

L5779

**COMMUNITY PRESERVATION FUNDING AGREEMENT BETWEEN  
NEWTON HISTORICAL SOCIETY AND THE CITY OF NEWTON**

This AGREEMENT made as of December 9, 2011 by and between the Newton Historical Society, Inc., a Massachusetts corporation, having a usual place of business located at 527 Washington Street, Newton, MA 02458 (hereinafter "Grantee") and the City of Newton, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through the Director of the Newton History Museum or her designated staff, but without personal liability to her, (hereinafter the "City").

WITNESSETH THAT:

WHEREAS, the Grantee intends to restore the Durant Kenrick Homestead known and numbered 286 Waverley Avenue, Newton, Massachusetts (hereinafter "the Property") into a fully-functioning, actively-interpreted historic house museum; and

WHEREAS, the Grantee has agreed to grant a preservation restriction on the homestead and the adjacent open lot to the Newton Historical Commission; and

WHEREAS, the Grantee applied for and received approval from the Community Preservation Committee ("CPC") and the Board of Aldermen, upon the Funding Recommendation of the CPC, for a grant in the amount of \$2,710,000, subject to certain conditions set forth herein; and

NOW THEREFORE, the parties do mutually agree to the following:

1. **Subject Matter.** This Agreement sets forth the terms and conditions under which the Grantee shall receive funding from the City in the amount of Two Million Seven Hundred

Ten Thousand (\$2,710,000.00) Dollars, of which \$1,440,000 is for preserving, restoring, and rehabilitating the Property and \$1,270,000 is consideration for Grantee's conveyance of a preservation restriction to the City. The Grantee agrees to use such funding in accordance with the terms and conditions of the approval of the Board of Aldermen (Attachment A) and the Funding Recommendation of the CPC ("Attachment B").

2. **Scope of Work.** Grantee agrees that the funding in the amount of One Million Four Hundred Forty Thousand (\$1,440,000) Dollars shall be used for the preservation, restoration, and rehabilitation of the Property in accordance with the scope of work as described by McGinley Kalsow & Associates in "*The Durant Kenrick Homestead: A Program for Renovation and Restoration by the Newton Historical Society,*" included in the Grantee's funding proposal dated October 3, 2006, historic landscape plan, or in any subsequently revised version of either document that has been approved in writing by the Newton Historical Commission and Community Preservation Committee, or their designees, prior to the start of any on-site work to be reimbursed through this Agreement.

3. **Preservation Restriction.** Grantee shall convey, in form acceptable to the Newton Historical Commission, a perpetual historic preservation restriction on the Property and the adjacent open lot, which shall (a) require that the Property be open to the public on a regular basis; (b) prohibit modifications to the interior of the historic house (not including new construction) except upon approval by the Newton Historical Commission, or its designee, and (b) prohibit modifications to the site, including the entire exterior of the historic house, the surrounding historic landscape, and any new construction except upon approval by the Newton Historical Commission, or its designee. The historic preservation restriction shall have been approved by the Executive Director of the Massachusetts Historical Commission. The

consideration for this conveyance shall be One Million Two Hundred Seventy Thousand (\$1,270,000) Dollars, to be tendered to Grantee within thirty (30) days of receipt by the City of proof of recording of such restriction in the Middlesex South Registry of Deeds.

4. **Conditions Prior to Disbursement of Funds.**

The Grantee agrees to the following conditions prior to receipt of any funds hereunder:

(a) Grantee shall have provided to the Community Preservation Committee or its designee a certification signed by the Grantee's Treasurer, together with a copy of Grantee's latest fundraising report, demonstrating that the Grantee has secured not less than a total of \$900,000 in receipts or pledges representing funds from sources other than the City through its Community Preservation Committee, and that such funds are available, as needed, for the restoration and rehabilitation of the Property, as follows:

(i) \$265,000 in receipts or pledges prior to the payment of any consideration for the purchase of the preservation restriction;

(ii) \$635,000 in receipts or pledges prior to the payment of any funding for the rehabilitation and restoration work.

(b) The historic preservation restriction shall have been approved by the Secretary of the Massachusetts Historical Commission and Grantee shall have provided proof of its recording at the Middlesex South Registry of Deeds to the Community Preservation Committee or its designee.

(c) Grantee shall have provided to the Community Preservation Committee:

(i) with respect to any construction on any elements of the building or other structure on the Property, a certification from a qualified professional acceptable to the Community Preservation Committee or its designee, at the expense of the Grantee, that the final scope of work described in the final architectural drawings and specification for construction are in compliance with *The Standards for Rehabilitation* stated in the *United States Secretary of the Interior's Standards for the Treatment of Historic Properties* codified in 36 C.F.R. Part 68. For purposes of this subparagraph, Ann Beha Architects, having an office at 33 Kingston Street, Boston, Massachusetts, shall be deemed to be a qualified professional acceptable to the CPC.

(ii) with respect to any work involving the landscape on the Property, a certification from a qualified professional acceptable to the Community Preservation Committee or its designee, at the expense of the Grantee, that the final scope of work described in final landscape drawings and specifications for construction are in compliance with *Guidelines for the Treatment of Cultural Landscapes* stated in said Standards of the United States Secretary of the Interior. For purposes of this subparagraph, Lucinda Brockway of Past Designs, having an office in Kennebunk, Maine, shall be deemed to be a qualified professional acceptable to the CPC.

(iii) Each such certification shall be submitted to the Community Preservation Committee, or its designee, prior to any release of funding hereunder.

(d) The Grantee shall have delivered to the City a timeline which sets forth the expected date for notice to proceed to issue from the Grantee to its general contractor to commence construction and the expected date for completion.

5. **Release of Grant Funds.**

Grantee may submit monthly requests for payment, together with copies of invoices from Grantee's contractor(s). Such requests and supporting documentation shall be submitted to:

Community Preservation Program Manager  
Department of Planning and Development  
City of Newton  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

(a) Each request shall include copies of invoices for which the Grantee seeks reimbursement. After inspection of the work and approval of Grantee's request for payment, the Community Preservation Program Manager shall use best efforts to make such payments within thirty (30) days of receipt of Grantee's request for payment.

Upon satisfactory completion of the Project, including submission of the final reports described in Section 6(c) below, Grantee shall submit to the Community Preservation Program Manager a request for payment in full of any remaining balance, together with copies of any invoices which have not previously been submitted. Payment of any remaining balance shall be made to Grantee within thirty (30) days, subject to final inspection and approval of the work by the Community Preservation Program Manager or her designee. In the event any dispute arises concerning the work, an equitable amount shall be retained pending resolution thereof.

Grantee shall not request payment from the City for the cost of any item within the scope of the work required for the preservation, restoration and rehabilitation of the Property where the

Society has received a donation, bequest or grant from some source other than the \$1,440,000 grant received from the City, where such donation, bequest or grant is specifically identified as made for the purpose of covering the cost of such item. This is not to be construed as including any donation, bequest or grant, including the so called matching funds identified in paragraph 4 above, received by the Grantee which have been designated by the donor as generally restricted for use in connection with the Durant Kenrick Homestead but not restricted in use to the cost of any particular or specific item within the scope of work required for the preservation, restoration or rehabilitation of the Property.

**6. Conditions Subsequent to Initial Receipt of Funds.**

(a) Beginning with the commencement of construction on the restoration and rehabilitation of the Property, Grantee shall submit to the Community Preservation Program Manager on a quarterly basis until project completion, a project timeline and a status report showing work that is complete, work remaining, expenditures and target completion date, in a format based on the original approved project budget (to permit clear comparison of planned and actual expenditures). Any demolition or other activities necessary in order to perform required archeology on the Property shall not be deemed to constitute the commencement of construction.

(b) Grantee shall obtain all necessary permits, zoning relief and waivers from the Massachusetts State Building Code and the Massachusetts Architectural Access Board and submit evidence of such relief and waivers to the Community Preservation Committee, or its designee.

(c) Prior to the final release of funds, Grantee shall submit to the Community Preservation Committee, or its designee, a final project development cost statement, in a format

based on the original approved project budget (to permit clear comparison of planned and actual expenditures) and a narrative report and/or presentation to the Community Preservation Committee on final project results.

(d) The Project shall be complete no later than four (4) years from the latest date of appropriation of CPA funds (as extended by Attachment G) unless the Grantee receives a further extension of this deadline granted in writing by the Director of Planning and Development. Grantee shall return to the City's Community Preservation Fund any portion of the grant funds not used for the Project.

7. **Insurance Requirements** Grantee shall keep the Property insured at all times and in such amounts as deemed reasonable and prudent in accordance with the terms of the preservation restriction, standard construction practices and in compliance with Attachment E hereof.

8. **Recapture of Funds.** In the event the Grantee uses any portion of the \$1,440,000 grant received pursuant to the terms of this Agreement for purposes other than the preservation, restoration and rehabilitation of the Property as described in the final scope of work approved under Paragraph 2 of this Agreement, the approval of the Board of Aldermen, or the Funding Recommendation of the CPC, then the Grantee shall reimburse the CPC the amount of such portion so used, and the Mayor or the CPC may take such steps as may be necessary, including legal action, to secure repayment of such amount.

9. **Record Keeping.** The Grantee agrees to keep such records as are kept in the normal course of business and as may be required in writing by the City. The Community

Preservation Committee or its designee shall have full and free access to such records with respect to utilization of the proceeds of this Agreement.

10. **Termination.** If, at any time, the Grantee is in violation of any of the terms of this Agreement, the City may deliver to the Grantee a notice of default. The Grantee shall have thirty (30) days within which to cure such default, or, if such default cannot be cured within thirty days, such reasonable time as the parties mutually agree may be required to cure such default. At the end of such period, if the Grantee has not cured the default, the Mayor shall have the right to terminate this Agreement upon written notice to the Grantee and may pursue all rights and remedies available at law or in equity.

11. **Compliance with Applicable Laws.** The Grantee shall comply with all applicable local, state and federal laws, ordinances, regulations or codes during the term of the Project.

12. **Equal Opportunity.** The Grantee shall comply with all applicable local, federal and state laws governing discrimination and equal opportunity.

13. **Monitoring.** The Grantee shall respond promptly to periodic requests from the Community Preservation Committee or its designee for updates on the project's status, including any reasonable request for information not already included with Grantee's reimbursement requests. The Community Preservation Committee or its designee shall periodically evaluate the performance of the Grantee and may make a determination as to whether the Grantee has conformed with this Agreement and has a continuing capacity to carry out the funded activities in the manner required pursuant to this Agreement. On reasonable notice, during normal business hours and as often as reasonably necessary, Grantee shall make available all such



records and documents as requested by the Community Preservation Committee or its designee for monitoring the project and auditing the expenditure of the monies received by the Grantee on account of the \$1,440,000 grant. The Community Preservation Committee or its designee may examine and make copies of such records and may audit all contracts, procurement records, invoices, materials, payrolls, personnel records, conditions of employment, and such documents relating to all matters covered by this Agreement as may be reasonably required to monitor the project and audit expenditures on account of the \$1,440,000 grant, excepting only those documents which identify and contain confidential information regarding Grantee's donors, which documents the Grantee at its option may redact to exclude such information.

14. **Successors and assigns.** The terms of this Agreement shall be binding on the Grantee's successors and assigns. After the Grantee has taken title to the Property, the Grantee shall promptly provide notice to the City of any subsequent change in ownership of the Property.

15. **Conflict of Interest; Bonus and Benefit Prohibited.**

(a) No member, officer, or employee of the City or its designees or agents, no member of the governing body of the City of Newton or the Commonwealth of Massachusetts, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the subject funding programs during his or her tenure or for one year thereafter, shall have any interest or benefit, direct or indirect, in any contract or subcontract, or in the proceeds thereof, in connection with this Agreement, including work to be performed.

