

LAW DEPARTMENT



CITY OF NEWTON, MASSACHUSETTS

CITY HALL

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NEWTON CENTRE, MA 02459

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EILEEN M. MCGEETIGAN
CATHERINE L. FARRELL
MARIE M. LAWLOR

August 3, 2005

Michael Steinitz
Massachusetts Historical Commission
Massachusetts Archives Building
220 Morrissey Blvd.
Boston, MA 02125

RE: Historic Preservation Restriction for West Suburban YMCA, 276 Church Street, Newton

Dear Mr. Steinitz:

Enclosed for review and approval by the Massachusetts Historical Commission please find an executed Historic Preservation Restriction with regard to the West Suburban YMCA. Lara Kritzer of the Newton Planning Department has previously emailed a copy of this document to you.

Included with the Restriction are true copies of baseline photographs of the YMCA building. Please let me know if the MHC requires any other documentation or information for its review. You may reach me at the above address and telephone number.

Thank you.

Very truly yours,

Marie M. Lawlor

Assistant City Solicitor

Enclosures

Cc: Lara Kritzer
Jennifer Goldson

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HISTORIC PRESERVATION RESTRICTION

THIS HISTORIC PRESERVATION RESTRICTION is made this 28th day of July, 2005, by and between **The West Suburban Young Men's Christian Association**, a Massachusetts charitable corporation, of 276 Church Street, Newton, Massachusetts 02458, (hereinafter "YMCA"); **Newton Corner Place Limited Partnership**, a Massachusetts limited partnership, of 276 Church Street, Newton, Massachusetts 02458 (hereinafter "NCP"); 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.

276 Church St, Newton

WITNESSETH:

WHEREAS, YMCA and NCP are owners of certain real property located at 276 Church Street in the City of Newton, Commonwealth of Massachusetts, which property consists of a condominium known as the West Suburban YMCA Condominium, the master deed of which is recorded in the land records of Middlesex County South District Registry of Deeds at Book 27829, page 142, and more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter "the Property");

WHEREAS, the Property includes a brick, three story Colonial Revival style institutional building built circa 1911, which is the subject of this Historic Preservation Restriction, and which currently houses the West Suburban Young Men's Christian Association (Unit 1) and Newton Corner Place, LP (Unit 2), (hereinafter "the Building"). The Property also includes a recent addition built in 2002, which is located on the easterly side of the original 1911 structure, and which is not part of this restriction;

WHEREAS, YMCA owns Unit 1 of said Property, which unit includes the basement, ground (first) and second floors of the building together with a proportionate share of the common areas, the Unit Deed of which is recorded in the land records of Middlesex County (Southern District) Registry of Deeds at Book 29136, page 021, and more particularly described in Attachment B hereto;

WHEREAS, NCP owns Unit 2 of said Property, which unit includes the third floor and certain other portions of the Building, together with a proportionate share of the common areas, the Condominium Unit Deed of which is recorded in the land records of Middlesex County (Southern District) Registry of Deeds at Book 27829, page 181, and as is more particularly described in Attachment C hereto;

**City of Newton Law Department
1600 Commonwealth Avenue
Newton Centre, MA 02459**

WHEREAS, the Building stands as a highly significant example of Colonial Revival institutional architecture, 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 Historical Commission's inventory of Historic and Archaeological Assets of the Commonwealth;

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 31, 32, and 33 (hereinafter "the Act");

WHEREAS, YMCA, NCP 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 D 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 D.

WHEREAS, the grant of a preservation restriction by YMCA and NCP 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, YMCA and NCP each desire to grant to the City, and the City desires to accept, a preservation restriction in gross in perpetuity on the exterior of the Building on the Property pursuant to the Act;

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 31, 32, and 33, YMCA and NCP do hereby voluntarily grant and convey unto the City this preservation restriction (hereinafter "the Restriction") in gross in perpetuity 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.

YMCA'S COVENANTS

2.1 YMCA and NCP's Covenants: Covenant to Maintain. YMCA and NCP agree at all times to maintain the exterior of the Building in the sound structural condition and good state of repair in accordance with the terms of this paragraph. It is YMCA's intent that the exterior of the Building shall be maintained in a physical appearance and composition that is as close to its original appearance and composition as is reasonably possible. YMCA's and NCP's obligation to maintain shall require replacement, repair, and reconstruction by YMCA and NCP whenever necessary to preserve the exterior of the Building in sound structural condition and a good state of repair. 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 YMCA's and NCP's Covenants: Prohibited Activities.

The Building or any part thereof shall not be demolished, removed, or razed (by affirmative action or through neglect or failure to repair and maintain) except as provided in paragraphs 7 and 8.

YMCA'S and NCP'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, YMCA and NCP 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, ridgeline and rooflines of the Building. Activities by YMCA and NCP 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 the YMCA and NCP 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 YMCA's and NCP's Requests for Approval. YMCA and NCP 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, YMCA and NCP 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 receipt 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 YMCA and NCP 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 YMCA's and NCP'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 YMCA and NCP 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.

