

12-0

PRESERVATION RESTRICTION AGREEMENT
 between the COMMONWEALTH OF MASSACHUSETTS
 by and through the MASSACHUSETTS HISTORICAL COMMISSION
 and the City of Newton

The parties to this Agreement are the Commonwealth of Massachusetts, by and through the Massachusetts Historical Commission located at the Massachusetts Archives Building, 220 Morrissey Boulevard, Boston, Massachusetts 02125, hereinafter referred to as the Commission, and the City of Newton, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, hereinafter referred to as the Grantor.

WHEREAS, the Grantor is the owner in fee simple of certain real property with improvements known as the East Parish Burial Ground, located at the corners of Centre Street and Cotton Street in the City of Newton, and being a portion of land identified as Property Identification # 730010018 and Map Identification # 060NW, hereinafter referred to as the Premises. The Premises is also described in Exhibit A, full legal boundary description prepared by the Engineering Division, City of Newton and in Exhibit B in a Plan of Land prepared by the Engineering Division, City of Newton and attached hereto and incorporated herein by reference; and

WHEREAS, the Premises includes, but is not limited to, the following: East Parish Burial Ground is a 2.89 acre parcel of land of varied typography surrounded by a fieldstone retaining wall with a row of tombs located along the burial ground edge along Centre Street; the burial ground includes a wide variety of tombs, gravestones, obelisks and other monument types and is also shown as Exhibit C, City of Newton Assessor's Map for Property # 730010018 (with GIS Mapping overlay) ; and

WHEREAS, the Grantor wishes to impose certain restrictions, obligations and duties upon it as the owner of the Premises and on the successors to its right, title and interest therein, with respect to maintenance, protection, and preservation of the Premises in order to protect the architectural, archaeological and historical integrity thereof; and

WHEREAS, the Premises is significant for its architecture, archaeology and/or associations, and was individually listed in the State and National Registers of Historic Places on January 23, 1983 and therefore qualifies for a preservation restriction under M.G.L., Chapter 184, section 32; and

WHEREAS, the preservation of the Premises is important to the public for the enjoyment and appreciation of its architectural, archaeological and historical heritage and will serve the public interest in a manner consistent with the purposes of M.G.L. Chapter 184, sections 31, 32, and 33 hereinafter referred to as the Act; and

Book 333, Page 60
 Book 1689, Page 481

**City of Newton Law Department
 1000 Commonwealth Avenue
 Newton Centre, MA 02459**

WHEREAS, the Commission is a government body organized under the laws of the Commonwealth of Massachusetts and is authorized to accept these preservation restrictions under the Act;

NOW, THEREFORE, for good and valuable consideration, the Grantor conveys to the Commission the following preservation restrictions, which shall apply in Perpetuity to the Premises.

PURPOSE

It is the Purpose of these preservation restrictions to ensure the preservation of those characteristics which contribute to the architectural, archaeological and historical integrity of the Premises which have been listed in the National and/or State Registers of Historic Places, under applicable state and federal legislation. Characteristics which contribute to the architectural, archaeological and historical integrity of the Premises include, but are not limited to, the artifacts, features, materials, appearance, and workmanship of the Premises, including those characteristics which originally qualified the Premises for listing in the National and/or State Registers of Historic Places.

TERMS

The terms of the Agreement are as follows:

1. Maintenance of Premises: The Grantor agrees to assume the total cost of continued maintenance, repair and administration of the Premises so as to preserve the characteristics which contribute to the architectural, archaeological and historical integrity of the Premises in a manner satisfactory to the Commission according to the Secretary of the Interior's "Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (36 CFR 67 and 68), as these may be amended from time to time. The Grantor may seek financial assistance from any source available to it. The Commission does not assume any obligation for maintaining, repairing or administering the Premises.
2. Inspection: The Grantor agrees that the Commission may inspect the Premises from time to time upon reasonable notice to determine whether the Grantor is in compliance with the terms of this Agreement.
3. Alterations: The Grantor agrees that no alterations shall be made to the Premises, including the alteration of any interior, unless (a) clearly of minor nature and not affecting the characteristics which contribute to the architectural, archaeological or historical integrity of the Premises, or (b) the Commission has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by the Grantor, or (c) required by casualty or other emergency promptly reported to the Commission. Ordinary maintenance and repair of the Premises may be made without the written permission of the Commission. For purposes of this section, interpretation of what constitutes alterations of a minor

nature and ordinary maintenance and repair is governed by the Restriction Guidelines which are attached to this Agreement and hereby incorporated by reference.