(b) Grantee shall not pay bonus, commission, or fee for the purpose of obtaining the City's approval of or concurrence to complete the work financed in whole or in part by this Agreement.

16. **Indemnification.** The Grantee shall indemnify, hold harmless, and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensation, including attorneys' fees and interest arising out of or resulting directly from the services rendered pursuant to this Agreement, provided that any such action, cause of action, claim, demand, damage costs, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property which (2) is caused in whole or in part by any act or omission of the Grantee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

17. **Notice.** Any notice, demand, request, consent, approval, communication either party is required to give to the other party or any person shall be in writing and either served personally or sent by prepaid, first class mail to the respective addresses set forth below. Either party may change its address by notifying the other party of the change of address in writing.

To the City:                   Community Preservation Program Manager  
  Department of Planning and Development  
  City of Newton  
  1000 Commonwealth Avenue  
  Newton Centre, MA 02459

With a copy to:                Director of Planning and Development  
  Department of Planning and Development  
  Newton City Hall

1000 Commonwealth Avenue  
Newton Centre, MA 02459

To Grantee: The Newton Historical Society, Inc.  
527 Washington Street  
Newton, MA 02458

18. **Changes.** In the event that changes in the Project become necessary, including but not limited to changes in funding, scope or duration, the Grantee shall request the change in writing to the Community Preservation Committee or its designee. If the CPC or its designee agrees to such changes, they must be approved in writing by the CPC or its designee and incorporated into this Agreement as amendments.

19. **Other Provisions.** All other provisions, if any, are set forth within the following SCHEDULES attached hereto and made a part hereof as listed below:

Attachment A, Approval of the Board of Aldermen

Attachment B, Approval and Funding Recommendation of the CPC

Attachment C, Certificate of Authority

Attachment D, State Tax Attestation

Attachment E, Insurance Requirements

Attachment F, Grantee's CPC Proposal Attachment G, Extension from Director of Planning and Development

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT in three sets to be effective when executed by His Honor the Mayor of the City of Newton.

**GRANTEE:**

Newton Historical Society, Inc.

By: Anne Larner  
Anne Larner

Date: December 9, 2011

Its: President

**CITY OF NEWTON:**

By: Cynthia Stone  
Director, Jackson Homestead

Date: Dec 9, 2011

I certify funds are available in the amount of \$2,710,000 in Account 21B603035797 <sup>1,440,000.00</sup>  
for this Agreement. <sub>21B60303-5810 1,2700.000.00</sub>

By: [Signature]  
Comptroller of Accounts

**Approved as to legal form and character**

By: [Signature]  
Assistant City Solicitor

**CONTRACT APPROVED**

By: [Signature] <sup>12/12/11</sup>  
Setti D. Warren, Mayor Date:

**Attachment A**  
**Approval of the Board of Aldermen**

CITY OF NEWTON

IN BOARD OF ALDERMEN

June 4, 2007

ORDERED:

That in accordance with the recommendations of the community Preservation Committee through its Chairman, Charles McMillan; the Board of Aldermen Committee on Community Preservation through its Chairman, Alderman Stephen M. Linsky; and the Finance Committee through its Chairman, Alderman Paul E. Coletti, the sum of One Million, Four Hundred Forty Seven Thousand, Three Hundred Dollars (\$1,447,300) be and is hereby appropriated and transferred from the Fund Balance – Historic Preservation, Community Preservation Historic Preservation Reserve, and the Community Preservation General Reserve, to be expended under the direction and control of the Director of the Newton History Museum (Jackson Homestead) for purposes of funding a grant to preserve, restore, and rehabilitate the house and site of the Durant Kenrick Homestead at 286 Waverley Avenue as described in the Community Preservation Committee Recommendation (dated March 28, 2007) and the application (submitted on October 3, 2006) and amended request (dated January 30, 2007).

FROM:

Fund Balance – Historic Preservation (21-3321B).....	\$ 21,797.00
Community Preservation Historic Preservation Reserve (21R10498-5790B).....	\$ 145,759.98
Community Preservation General Reserve (21R10498-5790).....	\$1,279,743.02
TOTAL.....	\$1,447,300.00

TO:

Historic Preservation Projects; Durant Kenrick Homestead (21B60303-5797).....	\$1,440,000.00
Law Dept.; Legal Fees; CPA projects (21B60303-5309) .....	\$ 7,300.00

Under Suspension of Rules  
Readings Waived and Approved  
22 yeas, 1 nay (Ald. Gentile), 1 absent (Ald. Lennon)

(SGD) DAVID A. OLSON  
City Clerk

(SGD) DAVID B. COHEN  
Mayor

\_\_\_\_\_  
Date

(SGD) PAUL E. COLETTI  
Chairman, Finance Committee

CITY OF NEWTON

IN BOARD OF ALDERMEN

August 13, 2007

ORDERED:

That, in accordance with the recommendations of the Community Preservation Committee, through its Chairman Charles McMillan; the Board of Aldermen Committee on Community Preservation, through its Chairman Alderman Stephen Linsky; and the Finance Committee through its Chairman Alderman Paul Coletti the sum of One Million Two Hundred and Seventy Thousand Dollars (\$1,270,000) is hereby appropriated and transferred from the Community Preservation Historic Preservation Reserve and the Community Preservation General Reserve, to be expended under the direction and control of the Executive Director of the Newton History Museum (Jackson Homestead) for purposes of funding a grant to preserve the historic landscape at assessors parcel id# 73009 0001 through a permanent preservation restriction as described in the Community Preservation Committee Recommendation (dated March 28, 2007) and the application (submitted on October 3, 2006) and amended request (dated January 30, 2007).

And be it further ORDERED:

That the Mayor and Historical Commission are hereby authorized to accept preservation restrictions, easements, and/or such other real estate interests in the properties at 286 Waverley Avenue (assessors parcel id# 73009 0017) and at assessors parcel id# 73009 0001, as the Mayor deems appropriate.

FROM:

Community Preservation Historic Preservation Reserve (21R1049-5790B).....	\$ 339,481
Community Preservation General Reserve (21R10498-5790).....	\$ 930,519
TOTAL:	<u>\$1,270,000</u>

TO: Historic Preservation Projects; Durant Kenrick Preservation Restriction  
(21B60303-5810).....\$1,270,000

Under Suspension of Rules

Readings Waived and Approved

17 yeas 4 nays (Aldermen Gentile, Harney, Lennon and Parker) 3 absent (Aldermen Lappin, Sangiolo and Schnipper)

(SGD) DAVID A. OLSON  
City Clerk

(SGD) DAVID B. COHEN  
Mayor

(SGD) PAUL E. COLETTI, Chairman  
Finance Committee



**Attachment B**  
**Funding Recommendation of the CPC**

City of Newton



David B. Cohen  
Mayor

City of Newton, Massachusetts  
**Community Preservation Committee**

CITY HALL  
1000 Commonwealth Avenue  
Newton, MA 02459  
Telephone (617) 796-1144  
TDD/TTY (617) 796-1089  
Fax (617) 796-1142



**MEMORANDUM**

TO: The Honorable Board of Aldermen  
FROM: Community Preservation Committee  
DATE: 28 March 2007, revised 12 June 2007

**RE: Recommendation for CPA Funding for the  
Durant Kenrick Homestead Project**

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**PROJECT TITLE:** Durant Kenrick Homestead, 286 Waverley Avenue

**CPA CATEGORY:** Historic Preservation

**CPA FUNDS:**

Requested: \$2.71M  
Recommended: \$1.27M for Phase II  
\$1.44M for Phase I + legal fee of \$7.3K (Docket Item #120-07)

**PROJECT DESCRIPTION**

The Newton History Museum and the Newton Historical Society jointly submitted a request for CPA funds in the amount of \$2.71M to support the full restoration and transformation of the Durant Kenrick Homestead, constructed in 1732, into a fully-functioning, actively-interpreted historic house museum. The total project budget of \$4.56M would include a \$300K endowment donated by the Durant Homestead Foundation, \$1.38M raised through community fundraising/capital campaign, \$100K from the Riley Foundation, and \$77.5K from previously-awarded CPA funds, in addition to the current CPA funds requested.

The CPA funds requested through the current application would provide seed funding which would enable the Historical Society to accept the generous offer from the Durant Kenrick Homestead to donate the Homestead, including the Georgian style house, its lot (26,354 s.f.), antique collections, the adjacent open lot (24,639 s.f.), and the \$300K endowment to the Newton Historical Society. The house, its lot, and adjacent open lot at the corner of Waverly Avenue and Kenrick Street are valued at \$2.51M<sup>1</sup> and the collections are valued at \$217.35K.<sup>2</sup>

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<sup>1</sup> Source: Eric Reenstierna Associates, "A Self-Contained Report of a Complete Appraisal of a Historic House, a Vacant Lot, and an Easement – The Durant-Kenrick Homestead, 286 Waverley Avenue and Kenrick Street, Newton, MA", July 25, 2006.

<sup>2</sup> "Collections Appraisal Report", no author, no date, located as an attachment to the "Application for Community Preservation Funding – Historic Preservation Restrictions and Seed Capital Funding to Ensure Full Accessibility for the Durant Kenrick Homestead", October 3, 2006.

The scope of the Historical Society's project includes an extensive restoration and rehabilitation of the property, an addition of a new ell and classroom space to replace the existing early-20<sup>th</sup> century ell, and the establishment of a \$2.58M endowment. The rehabilitation and ell addition, with the installation of an elevator and lift, would make both floors of the museum and grounds accessible, which may make this property the first historic house museum in Massachusetts to achieve this level of accessibility.

In addition to the capital improvements, this project would support the joint vision of the Historical Society and the Newton History Museum to collaboratively create museum programming that would actively interpret the cultural, social, and physical history of the house, grounds, and surrounding neighborhood.

### **BRIEF HISTORY OF PROPERTY**

The Homestead was constructed in 1732 by the Durant Family as a gentleman's farmhouse and originally sat on approximately 91 acres of land, which stretched from current-day Newton into the Brighton neighborhood of Boston. The Durant Family is significant in Newton's history, particularly in regard to civic involvement both preceding and during the Revolutionary War period.

*As tensions with Britain grew in the early 1770s, Edward Durant was selected to serve on every committee that drafted the town's responses to political emergencies in the province. In January of 1772, Durant led a select committee of his fellow townsmen -- Charles Pelham, William Phillips, Noah Hyde, and Durant's business partner Alexander Shepard -- in preparing Newton's response to "the present unhappy situation this country is reduced to, by some late attacks made on our constitutional rights and privileges." In their written report, presented to and approved by the town, Durant's committee resolved "that no good man can be silent and inactive in the cause of liberty at this alarming period. . . ."*<sup>3</sup>

In addition to Edward Durant's civic leadership in this period, as described above, three of Durant's sons participated in Battles of Lexington and Concord on April 19, 1775.

In 1790, the Durant Family sold the Homestead to the Kenrick Family who created and operated an extensive nursery on the property until 1850.

*The landscape history at the Durant-Kenrick House is a long and important story . . . Its greatest significance, however, is the story of its nursery . . . Through this nursery came some of the most popular fruit on the market today . . . At the forefront of horticultural interests, William Kenrick rode the wave of the mulberry mania and crashed mightily with the best of them. Today the remains of the nursery and their horticultural offerings tower over the residential subdivisions that swept through the property . . . Aging copper beeches, oaks, and other ornamentals still stand testament to the Kenrick Nursery . . . Today barely two acres remain with the Durant Kenrick house, yet this small parcel is linked to the larger neighborhood where the larger landscape themes are just as evident.*<sup>4</sup>

The house is one of the earliest intact historic homes in Newton. It is individually listed on the National Register of Historic Places and is a Local Landmark. The house not only boasts intact historic features on the exterior, but also has an intact 18<sup>th</sup> century interior with a museum-quality collection of antique furniture, household articles, and documents.