YMCA'S and NCP'S RESERVED RIGHTS

6. YMCA's and NCP'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 YMCA and NCP 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 YMCA and NCP 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.

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

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, YMCA and NCP 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 YMCA and NCP without the City's prior written approval. Within ninety (90) days of the date of damage or destruction, if required by the City, YMCA and NCP at their expense shall submit to the City a written report prepared by a qualified restoration architect and an engineer who are acceptable to YMCA, NCP 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, YMCA, NCP and the City agree that the Purpose of the Restriction will be served by such restoration/reconstruction, YMCA, NCP and the City shall establish a schedule under which YMCA and NCP 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 YMCA and NCP.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, YMCA, NCP 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, YMCA and NCP may, with the prior written consent of the City, alter, demolish, remove, or raze the Building, and/or construct new improvements on the Property. YMCA, NCP 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, YMCA, NCP, 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. YMCA and NCP 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 YMCA and NCP or contribution or coinsurance from YMCA and NCP. YMCA and NCP 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: YMCA and NCP hereby agree to pay, protect, indemnify, hold harmless and defend at their 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 YMCA and NCP are 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.** YMCA and NCP 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 YMCA and NCP timely object 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 YMCA and NCP, the City is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to YMCA and NCP 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 YMCA, NCP 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 YMCA, at:

West Suburban YMCA
Unit 1
276 Church Street
Newton, MA 02458

if to NCP:

Newton Corner Place, LP
Unit 2
276 Church Street
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 the YMCA and NCP, the City shall promptly furnish YMCA and NCP with certification that, to the best of the City's knowledge, YMCA and NCP are in compliance with the obligations of YMCA and NCP 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 YMCA and NCP, representatives of the City shall be permitted at reasonable times to inspect the Building each May on an annual basis at the convenience of YMCA, NCP, and the City. YMCA and NCP covenant 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 YMCA and NCP, 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 YMCA's and NCP's obligations hereunder.

In the event YMCA and/or NCP are found to have violated any of their obligations, YMCA and/or NCP 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 YMCA and/or NCP 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.** YMCA and/or NCP shall deliver to the City copies of any notice of violation or lien relating to the Property received by YMCA and/or NCP from any government authority within five (5) days of receipt by YMCA or NCP. Upon request by the City, YMCA and/or NCP shall promptly furnish the City with evidence of YMCA's and/or NCP's compliance with such notice or lien where compliance is required by law.

BINDING EFFECT; ASSIGNMENT

18. **Runs with the Land.** Except as provided in paragraphs 8 and 21.1, the obligations imposed by this Restriction shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Restriction shall extend to and be binding upon YMCA, NCP and the City, their respective successors in interest and all persons hereafter claiming under or through YMCA, NCP and the City, and the words "YMCA", "NCP", 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.

YMCA and NCP agree to incorporate by reference the terms of this Restriction in any deed or other legal instrument by which YMCA and/or NCP transfer any interest in all or a portion of the Property, including without limitation a leasehold interest for a term greater than one year. YMCA and NCP further agree to amend the Condominium By-Laws as necessary to incorporate by reference the terms of this Restriction.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Restriction shall be inserted by YMCA and NCP, by express reference, in any subsequent deed or other legal instrument by which YMCA and/or NCP divests itself of either the fee simple title to or any lesser estate in the Property or any part hereof, 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.

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. YMCA and NCP 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 land records of Middlesex County. YMCA, NCP, 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.** YMCA, NCP, 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 YMCA and/or NCP.

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, YMCA, NCP, 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 YMCA and/or NCP.

INTERPRETATION

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 and the transfer of rights and the restrictions on use herein contained.

(b) This instrument may be executed in two counterparts, one of which may be retained by the YMCA and NCP, 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 YMCA or NCP 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, YMCA and NCP 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.

AMENDMENT

23. **Amendment.** If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, YMCA, NCP, 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 YMCA, NCP, or the City to agree to any amendment or to consult or negotiate regarding any amendment.

THIS RESTRICTION reflects the entire agreement of YMCA, NCP, 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.

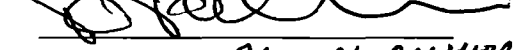
IN WITNESS WHEREOF, YMCA, NCP, and the City have set their hands this 28th day of July, 2005.

