



# Finance Committee Agenda

## City of Newton In City Council

Monday, April 25, 2016

7 PM  
Room 211

Please Bring Your Budget and CIP Books

### ITEMS SCHEDULED FOR DISCUSSION:

#### BUDGET & CIP DISCUSSIONS:

Comptroller

Financial Information Systems

Human Resources

Information Technology

### Referred To Finance and Appropriate Committees

#288-15

#### Submittal of the FY17 Capital Improvement Plan

HIS HONOR THE MAYOR submitting the FY 2017-FY 2021 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/01/15 @ 1:53 PM]

### Referred To Finance and Appropriate Committees

#288-15(2)

#### Submittal of the FY 2017 Municipal/School Operating Budget

HIS HONOR THE MAYOR submitting in accordance with Section 5-1 of the City of Newton Charter the FY17 Municipal/School Operating Budget totaling \$378,969,244 passage of which shall be concurrent with the FY17-FY21 Capital Improvement Program (#288-15).[04/11/16@11:31 AM]

**EFFECTIVE DATE OF SUBMISSION 04/19/16; LAST DATE TO PASS THE BUDGET 06/03/16**

### Referred To Finance and Appropriate Committees

#288-15(4)

#### Submittal of the FY 2017 – FY 2021 Supplemental Capital Improvement Plan

HIS HONOR THE MAYOR submitting the FY 2017 – FY 2021 Supplemental Capital Improvement Plan. [04/11/16 @ 11:31 AM]

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The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, *please contact Jini Fairley, at least two days in advance of the meeting: [ifairley@newtonma.gov](mailto:ifairley@newtonma.gov), or 617-796-1253. For Telecommunications Relay Service dial 711.*

**#84-15 Discussion with NCDF on repayment of deferred payments and accrued interest**  
ALD. GENTILE requesting a discussion with the Newton Community Development Foundation (NCDF) regarding their plans for repayment of the deferred rental payments and accrued interest on their ground lease with the City for the former Warren Junior High School site. [03-03-15 @ 2:57 PM]

**#135-16 Transfer of funds for veterans' benefits**  
HIS HONOR THE MAYOR requesting authorization to transfer the sum of twenty thousand dollars [\$20,000] from Veteran Services Full-time Salaries Account to the Veterans' Benefits Account and to appropriate and expend forty-seven thousand five hundred dollars (47,500) from Free Cash to the Veterans' Benefits Account to supplement the account. [04/11/16 @ 11:27 PM]

**Referred to Programs & Services and Finance Committees**

**#139-16 Appropriation to pay final installment for a quadrant of veterans graves**  
HIS HONOR THE MAYOR requesting authorization to appropriate fifty-six thousand dollars (\$56,000) from Free Cash to the Veterans Department's Veterans Benefits Account to pay the final installment for the purchase of the quadrant of graves located in the Newton Cemetery. [04/11/16 @ 11:27 PM]  
**Programs & Services Approved 3-0-1 (Kalis abstaining) on 04/20/16**

**Referred to Programs & Services and Finance Committees**

**#140-16 Appropriation from Free Cash for tree services**  
HIS HONOR THE MAYOR requesting authorization to appropriate and expend three hundred thousand dollars (\$300,000) from Free Cash to the Parks and Recreation Department for the purpose of funding the removal of all known dead or dangerous trees. [04/11/16 @ 11:32 AM]  
**Programs & Services Approved 7-0 on 04/20/16**

**Referred to Public Facilities and Finance Committees**

**#141-16 Appropriation from Free Cash for operation and maintenance of Aquinas**  
HIS HONOR THE MAYOR requesting authorization to appropriate and expend one hundred sixty thousand dollars (\$160,000) from Free Cash for the purpose of funding the costs of operation and maintenance of the Aquinas facility for Fiscal Year 2016. [04/11/16 @ 11:32 AM]  
**Public Facilities on 04/21/16**

**Referred to Public Facilities and Finance Committees**

**#143-16 Funding to supplement DPW accounts for snow and ice removal**  
HIS HONOR THE MAYOR, requesting authorization to transfer the sum of two hundred seventy six thousand one hundred thirty-five dollars (\$276,135) from Budget Reserve – Snow and Ice Removal Account and to appropriate five hundred thousand dollars (\$500,000) from Free Cash to the following accounts:

Personnel Costs – Overtime  
(0140110-513001).....\$276,135

Rental Vehicles  
(0140110-5273-5273) .....\$500,000

[04/11/16 @ 11:32 AM]

**Public Facilities to meet on 04/28/16**

**Referred to Zoning & Planning and Finance Committees**

**#115-16 Funding for Zoning Reform Phase 2**

HIS HONOR THE MAYOR requesting authorization to appropriate one hundred twenty five thousand dollars (\$125,000) from Free Cash and authorization to transfer the sum of two hundred thousand dollars (\$200,000) from the Planning Department’s Full-time Salaries Account to the Planning Department’s Consultants Account for the purpose of funding Zoning Reform Phase 2. [03/15/16 @ 4:52 PM]

**Zoning & Planning Approved 8-0 on 04/11/16**

**#138-16 Appropriation to fund busing Zervas School students to Carr School**

HIS HONOR THE MAYOR requesting authorization to appropriate the sum of two hundred fifty thousand dollars from the Override Capital Project Stabilization Fund to the Newton Public Schools for the purpose of funding the busing costs associated with the transfer of the Zervas Students to the Carr Elementary School for the January 2016 – June 2016 timeframe. [04/11/16 @ 11:32 AM]

**#136-16 Transfer of FEMA Grant Funds to Inclement Weather Fund**

HIS HONOR THE MAYOR requesting authorization to transfer the sum of nine hundred thirty-nine thousand nine hundred eighty-six dollars and sixty-four cents (\$939,986.64) from the January 2015 Federal Emergency Management Agency Grant to a Receipts Reserved for Inclement Weather Fund. [04/11/16 @ 11:32 AM]

**#137-16 Appropriate funds from Free Cash to the Rainy Day Stabilization Fund**

HIS HONOR THE MAYOR requesting authorization to appropriate six hundred fifty-four thousand four hundred thirty-five dollars (\$654,435) from Free Cash to the Rainy Day Stabilization Fund. [04/11/16 @ 11:32 AM]

**Items Not Scheduled for Discussion at this Meeting:**

**#134-16 MEMA Grant for equipment for the heavy duty rescue truck**

HIS HONOR THE MAYOR requesting authorization to expend a reimbursable Massachusetts Emergency Management Agency grant in the amount of twenty-two thousand seventy dollars (\$22,070) for a for the purpose of purchasing equipment and related items for the Fire Department’s heavy duty rescue truck. [04/11/16 @ 11:32 AM]

**Referred to Public Facilities and Finance Committees**

- #144-16** **Transfer to supplement DPW accounts for vehicle parts and recyclable collection**  
HIS HONOR THE MAYOR , requesting authorization to transfer the sum of two hundred fifty thousand dollars (\$250,000) from Public Works Full-time Salaries Account to the following accounts:  
Vehicle Repair Parts  
(0140103-5484).....\$50,000  
Collection-Recyclables  
(0140111-52322) .....\$200,000  
[04/11/16 @ 11:32 AM]

**Referred to Public Facilities and Finance Committees**

- #142-16** **Appropriation from Free Cash for Street Paving**  
HIS HONOR THE MAYOR requesting authorization to appropriate and expend five hundred thousand dollars (\$500,000) from Free Cash for the purpose of supplementing Chapter 90, override and grant funding for street paving in Fiscal Year 2017. [04/11/16 @ 11:32 AM]

**Referred to Public Safety & Transportation and Finance Committees**

- #197-15(2)** **Pilotless Aircraft Operation**  
Councilors Albright, Baker, and Norton proposing an ordinance regulating the operation and registration of pilotless aircraft in the City of Newton. [04/07/16 @ 4:25 PM]

**Referred to Zoning & Planning, Land Use and Finance Committees**

- #104-15** **Qualification of affordable units developed at Comm Ave, Pearl St, and Eddy St**  
ALD. JOHNSON, LAREDO, AND GENTILE requesting a report from the Planning Department re how many of the affordable units developed at Commonwealth Avenue, Pearl Street, and Eddy Street qualify for inclusion on the State’s Subsidized Housing Inventory List; if a property is not on the list, what can be done to make it eligible. [04/09/15 @ 12:00 PM]

- #31-15(3)** **Discussion of Financial Impact of Leaf Blower Ban on Newton’s Budget**  
PROGRAMS & SERVICES COMMITTEE requesting a discussion of the financial impact of a seasonal leaf blower ban on the City’s operating budget. [03/24/16 @1:41 PM]

**Referred to Programs & Services and Finance Committees**

- #31-15(4)** **Amend Chapter 20 Section 51 Civil Fine for Littering to Include Yard Waste**  
PROGRAMS & SERVICES COMMITTEE requesting that the City of Newton Ordinances Chapter 20, Section 51, Depositing of Litter, be amended to include leaves, yard waste, and other similar material, and that civil fines be associated with violations of the section and added to Chapter 20, Section 21. [03/24/16 @1:41 PM]

**#112-16 Appropriation of mitigation funds for pedestrian and traffic improvements**

HIS HONOR THE MAYOR requesting authorization to appropriate and expend the following Mitigation Funds:

Village Café at 719 Washington Street	\$2,500
258 Nevada Street at Linwood Street	\$1,500
Cherry Street at Washington Street	\$2,000
O'Hara's Restaurant, Newton Highlands	\$2,500
Rox Diner Parking & Pedestrian Improvements	\$2,500
Riverside, Old Jordan marsh	\$16,045
Canton Circle LLC, 714-724 Beacon Street	\$10,000

**Referred to Public Safety & Transportation and Finance Committees****#64-16 Increase the number of Chief of Operation positions in the Fire Department**

HIS HONOR THE MAYOR requesting a temporary increase in the number of Chief of Operations in the Fire Department from one to two Chief, as the current Assistant Chief of Operations is on extended sick leave, does not intend to return to his position, and his accrued time does not run out until August 2016. An Assistant Chief has been working as the acting Chief of Operations and the Fire Chief would like to permanently appoint him as the Chief of Operations before August 2016, as the acting Chief of Operations cannot attend bargaining sessions due to a possible conflict of interest should he return to a union position as Deputy Chief. [02/09/16 @ 2:47 PM]

**Public Safety & Transportation Held 6-0 on 02/17/16**

**#40-16 Request to accept MGL 149 Sec 148C related to earned sick time for employees**

COUNCILOR SANGIOLO requesting that City of Newton formally accept and/or take all necessary steps to accept Massachusetts General Law Chapter 149, Section 148C, in order to qualify full-time, part-time, seasonal, and temporary employees coverage under the earned sick time regulation, 940 CMR 33, as approved by the voters of Massachusetts in the 2014 Election as Ballot Question 4 – Earned Sick Time for Employees. [01/19/16 @ 2:35 PM]

**Referred to Programs & Services, Public Facilities, and Finance Committees****#357-15 Request for CPA funding for the Newton Highlands Playground**

COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of two million five hundred thousand dollars (\$2,500,000) from the Community Preservation Fund's open space and general reserves or fund balance to the Parks & Recreation Department, for the rehabilitation of the Newton Highlands Playground at Winchester and Dedham Streets, as described in the proposal submitted to the Community Preservation Committee in November 2015. [12/15/15 @ 12:32 PM]

**Referred to Finance and Appropriate Committees**

**#288-15** **Submittal by the Mayor of the FY17 Capital Improvement Plan**  
HIS HONOR THE MAYOR submitting the FY 2017-FY 2021 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/01/15 @ 1:53 PM]

**#287-15** **Submittal by the Mayor of the 5-Year Financial Forecast**  
HIS HONOR THE MAYOR submitting the FY 2017-FY 2021 5-Year Financial Forecast for Board of Aldermen review/acceptance. [10/01/15 @ 1:53 PM]

**Referred to Public Facilities and Finance Committees**

**#223-15** **Discussion on the process of licensing the use of city buildings**  
ALD. LAREDO requesting a discussion of the process of licensing the current and future use of city building, including: (a) how licensees may request the use of city buildings; (b) the process for determining which licensees will get the use of city buildings; (c) how the fees for the use of city buildings are set; and (d) how the current process compares to the process for permitting the use of school buildings. [08/13/15 @ 11:20 AM]

**#190-15** **Discussion of a policy to record all meetings and post all meeting materials online**  
ALD. SANGIOLO requesting a discussion with the Executive Department relative to creating a policy to require audio recordings of all meetings of boards and commissions and requiring them to be posted to the City's website, as well as posting of all documentation that is reviewed by boards and commissions and/or by their designated City staff member.

**Referred to Land Use and Finance Committees**

**#49-14** **Implementation of technology to monitor compliance with special permits**  
LAND USE COMMITTEE requesting discussion with the Chief Financial Officer and the Chief Information Officer regarding the critical need to implement technology which enables the development, management and use of shared, searchable, mobile-accessed (both read and write) database which contains parcel-based information that can be accessed by all city departments (including Planning, Inspectional Services (ISD), Assessing, Engineering, Fire, Police, Health), the Board of Aldermen and the community. This technology must support the work of ISD and other departments in both the office and the field to more effectively and efficiently monitor and enforce compliance with approved special permits and other related Board Orders. [02/10/14 @ 6:47 PM]

**#248-12** **Ordinance amendments to Article IV Purchases and Contracts**  
RECODIFICATION COMMITTEE recommending that **ARTICLE IV. PURCHASES AND CONTRACTS, Secs. 2-182 through 2-205**, be amended to make it consistent with state law.

