

**HISTORIC PRESERVATION RESTRICTION**

**THIS HISTORIC PRESERVATION RESTRICTION** is made this 7<sup>th</sup> day of January, 2010, by and between **Warren House Associates Limited Partnership**, a Massachusetts limited partnership of which **Newton Community Development Foundation III, Inc.**, a Massachusetts corporation and **New Keen Corporation**, a Massachusetts corporation are the general partners and having an address c/o Newton Community Development Foundation, Inc. 425 Washington Street Suite 205 Newton, MA 02458 (hereinafter "WHA"); and the **City of Newton**, a Massachusetts municipal corporation (hereinafter "City") acting through the Newton Historical Commission (the "Commission"), with a mailing address of 1000 Commonwealth Avenue, Newton, Massachusetts 02459.

**WITNESSETH:**

WHEREAS, WHA is the owner of a building known and numbered 1600 Washington Street, in the City of Newton, Commonwealth of Massachusetts, (hereinafter the "Building") the deed to which is recorded in the land records of Middlesex County South District Registry of Deeds at Book 21653, page 407, located on land owned by the City of Newton (hereinafter the "Land") more particularly described in Exhibit A attached hereto and incorporated herein (the Building and the Land hereinafter collectively "the Property");

WHEREAS, the Property was a former Newton public junior high school which was subsequently converted into 59 rental housing units and a child care center;

WHEREAS, the Land is subject to a Ground Lease with a 65-year term expiring in 2056, and the Building is subject to a right of reversion such that at the expiration or earlier termination of said Ground Lease the Building will revert back to the City of Newton unless the Ground Lease is extended;

WHEREAS, a portion of the Building was demolished in about 1991 in connection with its conversion to housing and a child care center, and the remaining portion of the Building is a Georgian Revival style apartment building associated with the historical development of Newton through its use as a former Junior High School built in 1927, which is the subject of this Historic Preservation Restriction, (hereinafter "the Building");

WHEREAS, the Building stands as a highly significant example of Georgian Revival architecture, and is listed on the National Register of Historic Places and has been determined by the Newton Historical Commission to be

significant to the history and culture of the City of Newton, and which is further included in the Massachusetts State Register;

WHEREAS, WHA has requested and the City's Community Preservation Committee has recommended that funding in the amount of \$1,080,000 be granted to preserve and rehabilitate the roof and masonry on the Building;

WHEREAS, the City is authorized to accept historic preservation restrictions to protect property significant in national and state history and culture under the provisions of M.G.L. chapter 184, sections 26, 31, 32, and 33 (hereinafter "the Act");

WHEREAS, WHA and the City recognize the architectural, historic and cultural values and significance of the Building, and have the common purpose of conserving and preserving certain key features of the Building's exterior, which key features are set forth in Exhibit B attached hereto and made a part hereof (the "Key Features"). Baseline photographs of the Building and its Key Features will be maintained in the Archives of the Newton History Museum located at the Jackson Homestead, 527 Washington Street, Newton, Massachusetts, 02458. Photocopies of said baseline photographs are attached hereto as part of Exhibit B.

WHEREAS, the grant of a preservation restriction by WHA to the City on the Building will assist in preserving and maintaining the Building and its architectural, historic and cultural features for the benefit of the people of the City of Newton, Commonwealth of Massachusetts, and the United States of America; and

WHEREAS, to that end, WHA desires to grant to the City, and the City desires to accept, a preservation restriction on the exterior of the Building on the Property pursuant to the Act;

WHEREAS the parties intend this preservation restriction to be in force and effect for the longest period permissible by law, with the intention that it be coterminous with the expiration of the Ground Lease on December 19, 2056;

WHEREAS, the City of Newton is a "governmental body" as that term is defined in G.L. c. 184, §26; and

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to M.G.L. chapter 184, sections 26, 31, 32, and 33, WHA does hereby voluntarily grant and convey unto the City this preservation restriction (hereinafter "the

Restriction”) in gross for the term set forth herein over the exterior of the Building on the Property.

### **PURPOSE**

1. **Purpose.** It is the Purpose of this Restriction to assure the continued architectural and historical integrity of the exterior Key Features of the Building, and to prevent any change to the exterior of the Building that will significantly impair or interfere with the Building’s Key Features.