YMCA:
West Suburban YMCA

BY: 
Print Name: PATRICK PALMER
Title: PRES + CEO

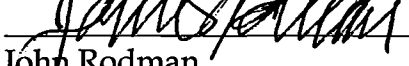
BY: _____
Print Name:
Title:

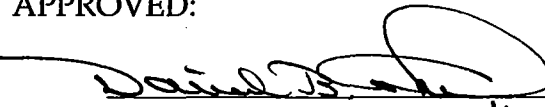
NCP:
Newton Corner Place Limited Partnership

BY: 
Print Name: PATRICK PALMER
Title: PRES + CEO
ASSIST CLERK

BY: _____
Print Name:
Title:

THE CITY:
City Of Newton

BY: 
John Rodman
Chairman
Newton Historical Commission

APPROVED: 
David B. Cohen, Mayor

Approved as to legal character
and form:

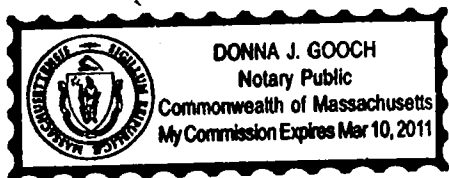

Assistant City Solicitor

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.
2005

July 27,

On this 27th day of July, 2005, before me, the undersigned notary public, personally appeared the above-named PATRICK PINNA, proved to me through satisfactory evidence of identification, which was MASS. DRIVER 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 for West Suburban Young Men's Christian Association.



Donna Gooch
Notary Public
My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.
2005

On this ____ day of _____, 2005, before me, the undersigned notary public, personally appeared the above-named _____, proved to me through satisfactory evidence of identification, which was _____, 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 _____ for West Suburban Young Men's Christian Association.

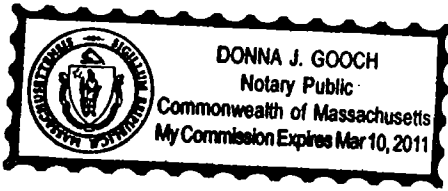
Notary Public
My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.
2005

July 27,

On this 27th day of July, 2005, before me, the undersigned notary public, personally appeared the above named Patrick Pina, proved to me through satisfactory evidence of identification, which was MA Driver's 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 asst. clerk for **Newton Corner Place Limited Partnership.**



Donna Gooch
Notary Public
My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.
2005

On this ____ day of _____, 2005, before me, the undersigned notary public, personally appeared the above-named _____, proved to me through satisfactory evidence of identification, which was _____, 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 _____ for **Newton Corner Place Limited Partnership.**

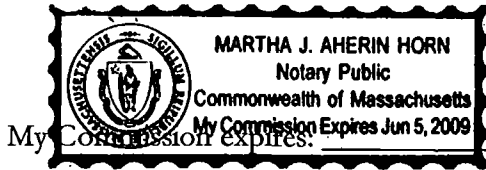
Notary Public
My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.
2005

July 28, 2005

On this 28 day of July, 2005, before me, the undersigned notary public, personally appeared the above-named **John Rodman**, 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**, for the **City of Newton**.



Martha J. Aherin Horn
Notary Public

APPROVAL BY MASSACHUSETTS HISTORICAL COMMISSION
COMMONWEALTH OF MASSACHUSETTS

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Massachusetts General Law, chapter 184, section 32.

* Date: 9/6/2005

Brona Simon

Brona Simon
Acting Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk
MIDDLESEX, SS.
2005

On this 8th day of September, 2005, before me, the undersigned notary public, personally appeared the above-named Brona Simon, proved to me through satisfactory evidence of identification, which was _____, 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 **Acting Executive Director and Clerk** for the **Massachusetts Historical Commission**.

Nancy Maida
Notary Public
My Commission expires: January 19, 2012

SCHEDULE OF EXHIBITS

- A. Description of West Suburban YMCA Condominium and Site Plan
- B. Description of Unit 1 of the West Suburban YMCA Condominium
- C. Description of Unit 2 of the West Suburban YMCA Condominium
- D. Key Features
- E. Mortgage Subordination Agreement of Eastern Bank (Unit 1)
- F. Mortgage Subordination Agreement of Village Bank (Unit 2)
- * G. Mortgage Subordination Agreement of West Suburban Young Men's Christian Association (Unit 2)
- H. Mortgage Subordination Agreement of Citizen's Bank Of Massachusetts (Unit 1)

EXHIBIT A

1. The West Suburban YMCA Condominium, a condominium located at 276 Church Street, Newton, Massachusetts created by Condominium Master Deed dated October 31, 1997 and recorded in Middlesex County (Southern District) Registry of Deeds on October 31, 1997 in Book 27829, Page 142. Parcel Description, text fully recited below, Description of Building, and Description of Units are recorded in said registry as part of the Condominium Master Deed at Book 27829, Pages 154 through 157.

Parcel Description

A certain parcel of land located on Church Street in the City of Newton, County of Middlesex, Commonwealth of Massachusetts, and shown on a plan entitled "Plan of Land in Newton, Mass.; Prepared for: Palmer & Dodge, Scale: 1" = 40' Date: October 29, 1997, Schofield Brothers of New England, Inc." said parcel of land being bounded and described as follows:

Commencing at the northeast corner of said parcel on the southerly side of the Massachusetts Turnpike on the westerly side of Richardson Street approximately 0.81 feet southeast of a stone bound found, said point being the POINT OF BEGINNING; thence

S 30 14' 38"E a distance of 63.18 feet to a stone bound found; thence

Southeasterly and curving to the right along an arc of a curve having a radius of 25.00 feet and a length of sixty-one and forty-four hundredths (61.44) feet along Richardson Street to a point on the northerly side of Church Street; thence