Respectfully submitted;

Leonard J. Gentile, Chair

CITY OF NEWTON, MASSACHUSETTS  
SUMMARY OF AVAILABLE FUNDS

	July 1, 2015 <u>Available Balance</u>	<u>Additions</u>	Appropriations/ <u>Uses</u>	Pending <u>Appropriations</u>	April 22, 2016 <u>Available Balance</u>
Free cash	-	6,109,028	(1,426,721)	(3,842,935)	<b>839,372</b>
Overlay surplus	-	1,318,522	(1,318,522)	-	-
Budget reserve	-	500,000	(492,133)	-	<b>7,867</b>
Snow & ice reserve	-	2,500,000	(2,223,865)	(276,135)	-
Wage/salary reserve	-	750,000	-	-	<b>750,000</b>
Interest on Property Tax Refunds reserve	435,510	445,226	-	-	<b>880,736</b>
NSHS MSBA reimbursement reserved for future year debt service	456,746	-	-	(50,769)	<b>405,977</b>
NNHS MSBA reimbursement reserved for future year debt service	2,184,417	-	-	(47,777)	<b>2,136,640</b>
Angier Debt exclusion premium - reserved for FY 2017 appropriation	351,159	261,366	(351,159)	-	<b>261,366</b>
Cabot Debt exclusion - premium - reserved for appropriation	17,865	-	(17,865)	-	-
Federal Snow/Ice Reimbursement	-	939,987	-	(939,987)	-
Rainy Day Stabilization Fund	17,317,598	834,132	-	654,435	<b>18,806,165</b>
Judgments and Settlements	-	373,467	(350,799)	-	<b>22,668</b>
Liability Self Insurance Fund	138,694	65	(134,363)	-	<b>4,396</b>
Parking meter receipts	300,040	1,240,563	-	(1,500,000)	<b>40,603</b>
Sale of recyclable materials	6,346	14,182	-	(10,000)	<b>10,528</b>
Automated trash collection fees	14,001	105,633	-	(125,000)	<b>(5,366)</b>
<b>CATV regulation receipts:</b>					
Capital	178,655	249,535	(200,000)	(200,000)	<b>28,190</b>
Operating	374,097	139,448	(300,000)	(200,000)	<b>13,545</b>
BAA Marathon receipts	-	118,000	-	(118,000)	-
Commonwealth Golf Day receipts	3,000	12,000	-	(25,000)	<b>(10,000)</b>
Handicapped Parking fines (Disability Commission)	17,227	-	-	-	<b>17,227</b>
<b>Inclusionary zoning receipts:</b>					
Planning & Community Development	213,550	56,987	-	-	<b>270,537</b>
Housing Authority	280,973	56,987	-	-	<b>337,960</b>
<b>School E-Rate receipts</b>	2	116,911	-	-	<b>116,913</b>
<b>Library E-Rate receipts</b>	2,349	-	-	-	<b>2,349</b>
<b>CH 148A Fire Prevention Fines</b>	1,800	600	-	-	<b>2,400</b>
<b>CH 148A Inspectional Svs Fines</b>	17,070	8,550	-	-	<b>25,620</b>

CITY OF NEWTON, MASSACHUSETTS  
SUMMARY OF AVAILABLE FUNDS

	<u>July 1, 2015</u> <u>Available Balance</u>	<u>Additions</u>	<u>Appropriations/</u> <u>Uses</u>	<u>Pending</u> <u>Appropriations</u>	<u>April 22, 2016</u> <u>Available Balance</u>
<b>Development Mitigation:</b>					
Riverside - Auburndale improvements	136,569	141	(136,710)	-	-
Riverside - Lower Falls improvements	372	34,463	-	(372)	<b>34,463</b>
Riverside - Other improvements	15,657	31	-	(15,673)	<b>15</b>
N-W Hospital drainage mitigation	19,191	39	-	-	<b>19,230</b>
Woodland Station I&I mitigation	85,380	-	-	-	<b>85,380</b>
Kessler Way I&I mitigation	73,750	-	-	-	<b>73,750</b>
Marriott - Commonwealth Ave. Landscape maintenance	20,900	-	(20,900)	-	-
Cherry St traffic signalization improvements	2,000	-	-	(2,000)	-
Newton Centre maintenance (St Petersburg Café)	4,000	-	-	-	<b>4,000</b>
O'Hara's Highlands pedestrian improvements	2,500	-	-	(2,500)	-
Café Santiago parking	2,500	-	-	-	<b>2,500</b>
Terry O'Reilly's Pub LLC	1,000	-	-	-	<b>1,000</b>
275 Washington St. Streetscape	2,500	-	-	-	<b>2,500</b>
258 Nevada St Linwood/Nevada St Handicapped Ramps	1,500	-	-	(1,500)	-
719 Washington St. - Village Café	2,500	-	-	(2,500)	-
335 Walnut St. Rox Diner Traffic/Parking Mitigation	2,500	-	-	(2,500)	-
CH Square I&I Mitigation	10,000	-	-	-	<b>10,000</b>
714-724 Beacon Crosswalk Relocation	-	10,000	-	(10,000)	-
22 Union Street Parking Improvements	-	2,500	-	-	<b>2,500</b>
Kessler Woods Development I&I	-	286,473	-	-	<b>286,473</b>
Newton Centre Parking Mitigation	-	1,500	-	-	<b>1,500</b>
Upper Falls Greenway Development	-	10,000	-	-	<b>10,000</b>
Harvard/Washington St Pedestrian Improvements	-	15,000	-	-	<b>15,000</b>
Windsor/Beacon Pedestrian/Vehicle Improvements	-	2,500	-	-	<b>2,500</b>
Wells Ave/Nahanton St & Winchester St Traffic Improvements	-	67,500	-	-	<b>67,500</b>
<b>Community Preservation Fund:</b>					
Open space purposes	-	357,251	-	(357,251)	-
Historic preservation purposes	4,420	357,251	(281,043)	(80,628)	-
Community housing purposes	-	357,251	-	(357,251)	-
All CPA purposes	8,219,044	2,080,905	(100,000)	(4,516,457)	<b>5,683,492</b>
<b>Water and Sewer Funds:</b>					
Stormwater Management Fund Surplus - Available for Appropriation	41,146	-	-	-	<b>41,146</b>



CITY OF NEWTON, MASSACHUSETTS  
SUMMARY OF AVAILABLE FUNDS

	<u>July 1, 2015</u> <u>Available Balance</u>	<u>Additions</u>	<u>Appropriations/ Uses</u>	<u>Pending Appropriations</u>	<u>April 22, 2016</u> <u>Available Balance</u>
Stormwater Management Fund Operating Reserve - 2016 Budget	-	150,000	(2,419)	-	<b>147,581</b>
Sewer Fund Surplus - Budget Stabilization	-	-	-	-	-
Sewer Fund Surplus - Available for Appropriation	7,515,508		-	-	<b>7,515,508</b>
Sewer Operating Reserve - 2016 budget	-	1,627,374	(1,335)	-	<b>1,626,039</b>
Sewer Capital Reserve - 2016 budget	-	-			-
Water Fund Surplus - Budget Stabilization	-	-	-	-	-
Water Fund Surplus - Available for Appropriation	3,528,832		-	-	<b>3,528,832</b>
Water Operating Reserve - 2016 budget	-	1,500,000	-	-	<b>1,500,000</b>
Water Capital Reserve 2016 budget	-	-	-	-	-
<b>Capital Stabilization Fund:</b>					
Fire station renovations	10,830	5,566	-	-	<b>16,396</b>
Energy conservation projects	905,046	292,583	(930,046)	-	<b>267,583</b>
FY 2014 Override capital projects	495,643	2,400,000	(493,218)	(1,692,340)	<b>710,085</b>
Bonded capital projects	13,752	-	(13,752)	-	-
Unrestricted capital purposes	27,061	-	(27,061)	-	-
Capital Project Fund bond balances available for appropriation	255,562	72,190	(327,752)	-	-
<b>Employee Benefit Funds:</b>					
Other Post Employment Benefit Fund	2,118,738	983,214	-	-	<b>3,101,952</b>
Tufts Health Self Insurance Fund {1}	4,763,902	30,101,164	(31,087,994)	-	<b>3,777,072</b>
Harvard-Pilgrim Self Insurance Fund {1}	9,533,185	12,385,451	(13,009,358)	-	<b>8,909,278</b>
Workers Compensation Self Insurance Fund {2}	2,426,609	1,316,118	(1,262,010)	-	<b>2,480,717</b>

*{1} Tufts and Harvard-Pilgrim June 30, 2015 balance has been re-stated for results of September 30, 2015 claims run-off analysis for the July 1 - September 30 period. IBNR reduced by \$744,563 and fund balances increased by the same. This is due to continued improvement in the timeliness of claims payment by the City's two plan administrators.*

*{2} Workers Compensation Fund June 30, 2015 balance has been re-stated for results of June 30, 2015 actuarial valuation (\$323,784)*

Warren House Ground Lease Receivable  
 65 Year Term  
 01-135001

	<u>Rent Due</u>	<u>Rent Paid</u>	<u>Outstanding Balance</u>	<u># Years Outstanding</u>	<u>Accrued Interest</u>	<u>Total Due</u>
March 15, 1993	75,000.00	-	75,000.00	23	138,000.00	213,000.00
March 15, 1994	75,000.00	-	75,000.00	22	132,000.00	207,000.00
March 15, 1995	75,000.00	-	75,000.00	21	126,000.00	201,000.00
March 15, 1996	75,000.00	-	75,000.00	20	120,000.00	195,000.00
March 15, 1997	75,000.00	-	75,000.00	19	114,000.00	189,000.00
March 15, 1998	75,000.00	-	75,000.00	18	108,000.00	183,000.00
March 15, 1999	75,000.00	-	75,000.00	17	102,000.00	177,000.00
March 15, 2000	75,000.00	-	75,000.00	16	96,000.00	171,000.00
March 15, 2001	75,000.00	-	75,000.00	15	90,000.00	165,000.00
March 15, 2002	75,000.00	-	75,000.00	14	84,000.00	159,000.00
March 15, 2003	75,000.00	(894)	74,106.00	13	77,070.24	151,176.24
March 15, 2004	75,000.00	-	75,000.00	12	72,000.00	147,000.00
March 15, 2005	75,000.00	-	75,000.00	11	66,000.00	141,000.00
March 15, 2006	75,000.00	-	75,000.00	10	60,000.00	135,000.00
March 15, 2007	75,000.00	-	75,000.00	9	54,000.00	129,000.00
March 15, 2008	75,000.00	-	75,000.00	8	48,000.00	123,000.00
March 15, 2009	75,000.00	-	75,000.00	7	42,000.00	117,000.00
March 15, 2010	75,000.00	-	75,000.00	6	36,000.00	111,000.00
March 15, 2011	75,000.00	-	75,000.00	5	30,000.00	105,000.00
March 15, 2012	75,000.00	-	75,000.00	4	24,000.00	99,000.00
March 15, 2013	-	(2,879)	(2,879.00)	3	(690.96)	(3,569.96)
March 15, 2014	-	-	-	2	-	-
March 15, 2015	-	-	-	1	-	-
March 15, 2016	-	-	-	-	-	-
	<u>1,500,000.00</u>	<u>(3,773)</u>	<u>1,496,227.00</u>		<u>1,618,379.28</u>	<u>3,114,606.28</u>

March 15, 2015 Balance Forward	2,995,368.76
Rent payment: March 15, 2016	-
Accrued interest	119,237.52
<b>March 15, 2016 Balance Due</b>	<b>3,114,606.28</b>

ARTICLE III

Rent, Real Estate Taxes & Utilities

3.1 Rent. Tenant covenants and agrees to pay the Landlord rent as follows:

(a) The total rent for the Term shall be One Million Five Hundred Thousand Dollars (\$1,500,000.00). Subject to the conditions and limitations contained in Sections 3.1(b), (c), (d), (e) and (f) it will be payable at the annual rate of \$75,000.00 in arrears with respect to each calendar year on or before the fifteenth day of March of the following calendar year (the "Rental Due Date").

(b) Notwithstanding the provisions of Section 3.1(a) for no calendar year during the Term shall the rent payable under this section exceed fifty percent (50%) of the "adjusted cash flow" from operations of the Development. For the purposes of this paragraph, "adjusted cash flow" is defined as:

(i) rental income from all sources, including third-party subsidies as adjusted from time to time; plus

(ii) non-rental income including interest, endowment, grant funding loans or the like but only to the extent actually applied to pay costs under Section 3.1(b)(iii) and (iv) after application of all rental income; less

(iii) all ordinary and reasonable operating expenses and taxes, including reserves required by Tenant's primary mortgagee (as hereinafter defined) or Tenant's other primary financing sources (as hereinafter defined) and excluding any developer's fee; provided that (x) payments to and from reserves shall be deducted

GROUND LEASE

This Ground Lease is made this 20<sup>th</sup> day of ~~December~~, 1991 by and between the CITY OF NEWTON, a municipal corporation with an address at City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts 02159 (hereinafter referred to as "Landlord") and WARREN HOUSE ASSOCIATES LIMITED PARTNERSHIP, a Massachusetts limited partnership with an address at Two University Road, Cambridge, Massachusetts 02238 (hereinafter referred to as "Tenant").

WITNESSETHARTICLE IPremises

1.1 Land. In consideration of the rents and covenants herein set forth and contained on the part of the Tenant to be paid, performed and observed, Landlord does hereby demise and lease unto Tenant, for the term hereinafter set forth upon and subject to the terms and provisions of this Ground Lease, the land in Newton, Middlesex County, Massachusetts, described in Exhibit "A" attached hereto and comprising all or a portion of the land now or formerly know as the Warren Junior High School; together with any and all improvements, appurtenances, rights, privileges and easements now or hereafter benefiting, belonging or pertaining thereto, but excluding the buildings thereon which have been conveyed to the Tenant this day by a Deed; said land, appurtenances and easements being hereinafter referred to as the "Land". The Land and the buildings thereon as improved for Tenant's use as provided herein may hereinafter be referred to as the "Development".

Landlord further agrees to allow Tenant to enter its land adjoining the Land for such purposes as may be reasonably necessary or prudent from time to time. Tenant shall request Landlord's permission for each such entry, which permission shall not be unreasonably denied. The parties understand that Landlord may be particularly concerned about interference with the normal recreational use of Landlord's adjoining land. Tenant shall have the right to cross Landlord's adjoining land to improve and maintain the parking area on the Land. Tenant also shall have the right to cross Landlord's adjoining land to install drainage pipes and to connect its drainage system to the existing culvert on Landlord's adjoining land, subject to the approval of the City Engineer as to the place and manner of connection and for access to a water bubbler on Landlord's adjoining land. Tenant shall also have the right to use the sewerage and storm drainage pipes and water lines serving the buildings on the Land. In all cases of entry, Tenant shall restore the adjoining land promptly if it has been disturbed by Tenant's permitted entry. Landlord retains the right to enter onto the Land for the purpose of laying, installing, using, maintaining, repairing and replacing all utility, water and sewer lines and apparatus as do not unreasonably interfere with Tenant's use of the Land. After any such entry Landlord shall restore the Land to its prior condition, except for necessary physical changes because of the work done. In addition Landlord retains the right on behalf of members of the general public making authorized recreational use of Landlord's adjoining land for such members of the general public to enter upon driveways located on the Land for the purpose of utilizing such parking spaces on the

Land as will be reserved for recreational use and to pass and re-pass over portions of the Land for pedestrian access from the driveways and parking areas to Landlord's adjoining land.

1.2 Further Easements. The Landlord agrees that, within ten (10) days after receipt of written request from Tenant, it will join at no expense to Landlord in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the Tenant may do hereunder, and will also join in applications for and executions of any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Development.

1.3 Notice of Lease. A notice of this Ground Lease in statutory form shall be recorded with the Middlesex (Southern District) Registry of Deeds within thirty (30) days of the Commencement Date as herein defined.