### **2. WHA’S COVENANTS**

2.1 **WHA’s Covenants: Covenant to Maintain.** WHA agrees at all times to maintain the exterior of the Building in sound structural condition and good state of repair in accordance with the terms of this paragraph. It is WHA’s intent that the exterior of the Building shall be maintained in a physical appearance and composition that is as close to its current appearance and composition as is reasonably possible. WHA’s obligation to maintain shall, subject to the casualty provisions of paragraphs 7 and 8 require replacement, repair, and reconstruction by WHA whenever necessary to preserve the exterior of the Building in sound structural condition and a good state of repair. Also subject to the casualty provisions of paragraphs 7 and 8, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with *The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter “the Secretary’s Standards”).

#### **2.2 WHA’s Covenants: Prohibited Activities.**

WHA shall not demolish, remove, or raze the Building or any part thereof (by affirmative action or through neglect or failure to repair and maintain) except as provided in paragraphs 7 and 8.

### **3. WHA’S CONDITIONAL RIGHTS**

3.1 **Conditional Rights Requiring Approval by the City.** Without the prior express written approval of the City, which approval may not be unreasonably withheld but which may be subject to such reasonable conditions as the City in its discretion may determine, WHA shall not make any changes to the exterior Key Features of the Building, including the alteration, partial removal, construction, remodeling, or other physical or structural change to the exterior and any change in material or color and the footprint, size, mass, ridge line and roof lines of the Building. Activities by WHA to maintain the exterior of the Building which are not intended to change the exterior appearance of the Building and which are intended to be performed in accordance with provisions of section 2.1 shall not require the prior approval of the City.

**3.2 Archaeological Activities.** The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by WHA and approved in writing by the City and the State Archaeologist of the Massachusetts Historical Commission (Massachusetts General Laws, chapter 9, section 27C, 950 C.M.R. 70.00).

**3.3 Review of WHA's Requests for Approval.** WHA shall submit to the City for the City's approval of those conditional rights set out at paragraph 3.1 one copy of information (including plans, specifications and designs), identifying the proposed activity with reasonable specificity. In connection therewith, WHA shall also submit to the City a timetable for the proposed activity sufficient to permit the City to monitor such activity. Within forty-five (45) days of the City's receipt of any plan or written request for approval hereunder, the City shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the City shall provide WHA with written suggestions for modification or a written explanation for the City's disapproval. Any failure by the City to act within forty-five (45) days of receipt of WHA's submission or resubmission of plans or requests shall be deemed to constitute approval by the City of the plan or request as submitted and to permit WHA to undertake the proposed activity in accordance with the plan or request submitted.

**4. Standards for Review.** In exercising any authority created by the Restriction to inspect the Property; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the City shall apply the Secretary's Standards.

**5. Public Access.** This Restriction does not require public access.

**6. WHA's RESERVED RIGHTS**

**WHA's Reserved Rights Not Requiring Further Approval by the City.** Subject to the provisions of paragraphs 2.1, 2.2, and 3.1, the following rights, uses, and activities of or by WHA on, over, or under the Property are permitted by this Restriction and by the City without further approval by the City:

(a) the right to engage in all those activities and uses that: (i) are permitted by governmental statute or regulation; and (ii) are not inconsistent with the Purpose of this Restriction;

(b) the right to maintain and repair the exterior of the Building strictly according to the Secretary's Standards, provided that the WHA use in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Building. Changes in appearance, materials, colors or workmanship from that existing prior to the maintenance and repair requires the prior approval of the City in accordance with the provisions of paragraphs 3.1 and 3.2;

(c) the right to make changes of any kind to the interior of the Building, as long as interior changes have no impact on the exterior view of the Key Features.

**7. Casualty Damage or Destruction.** In the event that the exterior of the Building or any part thereof shall suffer major damage or destruction by fire, flood, windstorm, hurricane, earth movement, or other casualty, WHA shall notify the City in writing within fourteen (14) days of the damage or destruction or such reasonable time thereafter, depending upon the circumstances of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and to protect public safety, shall be undertaken by WHA without the City's prior written approval. Within ninety (90) days of the date of damage or destruction, if required by the City, WHA at its expense shall submit to the City a written report prepared by a qualified restoration architect and an engineer who are acceptable to WHA and the City, which report shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and

(c) a report of such restoration/reconstruction work necessary to return the Building to the condition existing as of the date hereof.

**8. Review After Casualty Damage or Destruction.** If, after reviewing the report provided in paragraph 7 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, WHA and the City agree that the Purpose of the Restriction will be served by such restoration/reconstruction, WHA and the City shall establish a schedule under which WHA shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to WHA.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, WHA and the City agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, WHA may, with the prior written consent of the City, alter, demolish, remove, or raze the Building, and/or construct new improvements on the Property. WHA and the City may then agree to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and paragraph 21.1 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, WHA and the City are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by any party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts's arbitration statute then in effect.

