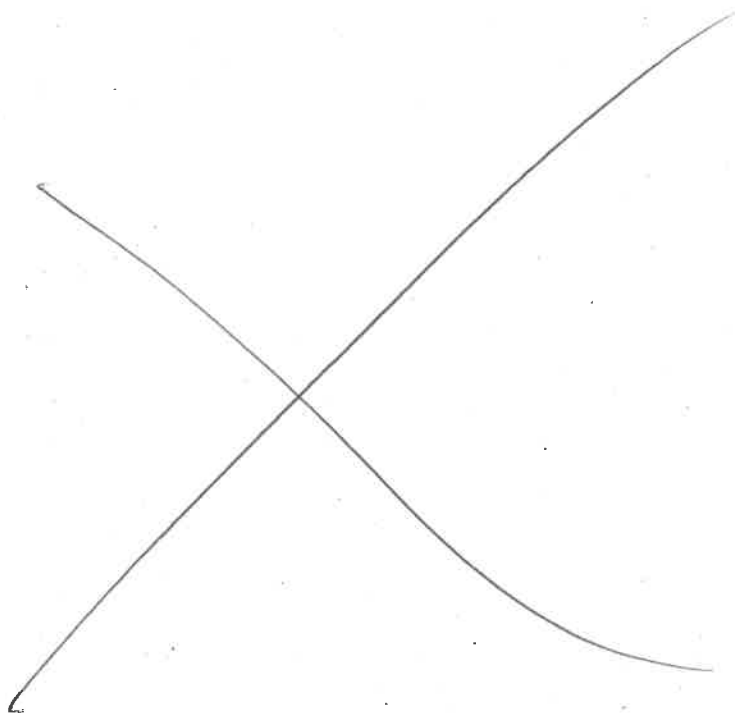
INDIVIDUAL PROPERTIES		DISTRICTS	
Eligible	No <input type="checkbox"/>	Eligible	Yes <input type="checkbox"/>
Eligible, also in a district	No <input type="checkbox"/>	Ineligible	NA <input type="checkbox"/>
Eligible only in a district	No <input type="checkbox"/>	More Information Needed	NA <input type="checkbox"/>
Ineligible	No <input type="checkbox"/>		
More Information Needed	No <input type="checkbox"/>		

CRITERIA:	A-Yes	B-Yes	C-Yes	D-No
LEVEL:	Local-Yes <input type="checkbox"/>	State-Yes <input type="checkbox"/>	National-No <input type="checkbox"/>	

STATEMENT OF SIGNIFICANCE by: Brian Lever  
 (Refer to criteria cited above in statement of significance. If more information is needed, use space to describe what is needed to finish eligibility opinion)  
 The Newton Cemetery has a long historical association with the City of Newton, taking over the function of a non-sectarian burying place from the municipal burying grounds, which had begun to fill to capacity by the mid-nineteenth century. Created in 1855 with its first burial in 1856, the private non-profit Newton Cemetery is an excellent example of the rural cemetery movement. Initially laid out by Marshall Rice town clerk and surveyor, the design of the cemetery incorporates natural water features and a rolling landscape creating a park-like setting. Notable sculptors and gravestone carvers with examples within the cemetery include Ephraim Keyser, Charles H. Pizzano, and Alpheus Cary. Located within the private cemetery is also a landlocked City-owned parcel containing the Newton Civil War Soldiers' Monument designed by Chester Mitchell and constructed in 1864. The Cemetery is the burying place of many notable citizens including Seth Davis, Samuel Francis Smith, Otis Pettee, and Freelan O. and Francis E. Stanley and continues to be the primary burying place utilized within the City of Newton. The cemetery is significant due to its historical association with the community, the burying place of citizens notable to the City of Newton and State of Massachusetts, and containing examples of a variety of gravestones and other sculptures from the mid-nineteenth century to the present.  
 Use reverse side if necessary

MHC STAFF OPINION			
Date Received:	Date Reviewed:	<u>4-5-12</u>	
Opinion:	<u>Concur</u>	Disagree <input type="checkbox"/>	More Information Needed <input type="checkbox"/>
Use Reverse for Comments			<u>OVER</u>