ARTICLE II

Term      *YR. 2056*

2.1 Term. This Ground Lease is for a term (the "Term") commencing on the Commencement Date as defined herein and continuing for sixty five (65) years unless sooner terminated in accordance with the provisions herein contained.

2.2 Commencement Date. The Commencement Date of this Ground Lease is December 20, 1991.

only once; and (y) third party subsidies shall be calculated after cash adjustments (but not accruals) (if any) made on account of cash flow of the development; and less

(iv) the sum of debt service attributable to Tenant's primary financing plus debt service attributable to any other mortgage which (x) encumbers no realty other than the Land, its appurtenances and improvements thereon, (y) is in an amount which together with Tenant's other financing contemplated in this section and exclusive of loans from the Newton Housing Authority and the Newton Community Development Authority does not exceed \$7,900,000.00 and (z) which is used to provide additional financing for costs reasonably related to the development, construction, operation, repair or maintenance of the Development, plus debt service attributable to other bona fide third-party obligations and related to the development, construction, operation, repair or maintenance of the Development, but only to the extent such other debt service costs are reasonable, normal and customary to housing of the type contemplated herein, including but not limited to debt service from contracts related to the initial construction contemplated in Section 5.1 hereof, and major capital improvements, but not including debt service attributable to syndication fees.

(c) On or before March 15 of each year during the Term Tenant shall determine adjusted cash flow if any from operations for the period constituting the prior calendar year. Such determination shall be submitted promptly to the City of Newton Comptroller. Subject to the limitations of this paragraph Tenant shall pay to Landlord fifty (50%) percent of the adjusted cash flow for the

prior calendar year. In any year in which adjusted cash flow is less than \$150,000.00 and Tenant's payment under this paragraph is therefore less than \$75,000.00 the difference between \$75,000.00 and the amount paid will accrue and be payable to the extent of 50% of adjusted cash flow in excess of \$150,000.00 in the first year or years in which such adjusted cash flow is available. FOR EXAMPLE, if in the first year of this Ground Lease there should be no cash flow the entire amount of \$75,000.00 otherwise payable hereunder will accrue. If in the tenth year of this Ground Lease adjusted cash flow shall be \$180,000.00 then \$75,000.00 (50% x \$150,000.00) shall be payable as that year's rent under this section and \$15,000.00 (50% x (\$180,000.00-\$150,000.00)) shall be payable with respect to the prior accruals until all accruals have been paid.

(d) At such time as Tenant pays the rent payable under Section 3.1 (c) Tenant shall pay together with such rent an additional sum of rent calculated in the same manner as simple interest would be calculated at the rate of eight (8%) percent per annum had the rent payment being made with respect to the prior year (but not any accrual) been due in four equal payments on the 15th days of April, July, and October of the prior year and January of the year of payment and were interest payable on such payments from the date due. FOR EXAMPLE should the rent payment being made with respect to any year under Section 3.1 (c) be \$60,000.00 the additional rent payment under this Section 3.1 (d) due upon payment of the rent on March 15 of the following year would be the sum of \$15,000.00 x .08 x 11/12 plus \$15,000.00 x .08 x 8/12 plus \$15,000.00 x .08 x 5/12 plus \$15,000.00 x .08 x 2/12 = \$2,600.00.

(e) Tenant shall continue to pay such rent until Tenant has



paid a total of one million five hundred thousand (\$1,500,000.00) dollars under Section 3.1(c) exclusive of payments under section 3.1 (d) and (f). If, at any time during the Term, Tenant has already paid \$1,500,000.00 under Section 3.1(c) then Tenant shall have no obligation to pay rent for the remainder of the Term. Conversely, if Tenant has not paid \$1,500,000.00 in rent at the end of the Term (whether it has ended by expiration or earlier termination) then Tenant shall, prior to its surrender of the Land at the termination or earlier expiration of the Term as the case may be, pay the difference between \$1,500,000.00 and the total rent paid under Section 3.1(c). If Tenant sells or assigns this Ground Lease excepting by an assignment under Section 5.4 to which Landlord's approval is not required, the then unpaid portion of the \$1,500,000.00 rent under Section 3.1(c) shall immediately be due and payable provided, however, that Tenant's obligation to pay the unpaid portion of the \$1,500,000.00 rent under Section 3.1(c) shall be limited to Tenant's assets upon such sale or assignment in the same manner as is provided in Section 14.10, and no such payment shall be sought from the separate assets of any partner comprising Tenant. To the extent Tenant's assets upon such sale or assignment are insufficient to pay the entire unpaid portion of the rent under Section 3.1(c) any balance then remaining unpaid shall continue to remain payable as provided in Section 3.1(c) from adjusted cash flow of the Development or this Section 3.1(e) from subsequent sale or assignment of this Lease.

(f) Notwithstanding any other provision of this Section 3.1, if in any year the endowment to be established by the Tenant for

the purposes inter alia of providing income to pay debt service on loans to the Newton Housing Authority or to the Newton Community Development Authority shall not be established or funded or once established and funded shall have been depleted through expenditures so as to be no longer funded then, in any such year that portion of the adjusted cash flow which is otherwise to be paid to the Landlord as rent under Sections 3.1 (c) and 3.1 (d) hereof shall instead be paid first towards interest and then principal on Tenant's loan to be taken on or about the date hereof from the Newton Housing Authority and second towards interest and then principal on Tenant's loan taken about July, 1991 from the Newton Community Development Authority. Payments made to the Newton Housing Authority or the Newton Community Development Authority under this paragraph shall not be applied against or reduce Tenant's aggregate rent obligation under this Section 3.1.

(g) Landlord shall have the right to examine Tenant's books to determine the accuracy of Tenant's reporting of adjusted cash flow and Landlord shall have the additional right to have Tenant's books audited for such purpose. Such audit shall take place no later than three years and three months after the end of the year which is being audited. If such examination or audit shows underreporting by Tenant of adjusted cash flow, then Tenant shall immediately pay the rent and any additional rent due under Section 3.1 (d) due on such underreported amounts. If the Tenant underreported adjusted cash flow by an amount equal to or greater than \$5,000.00 Tenant shall pay the cost of the examination and/or audit to Landlord.

3.2 Real Estate Taxes. Tenant shall pay any real estate taxes,

betterments, assessments and the like when due pursuant to G.L. c.59, Section 2B (or any similar statute) applicable to the Development. Landlord and Tenant acknowledge that as of the date hereof the Board of Assessors have determined the fair cash value of the leasehold created by this Ground Lease together with the buildings as anticipated to be improved will be \$4,800,000.00. Nothing contained in this Ground Lease shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord, or any income, excess profits or revenue tax, or any other tax, assessment, charge or levy upon the rent payable by the Tenant under this Ground Lease.

3.3 Utilities. Tenant shall pay or cause to be paid all charges for water, gas sewer, electricity, light, heat or power, telephone or other service used, rendered or supplied to Tenant in connection with the Development, except as the same may be contracted for or metered directly to subtenants, provided that failure to pay the same shall not be a default hereunder.

#### ARTICLE IV

##### Liability Insurance

Tenant shall at all times during the term of this Ground Lease procure and maintain comprehensive public liability insurance against injury to persons or damage to property arising out of the use of the Land and any improvements thereon with responsible companies duly authorized to write such insurance qualified to do business and in good standing in the Commonwealth of Massachusetts. The insurance shall include the broad comprehensive general form

liability endorsement in the minimum amount of five million dollars (\$5,000,000.00) together with so-called "umbrella" coverage in an additional amount of at least two million dollars (\$2,000,000.00). This policy and its coverage limits shall be reviewed every year and revised upwards to reflect the then current common and reasonable levels of insurance. Notice of such changes shall be given to Landlord. All such insurance shall name both Landlord and Tenant as insureds and certificates thereof shall be delivered to and left in the possession of the Landlord prior to the Commencement date. The policy (or policies) referred to in this Section shall be written with companies which are approved by the Landlord, which approval shall not be unreasonably withheld, and may be written in so-called "blanket" form. No changes or modifications, except increases in coverage, shall be permitted by Tenant without the approval of the Landlord, such approval shall not be unreasonably withheld. The certificates shall state that this policy (or policies) shall not be amended, except for increases in coverage, or canceled without giving Landlord at least thirty (30) days notice.

#### ARTICLE V

##### Use

5.1 Mixed-Income Rental Housing; Changes in Use. Tenant shall have the right to use the Land solely for a mixed income rental housing development and uses accessory thereto or as allowed or required by the Permits as defined in Paragraph 5.2 hereof as the same may be amended or superseded from time to time and subject to the limitations therein contained, and to make such alterations, improvements and betterments to the Land and the buildings thereon.

as are described in the Reuse Orders and the Special Permit, as they are defined below, and such further alterations, improvements and betterments in addition to or in substitution to those allowed by the Permits as Tenant may desire subject to Landlord's prior consent; provided, however, that no such alterations, improvements or betterments or any construction, demolition or reconstruction in the future shall violate conditions set forth in the Permits as hereinafter defined.

No earlier than 15 years after the Commencement Date Tenant shall have the right to convert the form of ownership of the development from rental housing to some other form of ownership such as without limitation cooperative ownership provided that:

- (i) Tenant shall first receive Landlord's consent which Landlord shall not unreasonably withhold or delay, provided that Landlord's consent may be conditioned on Landlord's participation in sale proceeds and Landlord shall not be deemed unreasonable in withholding Landlord's consent to any plan to convert the Development to a condominium or cooperative form of ownership;
- (ii) Upon any such conversion the then unpaid balance of rent under Section 3.1 (c) shall be payable from the first available proceeds of sale or refinancing from such conversion net of usual and customary transaction or closing costs, deed or transfer stamps, payoff of prior debt including without limitation debt to the

Executive Office of Communities and Development or its successors ("EOCD") under any program loans granted by or through EOCD, debt to the Newton Community Development Authority and/or the Newton Housing Authority or other necessary expenses;

- (iii) Any such conversion shall be in accordance with the requirements of the Reuse Orders and the Special Permit as defined in Section 5.2 and as either or both of them may be amended from time to time; and
- (iv) If at the time of such conversion the Development has outstanding obligations to the EOCD under any grant or loan programs administered by EOCD then any such conversion will require the consent of EOCD.

Notwithstanding the foregoing a refinancing for rental housing purposes which does not change the form of ownership of the Development shall not be considered a conversion of form of ownership to which the provisions of this paragraph relating to conversions shall apply.

5.2 Permits. Landlord and Tenant acknowledge that the Land is subject to reuse orders and conditions in Board of Aldermen Board Orders 621-81(3) dated September 15, 1986 and 236-89(3) dated September 8, 1989 (the "Reuse Orders") and to the special permit orders and conditions in Board of Aldermen Board Order 236-89(5) dated April 17, 1990, 1990, 236-89(8) dated November 5, 1990 and 236-89(9) dated March 4, 1991 (the "Special Permit"), as each of these orders have been or may hereafter be amended or extended, and

Tenant covenants to comply with all such orders and conditions.

Tenant further agrees to apply to such other municipal or other governmental agencies as may have jurisdiction for such other permits, approvals, orders of conditions or other authorizations necessary for the development of the Land and the buildings thereon for the uses permitted hereunder and shall comply with such permits, approvals, orders, conditions or other authorizations. For the purposes of this Ground Lease, the special permits, variances, orders, conditions, authorizations or permits of all governmental agencies having jurisdiction over the Development as the same may be amended or superseded from time to time are collectively referred to as the Permits.

5.3 Right to Sublease. Tenant shall have the right to sublease the Development or any parts thereof to residential subtenants of its choosing or to enter into occupancy agreements with such subtenants and also to lease permitted day care space to a licensed provider, provided, however, that the selection process for residential subtenants for affordable income units shall be as set out in the "Warren House Resident Selection Process" attached hereto as Exhibit "B". Tenant shall have no other right to sublet the Development or portions thereof without Landlord's prior consent.

5.4 Right to Assign Tenant's Rights Hereunder. Tenant agrees that for a period of five years from the Commencement Date, New Keen Corporation and Newton Community Development Foundation III, Inc. or another affiliate of Newton Community Development Foundation, Inc. will remain general partners of Tenant, and

thereafter either one of the two may withdraw as general partner from the limited partnership subject to the consent of Landlord which consent shall not be unreasonably withheld.

Tenant shall also have the right to assign this Ground Lease without the prior approval of Landlord as a collateral assignment to Tenant's primary financing as defined in Article VIII as security for leasehold mortgage loans upon the Land. Except as otherwise provided in this Paragraph 5.4, Tenant shall have no right to assign this Ground Lease without the consent of Landlord. In the event of any assignment (other than collateral assignments) permitted or consented to hereunder, the assigning tenant shall not be liable for obligations of the Tenant arising after the date of the assignment but the assignee shall be solely obligated to perform such obligations.

5.5 Compliance With Laws. Tenant shall perform all activities referred to in this Article V in compliance with all applicable laws, ordinances, codes and regulations as the same may be administered by authorized governmental officials.

5.6 Liens. Tenant shall use its best efforts throughout the term hereof to prevent any mechanic's liens or other liens for work, labor, services or materials from being filed or recorded against the Land or any portion thereof or any improvements thereon. In the event that any such lien shall be filed, Tenant shall procure the release or discharge thereof within sixty (60) days either by payment or in such other manner as may be prescribed by law, and shall hold Landlord harmless from and indemnified against any loss or damage related thereto. Tenant shall require any general contractor undertaking work to secure a payment and



performance bond and lien bond in the usual and customary AIA form and in substance satisfactory to the mortgagee(s) granting Tenant's primary financing.

Notwithstanding the provisions of this Ground Lease or the Permits allowing demolition of any improvements on the Land and construction and reconstruction of the improvements thereon for the purposes contemplated hereby, Tenant agrees that it will not permit waste in the Land or any improvements thereon, provided, however, that demolition activities in conjunction with the program of reuse, renovation and reconstruction of the Land and the improvements thereon anticipated in the Permits shall not be deemed waste hereunder.

5.7 Maintenance. Upon rehabilitation and construction of the Development, Tenant agrees to maintain the Development in first-class fashion, damage by casualty and ordinary wear and tear excepted, in accordance with sound management practices and in accordance with applicable regulations and management agreements of Tenant's primary financing.