*The plan of the building approached the Georgian ideal, just coming into fashion, of a two-room deep house (known as a double pile plan), with chimneys between the front and rear rooms . . . and a central hall with staircase that gave access to all rooms separately. . . The house is among the earliest known examples in the region of a center hall plan and of a gambrel roof on a wooden house. The ample room size and high ceilings further attest to the sophistication of the structure for the time.*<sup>5</sup>

<sup>3</sup> Fuhrer, Mary, "Edward and Mary Durant Family", 2006.

<sup>4</sup> Brockway, Lucinda A., "Brief Landscape History/Site and Landscape Analysis, Durant-Kenrick House and Property.", August 7, 2006.

<sup>5</sup> Grady, Anne, "Durant-Kenrick House: Architectural Evaluation.", no date.

## **BACKGROUND**

In early 2005, the Durant Homestead Foundation considered selling the adjacent open lot due to a dwindling endowment, rising costs, and limited capacity to open the property to the public. However, through active negotiations with the Newton Historical Society and Newton History Museum, the Foundation offered to donate the property and an endowment to the Newton Historical Society. The Foundation agreed to postpone consideration of the sale of the open lot while the Historical Society conducted a needs assessment, created a capital improvement plan, and raised funds.

After completing the CPA-funded needs assessment and creating a program for renovation and restoration, the Historical Society and Newton History Museum are now in the process of fundraising for both the capital improvements and the endowment.

## **FINDINGS OF STATUTORY ELIGIBILITY**

The CPA funds for Phase II are being requested, as follows: \$1.27M to purchase a preservation restriction on the adjacent open lot at the corner of Waverly Avenue and Kenrick Street.

### **Capital Improvements to House and Site**

As outlined by the architects, McGinley Kalsow & Associates, the scope of work for the capital improvements include **preservation** and **restoration** of the underlying structure, roof, windows, and interior finishes. The scope also includes **rehabilitation** to the house and site necessary to make the facility accessible in accordance with the Americans with Disabilities Act and the Massachusetts Architectural Access Board regulations and compliant with the Massachusetts State Building code. In addition to facilitating code compliance, the rehabilitation work is also necessary to make the facility fully functioning for its intended use as an historic house museum.

MGL c.44B allows the use of CPA funds for the acquisition, preservation, restoration, and rehabilitation of historic resources. The property clearly meets the Act's definition of historic resource because it is individually listed on the National Register of Historic Places, thus also listed on the State Register. Its historic significance is also recognized by the City of Newton through its designation as one of the City's first Local Landmarks in 1993.

In addition to the preservation and restoration elements of the scope of work, the rehabilitation elements also comply with the statute. "Rehabilitation" is defined in Section 2 of MGL c.44B as follows (emphasis added):

*... the remodeling, reconstruction and making of extraordinary repairs to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended use, including but not limited to improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes. With respect to historic resources, rehabilitation shall have the additional meaning of work to comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68.*

In regard to compliance of the work with the Secretary of the Interior's Standards for Rehabilitation, no analysis has been put forth to date. The CPC would rely on a qualified professional to confirm compliance in this regard. This issue has been addressed in the CPC's recommended terms of funding.

### **Preservation Restriction on Open Lot**

Purchasing the preservation restriction is also in compliance with MGL c.44B in that the Act allows for the acquisition of real property and real property interest for a CPA purpose, in this case the purpose of historic preservation. The subject lot, which is adjacent to the house lot, meets the statutory definition of historic resource in that it has been determined by the local historic preservation commission to be significant in the history of the city, through the letter from John S. Rodman, chair of the Newton Historical Commission, dated 9/7/2006 (see application, second section "Community Support").

The Act defines "acquire" as ". . . obtain by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. . .". Furthermore, the Act defines "real property interest" as ". . . a present or future legal or equitable interest in or to real property, including easements and restrictions,"

Section 12 (a) of the Act states:

*A real property interest that is purchased with monies from the Community Preservation Fund shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The deed restriction shall run with the land and shall be enforceable by the city or town or the commonwealth.*

The preservation restriction would permanently protect this historic landscape from any future development, would be held by the City, and would require approval by the Newton Historic Commission for future modifications to the site.

### **FINDINGS OF COMPLIANCE WITH NEWTON'S CPA GOALS**

The Durant Kenrick Homestead project would achieve several of Newton's overarching and historic preservation CPA goals, as described in more detail to follow.

#### **Overarching Goals**

The project achieves all but one of the overarching CPA goals as listed in the Community Preservation Plan FY07. The one goal the project does not achieve is serving more than one CPA category, as the project is only for historic preservation. The overarching goals the project will achieve are described below.

#### **Contribute to the preservation of Newton's unique character, boost the vitality of the community, and enhance the quality of life for its residents.**

The preservation of this historic site and house not only contributes to the character of the immediate neighborhood, but to the community as a whole as one of the oldest antique houses existing in Newton today on grounds that provide a glimpse of its historic context – a house surrounded by a 90+ acre nursery – so divergent from what the neighborhood has become.

In addition, the proposed programming to actively interpret the history of the house, property, and neighborhood; adult workshops on historic house and landscape restoration; and extensive engagement of Newton public school students as part of their standard curriculum provide valuable benefits to the community.

#### **Demonstrate the highest cost/benefit value relative to other proposals.**

FY07 proposals for CPA funding range from \$8,030 (Bronze Door Restoration) to \$2.71M for the Durant Kenrick Homestead project. Although this project is the most expensive proposal before the CPC in this funding round, the project's aspirations and merits far surpass the typical CPA project. This project would create a new community resource that, with a public use easement as a condition of funding, would be permanently open to the public no less than 100 days annually. The Durant Kenrick Homestead provides an extraordinarily rare opportunity to preserve and interpret Newton's colonial past like no other resource in Newton.

**Leverage other private and public funds.**

The ambitious budget being proposed by the applicants projects its ability to acquire over \$1.37M through community fundraising/capital campaign. The project has already secured commitments for \$300K from the Durant Homestead Foundation and \$100K from the Riley Foundation. The Historical Society has already hired a professional fundraiser to coordinate an extensive capital campaign. The capital campaign is projected to cost \$148K.

Please note that one of the financing scenarios that was originally proposed by the applicants was a "community assessment" on neighborhood properties, based on the golf course precedent. This scenario is no longer part of the proposal due to the various complications involved in enacting such an assessment and the fact that the assessment could not be levied in perpetuity.

**Preserve a resource or opportunity that would otherwise be lost.**

The opportunity to secure the preservation of the house, its lot, and the adjacent land as a fully-functioning and actively-interpreted historic house museum would be lost if CPA funding is not granted as "the first dollars in". The CPA funding would be used to not only leverage the substantial additional funds required for this project, but also to provide firm ground for the project so that the Historical Society can accept the generous donation of the house, land, and collections from the Durant Homestead Foundation.

**Show that a project is the most reasonable available option to achieve the objective.**

Through the initial \$77.5K grant from CPA, the applicants hired a team of experts in the field of historic preservation to assess the property's needs and develop a restoration/rehabilitation plan for creation of an historic house museum. In addition, the professional team was lead by a team of volunteers who are noteworthy in their own right for their expertise in historic preservation and museum sciences including: Jane O'Hern, Paul Eldrenkamp, Larry Bauer, Russel Feldman, Jay Walter, John Rodman, Susan Abele, and Cindy Stone. It is upon this plan that the applicants based its thorough and thoughtful proposal.

**Demonstrate strong community support.**

The application included numerous letters stating strong support for the proposal. The letters were submitted from the following organizations/individuals: Durant-Kenrick Neighborhood Steering Committee and Friends of Durant Kenrick, Chestnut Hill Association, Marietta Marchitelli, Board Member of the Newton Historical Society, Newton Corner Neighborhood Association, Newton Historical Commission, abutters Carl and Suzanne Cohen, Farlow Hill Neighborhood Association, and the Newton School Committee. In addition, the League of Women Voters submitted an analysis generally supporting the project, stating that "This seems to be the kind of one-time opportunity for which the Community Preservation Act was designed." The League qualifies this support with a number of specific questions and comments regarding the proposed use of the building as a house museum and the financing scenarios.

**Serve to equitably distribute CPA funds throughout the City.**

Out of the more than 50 projects that have been funded with CPA funds in Newton, only three projects are located in near vicinity to the neighborhood of the Durant Kenrick Homestead: Newton Corner Library, Farlow/Chaffin Park, and East Parish Burying Ground. The FY07 applications also include projects in West Newton, Newton Centre, as well as citywide projects.

**Historic Preservation Goals**

The Durant Kenrick Homestead proposal achieve four out of the six historic preservation goals set forth in the Community Preservation Plan. The two goals it does not meet are either not applicable (as in the case of goal 1 – preserving a municipally owned resource) or not available (as in the case of

goal 6 – address goals raised in the Citywide Preservation Plan). The four goals the project will achieve are described in more detail below.

**Support the preservation and restoration of privately owned properties that are on the National/State historic registers, or that have been landmarked. . .**

This project would clearly preserve and restore a privately owned property that is both on the National and State historic registers and is a local landmark.

**Encourage protection of resources that retain their historical integrity, in terms of location, context, design, style, workmanship, and materials.**

As the "*Architectural/Historical Evaluation of House*" by Anne Grady, Architectural Historian, makes clear, the historic fabric from the Colonial era, as well as changes from subsequent historic eras are intact and retain historical integrity. In addition, the house retains historical integrity in regard to its location (being located in its original siting) and its historic context – that of being surrounded by a large nursery - is preserved to the greatest extent possible at this time, with the preservation of the adjoining open lot.

**Enable access to the resource by the public, including access by disabled residents.**

The applicant's plans for opening the resource to the public as a fully-functioning, actively-interpreted house museum, plus the rehabilitation plans to provide handicap access to both main levels of the house and the grounds clearly achieve this goal.

**Support the objectives and priorities of the local historic preservation organizations, such as the Newton Historical Society, the Newton History Museum . . .**

The applicants for this project are the Newton Historical Society and the Newton History Museum. In addition, the Newton Historic Commission has expressed strong support for the project and stated that it is a priority.

**RECOMMENDATION OF THE COMMUNITY PRESERVATION COMMITTEE**

The Community Preservation Committee is pleased to strongly recommend funding the Durant Kenrick Homestead project. The CPC has carefully and thoroughly reviewed and evaluated this application for CPA eligibility under MGL c.44B and for consistency with Newton's CPA goals. The CPC held a public hearing in November 2006 and deliberated over the course of four working sessions held from November through March.

With this docket item the CPC intends to recommend \$1.27M in return for a preservation restriction on the adjacent open lot at the corner of Waverly Avenue and Kenrick Street. This recommendation is framed as a "challenge grant", as the release of funding would be tied, through the agreement, to matching funds obtained by the Newton Historical Society through an extensive capital campaign.

Therefore, the Community Preservation Committee voted unanimously on March 28, 2007 to recommend phase Ii funding for the Durant Kenrick Homestead preservation project as a grant in the amount of \$1.27M.