*Phil Buger*



LEVEL of SIGNIFICANCE - LOCAL ONLY

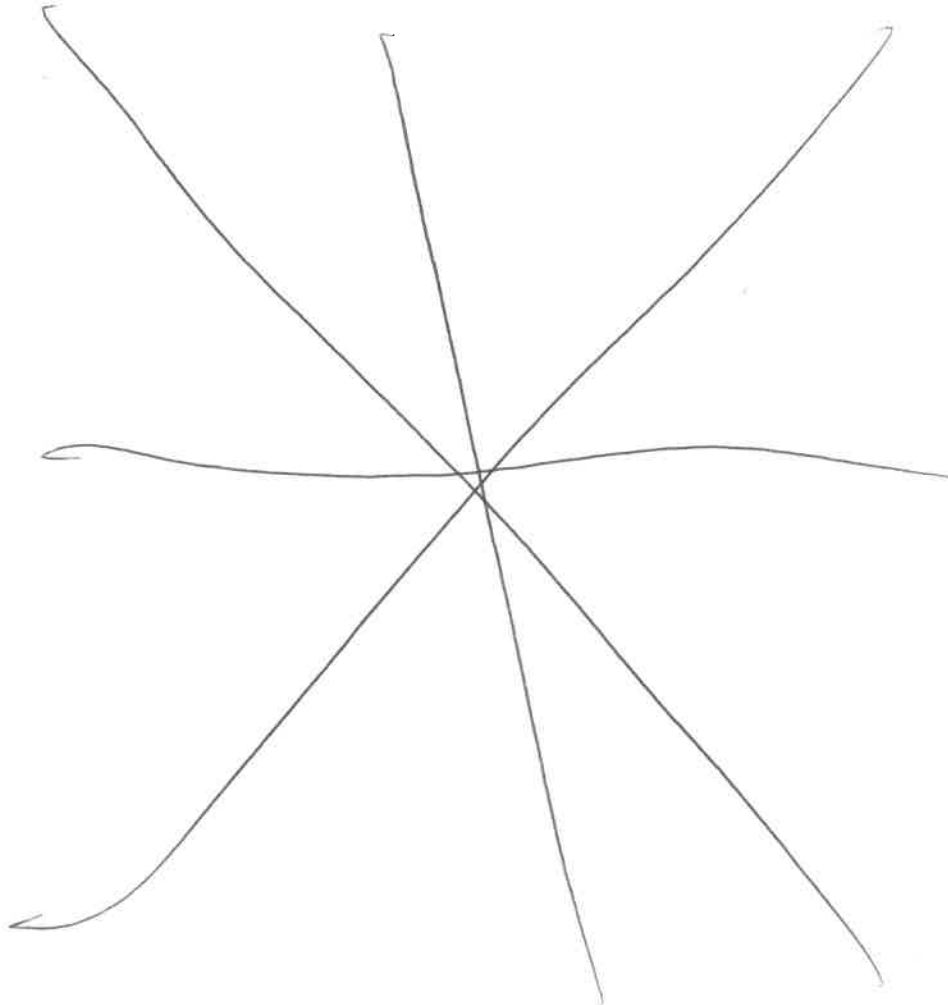
- |          |           |                                      |
|----------|-----------|--------------------------------------|
| INCLUDES | NHL # 979 | SOLDIER'S MONUMENT                   |
|          | 2906      | CEMETERY ADMINISTRATION BUILDING     |
|          | 5243      | NEWTON CEMETERY CREMATORIUM / CHAPEL |



**EXHIBIT E**

**MHC Inventory Form for Whipple-Beal Plot K-154**

[see attached]



# FORM E – BURIAL GROUND

MASSACHUSETTS HISTORICAL COMMISSION  
MASSACHUSETTS ARCHIVES BUILDING  
220 MORRISSEY BOULEVARD  
BOSTON, MASSACHUSETTS 02125

Assessor's Number USGS Quad Area(s) Form Number

64003 0009

Newton

NWT.805

Town: Newton

Place (neighborhood or village): Newton Centre

## Photograph



Address or Location: Newton Cemetery,  
791 Walnut Street

Name: Whipple/Beal Family Lot

Ownership:  Public  Private

Approximate Number of Stones: 7

Earliest Death Date: 1856

Latest Death Date: 1996

Landscape Architect: Marshall S. Rice, Town  
Surveyor

Condition: Excellent

Acreage: 300 square feet (.0069 acres)