#### ARTICLE VI

##### Property Insurance/Restoration

6.1 Property Insurance. Tenant shall at all times during the term of this Ground Lease procure and maintain real property insurance for damage to the improvements on the Land with responsible companies duly authorized to write such insurance and qualified to do business in and in good standing in the Commonwealth of Massachusetts. Policy amounts shall be as deemed sufficient by Tenant's primary financing mortgagee(s) but the

minimum policy limit shall be the replacement value of the improvements above foundations on the Land at any time. All such insurance shall be in such form as required by Tenant's primary financing mortgagee(s) and shall name both Landlord and Tenant as insureds and may, if required by Tenant's primary financing as hereinafter defined, name one or more leasehold mortgage(s) as insureds and/or loss payee, and certificates thereof shall be delivered to and left in the possession of the Landlord within ten (10) days after the Commencement Date. The policy (or policies) referred to in this section shall be written with companies which are approved by the Landlord, which approval shall not be unreasonably withheld. No changes or modifications to such policies (except increases in coverage) shall be permitted by Tenant without the approval of the Landlord, such approval not to be unreasonably withheld. The certificate shall state that this policy (or policies) shall not be amended (except for increase in coverage) or canceled without giving Landlord thirty (30) days notice. Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with the insurance required by Tenant's primary financing mortgagee(s), but Landlord may take out separate insurance which is not so contributing or concurrent.

6.2 Casualty. Except as provided in this Section 6.2, if any buildings on the Land are damaged or destroyed by fire or other casualty, this Ground Lease shall in no way be affected and shall continue in full force and effect. Landlord shall have no interest in or right to any insurance proceeds recoverable by Tenant or Tenant's leasehold mortgagee(s) or any subtenant as a result of

such damage, destruction or other casualty. In the event that at any time during the term, the buildings and improvements on the Land shall be destroyed or damaged in whole or in part by fire or other casualty, then, except as provided herein Tenant shall, but only to the extent of the sum of insurance proceeds actually made available to Tenant by Tenant's mortgagee(s) plus any deductible on Tenant's policy cause the same to be promptly repaired, replaced or rebuilt as nearly as possible to its value, condition and character immediately prior to such damage or destruction, within a period of time which, under all prevailing circumstances, shall be reasonable.

Notwithstanding the foregoing if at any time a mortgagee having rights to do so shall not permit insurance proceeds to be used for the repair or reconstruction of any improvements on the Land but shall require that such insurance proceeds be applied to Tenant's mortgage debt or in any event if any damage or casualty to any improvements on the Land shall cause damage in excess of 30% of the replacement cost of such improvements then Tenant may, with the written consent of Landlord's primary financing mortgagee(s), terminate this Ground Lease by a notice to Landlord given not later than six months after such damage or casualty in which event:

- (i) This Ground Lease shall terminate on the date set in Tenant's notice of termination; and
- (ii) Tenant shall pay to Landlord on or before the termination date of this Ground Lease the lesser of (x) the then unpaid balance of rent under Section 3.1(c), (y) net insurance proceeds

received by Tenant after payment by Tenant of all Tenant's obligations including without limitation all leasehold mortgages relating to the Development but in no event less than (z) all cash held by Tenant from whatever source which would otherwise be available for distribution to the partners comprising Tenant less (i) reasonable reserves for the costs of administration and winding up of Tenant's business and, (ii) such other reserves as may be established by Tenant's primary financing lender(s) which reserves shall be paid to Landlord at such time as they become available to Tenant for distribution to Tenant's partners.

#### ARTICLE VII

##### Eminent Domain

7.1 Proceedings. Upon receipt by either Landlord or by Tenant of notice of the institution of any proceedings for the taking of any part of the Land or the improvements thereon by the exercise of any power of condemnation or eminent domain, or for any street widening or change of grade, the party receiving such notice shall promptly give written notice thereof to the other party, who may also appear in such proceedings as may occur and be represented by counsel.

7.2 Right to Terminate. After the execution of this Ground Lease and before the expiration of the term hereof:

- (a) in the event of a taking of all the Land and the improvements thereon by reason of the

exercise of eminent domain or a condemnation;

or

(b) in the event of a taking of a substantial portion of the Land or the improvements thereon, by eminent domain or condemnation resulting in the termination of all subleases into which Tenant may have entered respecting all or portions of the Land, or

(c) in the event of a taking of less than all the Land or the improvements thereon by eminent domain or condemnation rendering utilization of the balance of the Land or the improvements by Tenant impossible,

then, in any of these events Tenant shall have the right to terminate this Ground Lease upon thirty (30) days written notice to Landlord which notice must be accompanied by a written consent to such termination executed by Tenant's primary mortgagee(s).

7.3 Award. Whether or not this Ground Lease shall have been terminated under Section 7.2 the Landlord subordinates its claim to any taking award to the Tenant's claim which may have been assigned to the Tenant's primary financing mortgagee(s), but such subordination shall only be to the extent of Tenant's primary financing.

7.4 Abatement. If, as a result of a taking of the Land and the improvements thereon, this Ground Lease is not terminated in accordance with Section 7.2 hereof, then it shall continue in full force and effect, except that there shall be an abatement in the

rental hereunder in a fair and just proportion having due regard to the degree to which Tenant's rights hereunder are impaired and the duration of such impairment.

#### ARTICLE VIII

##### Leasehold Mortgages

8.1 Tenant's Primary Financing. It is contemplated by the parties that on or before December 31, 1991 one or more leasehold mortgages from Tenant to Tenant's primary financing lender will be placed upon the Land or parts thereof to secure obligations of Tenant including without limitation repayment of construction loans, permanent loans, an RDAL Loan, CDAG loans or grants or one or more forms of rental subsidy assistance. Landlord agrees that the execution of such mortgages shall not be deemed to be a violation of any provision of this Ground Lease. Further leasehold mortgages shall be subject to the prior approval of Landlord, which shall not be unreasonably withheld provided however, that Tenant may, without Landlord's consent either (i) amend Tenant's primary financing as to its terms, increase its amount or obtain additional secured financing all so that such financing shall not exceed \$7,900,000.00 in the aggregate, or (ii) grant such mortgages or interests as may be necessary to obtain loans in addition to such financing in the aggregate amount of \$500,000.00 from the Newton Community Development Authority and/or the Newton Housing Authority. Landlord and Tenant acknowledge that Tenant's primary financing is likely to be a combination of governmental or quasi-governmental financing, MHFA bonds or conventional mortgage financing, one or more public or private credit supports or insurance for such bonds or financing, a commitment of government

subsidy assistance such as but not limited to so-called SHARP program or a so-called RDAL Loan or CDAG loans or grants, one or more loans from the Newton Community Development Authority and/or the Newton Housing Authority and proceeds of syndication of interests in Tenant's partnership, but that other methods, sources or governmental or quasi-governmental agencies may also be utilized. Whenever in this Ground Lease the term "Tenant's primary financing" is used including without limitation in this Article VIII and in Section 3.1(b) that term shall be understood to include the entire package of financing whether senior or junior as in place or contemplated as of December 31, 1991 including, for example but without limitation, both a first mortgage to MHFA and a second mortgage to the Commonwealth of Massachusetts through the Executive Office of Communities and Development to secure any RDAL or CDAG Loan if applicable and any substitution, replacement, or amendment thereto in the same dollar amount of the outstanding balance thereof. Tenant shall from time to time upon Landlord's request, notify Landlord of the sources, extent and composition of Tenant's primary financing. Tenant's loans from the Newton Housing Authority and the Newton Community Development Authority are not included within the meaning of Tenant's primary financing.

8.2 Subordination of Rents. Landlord agrees to subordinate its interest in the rents provided for in this Ground Lease to Tenant's payments required under one or more mortgages constituting Tenant's primary financing as provided in Section 3.1(c) and to any amendments, extensions and replacements thereof which do not require Landlord's consent and to other leasehold mortgages to

which Landlord's consent is not required, provided that (i) such other leasehold mortgage is to be paid in full prior to the end of the Term hereof; (ii) such other leasehold mortgage provides that Landlord must receive copies of all default notices sent to Tenant by the mortgagee within ten (10) days of the receipt of such notice by Tenant or such notice shall not be effective; and (iii) Landlord shall have the right, but not the obligation, to cure any such mortgage defaults in which event Landlord shall have the further right to recover from Tenant any amounts paid by Landlord in curing such defaults. Tenant shall remit payment for such amount within ten (10) days of a receipt of a bill therefor. Tenant shall give Landlord written notice prior to the date on which any leasehold mortgage shall be placed on Tenant's leasehold interest in the Land or on the improvements thereon or any part thereof.

8.3 Tenant's Financial Difficulties. Landlord and Tenant acknowledge that there are certain practical business risks involved in the undertaking of this Ground Lease and have determined that except as provided herein, this Ground Lease will not be subordinated to the rights of the mortgagee(s) under Tenant's primary financing. Nonetheless there may arise circumstances in which because of financial difficulties certain modifications of this Ground Lease shall apply as provided in this Section 8.3.

In the event that Tenant shall during the term of this Ground Lease certify to Landlord that Tenant is experiencing financial difficulties, is unable to pay its operating expenses, ground rent and debt service in a timely fashion and therefore intends either to grant or assign its leasehold interest to or as directed by its



primary mortgagee in lieu of foreclosure or to refinance the land in a refinancing which will not result in any net cash proceeds to Tenant, then in any such event:

- (i) No consent of Landlord shall be required under any term of this Ground Lease to such a grant or assignment in lieu of foreclosure or refinancing provided that the assignee in such instance shall be a person or company of good reputation and suitable for leasing property from the City of Newton and have experience in the operation of property similar to the Development;
- (ii) No such grant or assignment or refinancing shall be considered a transfer or assignment to which the rent acceleration provisions of Section 3.1(e) shall apply;
- (iii) The refinancing obtained by Tenant or any refinancing placed on the land by or in connection with or pursuant to any deed by Tenant in lieu of foreclosure and specifically making reference to this paragraph shall be thereafter deemed to be "Tenant's primary financing" for purposes of determination of adjusted cash flow under Section 3.1(c).

8.4 Foreclosure. In the event that the holder of any of the mortgages comprising Tenant's primary financing shall foreclose its

mortgage upon the Development or be granted a deed and assignment of this Ground Lease in lieu of foreclosure as contemplated in Section 8.3 then the following provisions shall apply:

- (i) This Ground Lease shall remain in full force and effect if Tenant is not otherwise in default hereunder beyond applicable cure periods for Tenant and Tenant's primary financing mortgagee(s);
- (ii) No consent of Landlord shall be required for such mortgagee to continue to operate the Development as required by this Ground Lease, and Landlord shall accept such mortgagee as the tenant hereunder;
- (iii) Any such mortgagee may sell or assign its interest in the Development and in this Ground Lease to any person or company selected by the mortgagee, provided however, that such a person or company shall be of good reputation and suitable for leasing property from the City of Newton and have experience in the operation of property similar to the Development, and such sale or assignment shall not require any consent or approval of Landlord;
- (iv) Any financing obtained by such foreclosing mortgagee or by the purchaser or assignee from such foreclosing mortgagee shall be deemed to be part of "Tenant's primary financing" for all purposes of this lease including without limitation for purposes of determination of adjusted cash flow under Section 3.1(c).
- (v) Any grantee by sale or assignment of the foreclosing

mortgagee shall have all of the rights and obligations of the Tenant hereunder arising from and after the date of foreclosure of the primary leasehold mortgage.

8.5 Non-Merger. In the event that the estates of the Landlord and the Tenant shall at any time be held by a single person or entity no doctrine of merger shall apply but the fee and leasehold interests shall remain distinct and all leasehold mortgages in existence at that time shall continue as encumbrances on the leasehold estate.

8.6 Fee Mortgages. Landlord may not mortgage or otherwise encumber its fee interest in the Land without consent of the Tenant and Tenant's primary financing mortgagee(s) which may be withheld in their sole discretion and may be conditioned upon subordination of such fee mortgage to this Ground Lease and to any leasehold mortgages encumbering this Ground Lease from time to time.

#### ARTICLE IX

##### Quiet Enjoyment

Landlord covenants and agrees with Tenant that upon Tenant paying the above reserved rent and performing and fulfilling all covenants, agreements and conditions herein, Tenant shall and may, at all times during the Term, peaceably and quietly have, hold and enjoy the Land and all rights, appurtenances and privileges belonging or in any way appertaining thereto without hindrance or molestation from Landlord or anyone claiming under Landlord.

#### ARTICLE X

##### Defaults

10.1 Monetary Defaults. If any rent or other monetary amount

owing Landlord is due and remains unpaid for ten (10) days after written notice thereof from Landlord to Tenant and to Tenant's primary financing mortgagee(s) Landlord may upon further notice to Tenant and to Tenant's primary financing mortgagee(s), but subject to the provisions of Section 10.3, declare Tenant to be in monetary default. Upon such monetary default Landlord shall have the right to sue for rent or other monetary defaults, or, subject to the rights of leasehold mortgagees, to terminate this Ground Lease or Tenant's right to possession and, subject to G.L. c. 239, to re-enter the Land; but if Tenant shall pay such rent or other monetary amount within said ten (10) days, or if Tenant's mortgagee shall cure such default as provided in Section 10.3, then Tenant shall not be considered in default hereunder. Any monetary amounts which remain unpaid for more than ten (10) days after notice thereof shall be subject to interest at the annual rate of 14% from the date originally due. The maximum amount of 50% of adjusted cash flow under Section 3.1(c) shall not apply to this interest, nor shall this interest be deducted in the calculation of adjusted cash flow under Section 3.1(b).

If by reason of monetary default of Tenant which remains uncured by Tenant or Tenant's mortgagee, Landlord shall terminate Tenant's right of possession of the Land without, however, terminating this Ground Lease, Tenant shall nevertheless remain liable to the Landlord for the payment in full and promptly when due of all rent reserved under this Lease for the remainder of the unexpired term or that portion of the unexpired term of this Ground Lease. In such event, Landlord shall have the right to relet the Land and the buildings thereon for the account and benefit of

Tenant, but until so relet, Tenant shall continue to pay rent to Landlord, and if a sufficient sum shall not be realized from such reletting fully to pay the rent reserved hereunder, then Tenant shall pay to Landlord the amount of such deficiency.

10.2 Non Monetary Defaults. In the event Tenant breaches any covenant of this Ground Lease other than a covenant to pay rent or any other monetary amount due and should Tenant fail to cure such breach within thirty (30) days after notice from the Landlord or, if such breach is of a nature that it cannot reasonably be cured within thirty (30) days if Tenant shall not commence and diligently pursue such cure or if this Lease shall be rejected in any bankruptcy proceedings then Landlord may, upon ten (10) days additional notice to Tenant, elect to terminate this Ground Lease, but prior to any such termination Landlord shall give a notice to Tenant's mortgagee(s) and at the election and sole discretion of such mortgagee(s):

- (i) Landlord may terminate this Ground Lease; or
- (ii) Landlord will permit the mortgagee to become the tenant under this Ground Lease or to assign the Tenant's interest to a person or company selected by the mortgagee, provided however, that such a person or company shall be of good reputation and suitable for leasing property from the City of Newton and have experience in the operation of property similar to the Development; or
- (iii) Landlord may terminate this Ground Lease and at

the option of such mortgagee upon such termination the Landlord shall offer to such mortgagee a new ground lease on all the same terms and conditions and having the same priority against other interests as contained in this Ground Lease except as to the identity of the Tenant, and the mortgagee shall have the right to assign such new Ground Lease or to have such new Ground Lease made with a person or company on the same basis as in clause (ii) of this Section; or

- (iv) Such mortgagee may commence and diligently pursue foreclosure of its leasehold mortgage in which event Landlord will refrain from further actions to terminate this Ground Lease pending completion of foreclosure actions.