**9. Insurance.** WHA shall keep the Building insured by an insurance company rated "A1" or better by Best's for the full replacement value( against loss from perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to WHA or contribution or coinsurance from WHA. WHA shall deliver to the City, within ten (10) business days of the City's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

#### **INDEMNIFICATION; TAXES**

**10. Indemnification.** Except for any instance of gross negligence or willful misconduct on the part of the City or the City's agent, director, officer, employee, or independent contractor, the following shall apply: WHA hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, the City, its agents, directors, officers, and employees, or independent contractors from and against any and all claims, liabilities, expense, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Property; the presence or release in, on or about the Property, at

any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury, death or other damage occurring on or about the Property; unless such injury, death or damage is caused by the City or any agent, director, officer, employee, or independent contractor of the City. In the event that WHA is required to indemnify the City pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

11. **Taxes.** WHA shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless WHA timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of WHA, the City is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to WHA any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. The City may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by the City shall constitute a lien on the Property.

#### **ADMINISTRATION AND ENFORCEMENT**

12. **Written Notice.** Any notice which either WHA or the City may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods - facsimile transmission, or by first class mail postage prepaid, or hand delivery; if to WHA, at:

Warren House Associates Limited Partnership  
C/o Newton Community Development Foundation,  
Inc.  
425 Watertown Street, Suite 205  
Newton, MA 02458

and if to the City, at: Newton Historical Commission  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Each party may change its address set forth herein by a notice to such effect to the other party.

**13. Evidence of Compliance.** Upon request by WHA, the City shall promptly furnish WHA with certification that, to the best of the City's knowledge, WHA is in compliance with the obligations of WHA contained herein or that otherwise evidences the status of this Restriction to the extent of the City's knowledge thereof.

**14. Inspection.** With the consent of WHA, representatives of the City shall be permitted at reasonable times to inspect the Building each May on an annual basis at the convenience of WHA and the City. WHA covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

**15. The City's Remedies.** The City may, after thirty (30) days' prior written notice to WHA, institute suit(s) to enjoin any violation of the terms of this Restriction by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Building to the condition and appearance that existed prior to the violation complained of. The City shall also have available all legal and other equitable remedies to enforce WHA's obligations hereunder.

In the event WHA is found to have violated any of their obligations, WHA shall reimburse the City for any reasonable costs or documented expenses incurred in connection with the City's enforcement of the terms of this Restriction, including court costs, and attorney's, architectural, engineering, and expert witness fees.

In the event that WHA is required to reimburse the City pursuant to the terms of this Paragraph, the amount of such reimbursement until discharged, shall constitute a lien on the Property.

Exercise by the City of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

**16. Notice from Government Authorities.** WHA shall deliver to the City copies of any notice of violation or lien relating to the Property received by WHA from any government authority within five (5) days of receipt by WHA. Upon request by the City, WHA shall promptly furnish the City with evidence of



WHA's compliance with such notice or lien where compliance is required by law.

**BINDING EFFECT; ASSIGNMENT**

17. **Term.** This restriction shall terminate upon the expiration or earlier termination of the Ground Lease, but in no event later than December 19, 2056. The City of Newton is a "governmental body" as that term is defined in G.L. c. 184, §26.

18. **Runs with the Land.** Except as provided in paragraphs 8 and 21.1, the obligations imposed by this Restriction shall be effective from the date of recording through the expiration or earlier termination of the Ground Lease, but in no event later than December 19, 2056, and shall be deemed to run as a binding servitude with the Building. This Restriction shall extend to and be binding upon WHA and the City, their respective successors in interest and all persons hereafter claiming under or through WHA and the City, and the words "WHA" and "the City" when used herein shall include all such persons. Any right, title, or interest herein granted to the City also shall be deemed granted to each successor and assign of the City and each such following successor and assign thereof, and the word "the City" shall include all such successors and assigns.

WHA agree to incorporate by reference the terms of this Restriction in any deed or other legal instrument by which WHA transfer any interest in all or a portion of the Property, including without limitation a leasehold interest for a term greater than one year, but excluding residential leases.