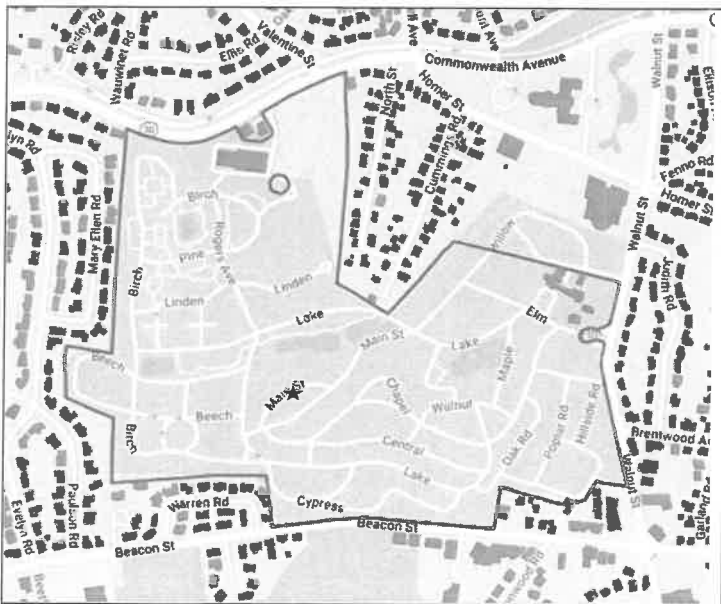
**Setting:** Located at the top of a long and narrow hill sprinkled with mature trees and plantings near the center of the cemetery. The Newton Cemetery is characterized by a rolling manicured landscape divided into sections by winding named roadways, the oldest of which are lined by Elm trees, and bisected by a string of small ponds. Cemetery buildings are clustered near the entrance to the cemetery and thirty different specimen trees are planted throughout the site.

Recorded by: Lara Kritzer

Organization: City of Newton

Date (month / year): 3/2022

## Locus Map



# INVENTORY FORM E CONTINUATION SHEET

NEWTON

NEWTON CEMETERY,  
791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

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Recommended for listing in the National Register of Historic Places.

*If checked, you must attach a completed National Register Criteria Statement form.*

*Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.*

## VISUAL/DESIGN ASSESSMENT

*Describe landscape features, gravestone materials, designs, motifs, and symbols that are common. Note any known carvers.*

The Whipple Beal Family Lot is located at the top of a small hill in Section K, Lot 54 on the south side of Main Avenue near the center of the Newton Cemetery, as shown on the attached map, and is notable as the site of the Cemetery's first burial and last surviving wrought iron fence. The 15' x 20' lot includes seven headstones arranged in two lines surrounded by a decorative cast iron fence with a single opening centered on its north side. The oldest stone is an arched marble headstone with a carving of an angel and child above the text for Jessie Annie and Orrin Winslow Whipple which is located in the southeast corner of the lot. The remaining markers include two identical arched marble headstones, a small round marble stone for a child, a limestone marker, and two twentieth century granite markers. Mature trees line the slope behind the lot and are scattered along the Cemetery's roadways.

The cast iron fence is comprised of ten sections divided by eleven fluted posts set on granite bases. Each railing has a central medallion depicting a lamb lying under a weeping willow, a traditional theme during this era, set into an elaborate oval frame. The elements of the design (fleur-de-lis, acanthas leaves, lambs, willow trees) are all common representations of cemetery iconography popular since Grecian times, which were brought into heavy rotation in the late nineteenth century by the Victorian-era's sentimentalization of death. The fence is believed to be a later addition to the lot, but its exact date is unknown.

## HISTORICAL NARRATIVE

*Explain religious affiliations, major period of use, and evaluate historical association of this burial ground with the community.*

The Whipple Beal family lot is the site of the first burial in the Newton Cemetery. The lot was purchased by Orrin Whipple (1818-1882), a carpenter and Newton Selectman, and his wife Emeline (1822-1909). Son of Mary and Cyrus Whipple of Richmond, NH, Orrin had married Emeline Winslow Whipple, daughter of Eleazer and Ann Corbett Winslow of Hunter, NY, in 1841 and moved to Newton sometime before 1850. In October 1856 their daughter, Jessie Annie, was the first person to be buried in the new cemetery when she died of cholera infantum at the age of three months. The following year a second child, Orrin Winslow, died at two months from the same disease. Both are memorialized with a marble stone which includes a carving of an angel and child. A third child, Willie, was born in 1861 but lived only a few hours and is buried next to his siblings under a small, round marker. To the right of the children's stones are two nearly identical marble markers for Orrin and Emeline.