10.3 Notice of default to Mortgagees. Landlord shall at the same time as giving written default notice to Tenant send a copy of any such default notice whether for monetary or non-monetary default to Tenant's primary financing mortgagee(s) or to any other mortgagees holding any mortgages encumbering this Ground Lease to which Landlord has consented and such mortgagee or mortgagees at their option may thereafter cure such default within the time periods provided herein for Tenant plus an additional thirty (30) days, in which case Tenant shall not be considered in default. Landlord will accept performance by Tenant's primary financing mortgagee(s) of any covenant, agreement or obligation of Tenant contained in this Ground Lease with the same effect as though

performed by Tenant. Landlord's notice obligation under this Ground Lease shall only extend to Tenant's primary mortgagee(s) having given notice to Landlord of their status as such, or to such other mortgagee(s) to whom Landlord shall have consented, and only to such addresses as Tenant or such mortgagee shall advise Landlord in writing from time to time.

#### ARTICLE XI

##### Liability and Indemnification

###### 11.1 Disclaimer of Liability for Damage or Injury to Property or Person and Hold Harmless Provisions.

(a) Landlord shall not be responsible or liable for any damage or injury to any property, or to any person or persons at any time on the Land and/or any improvements thereon from any cause whatsoever nor shall Landlord be in any way responsible or liable for any accident or injury, including death, to any of Tenant's servants, employees, agents, invitees or subtenants in or about the Land, the improvements thereon or sidewalks adjacent thereto which Tenant has the responsibility to maintain under Section 13.5 hereof except as to injuries caused by any act or negligence of Landlord's invitees, servants, agents or employees.

(b) Tenant hereby releases and covenants to hold Landlord harmless for the damages or injuries described in paragraph (a) above.

###### 11.2 Indemnification for Liability, Breach of Lease, etc.

Tenant shall protect, and defend Landlord, its officers and employees against all liabilities, obligations, damages, penalties, claims, and causes of action, which may be incurred by or asserted

against Landlord, its officers and employees by reason of:

(a) any accident, injury or damage to any person or property occurring on or about the Land and/or the improvements thereon, or any part thereof except to the extent caused by any servant, agent or employee or Landlord;

(b) any use, non-use or condition of the Land and/or any improvements thereon or any part thereof which Tenant has the responsibility to maintain under Section 13.5 hereof; and

(c) any failure on the part of Tenant to perform or comply with any of the provisions hereof,

and to indemnify, reimburse or make good to the Landlord, its officers and employees, for any loss, damages, costs, charges and expenses, including reasonable attorneys' fees or the reasonable value of the work of the Newton City Solicitor, as a result of the items in paragraphs (a)-(c) above. In case any action or proceeding is brought against Landlord by reason of any such occurrence, Tenant upon Landlord's request shall, at Tenant's sole expense, resist and defend such action or proceeding, or cause the same to be resisted and defended either by counsel designated by Tenant and approved by Landlord, or where such occurrence is covered by liability insurance, by counsel designated by the insurer.

## ARTICLE XII

### Right of Reverter

At the expiration of this Ground Lease at the end of the Term, or by earlier termination of this Ground Lease pursuant to the provisions hereof or by agreement of the parties, the buildings and



any other improvements on the Land shall become the property of Landlord. Landlord agrees to take the buildings and improvements "as is", provided, however nothing herein shall absolve the Tenant from its obligations under Sections 5.7 or 6.2 hereof during the term of this Ground Lease. This right of reverter shall be included in the Notice of Lease described in Section 1.3.

#### ARTICLE XIII

##### Occupancy, Continuous Use and Other Covenants

13.1 Certificate of Occupancy; Continuous Use. Tenant shall use best efforts to complete construction of the anticipated improvements on the Land within eighteen (18) months from the Commencement Date; provided, however, that Landlord shall not have any remedy at law or in equity for Tenant's failure to substantially complete construction within such time period. If the construction is not substantially completed within thirty-six (36) months from the Commencement Date, Tenant shall be in default hereunder. For the purposes of this Paragraph 13.1, the phrase "substantially completed" shall be deemed to mean having obtained an occupancy permit. Promptly upon substantial completion of the work described in the plans referred to in the Special Permit, as such Special Permit may be amended from time to time, Buyer shall cause to be delivered to Landlord a certificate of Tenant's architect, on the so-called A.I.A. form Certificate of Substantial Completion, that the work shown on the plan has been substantially completed according to such plans. If an appeal from the issuance of the building permit shall have been taken within the applicable appeal period, then the eighteen (18) and thirty six (36) month

periods referred to above shall be stayed from the Commencement Date to the date of the Buyer's receipt of the decision of the appropriate municipal board, or if further appealed to the Superior Court, to the date of the Court's judgment.

Once the certificate of occupancy is granted, Tenant shall use its best efforts to rent the apartment contemplated and to keep them continuously rented throughout the term hereof.

13.2 Purchase and Sale Agreement. The provisions of the Purchase and Sale Agreement, dated July 26, 1991 between Landlord as Seller and Tenant as Buyer are hereby incorporated herein and a breach of one of the terms thereof which survive the delivery of the Deed shall be considered a breach hereunder subject to the default provisions of Article X.

13.3 Maintenance Personnel. Tenant shall ensure that except for temporary periods not to exceed sixty (60) days due to personnel changes, when there are residential subtenants or occupants of the Premises, there will be a maintenance person living on site, who will have authority to act in case of routine management and maintenance problems.

13.4 Parking. Parking spaces as set out in the Special Permit and maintained on the Land will be comprised of reserved spaces for subtenants and unreserved recreational spaces. At least one space will be assigned for each apartment. Tenant will maintain all the parking spaces year round and shall be responsible for snowplowing on the site and also (but only to the extent plowing is required for recreational use) for the recreational spaces, adjacent and southerly of the established boundaries of the Land. Those parking spaces shall be reconstructed by Tenant to the same quality as

those on the Land prior to its application for an occupancy permit, and such recreational spaces shall continue to be maintained by Tenant throughout the Term unless the Landlord determines in its sole discretion that such spaces are no longer required. At least two (2) parking spaces will be provided upon request of subtenants for each of the affordable units and such parking spaces shall be provided by Tenant, one such space to be without charge for use by the occupants of the affordable units and the second such space to be at fees to be determined in consultation with the Director of Planning and Development and the oversight committee established by the Special Permit. Parking fees for affordable units shall not exceed parking fees for market units, and increases in such fees shall be subject to the approval of the Director of Planning and Development, which approval shall not be unreasonably withheld.

13.5 Sidewalk Plowing. Tenant shall be responsible for the snowplowing of the sidewalk adjacent to the Land and the adjoining park property along Washington Street. Tenant shall repair any damage to the sidewalk caused by Tenant's construction.

13.6 Trash. Tenant shall be responsible for arranging for and the cost of all solid waste removal. Such removal shall be made by independent contractors, but to the extent permitted to other multi-family housing in Newton Tenant may contract for such trash removal with the City of Newton's main trash contractor.

13.7 Day-care Facility. As required in the Permits, Tenant shall provide a suitable shell space of 1500 +/- square feet for a 20-25 child day care center for \$1 per month, and shall use its best efforts to ensure the day care operation continues throughout

the term of this Ground Lease. If, within six (6) months of substantial completion of the construction, or if at any other time during the term hereof Tenant has been unable to secure a day care operator, after diligently searching for six (6) months, Tenant shall so notify Landlord and Landlord and Tenant shall meet to determine an appropriate alternate use. No other use may be made of the day care facility without Landlord's consent. Nothing herein should be construed to require Tenant to allow any use in contravention of zoning, building safety or other requirements.

13.8 Hazardous Waste Removal. In its removal of asbestos and other hazardous materials, all such removal shall be made in accordance with all applicable state and federal statutes, laws and regulations and Tenant shall supply Landlord with copies of receipts from the licensed hazardous waste facility or facilities when the waste was deposited within thirty (30) days of each deposit.

#### ARTICLE XIV

##### Miscellaneous

14.1 Covenants. Landlord and Tenant agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph thereof.

14.2 No Waiver. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Ground Lease shall be deemed a waiver of breach of any other

provision of this Ground Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion. Any and all rights and remedies which either party may have under this Ground Lease 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 said party or not, shall be deemed to be in exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

14.3 Headings. The headings used for the various articles of this Ground Lease are used only as a matter of convenience for reference, and are not to be construed as part of this Ground Lease or to be used in determining the intent of the parties of this Ground Lease.

14.4 Validity. If any of the terms, provisions, or conditions of this Ground Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Ground Lease and the application of such terms, provisions or conditions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this Ground Lease shall be valid and enforceable to

the fullest extent permitted by law.

14.5 Parties. Unless repugnant to the context, the words "Landlord" and "Tenant" shall be construed to mean the original parties, their respective successors and assigns and those claiming through or under them respectively. Subject to the provisions of Section 14.10, the agreements and conditions in this Ground Lease including without limitation those provisions intended for the benefit of Tenant's mortgagees and contained on the part of Tenant to be performed and observed shall be binding upon Tenant and its successors and assigns and shall inure to the benefit of Landlord and its successors and assigns, and the agreements and conditions in this Ground Lease including without limitation those provisions intended for the benefit of Tenant's mortgagee(s) contained on the part of Landlord to be performed and observed shall be binding upon Landlord and its successors and assigns and shall inure to the benefit of Tenant and its successors and assigns.

14.6 Estoppel Certificates. Each party agrees from time to time, upon no less than fifteen (15) days prior written request of the other, to execute, acknowledge and deliver to the other a statement in writing certifying that this Ground Lease is unmodified and in full force and effect (or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications) and the dates to which the rent has been paid and whether there exists any uncured default by the other party, and, if so, the nature of such default. Any such statement delivered pursuant to this Section 14.6 may be relied upon by any prospective purchaser or holder of a mortgage of the leasehold interest hereunder or any prospective holder of a

sublease from Tenant or any prospective assignee of any such holder of a mortgage or sublease or any limited partner of Tenant.

14.7 Early Termination. If this Ground Lease is terminated for any reason before the term expires, the parties shall execute, deliver and record an instrument acknowledging such fact and the date of termination of this Ground Lease.

14.8 Notices. Every notice or demand required or permitted to be given under this Ground Lease shall be in writing, shall be given and deemed to have been duly given when mailed postage prepaid by certified mail or registered mail, with return receipt requested, or delivered by hand or by recognized courier or overnight service addressed in case of notice or demand upon either party at its respective address first above noted, or in the cases of either party to such other address as that party shall from time to time have designated by written notice given to the other party as herein provided. Copies of all notices to Tenant shall be sent to Schlesinger and Buchbinder, 1200 Walnut Street, Newton, Massachusetts 02161 and to each of Tenant's primary financing mortgagees having given notice of their status as such to Landlord. A copy of all notices to Landlord shall be sent to the Mayor of the City of Newton and to the City Solicitor of the City of Newton, both at 1000 Commonwealth Avenue, Newton, MA 02159.

14.9 Liability of Owners. After the Commencement Date, no owner of the fee of the Land shall be liable for breach of Landlord's obligations under this Ground Lease except for such breaches which occur during its period of ownership of the Land, provided however, that if any obligations of Landlord hereunder are

obligations of the City of Newton in its municipal capacity those obligations will continue as municipal obligations of the City of Newton after transfer of the property.

14.10 Tenant's Obligations. No partner comprising Tenant shall be personally liable for payment or performance of Tenant's obligations hereunder. Landlord agrees that in the event of any default hereunder Landlord shall look solely to Tenant's interest in the Development and to the assets of Tenant for satisfaction of any judgment against Tenant, but in no event may Landlord have any satisfaction from the separate assets of any partner comprising Tenant.

14.11 Modifications. This instrument and those documents referred to or incorporated herein contain all the agreements made between the parties hereto with respect to this Ground Lease and may not be modified or terminated in any other manner than by an instrument in writing by the parties or their respective successors in interest assented to by Tenant's primary financing mortgagee(s).

14.12 No Rights to Rentals. Landlord shall have no rights in and to any rentals payable to Tenant under any of the Leases or subsidy contracts pertaining to the Development, which rights will have been assigned to Tenant's primary financing mortgagee(s).



EXECUTED as a sealed instrument as of the day and year first above written.

TENANT:

WARREN HOUSE ASSOCIATES  
LIMITED PARTNERSHIP

By: Newton Community Development Foundation, III, Inc.,  
General Partner:

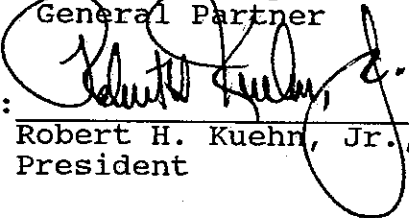
LANDLORD:

City of Newton:

By:   
Paul Doherty, President

By:  *SMC*  
Theodore D. Mann, Mayor

By: New Keen Corporation,  
General Partner

By:   
Robert H. Kuehn, Jr.,  
President

Approved as to legal form  
and character:

  
City Solicitor

EXHIBIT A

DESCRIPTION OF LAND  
SITUATED IN  
NEWTON, MASSACHUSETTS  
IN MIDDLESEX COUNTY  
(1600 WASHINGTON STREET)

Beginning at the northeasterly corner of a parcel of land, situated on the southerly side of Washington Street, upon which #1600 Washington Street is located. Said point being approximately 389 feet southwesterly of the southwest corner of Washington Street and Myrtle Street, thence;

- S 45-00-00 E      A distance of 322.15 feet to a point, thence;
- S 45-00-00 W      A distance of 320.00 feet to a point, thence;
- S 45-00-00 E      A distance of 82.85 feet to a point, thence;
- S 45-00-00 W      A distance of 170.00 feet to a point, thence;
- N 45-00-00 W      A distance of 120.00 feet to a point, thence;
- N 45-00-00 E      A distance of 30.00 feet to a point, thence;
- N 45-00-00 W      A distance of 272.75 feet to a point at the southerly sideline of Washington Street, the last (7) courses by land now or formerly of the City of Newton (recreation fields), thence;
- Northeasterly      Along a curve to the right, having a radius of 870.00 feet, a distance of 146.18 feet to a point of tangency, thence;
- N 45-00-00 E      A distance of 314.51 feet to the point of beginning, the last (2) courses by said Washington Street.
- Containing:      3.737 ± acres.

