

**COMMUNITY PRESERVATION GRANT AGREEMENT  
BETWEEN THE WEST SUBURBAN YMCA and THE CITY OF NEWTON**

This AGREEMENT made as of July \_\_, 2005 by and between The West Suburban Young Men's Christian Association (West Suburban YMCA), a Massachusetts non-profit corporation having a usual place of business located at 276 Church Street, Newton, MA 02458 (hereinafter "YMCA") and the City of Newton, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Director of Planning and Development or his designated staff, but without personal liability to him, (hereinafter the "City"), collectively, the "parties."

WITNESSETH THAT:

WHEREAS, the YMCA has applied for and received approval from the Community Preservation Committee and Board of Alderman of the City of Newton for a grant of \$160,273 for the restoration of 66 historic exterior windows on the first and second floors of the 1911 portion of the West Suburban YMCA Condominium building (the "Building") located at 276 Church Street, Newton, MA;

WHEREAS, the YMCA will apply the grant to pay for the costs of restoring said historic windows;

WHEREAS, the YMCA, record owner of Unit 1 of the West Suburban YMCA Condominium, and Newton Corner Place Limited Partnership (NCP), record owner of Unit 2 of the West Suburban YMCA Condominium, have each signed an historic preservation restriction referring to the Building;

WHEREAS, the historic preservation restriction will be submitted to the Massachusetts Historic Commission (MHC) for approval, and once approved will be recorded in the Registry of Deeds (Southern Middlesex Division) together with Subordination Agreements from all mortgagees of Unit 1 and Unit 2,

NOW THEREFORE, the parties do mutually agree to the following General Provisions and Attachments:

**\*\*GENERAL PROVISIONS\*\***

1. **Subject matter.** This Agreement sets forth the terms and conditions whereby the YMCA shall receive a grant award from the City in the amount of one hundred sixty thousand, two hundred seventy-three dollars (\$160,273.00). The YMCA agrees to use the grant for the purpose of restoring 66 historic exterior windows on the first and second story of the 1911 portion of the YMCA building, as described in the Community Preservation Committee Recommendation (**Attachment A** hereto).
2. **Conditions Prior to Receipt of Funds.** The YMCA agrees to the following contingencies prior to the receipt of funds:
  - (a). YMCA agrees that all the conditions of the Historic Preservation Restrictions shall be met;
  - (b). The Historic Preservation Restrictions have been approved by the Massachusetts Historic Commission and recorded in the Registry of Deeds, together with Subordination Agreements from all mortgagees of Unit One and Unit Two of the West Suburban YMCA Condominium.
3. **Release of Grant Funds for Construction.**
  - (a) **Request for Payment.** Following completion of any portion of the work the YMCA shall prepare and submit requests for payment to the City. The YMCA understands and agrees that it may not request payment from the City for any costs covered by or charged to any other funding source. After payment of the initial deposit invoice amount provided for in Paragraph 3(b), the City will not advance funds to the YMCA under any circumstances.  
The request for payment should be addressed to:

Jennifer Goldson  
 Department of Planning and Development  
 City of Newton  
 1000 Commonwealth Avenue  
 Newton Centre, MA 02459

(b) **Disbursement Procedures.** Payment of the grant funds shall be made as follows:

1) **Initial Deposit Payment.** After execution of this agreement and recording of the MHC approved Historic Preservation Restrictions and Mortgage Subordination Agreements, YMCA shall submit to the City a request for payment of the deposit amount of Thirty-Seven Thousand Dollars (\$37,000.00), together with copies of the deposit invoices from YMCA's contractors. The City, within five business days of such submission shall deliver a check in the deposit amount made payable to the West Suburban YMCA.