4. Notice and Approval: Whenever approval by the Commission is required under this restriction, Grantor shall request specific approval by the Commission not less than (30) days prior to the date Grantor intends to undertake the activity in question. A request for such approval by the grantor shall be reasonably sufficient as a basis for the Commission to approve or disapprove the request. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Commission to make an informed judgment as to its consistency with the purposes of this Preservation Restriction. Within (30) days of receipt of Grantor's reasonably sufficient request for said approval, the Commission shall, in writing, grant or withhold its approval, or request additional information relevant to the request and necessary to provide a basis for its decision. However, should the Commission determine that additional time is necessary in order to make its decision the Commission shall notify the Grantor. The Commission's approval shall not be unreasonably withheld, and shall be granted upon a reasonable showing that the proposed activity shall not materially impair the Purpose of this Agreement. Failure of the Commission to make a decision within sixty (60) days from the date on which the request is accepted by the Commission or notice of a time extension is received by the Grantor shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

5. Assignment: The Commission may assign this Agreement to another governmental body or to any charitable corporation or trust among the purposes of which is the maintenance and preservation of historic properties only in the event that the Commission should cease to function in its present capacity.

6. Validity and Severability: The invalidity of M.G.L. c. 184 or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

7. Recording: The Grantor agrees to record this Agreement with the appropriate Registry of Deeds and file a copy of such recorded instrument with the Commission.

8. Archaeological Activities: The conduct of archaeological activities on the Premises, including without limitation, survey, excavation and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the State Archaeologist of the Massachusetts Historical Commission (M.G.L. Ch.9, Section 27C, 950 CMR 70.00).

9. Enforcement: The Commission shall have the right to prevent and correct violations of the terms of this preservation restriction. If the Commission, upon inspection of the Premises, finds what

appears to be a violation, it may exercise its discretion to seek injunctive relief in a court having jurisdiction. Except where the Commission determines that an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical and/ or architectural importance of the Premises, the Commission shall give the Grantor written notice of the violation and allow thirty (30) calendar days to correct the violation before taking any formal action, including, but not limited to, legal action. If a court, having jurisdiction, determines that a violation exists or has occurred, the Commission may seek to obtain an injunction to stop the violation, temporarily or permanently. A court may also issue a mandatory injunction requiring the Grantor to restore the Premises to a condition that would be consistent with the preservation purposes of the grant from the Massachusetts Preservation Projects Fund and the Massachusetts Historical Commission. In any case where a court finds that a violation has occurred, the court may require the Grantor to reimburse the Commission and the Commonwealth's Attorney General for all the Commonwealth's expenses incurred in stopping, preventing, and/ or correcting the violation, including, but not limited to, reasonable attorney's fees. The failure of the Commission to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

10. Other Provisions: None applicable.

The burden of these restrictions enumerated in paragraphs 1 through 9, inclusive, shall run with the land and is binding upon future owners of an interest therein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 6th day of JUNE, 2017.

TITLE OF ORGANIZATION

By: [Signature]
Name: Seth D. Warren
Title: Mayor, City of Newton

Approved as to Legal Form and Character

[Signature]
Deputy City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Mooresey, ss.

On this 6th day of JUNE, 2017, before me, the undersigned notary public, personally appeared Seth D. Warren, Mayor, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.



[Signature]
Notary Public
My Commission Expires 11/9/23

APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION

The undersigned hereby certifies that the foregoing preservation restrictions have been approved pursuant to Massachusetts General Laws, Chapter 184, section 32.