S 20 34' 07"W a distance of 44.20 feet on a line not tangent to said curve to a point on the southerly side of Church Street; thence

S 69 33' 27"E a distance of 137.37 feet along Church Street to a point; thence

Southeasterly and curving to the right along an arc of a curve having a radius of 13.27 feet and a length of nineteen and fifty-one hundredths (19.51) feet to a point on the westerly side of Oakland Street; thence

S 14 40' 56"W a distance of 173.81 feet along Oakland Street to a steel survey marker set; thence

N 75 20' 46" a distance of 142.28 feet by land now or formerly of Flanagan to a steel survey marker set; thence

S 21 45' 14"W a distance of 53.00 feet by said land of Flanagan to a point; thence

S 21 19' 55"W a distance of 167.82 feet to a point. The last course being along lands now or formerly of Spearing, Ly and Caron and across the end of Winthrop Avenue, a private way; thence

N 77 2' 12"W a distance of 574.20 feet by lands now or formerly of Boggini, Martin, Shapiro, Carpenter, Roberts, and Fogel to a steel survey marker set; thence

N 09 55' 33"E a distance of 232.88 feet to a steel survey marker set; thence

N 68 31' 26"E a distance of 114.35 feet to a point; thence

N 73 45' 22"E a distance of 330.84 feet to a point; thence;

S 69 33' 27"E a distance of 31.64 feet to a point; thence

N 73 50' 18"E a distance of 74.67 feet to a point; thence

N 73 50' 18"E a distance of 140.96 feet to a point, said point being the POINT OF BEGINNING. The last six courses being along land now or formerly of the Massachusetts Turnpike Authority.

* The above described parcel of land contains an area of 274,970 square feet (6.312 acres), more or less, according to said plan.

For title see the following deeds:

Book 3501	Page 285
Book 3488	Page 532
Book 3489	Page 141
Book 3503	Page 455
Book 3507	Page 250
Book 3504	Page 305
Book 6517	Page 537
Book 11716	Page 113
Book 11022	Page 162