The CPC further recommends that the funds be appropriated under the control of the Newton History Museum (Jackson Homestead) and that the following nine (9) terms be incorporated in the agreement between the City and the Newton Historical Society:

1. That the funds be used for the preservation, restoration, and rehabilitation scope as described by McGinley Kalsow & Associates in "*The Durant Kenrick Homestead: A Program for Renovation and Restoration by the Newton Historical Society.*"

2. That after CPA funds have been approved for appropriation by the Board of Aldermen for this project, the grant recipient be required to submit a project status report to the Community Preservation Committee, or its designee, on a quarterly basis until project completion.
3. That prior to release of any CPA funds, the final scope of work be certified by a qualified professional, at the expense of the grant recipient, for compliance with *The Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68*. A written record of the certification be submitted to the Community Preservation Committee, or its designee, prior to release of CPA funds.
4. That all zoning relief and waivers from the Massachusetts State Building Code and the Massachusetts Architectural Access Board be received. Records of such relief and waivers be submitted to the Community Preservation Committee, or its designee.
5. That prior to release of any CPA funds, the property at 286 Waverley Avenue be bound by a preservation restriction and/or instruments as follows:
  - a. Requiring that the property be open to the public on a regular basis in perpetuity.
  - b. Prohibiting modifications to the interior of the historic house (not including new construction) except upon approval by the Newton Historic Commission, or its designee, in perpetuity.
  - c. Prohibiting modifications to the site, including the entire exterior of the historic house and any new construction except upon approval by the Newton Historic Commission, or its designee, in perpetuity.<sup>6</sup>
6. That prior to the release of any CPA funds, the grant recipient secure funding in an amount not less than \$635,000 of \$635,000 for phase I, and \$265,000 for phase II.<sup>7</sup>
7. That the project commence no later than two years after appropriation of CPA funds unless the grant recipient receives an extension of time from the Director of Planning and Community Development.
8. That the project be complete no later than 4 years after appropriation of CPA funds unless the grant recipient receives an extension of time from the Director of Planning and Community Development.
9. That promptly after substantial completion of project, the grant recipient submits to the Community Preservation Committee a final development project cost statement. Any portion of the grant not used for the purposes states herein be returned to the Newton Community Preservation Fund.

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<sup>6</sup>Note: The exterior preservation restriction is intended to strengthen the property's existing protections under the Local Landmark Ordinance, which only protects historic elements that are visible from a public way.

<sup>7</sup>For the entire project, including both phases I and II, funds to be raised from the community before CPA funds are released total \$900,000.



**Attachment C**  
**Certificate of Vote**

**Attachment C  
Certificate of Authority**

1. I hereby certify that I am the Clerk/Secretary of:

The Newton Historical Society, Inc. ("the Society"); and that

2. Anne Larner is the duly elected

President of said corporation; and that

3. on May 11, 2011 at a duly authorized meeting of the Board of

Directors of said corporation, at which all the Directors were present or waived notice, it was voted:

That the Society enter into the Community Preservation Funding Agreement ("Funding Agreement") between the Society and the City of Newton, and that Anne Larner, as President of the Society, be and hereby is authorized in the name of and on behalf of the Society to execute and deliver such Funding Agreement, substantially in the form presented to the Board, with such changes therein as may be approved by the President, the execution by the President of said Funding Agreement being conclusive evidence of her approval thereof and her authority hereunder.

4. The above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below,

ATTEST:

Brooke K Lipsitt  
(Signature of Clerk or Secretary)

NAME:

Brooke K. Lipsitt

DATE:

December 7, 2011

**Attachment D  
State Tax Attestation**

Pursuant to Massachusetts General Laws Chapter 62C Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all Massachusetts tax returns and paid all Massachusetts taxes required under law. \*

Ann M. Lerner  
Signature

Newton Historical Society, Inc  
Name of Grantee

\_\_\_\_\_  
Federal Identification Number  
or Social Security Number

December 9, 2011  
Date

\_\_\_\_\_  
\*Legislation enacted by the Commonwealth of Massachusetts, effective July 1, 1983, requires that the above Attestation be signed by all contractors doing business with municipalities.

**Attachment E**

**Insurance**

**1. General.** Grantee, and contractors and subcontractors engaged by Grantee, its agents or designees to perform the site work and construction work, shall, at all times, be required to maintain insurance coverage consistent with the character of the Project. Grantee agrees to keep copies of each policy and certificate on file, and to provide such copies to the City upon request.

The following coverage will be required at the minimum amounts indicated below:

<b>Workmen's Compensation Employer's Liability</b>	<b>Statutory Coverage \$100,000 Coverage B</b>
<b>Comprehensive General Liability Bodily Injury</b>	<b>\$500,000 each occurrence \$1,000,000 aggregate</b>
<b>Property Damage</b>	<b>\$500,000 each occurrence \$1,000,000 aggregate</b>

**NOTE: The comprehensive General Liability policy must included coverage for:**

- Independent contractor's liability
- Products and completed operations liability for a period of not less than one year
- Broad form property damage liability
- Contractual liability

**2. Property Insurance.**

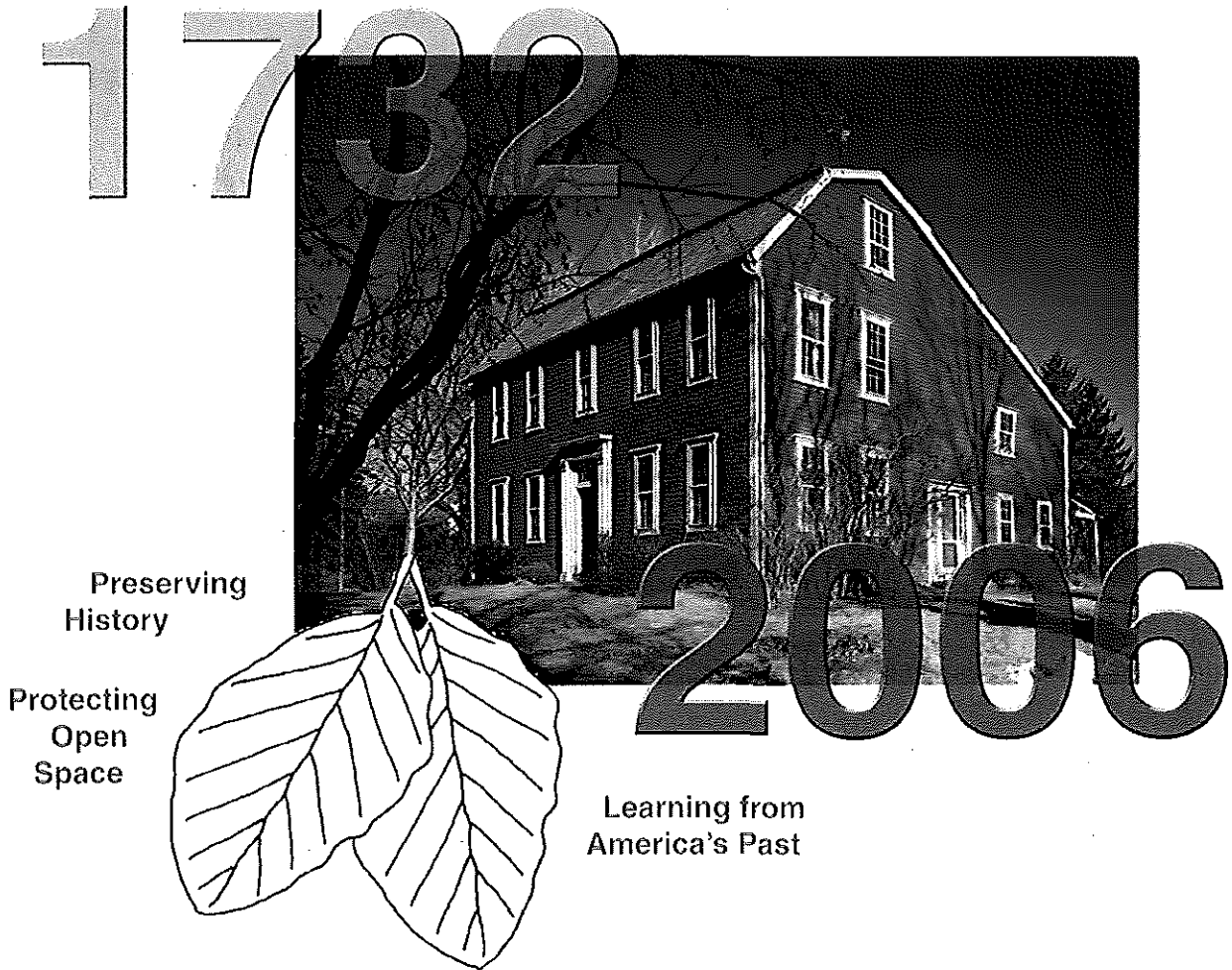
a. The Grantee shall be required to maintain such insurance as may be required by the Preservation Restriction Agreement. In the event of distribution of hazard insurance proceeds in lieu of restoration or repair following loss to the structures, an amount of the proceeds not to exceed the amount of the grant of \$1,440,000 paid to Grantee by the City hereunder, together with any future City funds provided for the preservation, restoration, and rehabilitation of the Property under the terms of this Agreement and any amendments thereto are hereby assigned and shall be paid to the City.

b. **Restoration or Repair of Property.** In the event of fire, hazard or other similar occurrence resulting in the partial or total loss of the Property, Grantee shall restore the Property unless Grantee and the City determine that it is impossible or impractical to do so.

**Attachment F**  
**Grantee's CPC Proposal**

Newton, Massachusetts  
Application for Community Preservation Funding

October 3, 2006



Historic Preservation Restrictions and  
Seed Capital Funding to Ensure Full Accessibility for  
The Durant Kenrick Homestead

A Joint Proposal by  
The Newton History Museum of the City of Newton and Newton Historical Society, Inc.



**NEWTON HISTORY MUSEUM AND  
NEWTON HISTORICAL SOCIETY**

 at The Jackson Homestead

David B. Cohen, Mayor  
Cynthia Stone, Director



**Museum Trustees**

Harry O. Lohr, Jr.  
*Chair*  
Russel Feldman  
Thelma Fleishman  
Lillie B. Jefferson  
John J. Long  
John R. Morganti  
Jane O'Hern  
Carol Ann Shea  
Duscha S. Weisskopf

**Newton Historical  
Society  
Board of Directors**

Peter Dimond  
*President*  
Marietta Marchitelli  
*Vice President*  
Russell Lightman  
*Treasurer*  
Keith Dennis *Asst.  
Treasurer*  
Beverly Hume *Clerk*

Scott Aquilina  
Melvyn Berger  
Philip Brown  
James Bryant  
Lucy Caldwell-Stair  
Susan DeMarco  
Sheila Donahue  
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Kristen Grannan  
Karen Haywood  
Paula Jacoff  
Treffle E. LaFleche  
Anne Larner  
Brooke K. Lipsitt  
Stephen Logowitz  
John Rodman  
Lynne M. Sullivan  
Jay C. Walter  
Doris H. White Soares  
Judith Wittenberg

**Emeritus**

Allen J. Hinand  
Wilson F. Pollock, Jr.  
Donald J. Stanton  
John A. Winslow  
Stuart A. Yoffe

October 3, 2006

Community Preservation Committee  
Planning and Development Department  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Community Preservation Committee:

The Newton Historical Society in conjunction with the Newton History Museum is pleased to submit this request for funding for historic preservation restrictions and seed capital funding for the Durant Kenrick Homestead.

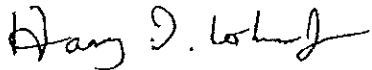
Over the past year, members of the Board of the Society, Trustees of the Museum, and Museum staff have worked to develop plans, and assess the financial requirements associated with accepting the generous gift of the Durant Homestead and its adjacent lot. This work has been supported by the initial planning funding granted to us by your Committee last winter.

Our application is the result of those efforts. We look forward to working with you and appreciate your willingness to consider our request.

Sincerely,



Peter Dimond  
President, Newton Historical Society



Harry Lohr  
Chair, Newton History Museum Trustees

**Application**



City of Newton



David B. Cohen  
Mayor

## APPLICATION FOR COMMUNITY PRESERVATION FUNDING

### Form CPA-1

Submit to Jennifer Goldson, CPA Program Manager  
Newton Planning and Development Department  
1000 Commonwealth Avenue, Newton, MA 02459  
jgoldson@newtonma.gov  
617-796-1131

Name of Applicant<sup>3</sup> Newton Historical Society

Name of Co-Applicant, if applicable Newton History Museum

Contact Name Peter Dimond, President, Newton Historical Society

Mailing Address 527 Washington Street City Newton State MA Zip 02458

Daytime Phone 617.332.4063 Email peterdimond@comcast.net

Name of Proposal Historic Preservation Restrictions and Seed Capital Funding to Ensure Full Accessibility for the Durant Kenrick Homestead

Address of Proposal (or assessor's parcel id) 286 Waverley Avenue, Newton Corner

CPA Category (circle all that apply): Open space Historic preservation Recreation Community housing

CPA Funding Requested \$2,710,000 Total Cost of Proposed Project \$3,600,000-\$4,560,000

**PROJECT DESCRIPTION:** Attach answers to the following questions. Applications will be returned as incomplete if all requested information is not provided. Include supporting materials as necessary.