Anything contained herein to the contrary notwithstanding, an owner of the Building shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Building by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Restriction shall be inserted by WHA, by express reference, in any subsequent deed or other legal instrument by which WHA divests itself of title to the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property, but excluding any lease with a term of fewer than ninety (90) days, and also excluding residential leases.

19. **Assignment.** The City may convey, assign, or transfer this Restriction to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" that qualifies under the Act as an eligible donee whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which

the Restriction was granted will continue to be carried out as a condition of the transfer. WHA shall give prior written approval of such conveyance, assignment, or transfer by the City, such approval not to be unreasonably withheld.

**20. Recording and Effective Date.** The City shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the Middlesex County (Southern District) Registry of Deeds. WHA and the City intend that the restrictions arising under this Restriction take effect on the day and year this instrument is recorded in the land records of the Middlesex County.

### **EXTINGUISHMENT**

**21.1 Extinguishment.** WHA and the City hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Building in a manner consistent with the purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but are not limited to, partial or total destruction of the Building resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction and shall meet the requirements of the Act for extinguishment. In the event of any sale of all or a portion of the Property (or of any other property received in connection with an exchange or involuntary conversion of the Property), the proceeds of such sale shall be paid to WHA.

**21.2 Condemnation.** If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, WHA and the City shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. Such recovered proceeds shall be paid to WHA.

**22. Interpretation.** The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Building shall not apply in the construction or interpretation of this Restriction, and this instrument shall be interpreted broadly to effect its Purpose.

(b) This instrument may be executed in two counterparts, one of which may be retained by the WHA, and the other, after recording, to be retained by the City. In the event of any discrepancy between the counterparts produced, the recorded counterpart shall in all cases govern. In the event of any discrepancy between two copies of any documentation retained by the parties, the copy retained by the City shall control.

(c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit WHA to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, WHA promptly shall notify the City of such conflict and shall cooperate with the City and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

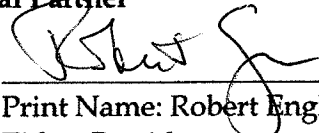
23. **Amendment.** If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, WHA and the City may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of the Restriction or the status of the City under the laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Building and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the land records of the Middlesex County. Nothing in this paragraph shall require WHA or the City to agree to any amendment or to consult or negotiate regarding any amendment.


THIS RESTRICTION reflects the entire agreement of WHA and the City. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Historic Preservation Restriction, unto the said City and its successors and permitted assigns forever. This HISTORIC PRESERVATION RESTRICTION may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

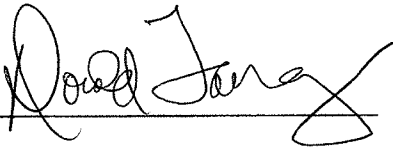
IN WITNESS WHEREOF, WHA and the City have set their hands this 7<sup>n</sup> day of January, 2010.


**WHA:**  
**Warren House Associates**  
**Limited Partnership**  
**Newton Community Development**  
**Foundation III, Inc.**  
**General Partner**


BY:   
Print Name: Robert Engler  
Title: President

BY:   
Print Name: Timothy Dacey  
Title: Treasurer

**THE CITY:**  
**City Of Newton**

BY:   
Donald Lang, Chairman  
Newton Historical Commission

APPROVED:  
  
Setti D. Warren, Mayor

Approved as to legal character  
and form:  
  
Assistant City Solicitor

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

January 6, 2010

On this 6<sup>th</sup> day of January, 2010, before me, the undersigned notary public, personally appeared the above-named Robert Engler, as President of Newton Community Development Foundation III, Inc., as general partner of and on behalf of Warren House Associates Limited Partnership proved to me through satisfactory evidence of identification, which was Drivers License, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as President of Newton Community Development Foundation III, Inc., as general partner of and on behalf of Warren House Associates Limited Partnership

Liya Alekseyev  
Notary Public  
My Commission expires: 10/24/2014

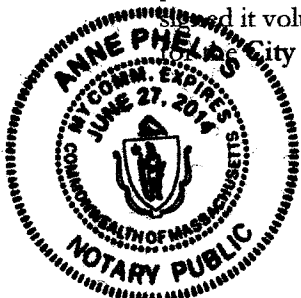
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

January 7, 2010

On this 7<sup>th</sup> day of January, 2010, before me, the undersigned notary public, personally appeared the above-named Donald Lang, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Chairman, Newton Historical Commission, City of Newton.