2. Site Plan Dated 10/19/01 attached hereto.

FRONT FACADE



FRONT FACADE



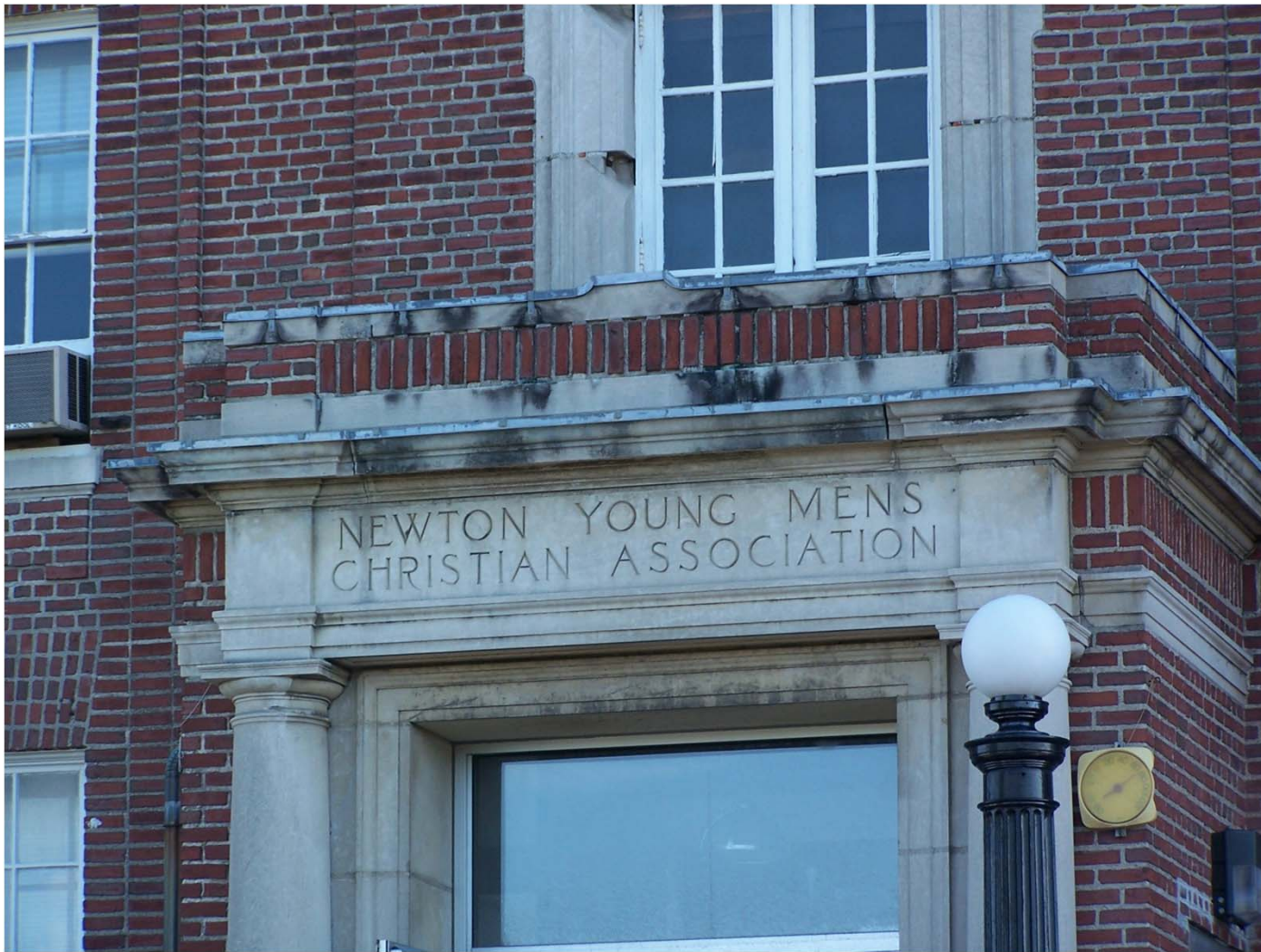
FRONT FAÇADE WITH NEW ADDITION



FRONT ENTRANCE



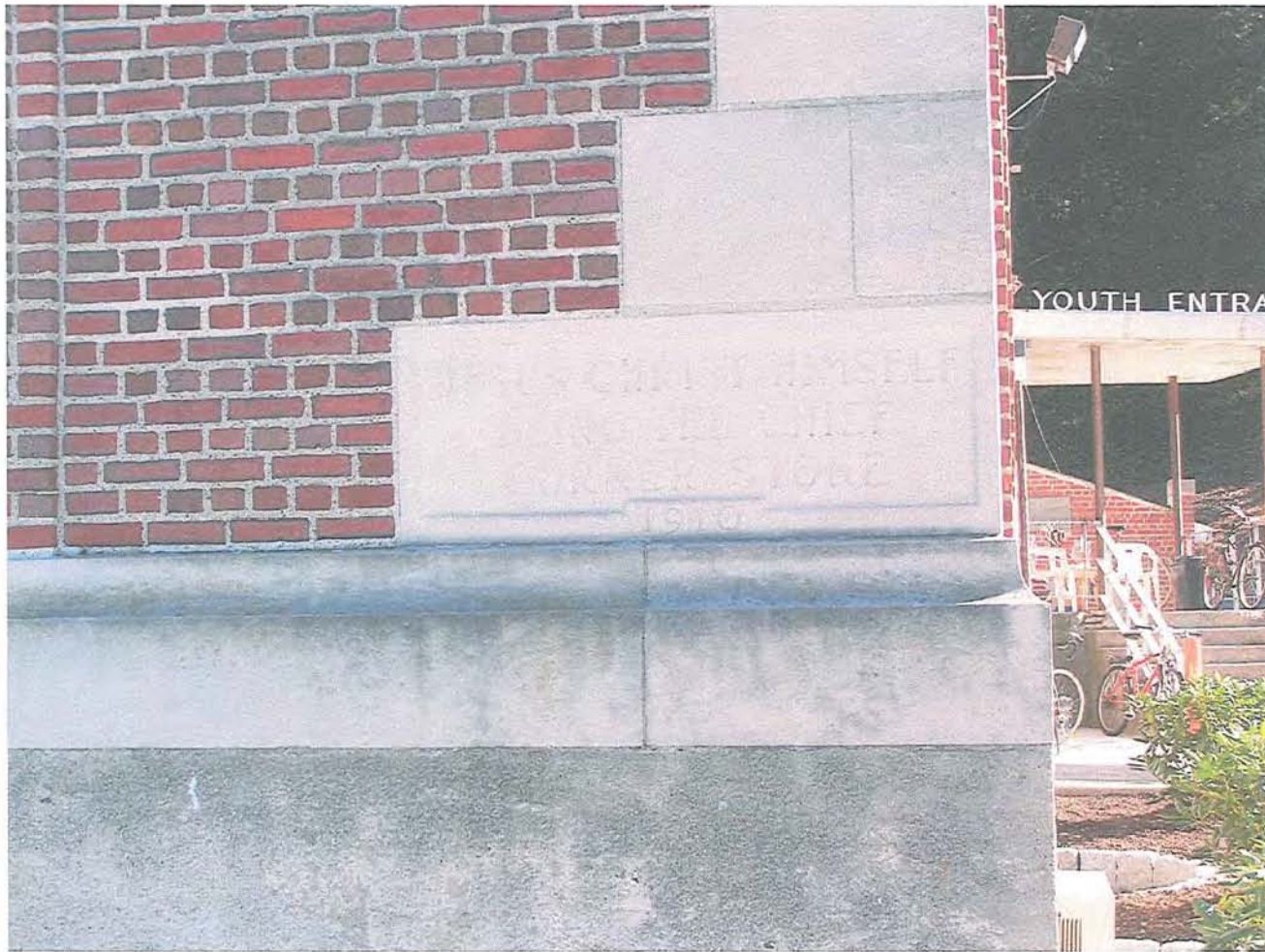
FRONT ENTRANCE SIGNAGE



WINDOWS ON FRONT FAÇADE
(EAST OF MAIN ENTRANCE)