1. **Goals:** What are the goals of the proposed project?
2. **Community Need:** Why is this project needed? Does it address needs identified in existing City plans?
3. **Community Support:** What is the nature and level of support for this project? Include letters of support and any petitions.
4. **Timeline:** What is the schedule for project implementation, including a timeline for all critical milestones?
5. **Credentials:** How will the experience of the applicant contribute to the success of this project?
6. **Success Factors:** How will the success of this project will be measured? Be as specific as possible.
7. **Budget:** What is the total budget for the project and how will CPA funds be spent? All items of expenditure must be clearly identified. Distinguish between hard and soft costs and contingencies. (NOTE: CPA funds may NOT be used for maintenance.)
8. **Other Funding:** What additional funding sources are available, committed, or under consideration? Include commitment letters, if available, and describe any other attempts to secure funding for this project.
9. **Maintenance:** If ongoing maintenance is required for your project, how will it be funded?

**ADDITIONAL INFORMATION:** Provide the following additional information, as applicable.

10. Documentation that you have control over the site, such as Purchase and Sale Agreement, option, or deed.

<sup>3</sup> If the proposal is on City-owned land, either the applicant or the co-applicant must be the City Board, Commission, or Department that has custody of the land.

11. For projects that include construction or rehabilitation, include the existing and proposed site plan, floor plans, elevations, and any other drawings as necessary to visually describe the proposal.
12. Evidence that the project is in compliance with the zoning ordinance, Architectural Access Board Regulations, or any other laws or regulations. Or, if zoning relief is required, specify what relief is needed and when an application will be made to the City for zoning review.
13. Evidence that the appropriate City Boards and Commissions have approved the project (for example, proposed new uses on Parks & Recreation land requires approval from the Parks and Recreation Commission)
14. Evidence that the proposed site is free of hazardous materials or that there is a plan for remediation in place.
15. Evidence that appropriate professional standards will be followed if construction, restoration or rehabilitation is proposed.
16. Information indicating how this project can be used to achieve additional community benefits.

NOTE: If the requested funds are for a real estate acquisition, an independent appraisal will be required which the applicant will be required to fund initially. No funding decisions will be made without an independent appraisal. Contact Jennifer Goldson, CPA Program Manager, at 617-796-1131 or [jgoldson@ci.newton.ma.us](mailto:jgoldson@ci.newton.ma.us) to arrange for an independent appraisal.

Refer to the City web site ([ci.newton.ma.us/Planning/CPA](http://ci.newton.ma.us/Planning/CPA)) for further information.  
Form CPA-1 (Revised 9/11/03)

Newton Historical Society, Inc./City of Newton through the Newton History Museum  
**Application for Community Preservation Funding**  
October 2, 2006

**1. Project Goals**

*A. Historic Importance of Property*

The Durant Kenrick Homestead, built in 1732, is one of only a few pre-Revolutionary houses remaining in Newton. The interior and exterior of the house are in near original condition. It has been maintained in the period, is fully furnished with period furniture and other collections, and is surrounded by specimen trees that were planted by one of the first horticulturists in the country. Protecting the Homestead provides a rare opportunity to preserve the past for the benefit of future generations.

The Durant Homestead Foundation, owners of the Durant Kenrick Homestead (at 286 Waverley Avenue), faced with a dwindling endowment, rising costs, and a severely constrained capacity to open the Homestead to visitors approached the Newton Historical Society in September 2005 about taking over the Foundation's property, collection of furnishings, adjoining open lot, and endowment.

The Foundation and the Historical Society share a goal to preserve and protect the Homestead and its adjoining property, create educational opportunities for the community, and provide a high level of stewardship that will enable the people of Newton to enjoy the Homestead for generations to come. The Durant Kenrick Homestead would become an extension of the same educational programming now provided by the Newton Historical Society at the Newton History Museum at the Jackson Homestead.

In February 2006, the Historical Society joined with the City of Newton through the Newton History Museum to request \$77,500 from the CPA to complete a needs assessment and capital improvement plan for the Durant Kenrick Homestead. This application reports on that work, and requests funding from the CPA for an important component of the financial foundation of successful operation of the Homestead.

*B. Funding Requested*

This Application requests CPA funding for purchase by the City of Newton of the following Historic Preservation Restrictions, each to be administered by the Newton Historical Commission on behalf of the City, and to contain such specific provisions as may be found mutually acceptable by and among the Newton Historical Society, the CPC, the City Law Department and the Newton Historical Commission (NHC):

- An Historic Preservation Restriction covering the Vacant Lot prohibiting development of the lot, protecting the open space and preserving the

landscape, while permitting the NHS to utilize the parcel in conjunction with programs at the site, such restriction to parallel the City's Landmark Ordinance.

- An Historic Preservation Restriction covering the interior of the main part of the House (i.e. the 8 rooms without the ell), along the lines of those imposed by Historic New England when de-accessioning historically significant houses.
- Purchase of a public use covenant, which the Newton Historical Society will record with the deed to provide public access to the property a minimum of 100 days per year.
- Seed capital funding, specifically to ensure full accessibility of the renovated museum, to be matched by funding from other sources for additional capital improvements.

## 2. Community Need

As a department of the City of Newton, The Newton History Museum has developed a strategic plan for community outreach and development. Future work on the Durant site is consistent with this plan.

The acquisition of the Durant Kenrick Homestead and its adjacent lot would preserve existing open space, and provide an ideal setting for a museum that interprets 18<sup>th</sup> century Newton through public tours, student educational programs, and public programs for adults, families and children. The Newton school system is in the midst of developing a new curriculum focusing on local history in the context of American history. The Durant family and its role in the events leading up to the American Revolution will be part of this curriculum. The Durant-Kenrick homestead will be ideal for supporting these studies in the same way that the 1809 Jackson Homestead has supported study of the 19<sup>th</sup> century and abolition movement.

In addition to colonial life and the American Revolution, our programming will address historic house and landscape stewardship, supporting the needs of owners of historic homes in Newton. We plan to have a community workshop adjacent to the historic house so that Newton residents can learn in a hands-on way to maintain their historic homes and gardens.

Finally, we feel this property will be a model of accessibility for historic homes from two perspectives. The first is that we plan to make the second floor of the house accessible to handicapped visitors through inclusion of a LULA and lift. Typically handicapped people can visit only the first floor of a historic house so we will be setting a new standard of handicapped accessibility for historic residences. Secondly, our interpretive methods for public tours will be state of the art engaging the visitor in a new creative way. We plan to develop an interactive audio program that will feature the voices of individuals who lived in the house over time (played by actors,

of course) dealing with issues contemporary to their lives. This will bring the house and grounds to life for a diverse audience including the I-Pod generation.

This fall the interpretive staff of the Newton History Society and Museum will convene a meeting of our constituents to further develop our plans for the site and ensure that they meet community needs.

### 3. Community Support

Support for this application is broad-based and documented in letters of support attached from the following groups and organizations.

### 4. Timeline

In parallel with the Community Preservation Committee's review of this application, the Newton Historical Society will launch a capital campaign to raise the remaining funds to operate and renovate the museum. Already work with the community has begun to generate donations and consider the possibility of an assessment on surrounding properties to provide annual support for the operation of the museum. This process will likely take the better part of a year.

Once funding has been secured, and only if adequate capital and operating funds are available, the renovations will begin according to the following schedule:

	Months																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Site Plan Preparation and Review	■	■	■	■																
Architectural Design	■	■	■	■	■	■	■													
Regulatory Reviews Architectural Access Board Local Commissions	■	■	■	■	■	■														
Bidding of Construction Contract								■												
Construction									■	■	■	■	■	■	■	■	■	■	■	■
Punch List and Certificate of Occupancy																				■

## **5. Credentials**

The Newton Historical Society, Inc. and the City of Newton have worked together for decades in the operation, maintenance, and promotion of the Newton History Museum at the Jackson Homestead. The Newton History Museum is a joint effort of the City of Newton and the Newton Historical Society, a private, non-profit 501 (c) 3 organization that is made up of a very active 35-Member Board of Directors and nearly 500 members. The City maintains the Museum building and provides support for the director, archival, and education staff, while the Historical Society provides the funding for the Museum's programs---including ongoing exhibits, nearly 140 presentations each year to area school children, programs for adults, the Newton House Tour, an historic marker program, neighborhood walking tours, and more. The CPC has previously funded the Newton History Museum, in conjunction with the Newton Historical Society, to oversee the restoration of Newton's three historic burial grounds, the final resting places of many of Newton's earliest residents.

## **6. Success Factors**

The success of this project will be measured by the Newton Historical Society's ability to raise additional funds to complete the capital renovations and provide operating funding for the Durant Kenrick Homestead.

## **7. Budget**

This request seeks Community Preservation Funds in the amount of \$2,710,000. It is anticipated that the funds will be appropriated to the Jackson Homestead, a department of the City of Newton. The Director of the Newton History Museum at the Jackson Homestead will enter into a grant agreement with the Newton Historical Society, Inc. who will oversee the construction improvements and operation of the Durant Kenrick Homestead.

The Financing section of this application provides:

- Two funding scenarios for the capital improvements and operation of the Durant Kenrick Homestead, one supported by an annual community assessment, and one relying upon fundraising and grants.
- A detailed capital budget and construction budget.
- A ten-year operating budget forecast.

## **8. Other Funding**

The gift of the house and its land, and the adjacent open lot, has been appraised at \$2,510,000. Additionally, collections worth \$217,350, and an endowment of approximately \$300,000 are offered for donation, for a total value of over \$3 million.

As described above, the Newton Historical Society is working with the community on fundraising. We are also in the process of assessing grant funding sources and has identified the following list of potential funders:

#### **Foundations and Corporations**

1772 Foundation  
Bank of America Charitable Foundation  
Benjamin Moore & Co.  
Boston Foundation  
Fidelity Foundation  
Jane's Trust  
Lynch Foundation  
New Balance Foundation  
Amelia Peabody Charitable Fund  
Mabel Louise Riley Foundation  
John and Naomi Tomfohrde Foundation  
TD Banknorth  
Village Bank

#### **State and Federal Grant Programs**

Massachusetts Cultural Facilities Fund  
Massachusetts Preservation Projects Fund (MPPF)  
National Endowment for the Humanities: Challenge Grant

#### **9. Maintenance**

Maintenance costs for the renovated facility are included in the underlying operating budget projections for the Homestead.

#### **10. Documentation of Control Over Site**

Original letters to and from the Durant Kenrick Foundation were included in our February 2006 Community Preservation funding application, and are included in this application for reference. We are currently in the process of formalizing those letters of intent with the draft Option Agreement included in this proposal.

#### **11. Site Plan**

The landscape history at the Durant-Kenrick House is a long and important story. It is important for its individual details that record its part in the transformation of Newton from a rural village near Boston to a major metropolitan suburb. Its greatest significance, however, is the story of its nursery from 1790-1850 (and later) that linked this land to the most learned Boston horticulturists and to

horticulturists and hybridizers in major European centers. William Kenrick propagated the fruits of his horticultural connections with Belgian pear hybridizer Dr. Van Mons and with Thomas Andrew Knight, President of the Royal Horticultural Society. Always at the forefront of horticultural trends, William Kenrick heavily promoted the mulberry/silk industry when the concept was in its infancy. He invested heavily in its futures, and bore the pain of its financial ruin, losing much of his own nursery acreage in the process.