2) **Subsequent Payments.** After the initial deposit payment, the YMCA may submit periodic requests for payment, together with copies of invoices from YMCA's contractor(s), as portions of the restoration are completed. After inspection of the work and approval of the YMCA's request for payment, the City shall make a periodic progress payment to the YMCA in the amount of the invoice attributable to the completed portion of the restoration. Upon satisfactory completion of the entire restoration, the YMCA shall submit to the City a request for payment in full of any remaining balance, together with copies of invoices from the YMCA's contractor(s). Payment of any remaining balance shall be made to the YMCA within thirty days, subject to final inspection and approval of the work by the City. In the event any dispute arises concerning the work, an equitable amount shall be retained pending resolution thereof.

4. **Quality of Work.** As required by the Community Preservation Act, M.G.L. chapter 44B, all restoration work shall be performed 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") and in accordance with all applicable local and state codes. YMCA shall so direct its contractor(s).
5. **Permits.** YMCA shall acquire, at its expense, all requisite permits and licenses for the performance of the restoration work hereunder.
6. **Insurance Requirements** The YMCA shall keep the property insured at all times and in such amounts as deemed reasonable and prudent in accordance with standard construction practices and in compliance with **Attachment D** hereto.
7. **Recapture of Funds.** If the YMCA fails to comply with the requirements of the grant, the grant funds shall revert back to the City, and the YMCA shall be liable to repay the entire amount of the grant to the City. The City may take such steps as necessary, including legal action, to recapture such funds.

8. **Return of Unused Portion of Grant.** Any portion of the grant not used to restore the 66 historic windows shall be returned by the YMCA to the City within six months of the date of this Agreement.
9. **Record Keeping.** The YMCA agrees to keep such records as kept in the normal course of business and as may be required by the City with respect to the restoration of the 66 historic windows. The City shall have full and free access to such records with respect to utilization of the proceeds of this Agreement.
10. **Termination.** In the event the YMCA fails to fulfill all obligations under the terms of this Agreement, including refusal of YMCA or NCP to comply with the Historic Preservation Restriction, the City shall have the right, in its sole discretion, to terminate this Agreement upon written notice to the YMCA. Upon such termination, the City shall be free to pursue any rights or remedies available at law or in equity, as well as any rights or remedies provided within this Agreement, including without limitation, recapture of funds under paragraph 7.
11. **Compliance with Applicable Laws.** The YMCA shall comply with all applicable laws, ordinances, or codes of state and/or local governments, in performing any of the work embraced by this Agreement.
12. **Monitoring.** The City shall periodically evaluate the performance of the YMCA and may make a determination as to whether the YMCA is in conformance with this Agreement and has a continuing capacity to carry out the grant activities in a timely manner. At any time during normal business hours and as often as the City may deem necessary, YMCA shall make available all such records and documents as requested by said parties for audit and/or monitoring. The City may examine and make copies of such records and may audit all contracts, procurement records, invoices, materials, payrolls, personnel records, conditions of employment, and all documents relating to all matters covered by this Agreement.
13. **Successors and assigns.** The terms of this Agreement shall be binding on the YMCA's successors and assigns. The YMCA shall provide notice of any change in ownership of the Property to the City.
14. **Conflict of Interest; Bonus and Benefit Prohibited.**  
 (a) No member, officer, or employee of the West Suburban YMCA or its designees or agents, no member of the governing body of the City of Newton or the Commonwealth of Massachusetts, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the subject funding programs during his or her tenure or for one year thereafter, shall have any interest or benefit, direct or indirect, in any contract or subcontract, or in the proceeds thereof, in connection with this Agreement, including work to be performed. (b) YMCA shall not pay bonus, commission, or fee for the purpose of obtaining the City's approval of or concurrence to complete the work financed in whole or in part by this Agreement.
15. **Free from Encumbrances.** YMCA agrees and represents that the Property is free from any attachments, tax liens, mechanic liens or any other encumbrances, except for the following:
- Unit 1 (West Suburban YMCA - mortgagor):
1. Mortgage to Eastern Bank, dated 12/16/03, in the principal amount of \$265,000, recorded with the Middlesex (Southern District) Registry of Deeds in Book 41625, Page 25;
  2. Mortgage and Trust Agreement with Massachusetts Development Finance Agency and Eastern Bank and Trust Company (Trustee), dated 10/19/00, in the principal amount of \$4,475,000, recorded in said Registry in Book 31938, Page 496;