Orrin and Emeline Whipple also had five children who survived to adulthood – Emeline F Whipple Tebbetts (1844-1904), Frederick H. (1845-1918), Harriet A. Whipple Cushman (1847-1888), Charles S. (1851-1886), and Edward E. (1863-1956). Charles S. remained in Newton and married Sarah T. Henderson of Rochester, NH in 1872. He is listed on the 1880 U.S. Census as a stable keeper but was working as a clerk at the time of his death in 1886. He was buried in the family lot with a limestone marker, after which his wife and children appear to have moved to New Hampshire. The only other child of Emeline and Orrin Whipple to be buried in the family lot is Emeline Whipple Tebbetts. Noah Tebbetts (1844-1909) of Rochester, NH joined the Union Army in 1862 and served as a Corporal in the New Hampshire 15<sup>th</sup> Infantry throughout the Civil War. After the war he became a lawyer and married Emeline Whipple in Newton in 1869. The couple moved to Brooklyn, NY after their marriage and lived there until their deaths, after which they were buried together under a shared headstone in the family lot.

# INVENTORY FORM E CONTINUATION SHEET

NEWTON

NEWTON CEMETERY,  
791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

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The last couple to be buried here, Foster Cushman Beal (1915-1995) and Lois Elliot McKechnie Beal (1915-1996), are descendants of Harriet Adelaide Whipple Cushman (1847-1888) and George Cushman (1846-1914) through their daughter, Marion Alice Cushman. George Cushman was the son of Artemas and Elizabeth Cushman and was born in Newton where his father was a hotel keeper. The couple married in 1869 and moved to Waltham, where George also became a hotel keeper. George continued to live in Waltham after Harriet's death in 1888. In the 1900 U.S. Census, he is listed as living there with his children, Harriet, Mildred, George Jr., Fanny, Marion, and Helen as well as mother-in-law Emeline Whipple. Both Harriet and George are buried in the Cushman family lot in Newton Cemetery.

Marion Alice Cushman (1851-1953) married Henry Foster Beal (1879-1956) in 1904. The couple remained in Waltham where Henry worked for the City of Waltham as a civil engineer and director of public works. Both are buried in Waltham's Grove Hill Cemetery. Their son, Foster C. Beal, was born in Waltham and went to Harvard University before marrying Lois McKechnie of Boston in 1939 and going to work for the Bethlehem Steel Company. Foster's draft card lists the couple as living in Belmont in 1940 but moved to Wellesley after WWII when he became a sales consultant for Barker Steel. The couple had five children – David Lawrence, Eliot Cushman, Alexander Winslow, Douglas Foster, and Elizabeth Wardwell. The couple later moved to Auburn, Maine, where both died. The couple share a headstone at the center of the Whipple Beal family lot. Although these are the last burials in the lot, a memorial inscription was recently added to the stone for their daughter, Elizabeth W. Beal Mawhinney (1955-2020).

Incorporated in 1855, Newton Cemetery was designed as a non-denominational, publicly accessible cemetery during a time when smaller private cemeteries in Newton were filling to capacity. The advent of the Parks Movement in the 1840s was also responsible for instilling the idea of creating a cemetery that served the health and recreational needs of the community by providing a rural, pleasant setting in which the dead could be remembered. According to the 1868 City of Newton Directory, "At the time of the first burial, Newton Cemetery was comprised of thirty acres and a 300 foot lot, complete with stone posts at each corner, could be had for \$100." Blanche-Linden Ward notes in "Silent City on a Hill" that early cemeteries used iron fences to protect monuments on family lots from grazing animals, but the use of fences to enclose family lots in this case appears to be more consistent with the Victorian-era movement around the "domestication" of death. The movement saw the beliefs and customs around death and the afterlife become more sentimentalized to the point of using family lots in the new garden-style cemeteries as outdoor "rooms" where family and friends could gather. Newton Cemetery initially allowed low walls, cast iron fencing, and decorative stonework around monuments, but by 1876 had found them to be too intrusive to the overall rural setting. All of these structures have since been removed with the exception of the cast-iron fence surrounding the Whipple Beal family lot.

## BIBLIOGRAPHY and/or REFERENCES

1868 City of Newton Directory

Linden-Ward, Blanche. *Silent City on a Hill: Landscapes of Memory and Boston's Mount Auburn Cemetery*. Ohio State University Press. 1989.