CF:pet/CF-001D

EXHIBIT

B

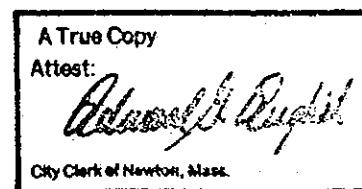
## WARREN HOUSE RESIDENT SELECTION PROCESS

The following procedure outlines the process by which residents will be selected for the affordable apartments at the renovated Warren Junior High School. Newton Community Development Foundation, Inc. and Keen Development Corporation are committed to making apartments available to local residents in full accordance with state and federal fair housing regulations.

- (1) **Marketing and Outreach:** As construction nears completion, NCDF will begin a marketing campaign to publicize the affordable apartments at Warren House. Advertising and other information about the availability of apartments will be posted in area newspapers and bulletins, at the Newton Housing Authority, and at local churches and social service organizations. This publicity campaign will also include affirmative marketing aimed at underserved groups, as required by law.
- (2) **Application Process:** Individuals who are interested in an apartment at Warren House will be invited to file an application; typically a one to two week application period is designated. All applicants must hold a valid Section 8 or 707 certificate to be eligible for consideration. Completed applications will then be screened and reviewed by NCDF according to the selection process outlined below.
- (3) **Selection Process:** All applicants are rated according to the severity of their housing need. Those with the greatest need are given preference for available apartments in the following order of priority:

Priority Criteria:

- (a) **Displacement from housing due to:**
  - \* natural disaster such as fire or flood
  - \* public action such as eminent domain
  - \* withdrawal of home from the rental market
- (b) Substantially substandard living conditions
- (c) More than 50% of income paid for housing
- (d) Overcrowded conditions
- (e) All other applicants





37 HAMLET STREET • NEWTON CENTRE, MASS. 02159 • (617) 244-4035

HAMLET

The demographic data for current occupancy at the Hamlet is summarized as follows:

Type of Household	Income Level			Total	Percent of Total
	LOW (NHA)	MOD	MKT		
Family	18	12	15	45	90%
Elderly	0	0	0	0	0%
Disabled	0	0	0	0	0%
Singles	0	0	5	5	10%
Totals	18	12	20	50	100%

Race of Head	Income Level			Total	Percent of Total
	LOW (NHA)	MOD	MKT		
White	8	8	11	27	54%
Black	8	3	5	16	32%
Hispanic	1	1	3	5	10%
Asian	1	0	1	2	4%
Native American	0	0	0	0	0%
Totals	18	12	20	50	100%

Prior Residence	Income Level			Total	Percent of Total
	LOW (NHA)	MOD	MKT		
Newton	6	4	8	18	36%
Boston	12	5	2	19	38%
Greater Boston	0	3	9	12	24%
Elsewhere	0	0	1	1	2%
Totals	18	12	20	50	100%

Residents who were not from Newton, but had a Newton tie i.e. Job, Relative

1                      2                      1                      4                      8%

A True Copy  
Attest:  
*Adrian H. Dupont*  
City Clerk of Newton, Mass.



Newton Community Development Foundation  
37 Hamlet Street Newton Centre, MA 02159 617/244-4035

WEEKS

The demographic data for current occupancy at the Weeks is summarized as follows:

Type of Household	LOW	Income Level		Percent of Total
		MKT	Total	
Family	8	1	9	12%
Elderly	24	30	54	72%
Disabled	10	2	12	16%
Singles	0	0	0	0%
Totals	42	33	75	100%

Race of Head	LOW	Income Level		Percent of Total
		MKT	Total	
White	33	31	64	86%
Black	5	2	7	9%
Hispanic	1	0	1	1%
Asian	3	0	3	4%
Native American	0	0	0	0%
Totals	42	33	75	100%

Prior Residence	LOW	Income Level		Percent of Total
		MKT	Total	
Newton	14	16	30	40%
Boston	12	3	15	20%
Greater Boston	11	4	15	20%
Elsewhere	5	10	15	20%
Totals	42	33	75	100%

Residents who were not from Newton, but had a Newton tie i.e. Job, Relative

6

13

A True Copy 25%  
Attest:  
*Edward J. Rusch*  
City Clerk of Newton, Mass.

# CASSELMAN HOUSE

Newton Community Development Foundation  
37 Hamlet Street Newton Centre, MA 02159 617/244-4035

## CASSELMAN

The demographic data for current occupancy at the Casselman is summarized as follows:

Type of Household	Income Level			Percent of Total
	LOW (NHA)	MKT SUPER-INTENDENT	Total	
Elderly	39	0	39	91%
Disabled	3	0	3	7%
Single	0	1	1	2%
Totals	42	33	75	100%

Race of Head	Income Level			Percent of Total
	LOW (NHA)	MKT	Total	
White	36	1	37	86%
Black	5	0	5	12%
Hispanic	0	0	0	0%
Asian	1	0	1	2%
Native American	0	0	0	0%
Totals	42	1	43	100%

Prior Residence	Income Level			Percent of Total
	LOW (NHA)	MKT	Total	
Newton	14	1	15	35%
Boston	14	0	14	33%
Greater Boston	9	0	9	20%
Elsewhere	5	0	5	12%
Totals	42	1	43	100%

Residents who were not from Newton, but had a Newton tie i.e. Job, Relative

14 1 15 35%

A True Copy  
Attest:  
*Adrian J. Bayliss*  
City Clerk of Newton, Mass.



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#135-16

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

April 11, 2016

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RECEIVED  
NEWTON CITY OFFICE  
2016 APR 11 AM 11:27  
DAVID A. OLSON, OMO  
NEWTON, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to transfer the sum of \$20,000 from Acct # 0150301-511001 and a request to authorize the appropriation and expenditure of the sum of \$47,500 from June 30, 2015 Certified Free Cash to Acct # 0150301-5709 Veterans' Benefits.

As you know, ensuring that our Veterans receive the benefits they need and deserve has been a priority for my administration. Our success in achieving this is reflected in this request.

Thank you for your consideration of this matter.

Sincerely,

Setti D. Warren  
Mayor

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#139-16

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

April 11, 2016

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to authorize the appropriation and expenditure of \$56,000 from June 15, 2015 Certified Free Cash to 0150301-5709 Veteran Benefits - Veterans' Department for the final installment of the purchase of the quadrant of graves located in the Newton Cemetery.

Thank you for your consideration of this matter.

Sincerely,

Setti D. Warren  
Mayor

RECEIVED  
Newton City Clerk  
2016 APR 11 AM 11:27  
DAVID A. OISSIN, CLERK  
Newton, MA 02459







SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#140-16

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

April 11, 2016

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

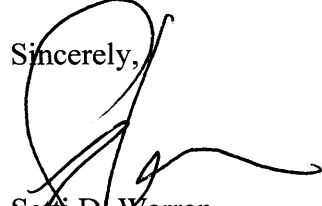
Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to authorize the appropriation and expenditure of \$300,000 from June 15, 2015 Certified Free Cash to Acct # 01602011-5243 Parks & Recreation, Forestry/Tree Services.

We have all seen and read of at least 5 people being killed by falling trees in the last 2 months. We here in Newton place great value on our street trees. However, with our enviable shade canopy comes a responsibility to maintain healthy trees, and perhaps most importantly to remove dead or dangerous trees. Therefore, this funding will be used to supplement our forestry personnel to enable the City to remove all known dangerous trees within the next 2 months.

Thank you for your consideration of this matter.

Sincerely,

  
Setti D. Warren  
Mayor

RECEIVED  
Newton City Office  
2016 APR 11 AM 11:32  
DAVID A. OLSON, CMO  
Newton, MA 02459

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE



SETTI D. WARREN  
MAYOR

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Office of the Mayor

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April 11, 2016

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to authorize the transfer and appropriation of \$160,000 from June 30, 2015 Certified Free Cash to Acct # 0111504-5210 to cover the costs of operation and maintenance of the Aquinas facility for FY2016.

Thank you for your consideration of this matter.

Sincerely,

Setti D. Warren  
Mayor

RECEIVED  
Newton City Clerk  
2016 APR 11 AM 11:32  
DAVID A. OLSON, OMC  
Newton, MA 02459

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE

City of Newton



## PUBLIC BUILDINGS DEPARTMENT

Josh Morse, Interim Building Commissioner

Telephone (617) 796-1600

FAX (617) 796-1601

TTY: (617) 796-1608

52 ELLIOT STREET

NEWTON HIGHLANDS, MA 02461-1605

**Setti D. Warren**

Mayor

January 28, 2016

Mayor Setti D. Warren  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

RE: Request for funds: Aquinas

Dear Mayor Warren:

The Public Buildings Department requests the sum of \$160,000.00 for the operation and maintenance at Aquinas.

Should you have any questions regarding the above, please feel free to contact my office.

Sincerely,

Josh Morse  
Public Buildings Commissioner

cc: Maureen Lemieux, Chief Financial Officer  
Alex Valcarce, Program Director  
Dori Zaleznik, Chief Admin Officer

3/16/2016

Funds Spent

Aquinas Breakdown of Funds

Water	1,500.00
Roof Leaks	7,336.00
Utilities	65,190.00
Asbestos	19,640.00
Viscom	4,934.00
HVAC	37,000.00
Plumbing	2,600.00
Custodial	3,800.00
Additional	18,000.00

Current Request 160,000.00



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#138-16

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

April 11, 2016

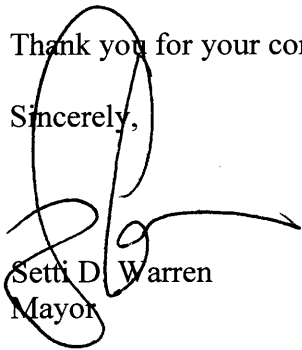
Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to transfer the sum of \$250,000 from Override Capital Project Stabilization Fund to the Newton Public Schools for the purpose of funding the busing costs associated with the transfer of the Zervas students to the Carr Elementary School for the January 2016 – June 2016 timeframe.

Thank you for your consideration of this matter.

Sincerely,



Setti D. Warren  
Mayor

RECEIVED  
NEWTON CITY OFFICE  
2016 APR 11 AM 11:32  
DAVID A. OLSON, CMC  
NEWTON, MA 02459

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#143-16

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Facsimile  
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(617) 796-1089

E-mail  
swarren@newtonma.gov

April 11, 2016

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to authorize the transfer of \$276,135 from Acct #'s 0110498-5794 Budget Reserve/Snow & Ice and the appropriation of \$500,000 from June 30, 2015 Certified Free Cash to the following accounts:

0140110-513001	Regular Overtime – Snow Removal	\$276,135
0110410-5273	Rental Vehicles – Snow Removal	\$500,000

Thank you for your consideration of this matter.

Sincerely,

  
Setti D. Warren  
Mayor

RECEIVED  
NEWTON CITY OFFICE  
2016 APR 11 AM 11:32  
DAVID A. OLSON, CMC  
Newton, MA 02459

1000 Commonwealth Avenue Newton, Massachusetts 02459

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City of Newton



Setti D. Warren  
Mayor

DEPARTMENT OF PUBLIC WORKS  
OFFICE OF THE COMMISSIONER  
1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449

April 11, 2016

To: Mayor Setti Warren,  
Maureen Lemieux, CFO

Ladies and Gentlemen:

I write to request that the Honorable Council docket for consideration a request to authorize the transfer of \$276,135 from Acct #'s 0110498-5794 Budget Reserve/Snow & Ice and the appropriation of \$500,000 from June 30, 2015 Certified Free Cash to the following accounts:

0140110-513001	Regular Overtime – Snow Removal	\$276,135
0110410-5273	Rental Vehicles – Snow Removal	\$500,000

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McGonagle".

James McGonagle  
Commissioner of Public Works

Jim McGonagle  
Commissioner

Telephone: (617) 796-1009 • Fax: (617) 796-1050 • [jmcgonagle@newtonma.gov](mailto:jmcgonagle@newtonma.gov)

City of Newton



Setti D. Warren  
Mayor

DEPARTMENT OF PUBLIC WORKS  
OFFICE OF THE COMMISSIONER  
1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449

To: The Honorable City Council

From: Shane Mark, Director of Operations  
James McGonagle, Commissioner

Subject: Snow Update

Date: April 21, 2016

To the Honorable City Council,

As of April 21, 2016 the City of Newton has expended \$3,597,486 on snow operations in fiscal year 2016 with a total of 35.7 inches of snow accumulating. Of these costs, \$1,363,021 has been paid to various contractors for snow plowing, hauling, and cleanup for six winter storms, and the clearing of sidewalks and schools for ten winter storms. The City projects to pay a final total of \$931,948 in personnel costs for the entire winter season, and \$896,225 to keep the salt sheds filled throughout the season. Additionally, \$351,212 has been spent on equipment costs such as vehicle rentals, vehicle maintenance, and the use of GPS units, and \$55,080 has been spent on fuel costs throughout the entire season. We have anticipated cost of roughly \$100,000 to fill the salt sheds, repair vehicles, and prepare for next year's snow season.

<b>FY 2016 Snow Costs Breakdown</b>	
<b>Equipment Expenses</b>	<b>\$351,212</b>
<b>Total Contracted Costs</b>	<b>\$1,363,021</b>
<b>Total Personnel Costs</b>	<b>\$931,948</b>
<b>Total Salt Costs</b>	<b>\$896,225</b>
<b>Total Fuel Costs</b>	<b>\$55,080</b>
<b>Anticipated Cost for Salt and Vehicle Repairs</b>	<b>\$100,000</b>
<b>Total Snow Costs</b>	<b>\$3,697,486</b>

Jim McGonagle  
Commissioner

Telephone: (617) 796-1009 • Fax: (617) 796-1050 • [jmcgonagle@newtonma.gov](mailto:jmcgonagle@newtonma.gov)





SETTI D. WARREN  
MAYOR

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Office of the Mayor

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E-mail  
swarren@newtonma.gov

March 14, 2016

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to transfer the sum of \$200,000 from Acct # 0111401-511001 Full time Salaries to Acct # 0111401-5301 Consultants and authorize the transfer and appropriation of \$125,000 from June 30, 2015 Certified Free Cash to Acct # 0111401-5301 Consultants for the purpose of funding Zoning Reform Phase 2.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

RECEIVED  
Newton City Office  
2016 MAR 15 AM 4:52  
David A. Olson, Clerk  
Newton, MA 02459

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE



Setti D. Warren  
Mayor

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

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www.newtonma.gov

James Freas  
Acting Director

## MEMORANDUM

**DATE:** March 14, 2016  
**TO:** Maureen Lemieux, Chief Financial Officer  
**FROM:** James Freas, Acting Director  
**SUBJECT:** Zoning Reform – Phase 2

The Zoning Reform project was initiated as a result of the 2011 Zoning Reform Group report, which recommended a two-phase process to reform Newton's Zoning Ordinance and bring it into greater consistency with the *2007 Newton Comprehensive Plan*. Phase 1 of this project was completed in November 2015 with the adoption of a reformatted and modernized zoning ordinance document. This phase of work did not deal with substantive changes to Newton's Zoning Ordinance that would help to address the systematic problems around issues of development activity and development project review that currently exist. Zoning Reform Phase 2 will address these more challenging issues and funding in the amount of \$325,000 is requested to support this project.