MASSACHUSETTS HISTORICAL COMMISSION

By Brona Simon
Brona Simon
Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 8th day of June, 2017 before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was (~~a current driver's license~~) (~~a current U.S. passport~~) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

Notary Public

Mary Maeder
My Commission Expires January 25, 2019

RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify Paragraph Three of the Terms of the Preservation Restriction Agreement, which deals with alterations to the Premises. Under this Paragraph, prior permission from the Massachusetts Historical Commission is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require the Commission's prior review.

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

PAINT

Minor - Exterior or interior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, wallpaper, ornamental woodwork, stone, decorative or significant original plaster.

WINDOWS AND DOORS

Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows as well as any level of stained glass window conservation/restoration. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the Premises is also considered a major alteration.

LANDSCAPE/OUTBUILDINGS

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing buildings or Premises; altering of Premises; altering or removing significant landscape features such as gardens, vistas, walks, plantings; ground disturbance affecting archaeological resources.

WALLS/PARTITIONS

Minor - Making fully reversible changes (i.e., sealing off doors in situ, leaving doors and door openings fully exposed) to the spatial arrangement of a non-significant portion of the building.

Major - Creating new openings in walls or permanently sealing off existing openings; adding permanent partitions which obscure significant original room arrangement; demolishing existing walls; removing or altering stylistic features; altering primary staircases.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major appearance changes (i.e., dropped ceilings, disfigured walls or floors, exposed wiring, ducts, and piping); the removal of substantial quantities of original plaster or other materials in the course of construction.

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

It is the responsibility of the owner of the Premises (Grantor) to notify the Commission in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of the Preservation Restriction is to enable the Commission to review proposed alterations and assess their impact on the integrity of the Premises, not to preclude future change. Commission staff will attempt to work with Grantors to develop mutually satisfactory solutions, which are in the best interests of the Premises.

EXHIBIT A

Legal Boundary Description
East Parish Burial Ground. Located
at the Intersection of Centre and
Cotton Streets, City of Newton, MA
02458 (Middlesex County)

City of Newton Engineering Division of D.P.W.

Legal Description for
Preservation Restriction
East Parish Burial Ground

A certain parcel of land situated in the City of Newton, Middlesex County, Commonwealth of Massachusetts, shown as "EAST PARISH BURIAL GROUND" on a Plan entitled, "Plan of Land of the East Parish Burial Ground for Preservation restriction in Newton, MA" prepared for the City of Newton, prepared by the City of Newton Engineering Division, dated July 27, 2016, Surveyor: Patrick Higgins, PLS to be recorded as Plan Book #2016, Plan # 792 at the Middlesex South District Registry of Deeds, bounded and described as follows:

Beginning at the Point of Commencement [P.O.C.] a Drill Hole in a Stone Bound Found below grade 2.6' near the Southeasterly corner of land of the Missionary Franciscan Sisters of the Immaculate Conception, Inc. and the Northerly sideline of Cotton Street as shown on the aforementioned plan, thence:

- N 82°05'32" W By Cotton Street a distance of three hundred fifty-four and three hundredths (354.03') feet to a 3/4" Iron Rod set, said point being the True Point of Beginning [P.O.B.], as shown on the aforementioned plan, thence;
- N 82°05'32" W By Cotton Street a distance of one hundred forty-eight and fifty-four hundredths (148.54') feet to a point, thence;
- Westerly By Cotton Street along a tangent curve to the right with a radius of two thousand three hundred eighty-nine and forty hundredths (2389.40') feet, a distance of one hundred ninety-eight and twenty-three hundredths (198.23') feet, having a delta angle of 4°45'12", to a point, thence;
- N 77° 20'20" W By Cotton Street and along a tangent line with a gateway a distance of nineteen and forty-eight hundredths (19.48') feet to a 3/4" Iron Rod set, thence;
- Northwesterly By Cotton Street, along a tangential curve to the right with a radius of twenty and zero hundredths (20.00') feet, a distance of nine and forty hundredths (9.40') feet, and having a delta angle of 26°56'15" to a 3/4" Iron Rod set at the Southeasterly corner of Loring Park, thence;
- N 39° 23'14" E By Loring Park, along a non-tangential line along the Westerly face of the field stone retaining wall a distance of three hundred fifteen and eleven hundredths (315.11') feet to a 3/4" Iron Rod set, thence;
- N 46° 08'41" W By Loring Park along the Southwesterly face of the field stone retaining wall a distance of sixty-two and eighty hundredths (62.80') feet to a Drill Hole set in concrete walk under corner of wall, thence;
- N 42° 46'28" E By Centre Street along the Westerly face of the field stone retaining wall a distance of twenty-seven and ninety-eight hundredths (27.98') feet to a 5/8" Iron Rod set, thence;
- N 42° 15'45" E By Centre Street along the Westerly face of the field stone retaining wall a distance of twenty-three and zero hundredths (23.00') feet to a Drill Hole set on the face of the wall, thence;