Fleishman, Thelma. *Newton's Garden Cemetery, est. 1855*. Newton Historical Society, 2010.

<https://www.newcemcorp.org/plan/whipple-beal-fence>

<https://www.newtonma.gov/government/planning/community-preservation-program/proposals-projects/newton-cemetery>

<https://www.Ancestry.com>

<https://www.findagrave.com>

INVENTORY FORM E CONTINUATION SHEET

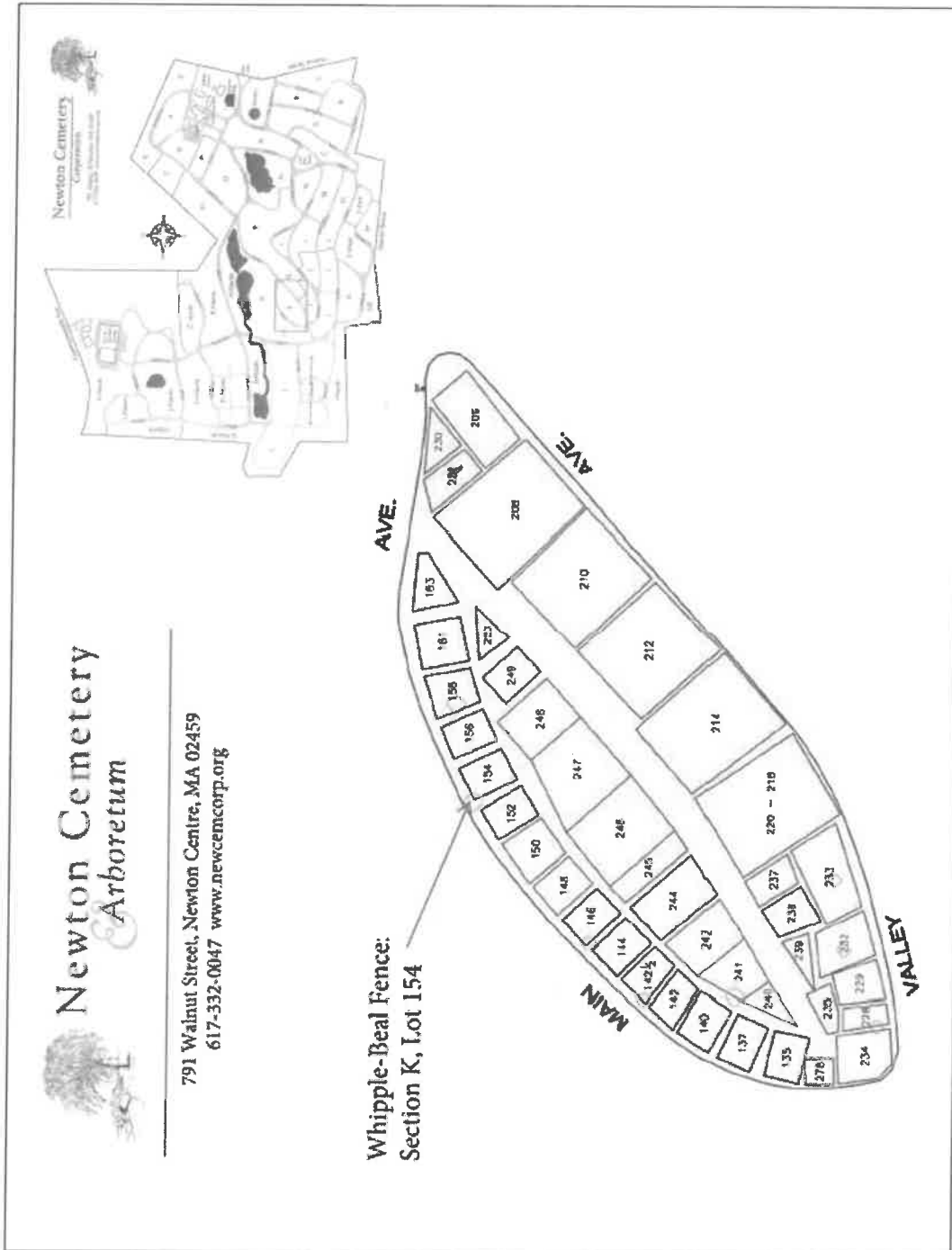
NEWTON

NEWTON CEMETERY,  
791 WALNUT STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