Zoning Reform Phase 2 has essentially a two-part scope of work to produce a "context based" zoning ordinance for the City and will be completed with the support of a consultant team. The first part of the project will be to collect quantitative and qualitative data about the City as it exists today, answering such questions as what are the patterns of development, what are the varying densities and land uses across the City, and where should additional growth occur? The second part is to take the maps, lot and building data, and policy information that results from part 1 and codify that into a draft zoning ordinance. Both parts of this project will depend on robust community engagement.

A selection committee representing Planning, ISD, Law, and the Zoning and Planning Committee of the City Council reviewed the two respondents to the Zoning Reform RFP. Sasaki Associates was selected (see attached). The \$325,000 identified above is the consultant fee for this project. The scope of work calls for an 18-month process at the end of which a draft Zoning Ordinance document will be submitted to the City Council.

City of Newton  
Purchasing  
Department

**To:** File  
**From:** N. Read, Chief Procurement Officer  
**Date:** January 28, 2016  
**Re:** Comprehensive Zoning Reform—Phase 2 RFP 16-24

---

On 10/15/15 the city released RFP 16-24 for vendors to provide expertise and assistance to the City of Newton Planning and Development Department, Law Department, and Board of Aldermen in developing a context-based zoning ordinance. One Addendum was issued. Proposals were to be submitted by 11/12/15, and 2 vendors duly submitted proposals:

Town Planning & Urban Design Collaborative LLC (TPUDC)  
Sasaki Associates, Inc. (Sasaki)

An evaluation committee made up of 4 persons<sup>1</sup> reviewed the technical proposals. Under the terms of the RFP, the proposers ranked Highly Advantageous and Advantageous are to be invited to interview and make a presentation. The evaluations ranking proposers on the Minimum Criteria and the first 4 Comparative Criteria were delivered to the Purchasing Department on 3/6/15.

---

<sup>1</sup> J. Freas, J. Lojak, T. Hess-Mahan & M Lawlor.

The Minimum Criteria ratings (deficiencies only noted) are as follows.

	TPUDC	Sasaki
The project team combined shall have the following: (1) a Master's degree in Planning, Architecture, or a closely related field; (2) a Juris Doctor degree with admission to the Massachusetts Bar or comparable credentials; and (3) five years of professional experience in planning and zoning.		
Resumes are provided for all project personnel including those listed above.		
Completed Bidder's Qualifications and References Form		
Certification of Tax Compliance		
Completed Certificate of Non-Collusion		
Completed Debarment Letter		
Completed IRS W-9 Form		

No proposers were disqualified so both were evaluated.

## Sasaki Associates, Inc.

	JF	JL	TH-M	ML
1. Quality of work proposal	HA	HA	HA	HA
2. Quality and depth of project experience	No Ranking Given	HA	HA	HA
3. Experience in Community Engagement	HA	A	HA	HA
4. Qualifications of the Proposer Based on Submitted Resume(s)	HA	HA	HA	HA
5. Completeness and quality of proposal package	HA	HA	HA	HA
6. Quality of the presentation*	HA	A	HA/A	HA
7. References <sup>2</sup>	HA			
Final Composite Ranking				

<sup>2</sup> James Freas ranked references on behalf of all evaluators.

## Town Planning &amp; Urban Design Collaborative LLC

	JF	JL	TH-M	ML
1. Quality of work proposal	HA	HA	HA	HA
2. Quality and depth of project experience	HA	HA	HA	HA
3. Experience in Community Engagement	HA	HA	HA	HA+
4. Qualifications of the Proposer Based on Submitted Resume(s)	HA	HA	HA	HA
5. Completeness and quality of proposal package	HA	HA	HA	HA
6. Quality of the presentation*	HA	HA	HA	HA
7. References <sup>3</sup>	HA			

When the evaluation results tabulated, the price proposals were opened. The results (with each proposer's aggregate composite ranking) are as follows:

<sup>3</sup> James Freas ranked references on behalf of all evaluators.

	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Total	Ranking
Sasaki Associates	10,000	10,000	35,000	125,000	65,000	50,000	30,000	325,000	HA
TPUDC	56,360	23,600	16,600	101,400	83,900	188,200	27,600	497,660	HA

The two proposers received identical qualitative rankings of HA and, though there some minor variations in the evaluations, these were not material. Both prices exceed the project estimate of \$150,000, and TPUDC's price is \$172,660 more (53%) than Sasaki's.

Given identical rankings and the substantial difference in price I recommend that Sasaki be awarded the contract as it is the most advantageous proposer based on price and non-price proposals.

**Referred to Zoning & Planning and Finance Committees****#115-16      Funding for Zoning Reform Phase 2**

HIS HONOR THE MAYOR requesting authorization to appropriate one hundred twenty five thousand dollars (\$125,000) from Free Cash and authorization to transfer the sum of two hundred thousand dollars (\$200,000) from the Planning Department's Full-time Salaries Account to the Planning Department's Consultants Account for the purpose of funding Zoning Reform Phase 2. [03/15/16 @ 4:52 PM]

**Action:**      **Approved 7-0-1 (Councilor Yates abstaining)**

**Note:** The Committee previously discussed this funding in a joint meeting with Finance Committee on March 28<sup>th</sup>. Two consulting firms, Sasaki Associates and TPUDC, submitted proposals which went through the procurement and bidding process. Sasaki Associates was the successful candidate. Both Committees held the item as they had not had the opportunity to review the proposals from the vendors. The proposals were made available to the Committee members and, therefore, the item is back for discussion. The ratings done on each firm were attached to the agenda and both scored extremely high and were fairly comparable in ratings.

**Committee Comments/Questions**

Some Committee members noted that after reading both proposals, they preferred the one from TPUDC over the Sasaki Associates proposal, conceding that the price was significantly higher for the former. It was felt that the Sasaki legal team's experience was primarily with 40R and affordable housing. Since Sasaki Associates have been working on the City's housing plan, perhaps a different set of eyes would be better to work on zoning reform. The TPUDC's legal team experience in community and neighborhood outreach was more appealing than Sasaki's experience with the Boston Redevelopment Authority and state experience with 40Rs. Perhaps TPUDC could participate in some way in conjunction with Sasaki.

Councilor Hess-Mahan said there is an argument that Sasaki, because it has done some other work in the City, has an advantage in knowing the City well and will not have to spend as much time as another firm getting up to speed. They have done the housing strategy and the management study for the Planning Department. However, he did share some of the same concerns that using Sasaki would not provide a fresh set of eyes but it was made clear in later discussions with them that they do have people on their team who could provide new perspective.

TPUDC was very open and willing to work with the community and they seemed to have good success with their methods. Sasaki also had good ideas about using store fronts, coming to farmers markets, etc. for community outreach. Both had different methods of outreach, but they both rated that component as extremely important and high priority. Charrettes would be employed by both firms as well (TPUDC called them "Planapaloozas"). As to Sasaki's public sector experience, they do have knowledge of more than 40R but that was just the example they gave of codes they have written.



TPUDC was also not very familiar with local control over zoning as is done in Newton. They typically have dealt with regional planning commissions and master planning, which is why Sasaki was rated higher on that score. TPUDC brought Mark Barborowski onto their team after the bid was put together so it's difficult to know how that might have affected their bid since he would be bringing the local knowledge and experience to the team.

There was some talk of phasing the work to have more than one firm on the project, but it would require a new bidding process in order to comply with state bidding laws so at this point having them participate would not be possible. Several Committee members felt phasing would not be desirable or effective.

A Councilor asked about the cost differences between the two firms as TPUDC's bid came in at about 50% higher than Sasaki's. Councilor Hess-Mahan explained that there had originally been a "placeholder" budget of \$150K for the project but they were waiting to see where the bids came in to set the final amount. The bids were not opened until after the rating process was completed, so they were independent of each other.

There were also questions about the timeline. Sasaki proposed a very short timeline, but the City has laid out an 18-month timeline. This concerned some members because it seemed as though Sasaki was being unrealistic about the task. Councilor Hess-Mahan noted that Sasaki is on board with the timeline and it's possible that the project could take longer than that. The contract is not for 18 months, the contract is for the deliverable. The approval process could take a considerable amount of time once the consultants have finished their draft.

A Councilor asked how the docket items currently on the agenda will be dealt with. In Committee discussions, many of those items were held for action because they would be covered by the work in Phase One. The Committee had been told that the Law Department would have resources available to work on Phase One but that turned out not to be the case adequately. It was not the fault of the lawyers, but just a factor of the amount of work on their plate. A wholesale reform of the zoning code is an extremely work-intensive project. The last recodification of the zoning ordinance included Gayle Smalley, a retired lawyer from the Newton Law Department and that proved invaluable. The Councilor would have a higher level of comfort if the Committee/Council had an advisor to help with the project, a more independent set of eyes. Other Committee members noted that there have been discussions for many years relative to having independent counsel for the legislative body in general, and agreed that an advisor would be helpful with this project.

A Councilor asked why TPUDC stated that the most successful adoption process are led by city staff and they will support the adoption with creating audience specific presentations and consult and strategize with staff. James Freas, Acting Director of Planning explained that consultants do the work and then staff carries the ball in terms of presenting it in public hearings and so forth. Staff are the ones who will have to work with the ordinance going forward so that know the material very well. The Long Range Planner will be the primary staff person to work on this project.

Another Councilor was worried about the policy as well as the drafting which is why he would like to see an advisor as mentioned earlier.

A Committee member asked if the Committee could make any changes and Councilor Hess-Mahan explained that this can be voted up or down. Any changes, for example, adding an advisor, phasing the project, choosing a different vendor, etc. would require a new bidding and RFP process. These are both eminently qualified firms and there are some reasons why TPUDC came in higher, but he's not sure 53% higher is justifiable. If TPUDC had come in at the same price as Sasaki, he may have chosen them.

A Councilor suggested that the Committee might say they are prepared to do this as long as there are assurances that independent resources would be available. The City's Law Department cannot support the time that would be needed. Perhaps someone like Mark Barborowski would be appropriate as an advisor. This is the biggest piece of work that the Committee and Council is going to be doing for years and it will have a long-range impact on the City. Councilor Baker reminded the Committee that he spent considerable time on his own going over the Phase One document and he does not want to see that happen again. When Gayle Smalley was hired, it was through a consultant fund in the Clerk's office. There is policy work that has to go on before drafting begins and it would have to be determined how much money should be budgeted and at what point they would need to come on board.

Another Councilor felt it would be best to have additional staff in the Law Department assigned to this project. This would also allow that resource to be available after the consultants have left and the ordinance is in effect

It was asked if a budget resolution for funds for an advisor would be appropriate. The burden on the Planning and Law Departments need to be taken into consideration. Mr. Freas explained that he has been building the Planning Department over the last year or so with an eye towards this project and other related projects. The Long Range Planner position is being filled, and he created and filled the Urban Designer position and the Community Engagement Manager position. He sees those three positions working as a team to shepherd this project. He will be returning to the Deputy Director position when a Planning Director is hired and he will be able to step in and spend time on this as well. There will be staffing from the Law Department as well.

Councilor Yates said he was going to abstain because he did not have a chance to review all of the materials. He also felt that an advisor would not be necessary and they would look incompetent if they could not get through the process with a Planning Department and a consultant team.

Councilor Hess-Mahan reminded the Committee that the consultants will deliver a draft and the Zoning & Planning Committee will start their review and work on it along with Planning and Law Department staff.

The Committee felt that Sasaki was extremely capable and is the best choice for the project. Councilor Sangiolo moved to approve the item and asked that the concerns relative to a legal

advisor to the Committee/Council be brought to the administration through the Chair and the President.

The Committee voted to approve 7-0-1 with Councilor Yates abstaining.

**#22-16 Resolution requesting appropriate training of Fair Housing laws**

COUNCILOR HESS-MAHAN proposing a RESOLUTION to the Mayor and City Council requesting that all members of municipal public bodies that have decision-making authority or an advisory role with respect to land use, zoning or housing issues be required to receive appropriate orientation or training concerning applicable rights and obligations under Fair Housing laws and regulations. [02/07/16 @ 3:01 PM]

**Action: Held 8-0**

**Note:** Councilor Hess-Mahan explained that one of the provisions of the HUD conciliation agreement, which was a result of the suit between the Supporters of Engine 6 et al. and the City of Newton, was to require training for staff in Fair Housing Laws. The Law, Planning and Purchasing Departments along with a handful of other staff did receive the training (approximately 45 in all). Many decisions that are made by these municipal public bodies have implications for fair housing issues and while there is an orientation for City Councilors on Chapter 40A and the Zoning Board of Appeals get orientation on variances, there is no training on fair housing laws. The Statement on Fair Housing In Newton (which was attached to the agenda) mirrors much of the language in the proposed resolution and is just a summary of the fair housing laws.

He felt it was likely that members of the City Council, ZBA and Planning Board may not be aware of all the protected classes and the protection to which they are entitled, including familial status. Councilor Hess-Mahan raised familial status because when developers come in and propose 1, 2 and 3 bedroom units, there are Councilors telling them they don't want 3-bedroom units, which infers a bias against families. This runs a risk of violating the Fair Housing laws.

Fair housing laws apply to all types of housing, with very few limited exemptions, whether in public or private sectors and regardless of whether public funds are involved. There is an extra duty involved if federal funding is involved which is that the City has to affirmatively further fair housing.

Councilor Hess-Mahan is not suggesting full-day training sessions, but he would like to see members provided with materials and orientation and an opportunity to ask questions and get answers.

Committee Comments/Questions

It was asked if there would be any cost involved in this training. James Freas thought the cost was \$200 or so for the 3-hour training that the various departments received. Councilor Hess-Mahan noted that the Clerk's office along with the Law and Planning Departments put together trainings for the Land Use Committee. He did not feel the cost would be prohibitive. He would like the City Council, ZBA, the Community Preservation Committee and the Planning & Development Board to get the training together for simplicity and knowledge-sharing.