CORNERSTONE



SOUTHEAST CORNER



EAST FACADE



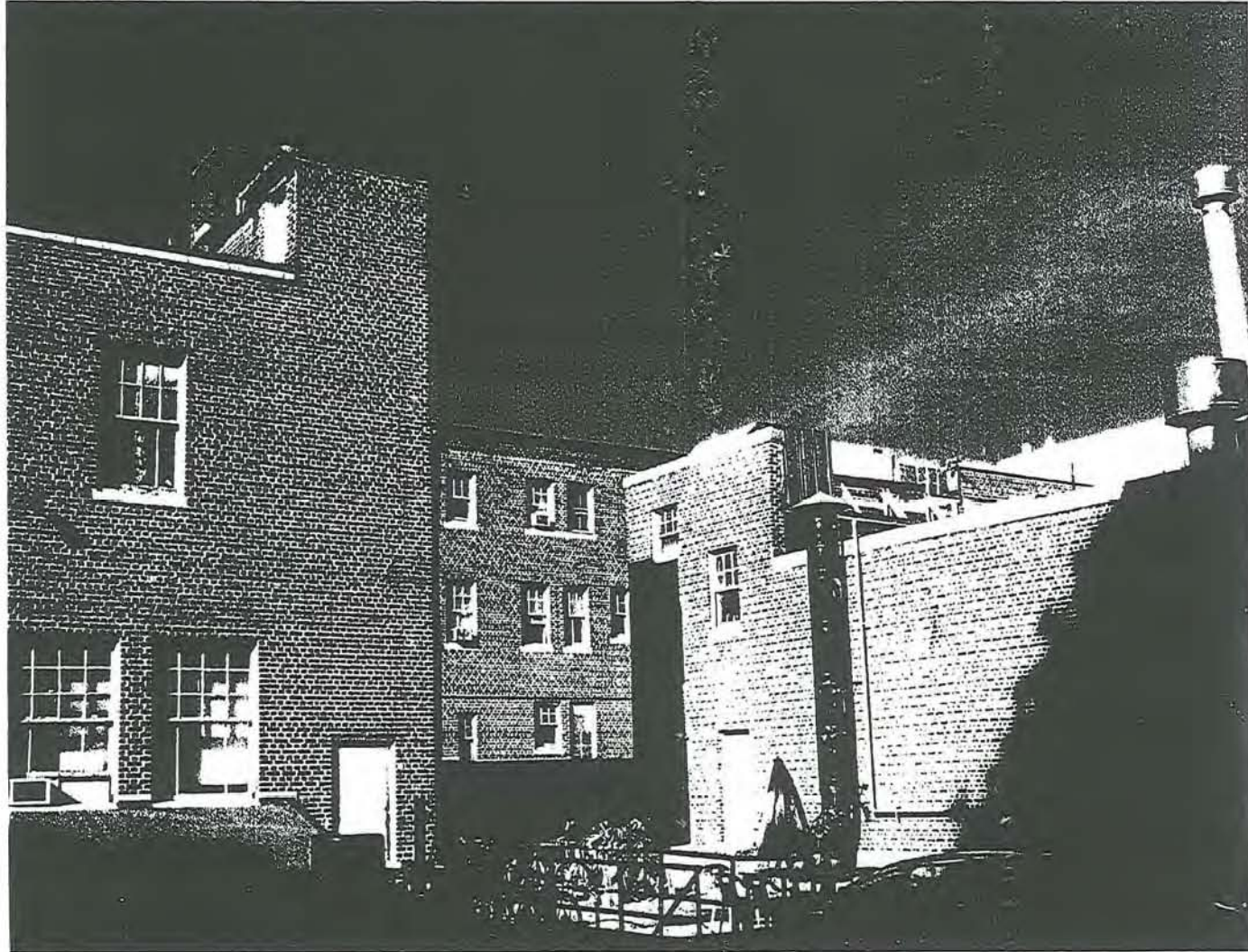
EAST SIDE ENTRANCE



REAR FACADE



REAR FACADE



James L. Brown
Archit. Middlesex S. Register

SUBORDINATION AGREEMENT

Citizens Bank of Massachusetts, with a principal place of business located at 53 State Street, Boston, Massachusetts, 02109, now the holder of a certain Mortgage, Security Agreement and Fixture Filing from **The West Suburban Young Men's Christian Association** of 276 Church Street, Newton, Massachusetts 02458 to it dated September 14, 2005, in the original principal amount of Six Million, Two Hundred Twenty-One Thousand, Six Hundred Forty-Four and 00/100 dollars (\$6,221,644.00) and duly recorded with the Middlesex County (Southern District) Registry of Deeds in Book 46084, Page 336, does hereby subordinate the lien of said mortgage and the note and claim secured thereby to a **HISTORIC PRESERVATION RESTRICTION** dated 9/26/05, recorded herewith, from said West Suburban Young Men's Christian Association to The City of Newton, its successors and/or assigns, just as if said Mortgage and Security Agreement had been dated, executed, acknowledged, delivered and recorded after the Historic Preservation Restriction.