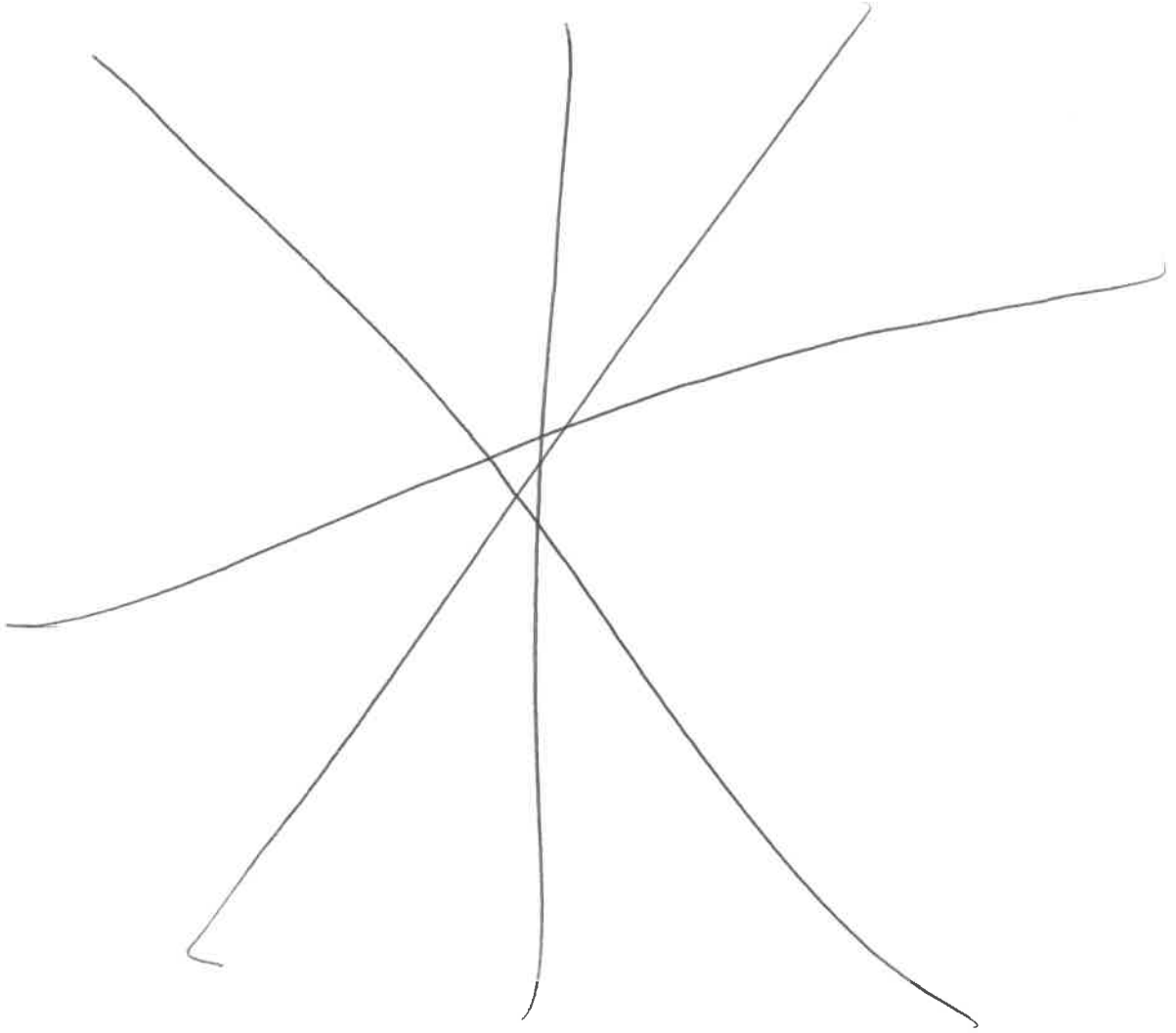
Area(s) Form No.

Two empty rectangular boxes for area and form number.