- N 37° 57'27" E By Centre Street along the Westerly face of the field stone retaining wall a distance of eighteen and ninety-four hundredths (18.94') feet to a 5/8" Iron Rod set, thence;
- N 33° 13'08" E By Centre Street along the Westerly face of the field stone retaining wall a distance of fifteen and zero-four hundredths (15.04') feet to a 5/8" Iron Rod set, thence;
- N 30° 28'37" E By Centre Street along the Westerly face of the field stone retaining wall a distance of twelve and eighty-eight hundredths (12.88') feet to a Drill Hole set on the corner face of the wall pillar, thence;
- N 24° 22'27" E By Centre Street along a gateway and the Westerly face of the field stone retaining wall a distance of forty-six and fifty-two hundredths (46.52') feet to a Drill Hole set on the face of the wall, thence;
- N 22° 03'33" E By Centre Street along the Westerly face of the field stone retaining wall a distance of forty-one and twenty hundredths (41.20') feet to a Drill Hole set on the face of the wall, thence;
- N 12° 57'30" E By Centre Street along the Westerly face of the field stone retaining wall a distance of sixteen and forty-six hundredths (16.46') feet to a Drill Hole set on the face of the wall, at the Southwesterly corner of land of the Missionary Franciscan Sisters of the Immaculate Conception, Inc., thence;
- S 72° 03'58" E By land of the Missionary Franciscan Sisters of the Immaculate Conception, Inc., and the Northerly face of the field stone retaining wall a distance of one hundred forty-two and twenty-four hundredths (142.24') feet to a 3/4" Iron Rod set, at the Northeasterly corner of the EPBG, thence;
- S 5° 10'03" E By land of the Missionary Franciscan Sisters of the Immaculate Conception, Inc., a distance of two hundred and thirty hundredths (200.30') feet to a Drill Hole set at an angle point on the face of the field stone retaining wall, thence;
- S 14° 50'30" E By land of the Missionary Franciscan Sisters of the Immaculate Conception, Inc., and the Easterly face of the field stone retaining wall a distance of thirty-nine and zero-six hundredths (39.06') feet to an angle point on the face of the field stone retaining wall, thence;
- S 0° 47'51" W By land of the Missionary Franciscan Sisters of the Immaculate Conception, Inc., and the Easterly face of the field stone retaining wall a distance of thirty-five and zero hundredths (35.00') feet to a Drill Hole set at an angle point on the base of the field stone retaining wall, thence;
- S 12° 49'17" W By land of the Missionary Franciscan Sisters of the Immaculate Conception, Inc., and the scattered remains of the Easterly face of the field stone retaining wall a distance of two hundred thirteen and thirty hundredths (213.30') feet to a 3/4" Iron Rod set at the Point of Beginning [P.O.B.].