Today some of the plant material featured in the Kenrick catalogs remains, in both first and second-generation plantings, surrounding the Durant-Kenrick Homestead. The most magnificent plant in the collection is the huge Copper Beech near the corner of Kenrick and Waverley Avenues. Just as magnificent, are the surrounding trees, which shelter the beech: Norway Spruce, White Oak, Red Oak – all equal in size and significance to the beech itself. Closer to the house, seedlings of former nursery stock mix with other intentional plantings, both old and new, as testament to the rich horticultural history that once surrounded this home. Here seedlings of European Beech, Mulberry, Hickory, Sycamore Maple, Sugar Maple, Pears, Tulip Trees, Goldenchain Tree, Elm, and others mix with larger Norway Maples, Crabapples and Flowering Dogwoods to create a tapestry of horticultural history.

The proposed landscape plan seeks to stabilize the existing landscape and its features, and to provide universal access to the house and grounds. On-site parking will be provided for four spaces as shown on the plan including one handicapped space. No existing trees will be removed except for a small contemporary crab apple that does not have historical significance. This will be removed to accommodate the proposed classroom/workshop and its adjacent terrace. A pedestrian path leads from the bus unloading area on Kenrick Street up to the Kenrick house. A large outdoor terrace offers the opportunity for outdoor gathering and classroom space for visitors and school programs. Areas for larger events and for demonstration gardens have been identified on the plan, but their details have not been fully defined. As the Historical Society's educational program becomes clear, then the details of these areas can be realized.

## 12. Zoning Compliance

The project will require a Special Permit from the Board of Aldermen for relief from the following zoning ordinances:

- Special Permit for museum / cultural use in a single residence district
- Relief from the required number of on-site parking stalls
- Relief from the required side lot setback requirement

The project endeavors to provide architectural access to the disabled, including access to the site, 1<sup>st</sup> and 2<sup>nd</sup> floors, and new accessible toilet facilities. The project



will require review and a variance by the Architectural Access Board to provide an alternative means of accessible route in the building, since the existing historic doors in the building do not meet the requirement for minimal width.

### **13. City Boards**

Work has begun to coordinate planning with City of Newton departments with jurisdiction over the project.

### **14. Hazardous Material**

Not applicable.

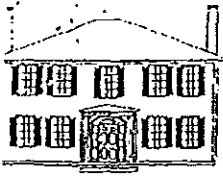
### **15. Appropriate Professional Standards**

The site plan for review for Special Permit will be prepared by a Massachusetts registered professional engineer. The architectural design of the historic building restoration and the proposed addition will be conducted by a Massachusetts registered architect, with qualifying experience in the restoration of historic buildings. The design and construction will comply with the U. S. Secretary of the Interior's Standards for the Treatment of Historic Properties. Construction contractors will be required to qualify with experience in the restoration of historic buildings


### **16. Additional Community Benefits**

The Newton Historical Society and the City of Newton believe that the restoration and effective operation of the Durant Kenrick Homestead will raise the visibility of the asset to the community, and draw more members and visitors to the Jackson Homestead. As a fully accessible facility, it will be a unique regional asset for all to experience and understand history. The preservation of the open space in the adjacent lot will be a valuable community asset for all.

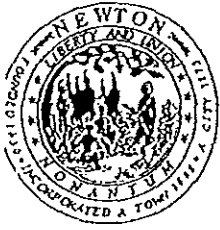
## **Letters of Agreement**



# NEWTON HISTORY MUSEUM

 at The Jackson Homestead

David B. Cohen, Mayor  
David A. Olson, Director



Durant Homestead Foundation  
Roger Avery, President  
55 Woodbridge Drive  
East Greenwich, RI 02818

September 14, 2005

Dear Members of the Board of the Durant Homestead Foundation,

The Newton History Museum and the Newton Historical Society are excited about exploring the options for the transfer of stewardship of the Durant Kenrick Homestead at 286 Waverley Avenue and the adjoining open lot, to either the museum or the historical society. The house and lot are significant historic resources that would allow us to provide educational experiences on many aspects of 18<sup>th</sup>-century life for the people of Newton and surrounding communities. As you suggested, we are writing this letter to you to outline our vision, goals, concerns, and thoughts on the various options we might be able to pursue to permit the transfer of this important example of Newton's early history.

## THE NEWTON HISTORY MUSEUM - WHO ARE WE?

The Newton History Museum is a joint effort of the City of Newton and the Newton Historical Society, a private, non-profit 501 (c) 3 organization that is made up of a very active 27-Member Board of Directors and nearly 400 members. The museum is led by Director David Olson who is a City of Newton employee. The City maintains the Museum building and provides support for the director and for curatorial and education staff, while the Historical Society provides the funding for the Museum's programs---including ongoing exhibits, nearly 140 presentations each year to area school children, programs for adults, the Newton House Tour, an historic marker program, neighborhood walking tours, and more. The Newton History Museum is also undertaking the restoration of Newton's three historic burial grounds, the final resting places of many of Newton's earliest residents.

The Newton History Museum has a staff of 2 full-time and 8 part-time employees whose work in the museum field totals over 100 years of experience. Staff members include:

David A. Olson	Director
Susan Abele	Curator of Photographs and Manuscripts
Eleanor Mish	Curator of Objects
Sheila Sibley	Education Manager
Alice Ingerson	Public Programs Consultant
David Oliver	Development Manager
Lynette Aznavourian	Public Relations Manager
Fae Morrissey	Museum Assistant
Karen Rubin	Program Assistant
Kathryn Bresee	Museum Assistant

*Headquarters of  
the Newton  
Historical Society*

As a point of interest, you may want to know that five years ago we organized and ran a reunion for well over 100 members of the Jackson Family, the family who donated our current headquarters and Museum building to the City in 1950. And, two years ago, our annual House Tour (now in its 23<sup>rd</sup> year) included the Durant Kenrick Homestead as one of the stops our 1,000-plus visitors made on the ten-house tour.

As part of the process of determining the best course of action we will consider which entity -- the City of Newton or the Newton Historical Society -- would be the most appropriate holder of the titles to the property.

#### OUR VISION

Our vision for the property is to maintain the Durant Kenrick Homestead as a museum that interprets 18<sup>th</sup>-century Newton through public tours, student educational programs, and public programs for families and adults. Through the site we would also like to tell the story of early preservation efforts in New England and highlight the work of Arthur and Frances Dewing in the preservation of the house.

Our vision for the process of transfer of the Durant Kenrick Homestead is that over the next eighteen months or so, the Newton History Museum will work with the Board of the Durant Homestead Foundation to:

- Develop a master plan for the preservation of the house and property;
- Develop a program plan for the use of the site for public and educational programs;
- Develop short and long range budgets that will provide guidance on the amount of money needed to preserve the property, undertake programs, and care for the collection;
- Engage the neighborhood, and the Newton community, in discussion of our plans for the transfer of responsibility in order to gain community input and facilitate a smooth transition; and
- Raise funds for the endowment.

#### OUR GOAL

As we discussed in our meeting on August 4<sup>th</sup>, our goals for the House will be to preserve the building and grounds as an historic house museum, while developing programming that will bring the 18<sup>th</sup> century to life for visitors young and old. We have an excellent professional staff at the Newton History Museum that is intrigued by the possibility of developing programs that relate the Durant Kenrick Homestead to life in the Revolutionary War period. The Durant Kenrick Homestead would fill a gap in our educational programming and provide an experience about a time in Newton's history about which many know very little.

#### Context – the Newton History Museum Strategic Plan

In 2004 the Newton History Museum developed a strategic plan to guide the museum for the next five years. Our vision, as articulated in that plan, is:

*The Newton History Museum is a visible and accessible cultural center that is the hub of a broad network of resources including streetscapes, buildings, burying grounds, collections, archives, organizations, and people. By anchoring, cultivating, and leading this network, the museum serves to preserve, document, exhibit, and explain Newton's history to people of all ages—and make that history a vibrant and living part of the present. Education and collections preservation are important tasks in this process. By*

*providing leadership in these efforts and by keeping our past alive in our present, we are able to foster a richer sense of community in Newton based on the shared experiences and common ground among all Newton's residents.*

Our strategic plan also outlines four goals for the museum:

- Goal 1 – To have the highest quality array of programs and collections, which stimulate, educate, and enrich.
- Goal 2 – Have high quality facilities consistent with our vision that showcase our offerings, support our staff, and preserve our collections.
- Goal 3 - To be recognized by people within the Newton area as a highly visible, accessible, magnetic, cultural/community center
- Goal 4 – Have sufficient resources to meet our goals.

The addition of the Durant Kenrick Homestead would fit very well into the Newton History Museum's current vision and strategic plan.

#### OUR CONCERNS

While we are very excited about our potential ownership of the Durant Kenrick House, we are also mindful of the need to have fully-funded endowments in place to properly maintain the property as well as to develop and run engaging educational programs. At this time, the Society does not have sufficient funds in the bank to take on a major new financial responsibility such as the Durant Kenrick Homestead. We recognize that we will have to raise a significant amount of money to cover direct expenses and to fund an adequate endowment. In determining the size of this endowment, we must undertake a number of tasks, including:

1. To determine the current and prospective physical needs of the House, and identify the amount of money needed to undertake necessary repairs and restoration.
2. To determine the requirements for preserving the Home and in telling its story, including the costs of upgrades to the electrical, heating, and cooling systems.
3. To determine the amount of money required to develop the first stages of educational programming and to put that programming into action
4. To determine the number of visitors we are likely to have at any given time and the ability of the property to accommodate those visitors, particularly as it relates to access, parking, and rest rooms.
5. To identify the total dollars necessary to properly maintain and operate the House as a vibrant house museum, and to identify potential sources that will fund those costs.

#### TIME FRAME

Following a determination by our respective organizations that we share the same goals and vision for the Durant Kenrick Homestead, we will move forward as quickly as possible to identify all anticipated costs and develop a schedule of the total amount of money needed to endow both the building and educational programming. To aid in this effort, we will need full access to the property. At the same time, we will continue our work to identify potential funding sources and undertake a fundraising effort. Our goal would be to be in a position to accept the title and responsibility of the House by early 2007.

POTENTIAL SOURCES OF FUNDING

Our most immediate need is to identify possible sources for the funding we need to conduct a study of the physical and programming needs of the House. We are determining estimated costs and will discuss funding with our board and trustees.

Other preliminary ideas we have considered, and which deserve further exploration include:

1. Selling conservation easements for the street-side parcel.
2. Building upon the donor network your foundation has already cultivated.
3. Requesting grants from various conservation-oriented organizations to pay for conservation easements.
4. Requesting funding from the City of Newton's Community Preservation Act for a conservation easement and for restoration and preservation improvements to the House
5. Soliciting donations from Newton residents and others who may be interested in historic houses in general and this House in particular
6. Seeking any available Federal and State funds
7. Seeking business and foundation support and relationships, possibly including public television's This Old House.

We also expect that the Durant Homestead Foundation will work with us to help raise funds for the endowment by providing names of participants; contacts to solicit, and assistance in fundraising events.

INTERIM RESPONSIBILITY

As we work to make this transfer a reality, we must make it clear that the Newton History Museum does not currently have the means to pay for any aspect of the operation of the Durant Kenrick Homestead. Thus the Durant Homestead Foundation must continue to maintain, operate, and protect its property.

NEXT STEPS

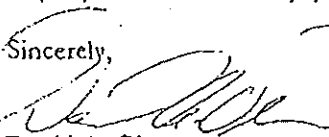
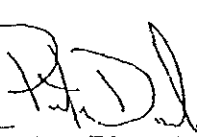
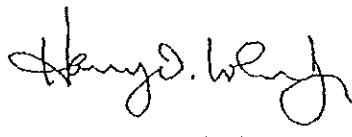
Assuming approval of this outline by our respective organizations, we believe we should develop a formal document that acknowledges our joint commitment and gives potential donors the comfort they need to contribute to our good cause.