IN WITNESS WHEREOF the said **Citizens Bank of Massachusetts** has caused its seal to be hereto affixed and these presents to be signed in its name and behalf by AUBREY THEALL, its VICE PRESIDENT, this 26th day of September, 2005.

CITIZENS BANK OF MASSACHUSETTS
 By: [Signature]
 Name: AUBREY THEALL
 Its: VICE PRESIDENT

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

On this 27 day of September, 2005, before me, the undersigned notary public, personally appeared AUBREY THEALL and proved to me through satisfactory evidence of identification, which were MASS DRIVER'S LICENSE, 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]
 Not. Middlesex S. Register

Nancy L. Corcoran
 Notary Public
 My commission expires:

City of Newton Law Dept.
 1000 Commonwealth Ave.
 Newton Centre, MA 02459

NANCY L. CORCORAN
 My Commission Expires
 October 3, 2008



SUBORDINATION AGREEMENT

The West Suburban Young Men's Christian Association, with a principal place of business located at 276 Church Street, Newton, Massachusetts 02458, now the holder of the following mortgages from Newton Corner Place Limited Partnership of 276 Church Street, Newton, Massachusetts 02458:

1. Mortgage dated 9/24/98, in the original principal amount of Two Hundred Fifty Thousand and 00/100 dollars (\$250,000.00) and duly recorded with the Middlesex County (Southern District) Registry of Deeds in Book 29136, Page 57; and
2. Mortgage dated 9/24/98, in the original principal amount of One Hundred Twenty-Seven Thousand and 00/100 dollars (\$127,000) and duly recorded with the Middlesex County (Southern District) Registry of Deeds in Book 29136, Page 72;

does hereby subordinate the lien of said mortgages and the notes and claims secured thereby to a **HISTORIC PRESERVATION RESTRICTION** dated _____, recorded herewith, from said West Suburban Young Men's Christian Association and Newton Corner Place Limited Partnership to The City of Newton, its successors and/or assigns, just as if said mortgages had been dated, executed, acknowledged, delivered and recorded after the Historic Preservation Restriction.

IN WITNESS WHEREOF the said West Suburban Young Men's Christian Association has caused its seal to be hereto affixed and these presents to be signed in its name and behalf by Patrick Palmer, its Executive Director this 3rd day of August, 2005. Joseph Stone Treasurer

WEST SUBURBAN YOUNG MEN'S
CHRISTIAN ASSOCIATION,

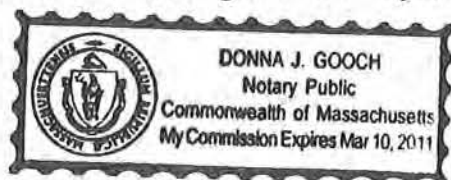
By: [Signature] By: [Signature]
its Treasurer

Its: Executive Director & CEO

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 3rd day of August, 2005, before me, the undersigned notary public, personally appeared Patrick Palmer and proved to me through satisfactory evidence of identification, which were MASS. License Joseph Stone 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:

[Signature]
Attest, Middlesex S. Register

City of Newton Law Dept.
1000 Commonwealth Ave.
110... Center ... 02459



2005 00223686

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SUBORDINATION AGREEMENT

Village Bank, (formerly Auburndale Co-Operative Bank) with a principal place of business located at 307 Auburn Street, Auburndale, Massachusetts, 02466, now the holder of a certain mortgage from Newton Corner Place Limited Partnership of 276 Church Street, Newton, Massachusetts 02458 to it dated 4/20/99, in the original principal amount of One Hundred Fifty Thousand and 00/100 dollars (\$150,000.00) and duly recorded with the Middlesex County (Southern District) Registry of Deeds in Book 30064, Page 489, does hereby subordinate the lien of said mortgage and the note and claim secured thereby to a **HISTORIC PRESERVATION RESTRICTION** dated _____, recorded herewith, from said West Suburban Young Men's Christian Association and Newton Corner Place Limited Partnership to The City of Newton, its successors and/or assigns, just as if said mortgage had been dated, executed, acknowledged, delivered and recorded after the Historic Preservation Restriction.

IN WITNESS WHEREOF the said Village Bank has caused its seal to be hereto affixed and these presents to be signed in its name and behalf by Andrew S Franklin, its Vice President, this 5th day of August, 2005.