Anne Phelps  
Notary Public  
My Commission expires: 6-27-2014



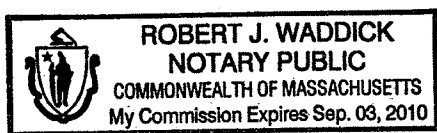
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

January 7, 2010

On this 7<sup>th</sup> day of January, 2010, before me, the undersigned notary public, personally appeared the above-named Setti D. Warren, proved to me through satisfactory evidence of identification, which was personally known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Mayor, of the City of Newton.

Robt J Waddick  
Notary Public  
My Commission expires: \_\_\_\_\_



## SCHEDULE OF EXHIBITS

- A. Legal Description
- B. Key Features
- C. Mortgage Subordination Agreement of Massachusetts Housing Finance Agency

Exhibit A

T-3

DEED

The CITY OF NEWTON, Massachusetts, a body corporate and politic organized under the laws of the Commonwealth of Massachusetts for consideration paid of Five Hundred Thousand (\$500,000.00) Dollars grants to WARREN HOUSE ASSOCIATES LIMITED PARTNERSHIP, a Massachusetts limited partnership of which Newton Community Development Foundation III, Inc. a Massachusetts corporation and New Keen Corporation a Massachusetts corporation are the general partners and having an address c/o Keen Development Corporation, 2 University Road, Cambridge, MA 02238 with QUITCLAIM COVENANTS:

The premises consisting solely of the buildings, including without limitation, all pipes, chases and conduits contained therein and improvements located in and upon the land known as 1600 Washington Street, Newton, Middlesex County bounded and described as follows:

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

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

25.00  
498  
MSD 01/02/92 01:17:00

plan # 2  
1653  
Focus 1600 Washington St Newton, MA

N 45-00-00 E A distance of 314.51 feet to the point of beginning, the last (2) courses by said Washington Street.

Containing: 3,737 acres plus or minus

and being shown on a certain plan entitled "Plan of Land in Newton, MA scale 1" = 40' November 25, 1991 Linenthal Eisenberg Anderson, Inc." recorded herewith.

Meaning and intending to convey only the buildings and other improvements set forth hereunder and not the land upon which such buildings and improvements are located, such land being the land referred to and the subject of a certain Ground Lease of even date herewith between the CITY OF NEWTON as Landlord and WARREN HOUSE ASSOCIATES LIMITED PARTNERSHIP as Tenant, notice of which Ground Lease is recorded herewith (hereinafter the "Ground Lease").

The premises granted herein are subject to a RIGHT OF REVERSION such that upon expiration or earlier termination of the Ground Lease title to such buildings, pipes, chases, conduits and improvements to the real property as may then be located on the land and owned by the Grantee or persons claiming by, through or under the Grantee shall automatically revert to the Grantor. Upon such reversion the following provisions shall bind, effect and be covenants running with the granted premises:

- (1) The CITY OF NEWTON shall assume any then outstanding obligations of the Grantee, its successors or assigns to maintain affordable housing pursuant to Condition # 3 of a Special Permit/Site Plan Approval issued by the Board of Aldermen in Board Order #236-89(5) recorded with Middlesex (Southern District) Registry of Deeds in Book 21293 Page 21;
- (2) The CITY OF NEWTON shall maintain the low income rent-subsidized housing units in any buildings to which it obtains title by reversion as low income housing units in perpetuity or for such shorter period commencing with the date of reversion as shall be the longest period for which such a restriction may then be enforced at law;
- (3) The obligations of the CITY OF NEWTON under the preceding paragraphs (1) and (2) shall be satisfied in full should the CITY OF NEWTON relocate the residents of such buildings to other units of comparable cost (to the residents) and quality elsewhere in Newton.

The provisions of the preceding paragraphs (1), (2) and (3) shall be covenants running with the land and the property



granted hereby and shall be binding upon the CITY OF NEWTON, its successors and assigns for the benefit of and subject to enforcement by the residents of any buildings which are subject to reversion hereunder from and after the date of such reversion. For purposes of this Deed the term "low income" shall mean persons or families as the case may be having incomes less than eighty (80%) percent of the median income for the Boston SMSA as determined by the then determining agency of the United States government.

The buildings and improvements granted herein are located upon a portion of land taken by the CITY OF NEWTON in two separate takings recorded with Middlesex (Southern District) Registry of Deeds in Book 4781 Page 26 and Book 9361 Page 236. See also deeds of Annie L.B. Barrett to the CITY OF NEWTON dated October 28, 1924 recorded with said Deeds in Book 4785 Page 73 and of Olive T. Spencer to the CITY OF NEWTON dated December 22, 1924 recorded with said Deeds in Book 4801 Page 442.