To proceed in a timely fashion and meet the timeline that is outlined in this letter, we would appreciate a written response from the Board of the Durant Homestead Foundation by October 1, 2005.

THANK YOU

We appreciate the potential opportunity to take on the stewardship of the Durant Kenrick Homestead and are optimistic, excited and at the same time respectful of the challenges of taking on this responsibility. Thank you for offering to work with us to preserve and maintain an important community resource. Please contact David Olson, Executive Director of the Newton History Museum at (617) 796-1450 or Peter Dimond, President of the Newton Historical Society, at (617) 332-4063 with any questions or concerns you may have.

Sincerely,

		
David A. Olson Director Newton History Museum	Peter Dimond President Newton Historical Society	Harry O. Lohr, Jr. Chair Jackson Homestead Trustees

**THE DURANT HOMESTEAD FOUNDATION**  
**P. O. BOX 3328**  
**South Attleboro, MA 02703-3328**  
**(Tel:401-885-1556—Fax:401-886-0812)**

**OFFICERS:**

*Roger C. Avery: President*  
*Ruth D. Ewing: Vice President*  
*Margaret A. Avery: Vice President*  
*Rosemary S. Avery: Secretary*

**TREASURER:**

*Roger C. Avery*

**CARETAKER:**

*Jane Zanichkovsky*  
*286 Waverley Ave.*  
*Norton MA 02458*

David A. Olson, Director Newton History Museum  
Peter Dimond, President Newton Historical Society  
Harry O. Lohr, Jr Chair, Jackson Homestead Trustees


October 10, 2005

Dear Sirs,

The officers of the Durant Homestead Foundation have met and considered your letter of September 14<sup>th</sup>. We are in agreement with the plan of action and hope that the Newton History Museum and Newton Historical Society will proceed with the proposed plan. In view of this support the Durant Homestead Foundation agrees to the following:

- (1) To postpone consideration of the sale of the corner lot.
- (2) To cooperate with the Newton History Museum and Newton Historical Society in preparing the detailed plans and goals for the Durant-Kendrick House specified in your letter. This cooperation would include reasonable access to the house.
- (3) Once the goals and financial plan have been prepared, the Durant Homestead Foundation will negotiate a document assuring transfer of the Durant Kendrick House and corner lot to the New Historical Society subject to the successful completion of the fund raising required for the implementation of the plan and the creation of a reasonable endowment to allow the continued preservation of the homestead.
- (4) In the interim the Durant Homestead Foundation agrees to consult with the you before taking any major action concerning the Durant Kendrick House.

Sincerely

  
Roger C. Avery  
President, Durant Homestead Foundation  
55 Woodbridge Dr.  
East Greenwich RI. 02818

DRAFT

**OPTION AGREEMENT**

Date: [Date]

Seller(s): [Name and Address]

Buyer: [Name and Address]

Premises: The land described in Exhibit A, together with all parking rights and other appurtenant rights, the buildings, improvements, the fixtures and other historic features within the buildings, located thereon, attached thereto, or used in connection therewith and the interior contents of the buildings other than fixtures described preliminarily in the List of historic materials relevant to interpretation of the house (to be finalized by the Buyer on/before \_\_\_\_\_ and then attached as a replacement to Exhibit B) said List attached to this Option Agreement as Exhibit B.

Purchase Price: \$1.00

Option Period: September 1, 2006 through August 31, 2007

Option Payment: \$1.00

Existing Insurance: [current Insurance company and Coverage]

1. Option; Extension. In consideration of the Option Payment by Buyer to Seller, receipt of which Seller acknowledges, Seller grants to Buyer, its successors and assigns, an option to purchase the Premises. Buyer shall exercise this Option by giving written notice of exercise to Seller on or before 5:00 p.m. on the last day of the Option Period or applicable Extension Period. Such notice shall state a closing date, which date shall not be less than 30 days nor more than 90 days after the day such notice of exercise is given.

This Option shall be automatically extended up to and including August 31, 2009.

2. Termination. The Buyer shall have the right to any time, and for any reason in its sole discretion to terminate this Agreement, with no further recourse between the Buyer and Seller. If termination occurs, except as indicated in paragraph 7 below, the Seller shall retain the Option Payment.

3. Closing. The deed is to be delivered and the consideration paid, unless otherwise agreed upon in writing, at 10 o'clock on the date fixed for conveyance in buyer's notice of exercise (such time, as the same may be extended, herein referred to as the "Time of Closing").



For such deed buyer shall pay the Purchase Price by a certified or bank check or by federal wire transfer. The Option Payment shall be credited against the Purchase Price. At the Time of Closing, Seller may use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments necessary for this purpose are recorded or registered simultaneously with the deed, except for mortgage discharges from institutional lenders which may be recorded when received.

4. Deed. Such conveyance shall be by a good and sufficient quitclaim deed running to Buyer or such person or persons as Buyer may designate in writing. In addition to executing and delivering the deed, Seller shall, at Buyer's request, execute and deliver such other title affidavits, non-foreign affidavits and related documents as Buyer may reasonably request. Seller shall also deliver all original documents relating to the Premises.

5. Title. The deed shall convey a good and clear record and marketable title to the Premises free from encumbrances except zoning laws, building laws and subdivision laws; liens for municipal betterments assessed after the date hereof; taxes for the current year to the extent that the same are not due and payable; and the matters listed on Exhibit A.

6. Possession and Condition. Except as stated in Exhibit A, full possession, free of all tenants and occupants, shall be delivered at the Time of Closing, the Premises to be in the same condition as they now are, reasonable use and were thereof excepted. The Premises shall then comply with any building, zoning and subdivision control laws and the provisions of any instrument referred to in Exhibit A. Access to and egress from the Premises shall then be provided by public way; the Premises shall then be served by municipal water, storm sewer and sanitary sewer, and by telephone, gas and electric services of public utilities, all provided to the Premises directly from a public way; such access and egress and all such services and facilities shall be in accordance in all material respects with all applicable governmental requirements and adequate for the purposes set forth above.

7. Seller Defaults. If Seller shall be unable to convey title, or to deliver possession of the Premises, all as herein stipulated, or if at the Time of Closing the Premises do not conform with the provisions hereof, then, at Buyer's election, Seller shall remove all encumbrances, if any, which secure the payment of money, including without limitation attachments and liens existing as of the date hereof and all encumbrances created by Seller, such as mortgages, and shall use reasonable efforts to remove all other defects in title, and to deliver possession as provided herein, and to make the Premises conform to the provisions hereof, as the case may be, and the Time of Closing shall be extended for a period of 30 days, or such earlier time as buyer may designate at the original Time of Closing.

If at the expiration of the extended time Seller shall have failed so to remove any defects in title, deliver possession, or to make the Premises conform, as the case may be, all as herein agreed, then, at Buyer's option, any payments made under this Agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto; provided, however, that buyer shall have the election, at either the original or extended Time of Closing, to accept such title as Seller can deliver to the Premises in their then condition and to pay therefor the Purchase Price without deduction, except that in the event of such conveyance:

(a) if the Premises are then subject to any encumbrances which secure the payment of money, the amount necessary to remove such encumbrances shall be deducted from the Purchase Price;

(b) if the Premises shall have been damaged by fire or casualty insured against, then Seller shall, unless Seller has previously restored the Premises to their former condition, either: (i) pay over or assign to Buyer, at the Time of Closing, all amounts recovered or recoverable on account of such insurance, or (ii) if a holder of a mortgage on the Premises shall not permit the insurance proceeds or a part thereof to be used to restore the Premises to their former condition or to be so paid or assigned, give to Buyer a credit against the Purchase Price equal to the amount so retained; in either case, less any amounts reasonably expended by Seller for partial restoration but increased by the amount of any deductible under such insurance policies; and

(c) if any portion of the Premises shall have been taken by exercise of the power of eminent domain, Seller shall either: (i) pay over or assign to Buyer at the Time of Closing, all awards recovered or recoverable on account of such taking, or (ii) if a holder of a mortgage on the Premises retains any such awards, give Buyer a credit against the Purchase Price equal to the amount so retained and pay the balance, if any, to Buyer.

8. Merger. The acceptance of a deed and possession by Buyer or such person as Buyer shall have designated shall be deemed to be a full performance and discharge of every agreement and obligation, except as to any agreements which by their terms are to be performed after delivery of said deed.

9. Insurance. Until the Time of Closing, Seller shall maintain insurance on the Premises against fire and hazards covered by "All-Risk" insurance coverage in an amount at least equal to the full replacement cost of the Premises. Seller shall, upon request by Buyer at any time after the date of this Agreement, deliver to Buyer a copy of the insurance policy or a certificate thereof covering the Premises.

10. Adjustments. Collected rents, operating expenses, water and sewer use charges, taxes assessed for the then current tax year and fuel value shall be apportioned in accordance with customary practices at the Time of Closing, so far as applicable.

If the amount of the taxes is not known at the Time of Closing, they shall be apportioned on the basis of the taxes assessed for the preceding year with a reapportionment as soon as the new tax rate and valuation can be ascertained. If the taxes which are to be apportioned shall thereafter be reduced by abatement, then the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties.

11. Broker. Seller and Buyer mutually represent that there is no broker with whom they have dealt in connection with this Option. Seller and Buyer each agree to indemnify and hold the other harmless from and against any liability, loss, cost, damage, or expense, including court costs and attorneys' fees, resulting from a breach of the above representation and warranty.

12. Buyer's Default. Upon any default by Buyer hereunder, either before or after exercise of this Option, including failure to close after exercise of the Option, Seller shall retain

all sums previously paid hereunder as full liquidated damages, and not as a penalty, and Seller shall have no other recourse at law or in equity.

13. Seller Representations. Seller hereby represents, warrants and covenants as follows:

(a) Seller is the sole owner of the Premises subject only to the matters set forth on Exhibit A, and Seller has full power to execute, deliver and perform the terms and provisions of this Option;

(b) Seller knows of no threatened or pending special assessment against any part of the Premises, nor any proposed or pending proceeding to alter the zoning classification of any portion of the Premises, nor any pending or threatened action or proceeding regarding the ownership, use, or occupancy of and part of the Premises or asserting that the Premises or the ownership, use, or occupancy thereof are in violation of any applicable legal requirement;

(c) there are no agreements or understandings, oral or written, to which Seller is a party or of which Seller has knowledge affecting the Premises;

(d) the Premises are not in material violation of any federal, state, or local law, including without limitation those respecting wetlands, zoning, or environmental conditions. To the best of Seller's knowledge, no "oil" or "hazardous materials" (as defined in Massachusetts General Laws Chapter 21E), lead paint, or asbestos are located on, under or about the Premises, including soil and groundwater conditions;

(e) during the Option Period or any Extension Period, Seller will not (i) encumber, lease, or grant any other interest or right in the Premises, (ii) change the physical characteristics of the Premises, or (iii) change the status of the Premises under any laws or regulations of any governmental authority from time to time in effect.

In the event that any of the foregoing representations or warranties are breached in any respect by Seller, then, without limiting any other remedies of Buyer, Seller shall upon demand return all monies hereunder paid by Buyer and this Option shall become null and void.