VILLAGE BANK

By: [Signature]

Its: Vice President

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

[Signature]
Attest. Middlesex S. Register

On this 5th day of August, 2005, before me, the undersigned notary public, personally appeared Andrew S Franklin and proved to me through satisfactory evidence of identification, which were MA. I.D., 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:
August 1, 2008
Deborah Simone

City of Newton Law Dept.
1000 Commonwealth Ave.
Newton Centre, MA 02459



SUBORDINATION AGREEMENT

Eastern Bank, with a principal place of business located at 265 Franklin Street, Boston, Massachusetts 02110-3120, now the holder of the following mortgages from **West Suburban Young Men's Christian Association** of 276 Church Street, Newton, Massachusetts 02458:

1. Mortgage dated 12/16/2003, in the original principal amount of Two Hundred Sixty-Five Thousand and 00/100 dollars (\$265,000.00) and duly recorded with the Middlesex County (Southern District) Registry of Deeds in Book 41625, Page 25; and
2. Mortgage and Trust agreement (between Massachusetts Development Finance Agency, Issuer, West Suburban Young Men's Christian Association, Borrower, and Eastern Bank and Trust Company, as Trustee) dated 10/19/2000, in the original principal amount of \$Four Million, Four Hundred Seventy-Five Thousand and 00/100 dollars (\$4,475,000) and duly recorded with the Middlesex County (Southern District) Registry of Deeds in Book 31938, Page 496;

does hereby subordinate the lien of said mortgages and the notes and claims secured thereby to a **HISTORIC PRESERVATION RESTRICTION** dated _____, recorded herewith, from said West Suburban Young Men's Christian Association and Newton Corner Place Limited Partnership to The City of Newton, its successors and/or assigns, just as if said mortgages had been dated, executed, acknowledged, delivered and recorded after the Historic Preservation Restriction.

IN WITNESS WHEREOF the said Eastern Bank has caused its seal to be hereto affixed and these presents to be signed in its name and behalf by Robert J. Moodie, its Senior Vice President this 11 day of August, 2005.

EASTERN BANK

By: [Signature]

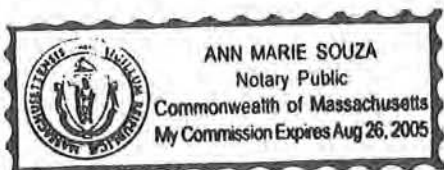
Its: Senior Vice President

COMMONWEALTH OF MASSACHUSETTS

[Signature]
Attest, Middlesex S. Register

Suffolk, ss

On this 11 day of August, 2005, before me, the undersigned notary public, personally appeared Robert Moodie and proved to me through satisfactory evidence of identification, which were Personally Known, 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:

City of Newton
Law Dept.
1000 Commonwealth Ave.
Newton Centre, MA 02459

8/26/05

EXHIBIT B

All that certain premises and proportionate interest in West Suburban YMCA Condominium, a condominium at 276 Church Street, in Newton, Middlesex County, Massachusetts, more particularly described as follows:

Unit 1 of the West Suburban YMCA Condominium, together with its undivided percentage of the common elements therein as established by a Condominium Master Deed dated October 31, 1997 and recorded in the Middlesex County (Southern District) Registry of Deeds in Book 27829, Page 142, and the By-laws of said condominium, dated October 31, 1997 recorded in the said Registry in Book 27829, Page 158; and as further described in a Condominium Unit Deed dated September 24, 1998 and recorded in the said Registry in Book 29136, Page 21.

EXHIBIT C

All that certain premises and proportionate interest in West Suburban YMCA Condominium, a condominium at 276 Church Street, in Newton, Middlesex County, Massachusetts, more particularly described as follows:

Unit 2 of West Suburban YMCA Condominium, together with an undivided percentage of the common elements as established by Master Deed dated October 31, 1997 and recorded with Middlesex County (Southern District) Registry of Deeds in Book 27829, Page 142, and the By-Laws of said Condominium dated October 31, 1997 recorded in the said Registry in Book 27829, Page 158; and as further described in a Condominium Unit Deed dated October 31, 1997 and recorded in the said registry on October 31, 1997 in Book 27829, Page 181.

EXHIBIT D

KEY FEATURES

West Suburban YMCA Condominium, 276 Church Street, Newton, MA

Any changes which would impact the exterior envelope of the Building must be reviewed and approved by the Newton Historical Commission prior to receiving a building permit. The Commission will give special consideration to changes which will impact the key architectural features (Key Features) of the Building, including the following:

- Decorative brick and stone work (patterned brick across front façade, cornerstone, inscribed stone over entrance)
- Front Entrance including steps, pillars, and ramp
- Windows – all double hung sash windows and the semicircular staircase window on the right façade. This does not include the windows found in the new addition to the Building
- Right Side Entrance including steps, railing, posts and roof
- Exterior doors on the original portion of the Building including balcony doors over entrance, front and right side doors
- Style, form, and massing of the original 1911 main section of the Building
- Public view across open front yard to principal facades of the 1911 portion of the Building.

Photocopies of baseline photographs of Building are attached hereto.