**EXHIBIT F**  
**The Maintenance Plan**  
[see attached]



## ATTACHMENT B-1

### Maintenance Plan & Budget for Whipple Beal Fence

(Supplement to "SUMMARY ANNUAL OPERATIONS & MAINTENANCE BUDGET")

The long-term maintenance plan and budget for the Whipple Beal Fence includes the following:

- o An annual visual inspection of the fence.  
Estimate: 1 hour of Newton Cemetery staff time per year
- o Touch-up paint if necessary, as determined by annual visual inspection.  
Estimate: 3 hours of Newton Cemetery staff time per year
- o Wash the fence every two years.  
Estimate: 2 hours of Newton Cemetery staff time per year

The above items will be completed by Newton Cemetery's monument staff. The annual figure of \$250 is for the six hours of estimated staff time and minimal material costs. It is an average over ten years that includes annual increases of 3%. There is no need to hire additional employees to perform this work as it can all be done with the staff currently included with the annual cemetery operations budget.

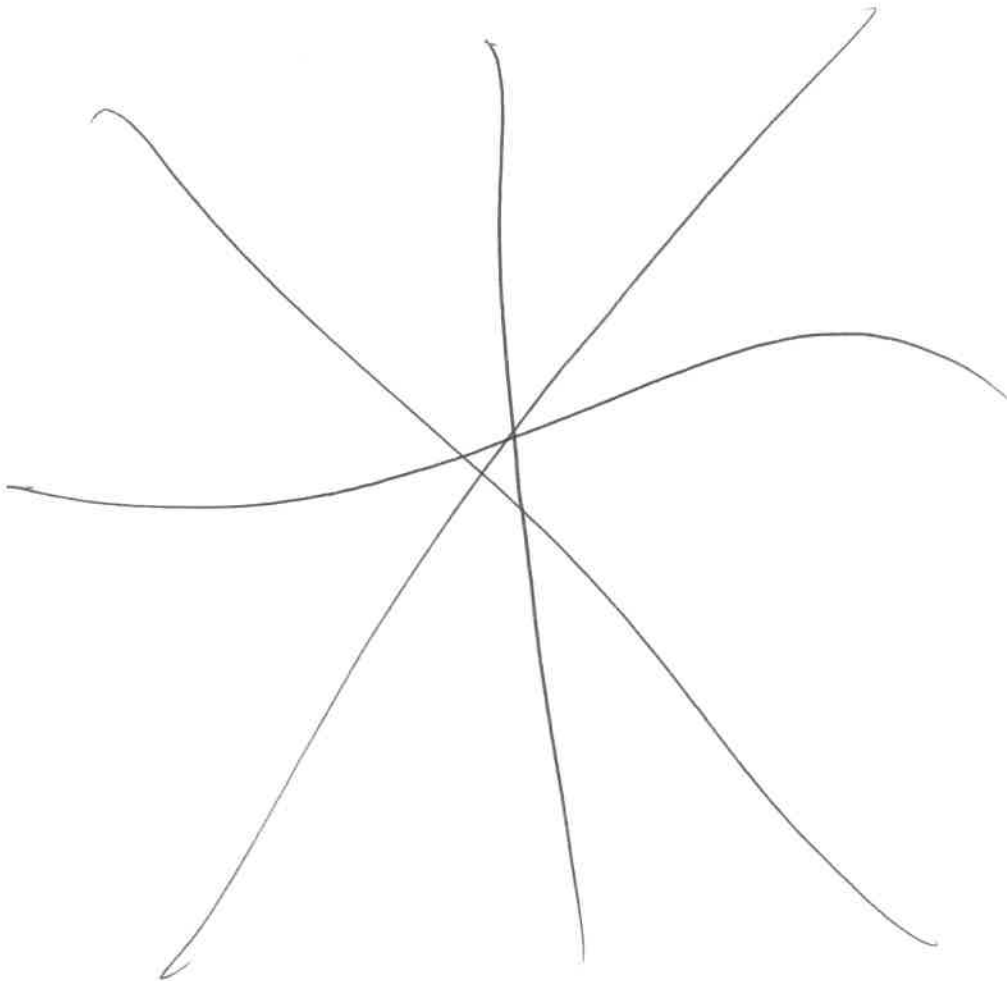
- o Lightly sand and re-paint the surface of the fence approximately twenty years after renovation.  
Estimate: \$5,000
- o Completely strip and re-paint the fence approximately 30-35 years after renovation.  
Estimate: \$15,000

The proposed scope and estimates for the two items above were received from a qualified conservator capable of performing the work. This work would not be completed by Newton Cemetery. The figures of \$250 and \$500 included in the proposal are what the Friends of Newton Cemetery anticipates needing to set aside annually to have an appropriate amount of funds available when the time comes for the work to be done.