The obligation of the Grantee hereunder pursuant to M.G.L. c. 44 Section 63A has been satisfied.

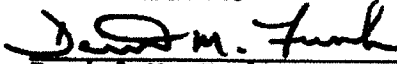
Executed as a sealed instrument this 20<sup>th</sup> day of December, 1991.

CITY OF NEWTON

BY: 

Theodore D. Mann, Mayor

Approved as to legal form and character



Daniel M. Funk  
City Solicitor

DEED

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

December 20, 1991

Then personally appeared before me Theodore D. Mann, Mayor of the City of Newton and acknowledged the foregoing document to be his free act and deed for and behalf of the City of Newton.

  
Notary Public

notice.les

The premises consisting solely of the buildings, in-  
cluding, without limitation, all pipes, chases and conduits contain-  
ing electric, gas, steam, water, sewer and other utilities, and all  
other improvements located in and upon the land known as  
#1600 Washington Street, Newton, Middlesex County bounded and  
described as follows:

Beginning at a point at the northeasterly corner of a  
parcel of land, situated on the southerly side of Washing-  
ton Street, upon which #1600 Washington Street is located. Sa-  
id point being approximately 389 feet southwesterly of the  
northeasterly corner of Washington Street and Myrtle Street,  
then:

S 45-00-00 E A distance of 322.15 feet to a point,  
thence;

S 45-00-00 W A distance of 320.00 feet to a point,  
thence;

S 45-00-00 E A distance of 82.85 feet to a point,  
thence;

S 45-00-00 W A distance of 170.00 feet to a point,  
thence;

N 45-00-00 W A distance of 120.00 feet to a point,  
thence;

N 45-00-00 E A distance of 30.00 feet to a point,  
thence;

N 45-00-00 W A distance of 272.75 feet to a point at  
southerly sideline of Washington Street,  
the last (7) courses by land now or  
formerly of the City of Newton (recreational  
fields), thence;

Northeasterly Along a curve to the right, having a radius  
of 870.00 feet, a distance of 146.18 feet  
to a point of tangency, thence;

## **EXHIBIT B**

### **KEY FEATURES**

Warren House, 1600 Washington Street, Newton, MA

Any changes which will affect the facade, roof, and grounds of the property must be reviewed and approved by the Newton Historical Commission or its staff prior to receiving a building permit. The Commission will give special consideration to changes that will affect the key architectural features ("Key Features") of the Building including the following architectural elements:

- Style, form, and massing of the original 1927 construction and the 1959 addition.
- Brick façade including watertable, exposed foundation, windows and window openings, gutters, downspouts, and cast stone and other stone ornamental features.
- Original entrances including staircases doors, lights, and railings.
- Roof, including slate roof, cornice, parapet, pediments, chimneys, louvers, vents, bell tower, and cupola.
- Open front yard with plantings.

Photocopies of baseline photographs of Building are attached hereto.

Exhibit C  
Subordination of Lenders

SUBORDINATION AGREEMENT

Massachusetts Housing Finance Agency, with a principal place of business at One Beacon Street, Boston, now the holder of the following mortgage and security interest from Warren House Associates Limited Partnership, of 425 Watertown Street, Suite 205, Newton:

Mortgage dated December 20, 1991, in the original principal amount of Six Million Sixty Thousand Dollars (\$6,060,000) and duly recorded with the Middlesex County (Southern District) Registry of Deeds in Book 21653, Page 410;

does hereby subordinate the lien of said mortgages and security interests and the notes and claims secured thereby to a HISTORIC PRESERVATION RESTRICTION dated January 7, 2010, recorded herewith, from said Warren House Associates Limited Partnership to the City of Newton, its successors and/or assigns, just as if said mortgage and security interest had been dated, executed, acknowledged, delivered and recorded after the Historic Preservation Restriction.

IN WITNESS WHEREOF the said Massachusetts Housing Finance Agency has caused its seal to be hereto affixed and these presents to be signed in its name and behalf by Laurie R. Wallach, its General Counsel, this 22 day of January, 2010.

MASSACHUSETTS HOUSING FINANCE  
AGENCY

By: [Signature]  
Its: General Counsel

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

On this 22nd day of JANUARY, 2010, before me, the undersigned notary public, personally appeared Laurie R. Wallach and proved to me through satisfactory evidence of identification, which were personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

[Signature]  
Notary Public  
My commission expires 8/2/2013