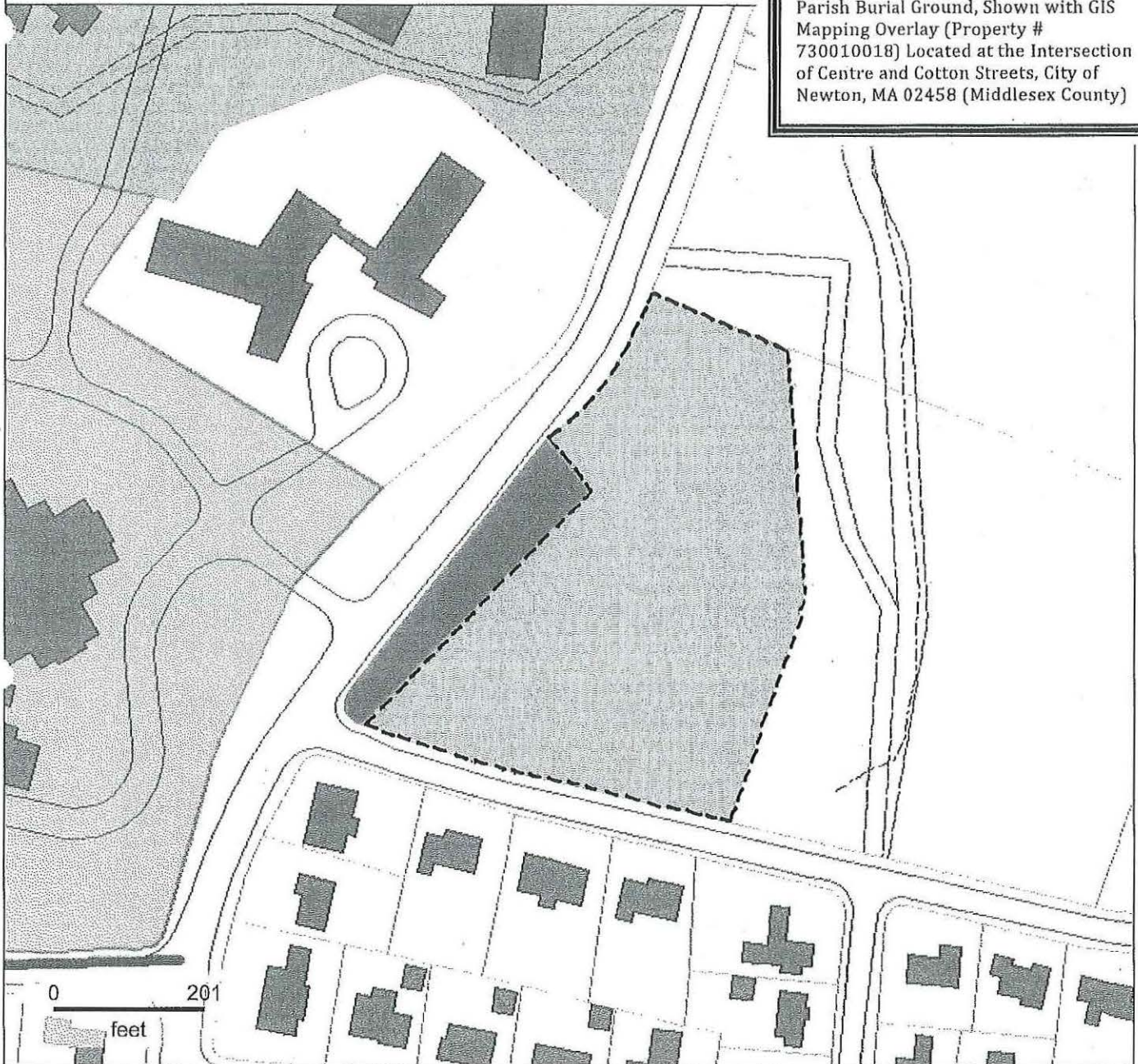
The East Parish Burial Ground parcel of land as described above is for the most part, surrounded by a field stone retaining wall, and contains one hundred twenty-five thousand nine hundred sixty-nine square feet more or less (125,969 +/- S.F.), two point eight nine acres more or less (2.89 +/- acres) according to said plan.

5/5/2015

City of Newton

EXHIBIT C

Assessor's Map - City of Newton East Parish Burial Ground, Shown with GIS Mapping Overlay (Property # 730010018) Located at the Intersection of Centre and Cotton Streets, City of Newton, MA 02458 (Middlesex County)



Property ID: 73001 0018
Address: CENTRE ST
Owner: CITY OF NEWTON



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

Because of different update schedules, current property assessments may not reflect recent changes to property boundaries. Check with the Assessors' Office to confirm boundaries uses at the time of assessment.

