

GROUND LEASE

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

WITNESSETH

ARTICLE I

Premises

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

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

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

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

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

ARTICLE II

Term

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

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

ARTICLE III

Rent, Real Estate Taxes & Utilities

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

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

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

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

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

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

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

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

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

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

(d) At such time as Tenant pays the rent payable under Section 3.1 (c) Tenant shall pay together with such rent an additional sum of rent calculated in the same manner as simple interest would be calculated at the rate of eight (8%) percent per annum had the rent payment being made with respect to the prior year (but not any accrual) been due in four equal payments on the 15th days of April, July, and October of the prior year and January of the year of payment and were interest payable on such payments from the date

FOR EXAMPLE should the rent payment being made with respect to any year under Section 3.1 (c) be \$60,000.00 the additional rent payment under this Section 3.1 (d) due upon payment of the rent on March 15 of the following year would be the sum of \$15,000.00 x .08 x 11/12 plus \$15,000.00 x .08 x 8/12 plus \$15,000.00 x .08 x 5/12 plus \$15,000.00 x .08 x 2/12 = \$2,600.00.

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

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

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

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

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

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

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

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

ARTICLE IV

Liability Insurance

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

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

ARTICLE V

Use

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

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

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

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

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

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

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

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

Tenant covenants to comply with all such orders and conditions.

Tenant further agrees to apply to such other municipal or other governmental agencies as may have jurisdiction for such other permits, approvals, orders of conditions or other authorizations necessary for the development of the Land and the buildings thereon for the uses permitted hereunder and shall comply with such permits, approvals, orders, conditions or other authorizations.

the purposes of this Ground Lease, the special permits, variances, orders, conditions, authorizations or permits of all governmental agencies having jurisdiction over the Development as the same may be amended or superseded from time to time are collectively referred to as the Permits.

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

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

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

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

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

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

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

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

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

ARTICLE VI

Property Insurance/Restoration

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

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

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

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

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

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

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

ARTICLE VII

Eminent Domain

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

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

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

exercise of eminent domain or a condemnation;

or

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

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

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

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

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

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

ARTICLE VIII

Leasehold Mortgages

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

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

8.2 Subordination of Rents. Landlord agrees to subordinate its interest in the rents provided for in this Ground Lease to Tenant's payments required under one or more mortgages constituting Tenant's primary financing as provided in Section 3.1(c) and to any amendments, extensions and replacements thereof which do require Landlord's consent and to other leasehold mortgages to

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

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

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

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

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

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

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

This Ground Lease shall remain in full force and effect if Tenant is not otherwise in default hereunder beyond applicable cure periods for Tenant and Tenant's primary financing mortgagee(s); No consent of Landlord shall be required for such mortgagee to continue to operate the Development as required by this Ground Lease, and Landlord shall accept such mortgagee as the tenant hereunder;

- (iii) Any such mortgagee may sell or assign its interest in the Development and in this Ground Lease to any person or company selected by the mortgagee, provided however, that such a person or company shall be of good reputation and suitable for leasing property from the City of Newton and have experience in the operation of property similar to the Development, and such sale or assignment shall not require any consent or approval of Landlord;
- (iv) Any financing obtained by such foreclosing mortgagee or by the purchaser or assignee from such foreclosing mortgagee shall be deemed to be part of "Tenant's primary financing" for all purposes of this lease including without limitation for purposes of determination of adjusted cash flow under Section 3.1(c).
- (v) Any grantee by sale or assignment of the foreclosing

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

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

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

ARTICLE IX

Quiet Enjoyment

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

ARTICLE X

Defaults

10.1 Monetary Defaults. If any rent or other monetary amount

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

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

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

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

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

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

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

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

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

ARTICLE XI

Liability and Indemnification

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

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

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

Indemnification for Liability, Breach of Lease, etc.

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

against Landlord, its officers and employees by reason of:

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

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

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

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

ARTICLE XII

Right of Reverter

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

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

ARTICLE XIII

Occupancy, Continuous Use and Other Covenants

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

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

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

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

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

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

those on the Land prior to its application for an occupancy permit, and such recreational spaces shall continue to be maintained by Tenant throughout the Term unless the Landlord determines in its sole discretion that such spaces are no longer required. At least

(2) parking spaces will be provided upon request of subtenants each of the affordable units and such parking spaces shall be provided by Tenant, one such space to be without charge for use by the occupants of the affordable units and the second such space to be at fees to be determined in consultation with the Director of Planning and Development and the oversight committee established by the Special Permit. Parking fees for affordable units shall not exceed parking fees for market units, and increases in such fees shall be subject to the approval of the Director of Planning and Development, which approval shall not be unreasonably withheld

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

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

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

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

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

ARTICLE XIV

Miscellaneous

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

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

provision of this Ground Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of other action on any subsequent occasion. Any and all rights remedies which either party may have under this Ground Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them whether exercised by said party or not, shall be deemed to be in exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

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

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

the fullest extent permitted by law.

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

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

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

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

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

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

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

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

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

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

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

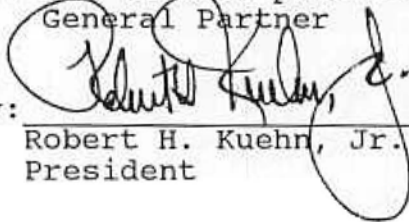
TENANT:
WARREN HOUSE ASSOCIATES
LIMITED PARTNERSHIP
By: Newton Community Development
Foundation, III, Inc.,
General Partner:

LANDLORD:
City of Newton:

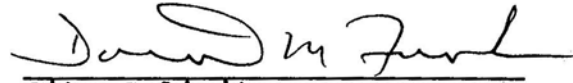
By: 
Paul Doherty, President

By: 
Theodore D. Mann, Mayor

By: New Keen Corporation
General Partner

By: 
Robert H. Kuehn, Jr.,
President

Approved as to legal form
and character:


City Solicitor