**EXHIBIT G**

**List of Burials in Whipple-Beal Lot**

[see attached]



**Newton Cemetery**  
Burials in the Whipple Beal Lot (Section K, Lot 154)

location	Deceased_name	Relationship to E. Beal	death_dt	death_yr	death_mo	death_dy	lot_born_dt	section_c	br_num	lot_nbr	lot_apace	lot_depth
SEC/K-154-6/SD1	WHIPPLE, JESSIE ANNIE	Great Aunt?	10/18/1855	1855	10	18		SEC/K	154		6/SD1	
SEC/K-154-6/SD3	WHIPPLE, WILLIE	Great Uncle?	3/31/1861	1861	03	31		SEC/K	154		6/SD3	
SEC/K-154-7/SD2	WHIPPLE, ORRIN	Great, Great Grandfather	4/9/1882	1882	04	09		SEC/K	154		7/SD2	
SEC/K-154-8/SD2	WHIPPLE, CHARLES S.	Great Uncle?	9/10/1882	1882	09	10		SEC/K	154		6/SD2	
SEC/K-154-1/SD	WHIPPLE, EMELINE F.	Great Grandmother	4/18/1886	1886	04	18		SEC/K	154		1/SD	
SEC/K-154-5/SD	TERRETT, NOAH	Great Grandfather	10/30/1904	1904	10	30		SEC/K	154		6/SD	
SEC/K-154-4/SD	WHIPPLE, EMELINE	Great Grandfather	5/21/1908	1908	05	31		SEC/K	154		4/SD	
SEC/K-154-3/SD	BEAL, FOSTER CUSHMAN	Great, Great Grandmother	7/1/1909	1909	07	01		SEC/K	154		8/SD	
SEC/K-154-2/SD	BEAL, LOIS E.	Mother	10/22/1895	1895	10	22		SEC/K	154		3/SD	
SEC/K-154-2/CR			6/6/1995	1995	06	06		SEC/K	154		2/CR	
SEC/K-154-3/CR								SEC/K	154		2/CR	
SEC/K-154-4/CR								SEC/K	154		3/CR	
SEC/K-154-5/CR								SEC/K	154		4/CR	
SEC/K-154-6/SD								SEC/K	154		5/CR	
SEC/K-154-7/CR								SEC/K	154		6/SD	
SEC/K-154-8/CR								SEC/K	154		7/CR	
SEC/K-154-1/CR								SEC/K	154		8/CR	
SEC/K-154-9/CR								SEC/K	154		1/CR	
SEC/K-154-9/SD								SEC/K	154		9/CR	
SEC/K-154-9/SD								SEC/K	154		9/SD	

## **EXHIBIT H**

### **Restriction Guidelines**

The purpose of the Restriction Guidelines is to clarify Paragraph 3 of the terms of the Restriction, which deals with alterations to the Protected Area. Under said Paragraph 3, permission from the Grantee is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require Grantee review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change which must be reviewed by the Grantee, the following list has been developed. By no means is this list comprehensive; it is only a sampling of some of the more common alterations which may be contemplated by the property owner.

#### **LANDSCAPE/FENCING/GRAVESTONES AND MONUMENTS**

**Minor:** Routine maintenance of landscape including lawn mowing, pruning, planting, painting and repair.

**Major:** repair and replacement of gravestones, monuments and fencing, altering or removing significant landscape features such as gardens, vistas, walks, fences, plantings; ground disturbance affecting archaeological resources; provided that those activities permitted under Section 4 of the Restriction shall not constitute major alterations.

Cleaning, restoration and repair of gravestones and fencing shall only be undertaken by a qualified and experienced conservator, by personnel under the supervision of a conservator, or where appropriate by personnel trained by a conservator, using methods and materials meeting the Secretary's Standards and with prior review and approval of said methods and materials by Grantee.

Changes classified as major alterations are not necessarily unacceptable. Under the Restriction such changes must be reviewed by the Grantee, and their impact on the historic integrity of the Protected Area assessed.

It is the responsibility of the property owner to notify the Grantee in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of the Restriction is to enable the Grantee to review proposed alterations and to assess their impact on the integrity of the Protected Area, not to preclude future change. Grantee will attempt to work with the property owner to develop mutually satisfactory solutions which are in the best interests of the Protected Area.