14. Inspections. Seller shall allow Buyer, its agents, and consultants access to the Premises upon reasonable, oral notice for any reasonable purpose consistent with and necessary to accomplish the mission and program of, and any uses for the Premises contemplated by, the Buyer for the Premises as it may determine in its discretion, and for the purposes of conducting tours of the Premises for prospective donors, City of Newton representatives, and for such surveys, tests, and inspections, they deem necessary provided that they shall be conducted in such a manner as not to unreasonably interfere with normal business operations on the Premises. The mission and program of the Buyer is more specifically described in Exhibit C. These inspections shall include, but not be limited to structural integrity, roof, HVAC, termites, hazardous waste, lead paint, accessibility issues. Unless Buyer exercises this Option, Buyer shall promptly restore the Premises to their prior condition to the extent practicable. Buyer agrees to indemnify and hold Seller harmless from all liability, loss, cost, damage or expense arising from the conducting of such survey, test, or inspection; provided, however, that this indemnity shall not apply to any liability, loss, cost, damage, or expense arising from the discovery or removal of

oil or hazardous materials located on the Premises on or before the Time of Closing. Buyer, its agents, and consultants shall have the right to inquire at any and all boards and agencies regarding the Premises.

15. Zoning and Permitting. Seller agrees to cooperate with Buyer, at such times as Buyer may reasonably request, in any proceedings necessary to change to zoning or otherwise obtain approval for the Premises for such use or uses as Buyer may desire. Such cooperation shall, however, be at Buyer's cost and expense.

The Buyer shall keep the Seller informed of the status of the Buyer's applications to the City of Newton and other federal, state or local regulatory agencies for any Approvals deemed necessary by the Buyer, in Buyer's sole discretion, for uses, parking, dimensional relief, building code, accessibility, orally and agrees to provide the Seller promptly with copies of all notices, reports, plans, surveys, agreements, bonds, correspondence or other documents received, prepared or issued by Buyer in connection with obtaining the Approvals and if the Closing does not occur the Seller shall have the right to use such copies for its own purposes.

All costs incurred in connection with obtaining the Approvals shall borne by the Buyer. The Buyer shall hold harmless and indemnify the Seller from and against all claims, costs, expenses or liability of whatever nature asserted by any of the Buyer's agents, servants or employees arising from work performed in connection with the Approvals or arising directly or indirectly from any accident injury or damage, however caused, to any such persons or to their property on or about the Premises; or asserted by any municipal employee arising directly or indirectly from any incident, injury or damage, however caused, to any such persons, or to their property on or about the Premises, provided such municipal employees are on or about the Premises in connection with the Approval.

The Buyer acknowledges and agrees that the Seller has made no warranties or representations on which the Buyer has relied with respect to the proposed use and development of the Premises.

In the event that the Buyer is unable to obtain the Approvals reasonably satisfactory in form and substance to the Buyer in its sole discretion from the City of Newton and all other federal, state and local entities and Regulatory Agencies who have jurisdiction and must grant approvals and permits, the Buyer shall have the right to terminate this Agreement by notifying the Seller thereof in accordance with Paragraph 21 and the Deposit will thereupon be returned to the Buyer and this Agreement will be deemed terminated with no further recourse as between the Buyer and the Seller. The Buyer and the Seller may agree to an extension of the date by which the Approvals must be obtained and a corresponding extension of the Closing Date. Further, in the event this Agreement is terminated for any reason, the Buyer shall assign to the Seller, at no cost to the Seller, all of its rights, title and interest in any applications, plans, reports and other documentation it may have relating to the Approvals, and shall promptly deliver the originals of (and copies if the originals do not exist) all such documentation to the Seller upon termination of this Agreement.

16. Due Diligence. Seller acknowledges that Buyer will, during the option, be exploring financial feasibility and fundraising sources for necessary permitting, approvals and inspections, insurances and acquisition, construction and repair.

17. Title. Without limitation of any other provisions in this Agreement, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title unless:

(a) All structures and improvements on the Premises, including any driveway(s), parking areas, garage(s), septic systems and wells and all means of access to the Premises shall be wholly within the boundary lines of the Premises and shall not encroach on, upon or under the property of any other person or entity;

(b) No building, structure or improvement, including any driveway(s), garages, septic systems and wells or property of any kind belonging to any other person or entity shall encroach upon or under the Premises;

© Title to the Premises is insurable, for the benefit of the Buyer, by a title insurance company reasonably acceptable to the Buyer in a fee owner's policy of title insurance, at normal premium rates, on the American Land Title Association form currently in use, subject only to those printed exceptions to title normally included in the "jacket" to such form or policy, the standard so-called "Schedule B" exceptions, and exceptions permitted under Paragraph 4 above; and

(d) The Premises have vehicular and pedestrian access to a public way, duly laid out or accepted as such by the town or city in which the Premises are located.

18. "As-is Condition". The Buyer expressly warrants and represents that it has made or will make, through qualified professional representatives, all such investigations of the Premises and the condition thereof as may be reasonably necessary so as to enable the Buyer to accept the Premises in "As-Is" condition and by acceptance of the deed the Buyer shall be deemed to have accepted the Premises in its "As-Is" condition. The Buyer expressly warrants, represents and agrees that the Seller and its agents have made no warranties, representations or undertakings of any nature with respect to the Premises or its condition which are not expressly set forth in this Agreement.

19. Affidavits. The Seller agrees to furnish the Buyer, at the time of the delivery of the deed, executed affidavits and indemnifications regarding mechanics' and materialmen's liens, and parties in possession sufficient to eliminate any title insurance exceptions for these matters, and to execute and deliver, at such time, any affidavits and certificates customarily required by the Buyer's mortgagee in connection with mortgage loans for transactions of this type. The Seller shall also furnish to the Buyer any and all authority documents and legal existence certificates as customary in transactions of this type and a wavier of corporate excise tax lien, if necessary.

20. Recording. Seller agrees upon the request of Buyer to execute and deliver a notice or recordable counterpart of this agreement.

21. Notice. Any and all notices or other communications, except as provided in Paragraph 14 above, required or permitted by this Option Agreement to be served on or given to one party by the other shall be in writing and shall be deemed duly served and given when delivered to the party to whom it is directed or such party's attorney, or in lieu of such service one (1) day after deposit with a recognized courier service or a United States Postal Service, Express Mail, or two (2) days after deposit in the United States Mail, First Class, Certified, Postage Prepaid, Return Receipt Requested, addressed to such party or its counsel at the following addresses:

If to Seller:

With a copy to Seller's Attorney:

And

If to Buyer:

With a copy to Buyer's Attorney:

22. General. Time is of the essence of this agreement. This Option shall be binding upon and shall insure to the benefit of the parties hereto, their successors, personal representatives, and assigns. Buyer may assign this Option, either before or after the exercise of this Option. No officer, director, shareholder, trustee, or beneficiary of a trust, if any, under which the Seller or Buyer acts in executing this agreement shall be personally liable for any obligation, express or implied, hereunder. If more than one person is named herein as Buyer, their obligations are joint and several. This Option is to be construed as a Massachusetts contract, sets forth the entire contract between the parties, and may not be cancelled, amended, or waived except in writing.

All notices given hereunder shall be in writing and shall be deemed received at the earlier of when delivered in hand, delivered by recognized delivery service, or 72 hours after the same

have been deposited in the United States mails, postage prepaid, certified or registered mail, return receipt requested, addressed to Buyer and Seller at their addresses appearing on the first page hereof, or to such other address or addresses as the parties may from time to time specify by notice so given.

Executed under seal the day first above written.

Seller:

\_\_\_\_\_

Buyer:

\_\_\_\_\_

**ADD ACKNOWLEDGMENT TO RECORD ENTIRE OPTION OR RECORD  
SEPARATE SHORT FORM PURCHASE AND SALE AGREEMENT**

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 20\_\_

Then personally appeared the above-named \_\_\_\_\_ and  
acknowledged the foregoing instrument to be \_\_\_\_\_ free act and deed, \_\_\_\_\_, as  
aforesaid, before me,

\_\_\_\_\_

Notary Public

My Commission Expires:

**EXHIBIT A**

**LEGAL DESCRIPTION WITH PERMITTED ENCUMBRANCES**

[Attach legal description of Premises with all parking rights and other appurtenant rights, and all permitted encumbrances]



## EXHIBIT C

### MISSION AND PROGRAM OF BUYER

#### ADDITIONAL UNDERTAKINGS OF BUYER DURING OPTION PERIOD

The Buyer's goal in acquiring the Premises is to preserve the building and grounds as an historic house museum while developing programming that will bring the 18<sup>th</sup> century to life for visitors young and old. Buyer has excellent professional staff to develop programs that will relate the Durant Kenrick House to life in the Revolutionary War period. And, since Buyer already has a house and related programming that reflects life in the 19<sup>th</sup> century, the Durant Kenrick house will fill a gap in its educational programming and provide an experience about a time in Newton's history about which many know very little. It is also an extension of Buyer's Strategic Plan that calls for the Society to expand its programs into the community.

While Buyer is very excited about its potential ownership of the Durant Kenrick House, Buyer is mindful of the need during the Option Period to obtain fully-funded endowments so it can properly maintain the Premises and develop and run engaging educational programs. At this time, the Buyer does not have the funds to take on a major financial responsibility such as the Durant-Kenrick House. Buyer recognizes that during the Option Period it will have to raise a significant amount of money to cover direct expenses and to fund an endowment, otherwise it will be unable to exercise the Option.

In determining the size of this endowment, Buyer, during the Option Period, will undertake a number of tasks, including:

1. determining the current and prospective physical needs of the Premises, and identifying the amount of money needed to restore it to its past glory
2. determining the requirements for preserving the Premises and for telling its story, including upgrades to the electrical, heating, and cooling systems, and identifying the amount of money needed to make those improvements
3. determining the amount of money required to develop the first stages of educational programming and to put that programming into action
4. determining the number of visitors likely to visit the Premises at any given time and the ability of the Premises to accommodate those visitors, particularly relating to access, parking, and rest rooms.
5. identifying the total dollars required to maintain and operate the Premises as a vibrant house museum, and identifying potential sources that will fund those costs.

#### Potential Sources of Funding

1. During the Option Period, Buyer will attempt to identify a source for the funding needed to conduct a study of the physical and programming needs of the Premises, as described in the Option Agreement.

Other endowment-funding sources potentially include:

1. Selling conservation easements for the street-side parcel to area residents

2. Requesting grants from various conservation-oriented organizations to pay for the conservation easements.
3. Requesting funding from the City of Newton's Community Preservation Commission, in accordance with the State's Community Preservation Act for a conservation easement and restoration and preservation improvements to the Premises
4. Soliciting donations from interested Newton residents and others who may be interested in historic houses in general and in these Premises in particular
5. Seeking any available Federal and State funds
6. Seeking business and foundation support and relationships, possibly including approaches similar to public television's This Old House restoration work.

**Attachment G**  
**Extension from Director of Planning and Development**



Setti D. Warren  
Mayor

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

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Candace Havens  
Director

May 16, 2011

Cindy Stone  
Historic Newton  
527 Washington Street  
Newton, MA 02458

SUBJECT: Request for time extension to complete improvements at Durant Kenrick Homestead

Dear Cindy:

I received your request to extend the completion date for Improvements to the Durant Kenrick Homestead Project. As you noted, the Newton Historical Society has made substantial progress in moving the project forward, with significant fundraising and completion of design documents. Among the things that remain to be completed are obtaining the final approval of the preservation restriction by the Massachusetts Historical Commission, signed and recorded at the Registry of Deeds, as well as completion of the archaeological excavation. Moreover, you will need to comply with the conditions of your special permit prior to occupancy and complete the building and landscaping per approved plans.

Given the progress that you have already made and considering the many tasks ahead, it is clear that meeting the August deadline would be a serious challenge and the December 31, 2012 completion date you suggest appears to be more reasonable. As such, your request for an extension until December 31, 2012 is granted. We look forward to seeing this community project completed so it can be a place that can be enjoyed by the residents and visitors to Newton and wish you all the best in your efforts.

Sincerely,

Candace Havens, Director  
Planning and Development

Cc: Alice Ingerson, Community Preservation Program Manager  
Brian Lever, Senior Preservation Planner