**Referred to Zoning & Planning and Finance Committees**

**#115-16 Funding for Zoning Reform Phase 2**

HIS HONOR THE MAYOR requesting authorization to appropriate one hundred twenty five thousand dollars (\$125,000) from Free Cash and authorization to transfer the sum of two hundred thousand dollars (\$200,000) from the Planning Department's Full-time Salaries Account to the Planning Department's Consultants Account for the purpose of funding Zoning Reform Phase 2.  
[03/15/16 @ 4:52 PM]

**Zoning & Planning Held 8-0 on 03/28/16**

**Action:** **Finance Held 8-0**

**Note:** The Committee met jointly with the Zoning and Planning Committee to discuss the request to appropriate \$125,000 and transfer \$200,000 within the Planning Department's budget to fund the second phase of zoning reform. The City issued the Zoning Reform Request for Proposals and received responses from Town Planning & Urban Design Collaborative LLC (TPUDC) and Sasaki Associates, Inc. An evaluation committee with representatives from the Law Department, Planning & Development, Inspectional Services, the Zoning and Planning committee, reviewed both proposals and the committee chose Sasaki Associates. The Sasaki Associates proposal was 50% less than TPUDC, and although TPUDC ranked slightly higher, both companies are very close to each other in terms of quality of work. The evaluation committee felt that the slight difference in ranking was not worth the additional costs of choosing TPUDC.

Once the funds are approved, the City would enter into a contract with Sasaki Associates for a fee of \$325,000 for 18-month process that would result in a draft zoning ordinance. The funds to be transferred are available due to ongoing vacancies in the Planning & Development Department. There would still be funding in the Planning Department budget after the transfer to fill each vacant position tomorrow and fund them until the end of the fiscal year. Committee members asked for a list of current vacant positions and recently filled positions, which includes the length of vacancy for each listed position.

Some Councilors thought that the Administration had put aside \$150,000 in the Planning Department budget for the second phase of zoning reform. Comptroller David Wilkinson explained that as long as funds were not special appropriations, the Planning Department could use funds in its Consulting budget for other consulting services. Attached is a report of the June 22, 2016 joint meeting with the Zoning and Planning and Finance Committee, which states that a transfer of \$200,000 from the Planning Department's Salaries Account would be used to hire consultants in Fiscal Year 2016 including a consultant for the second phase of zoning reform. Subsequent to the meeting, Comptroller David Wilkinson provided the attached summary of the current year operating activity in the Planning Department's consulting budgets.

Members of the Zoning and Planning Committee voiced concern that they had not received the scope of work and proposals from either consultant and did not feel comfortable taking an action on the docket item without reviewing those materials. It was pointed out that

MARCH 28, 2016

zoning reform is one of the most important issues that the Council will deal with over the next couple of years and the Councilors should be informed before making the decision to spend \$325,000. Councilor Albright moved hold in the Zoning and Planning Committee and Councilor Lappin moved hold in the Finance Committee. Both motions carried by unanimous votes. Councilors also asked when the report of the management review of Planning Department would be available to the City Council, as it would help inform budget discussions. Council Vice-president Lappin stated that she spoke with the Mayor regarding the report and he expects to release it to the Council in the next few weeks.

## CITY OF NEWTON, MASSACHUSETTS

#115-16

## GENERAL FUND

## SUMMARY OF CURRENT YEAR OPERATING ACTIVITY

## PLANNING DEPARTMENT CONSULTING ACCOUNTS

July 1, 2015 - March 31, 2016

	Planning <u>Administration</u>	Economic <u>Development</u>	Total <u>Planning Consulting</u>
Original FY 2016 budget	\$ 75,000.00	\$ 10,000.00	\$ 85,000.00
6/30/2015 Continued appropriations {1}	353,541.19	14,693.20	368,234.39
Budget transfer - postage	(7,834.39)	-	(7,834.39)
Budget transfer - subscriptions	-	(5,004.00)	(5,004.00)
<b>Consulting Budget as amended</b>	<b><u>420,706.80</u></b>	<b><u>19,689.20</u></b>	<b><u>440,396.00</u></b>
YTD expenditures:			
RKG Associates Inc. (Housing Needs Analysis)	95,006.80	1,646.80	96,653.60
Sasaki (Planning Management & Organization Analysis)	58,725.00	-	58,725.00
Northeastern University (Newton Benchmarking Study)	8,500.00	-	8,500.00
Nelson/Nygaard (Transportation Strategy)	56,270.60	-	56,270.60
Nelson/Nygaard (Newton Centre Parking Study)	47,570.00	-	47,570.00
RKG Associates Inc. (Austin St Fiscal & Economic Analysis)	13,075.00	-	13,075.00
<b>Total YTD expenditures</b>	<b><u>279,147.40</u></b>	<b><u>1,646.80</u></b>	<b><u>280,794.20</u></b>
Outstanding encumbrances:			
RKG Associates Inc. (Housing Strategy)	-	13,046.40	13,046.40
Sasaki (Planning Management & Organization Analysis)	3,475.00	-	3,475.00
Nelson/Nygaard (Transportation Strategy)	92,454.40	-	92,454.40
Nelson/Nygaard (Newton Centre Parking Study)	10,000.00	-	10,000.00
Nelson/Nygaard (Austin St Fiscal & Economic Analysis)	2,850.00	-	2,850.00
<b>Total Outstanding encumbrances</b>	<b><u>108,779.40</u></b>	<b><u>13,046.40</u></b>	<b><u>121,825.80</u></b>
<b>Available Balance</b>	<b><u>\$ 32,780.00</u></b>	<b><u>\$ 4,996.00</u></b>	<b><u>\$ 37,776.00</u></b>

{1} 6/30/2015 Continued appropriation consists of:

Original FY 2015 consulting line items	\$ 85,000.00
6/30/2014 continued appropriations - consulting	133,834.67
Supplemental FY 2015 consulting appropriations	210,000.00
Planning expense budget transfers	8,201.72
Consulting expenditures	<u>(68,802.00)</u>
6/30/2015 Continuing appropriation	<u>\$ 368,234.39</u>

Facilities Committees have reviewed the improvements and approved the \$1.2 million dollars for traffic improvements to Auburndale Square.

The review process in both Committees included neighborhood input. There has been discussion regarding whether the traffic light at Melrose Street and Commonwealth Avenue should be removed. The traffic consultants feel that the light enhances the traffic improvement plan. There is some concern related to the proposed concurrent pedestrian crossing phase at Auburndale Square, which would allow pedestrians to cross at the same time as the green light in the same direction. Concurrent pedestrian crossings are used at other locations in the City including West Newton Square. Some neighbors would prefer an exclusive phase pedestrian crossing where all lights turn red during the crossing phase. When the signals are installed, the City will be using the concurrent phasing crossing but if there is any problem, it can easily be switched to an exclusive phasing crossing. Ald. Sangiolo joined the Committee for the discussion and suggested that the Administration should consult with the Commission on Disability on the crossings. It was pointed out that the proposed pedestrian crossings in Auburndale Square are shorter due to the increase in the size of the traffic island.

Once the final design for the project is complete, the Public Facilities Committee will review the design. With that Ald. Fuller moved approval of #129-15A, which carried by a vote of seven in favor and none opposed.

#158-15      HIS HONOR THE MAYOR requesting an increase in the Fiscal Year 2016 annual expenditure limit of the Newtonville Area Council revolving fund from \$2,500 to \$10,000 in order cover the funds and expenses related to Newtonville Village Day. [06/10/15 @ 2:23 PM]

**ACTION:**      **APPROVED 7-0**

**NOTE:**      The Board of Aldermen recently authorized the creation of a revolving fund for the Newtonville Area Council with a limit of \$2,500. The Newtonville Area Council has requested an increase in the expenditure limit to \$10,000 to cover expenses related to Newtonville's Village Day. The Committee had no problem with increasing the expenditure limit as the area council collects and expends all money that comes into the account. Ald. Rice moved approval, which carried unanimously.

**REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES**

#161-15      HIS HONOR THE MAYOR requesting authorization to transfer the sum of two hundred ten thousand dollars (\$210,000) from the Planning & Development Department Salaries Account to the Planning & Development Department Consultants Account for the purpose of funding \$10,000 for the Newton Center Parking Study with the remaining amount to be available for consultants in Fiscal Year 2016. [06/15/15 @ 3:30 PM]

**ZONING & PLANNING APPROVED 6-0 on 06/22/15**

**ACTION:**      **APPROVED 7-0**

**NOTE:** The Committee met jointly with the Zoning and Planning Committee to discuss the transfer of funds from the Planning and Development salaries line item to the consultant's line item. The funds would be used to reimburse the Planning Department budget for the \$10,000 expended from that budget for the Newton Center Parking Study in Fiscal Year 2015. The study started in May in order to collect the parking data while school was in session. The remaining \$200,000 would be used to hire consultants in Fiscal Year 2016 once the funds are carried over to that budget. Chief of Staff Maureen Lemieux explained that the Administration wanted to dedicate the 2015 salary savings in the Planning Department's budget to hire consultants to further the City's planning initiatives instead of having those funds move to Free Cash at the end of the fiscal year.

Members of both Committees asked how the \$200,000 would be spent in the upcoming fiscal year. Chief of Staff Maureen Lemieux and Acting Planning Director James Freas expect that the funds would be used for the second phase of zoning reform and studies related to housing and transportation. The Chair of the Zoning and Planning Committee requested that the Committee receive a monthly update on how the \$200,000 is being expended. With that, Ald. Sangiolo moved approval in the Zoning and Planning Committee, which carried unanimously. Ald. Ciccone moved approval in the Finance Committee, which carried unanimously.

**Chairman's Note:** The Committee received updates on the Angier and Zervas Project budgets.

### **Angier Elementary School Project**

The Angier Project is well on its way to completion. The project is on schedule and, at this point, on budget. The City is in the process of getting its first change order, which is a \$10,000 credit to the City. The project manager and the construction manager understand the need to stay on budget and limit change orders.

There have been no changes to the scope of the project. The students and teachers are expected to move into the new school during the winter break. The School Department has ordered crates for teachers to pack and store supplies in preparation for the move. The crates are expected to be used for the Zervas School project moves.

Committee members asked if the Angier School Building Committee (ASBC) completed its scope of work. Ms. Lemieux believes that there are still some small tasks to accomplish for the ASBC is disbanded. The contractor is meeting monthly with the neighbors to answer any questions and address any concerns.

The bids for the offsite work came in \$150,000 over the estimated budget. The Administration is looking at ways to reduce the scope of the project. The bid included allowances for benching in landscaping, which could be scaled back with no impact to the improvements. It was pointed out that there was a significant amount of money in the project budget for offsite improvements. Ms. Lemieux explained that the offsite work included the construction of a wall along the MBTA tracks. The Chair asked for the cost of the wall and if it was on budget. Ms. Lemieux did not have the information available but will provide it.



**The Request for Proposal from the City of Newton for the Zoning Reform 2 project can be found at:**

<http://www.newtonma.gov/civicax/bids/inc/blobfetch.aspx?blobid=69332>

**The Proposals received for the Zoning Reform 2 project can be found at:**

*Sasaki Associates*

<http://www.newtonma.gov/civicax/filebank/documents/74434>

*TPUDC*

<http://www.newtonma.gov/civicax/filebank/documents/74435>

**Shawna Sullivan**

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**From:** David A. Olson  
**Sent:** Monday, March 28, 2016 9:01 AM  
**To:** citycouncil  
**Cc:** Karyn Dean; Shawna Sullivan  
**Subject:** FW: Zoning Consultants & Developers

-----Original Message-----

From: Nancy Finn [<mailto:nefinn@msn.com>]  
Sent: Monday, March 28, 2016 8:05 AM  
To: David A. Olson  
Subject: Zoning Consultants & Developers

To all Councilors,

Spending \$325k to hire zoning consultants is wrong. Hiring any consultants to do city departments work is not how it is supposed work.

If you are short staff in a department hire some new staff to do the work so it can be spread out internally in that department.

It amazes me that we have to hire consultants every time someone does not know what to do.

The chair of the zoning section should do the research and report back and/ or the internal planning hired staff should do the research.

Older homes

Also please stop letting the developers demolish older homes that are over 50 years old and then put up new homes that do not blend in with the homes already there.

Many of the developers do not even let the neighborhood know what is going on. It appears the developers can do whatever they want.

Many residents that I know in Newton do not want this.

Please stop wasting our tax dollars.

You all have a hard job to do, but your job is to represent the residents that elected you, not do what you want.

Thank you for your time as I do know you are busy.

Regards,  
Nancy E. Finn  
Concerned citizen  
Born here, raised here, and still here by choice.

I love NLF which is my village.

Sent from my iPhone



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#138-16

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(617) 796-1113

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E-mail  
swarren@newtonma.gov

April 11, 2016

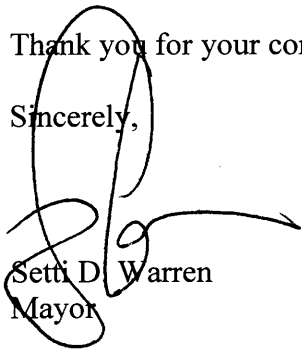
Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to transfer the sum of \$250,000 from Override Capital Project Stabilization Fund to the Newton Public Schools for the purpose of funding the busing costs associated with the transfer of the Zervas students to the Carr Elementary School for the January 2016 – June 2016 timeframe.

Thank you for your consideration of this matter.

Sincerely,



Setti D. Warren  
Mayor

RECEIVED  
NEWTON CITY OFFICE  
2016 APR 11 AM 11:32  
DAVID A. OLSON, CMC  
NEWTON, MA 02459

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



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April 11, 2016

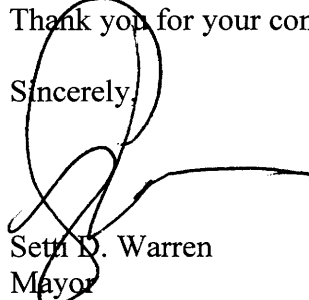
Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to transfer the sum of \$939,986.64 from the January 2015 FEMA Blizzard Federal Grant to a Receipts Reserved for Inclement Weather Fund.

Thank you for your consideration of this matter.

Sincerely,

  
Seth D. Warren  
Mayor

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2016 APR 11 AM 11:32  
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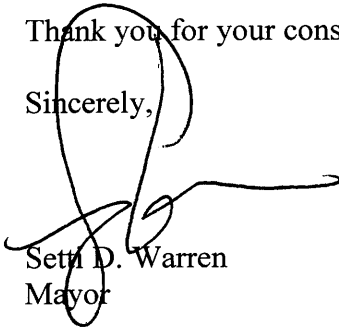
Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Council docket for consideration a request to authorize the appropriation and expenditure of \$654,435 from June 15, 2015 Certified Free Cash to the Rainy Day Stabilization Fund. This appropriation when combined with the \$150,000 appropriated in the FY2017 Mayor's Proposed Budget will allow the City to begin the fiscal year with a full 5% of the operating budget set aside in reserve.

Thank you for your consideration of this matter.

Sincerely,



Seth D. Warren  
Mayor

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