Unit 2 (Newton Corner Place Limited Partnership – mortgagor):

1. Mortgage to Village Bank (formerly Auburndale Co-Operative Bank), dated 4/20/99, in the principal amount of \$150,000, recorded with the Middlesex (Southern District) Registry of Deeds in Book 30064, Page 489;
2. Mortgage to West Suburban Young Men’s Christian Association, dated 9/24/98, in the principal amount of \$250,000, recorded with said Registry in Book 29136, Page 57;
3. Mortgage to West Suburban Young Men’s Christian Association, dated 9/24/98, in the principal amount of \$127,000, recorded in said Registry in Book 29136, Page 72.

16. **Indemnification.** The YMCA shall indemnify, hold harmless, and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensation, including attorneys’ fees and interest arising out of or resulting from the use of City funds disbursed pursuant to this Agreement, including claims attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, provided that such claim, damage, loss, or expense is caused in whole or in part by any negligent act or omission of the YMCA, anyone directly or indirectly employed by the YMCA, or anyone for whose acts YMCA may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder..
17. **Notice.** Any notice, demand, request, consent, approval, communication either party is required to give to the other party or any person shall be in writing and either served personally or sent by prepaid, first class mail to the respective addresses set forth below. Either party may change its address by notifying the other party of the change of address in writing.

To the City:                    Director of Planning and Development  
    Planning and Development Department  
    City Hall  
    1000 Commonwealth Avenue  
    Newton Centre, MA 02459

To YMCA:                        Executive Director  
    West Suburban YMCA  
    276 Church Street  
    Newton, MA 02458

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

- Attachment A, Community Preservation Committee Recommendation and Board of Alderman Vote
- Attachment B, Certificate of Authority
- Attachment C, State Tax Attestation
- Attachment D, Insurance Requirements

**\*\*\*\* SIGNATORIES \*\*\*\***

IN WITNESS WHEREOF the parties hereto have executed this Agreement in three sets on the day first written above effective when executed by His Honor the Mayor in the City of Newton.

**YMCA:**

**WEST SUBURBAN YMCA**

By: [Signature]  
Executive Director

8/03/05  
Date

By: [Signature]  
City Treasurer  
8/15/05

**CITY OF NEWTON:**

Reviewed and Authorized  
By: [Signature]  
Director of Planning & Development

8.23.05  
Date

I certify funds are available within Acct. #21B11403.R5797 in the amount of \$160,273 for this Agreement.

By: [Signature]  
Comptroller

9/7/05  
Date

**Approved as to legal form and character**

By: [Signature]  
Assistant City Solicitor

9/8/05  
Date

**CONTRACT APPROVED**

By: [Signature]  
Mayor

9/14/05  
Date

[Handwritten mark]

**Attachment A**  
**Community Preservation Committee Recommendation  
and Board of Alderman Vote**

**Attached to original grant agreement here:**

- YMCA's November 2003 grant proposal to the CPC
- CPC's November 2004 funding recommendation to the Board of Aldermen

Both documents are posted separately on the Newton CPC website, from:

[www.newtonma.gov/cpa/projects/ymca/ymca.htm](http://www.newtonma.gov/cpa/projects/ymca/ymca.htm)

CITY OF NEWTON  
IN BOARD OF ALDERMEN

February 7, 2005

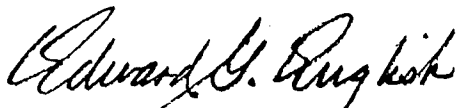
ORDERED:


That in accordance with the recommendations of the Community Preservation Committee, through its Chairman, Doug Dickson; the Board of Aldermen Committee on Community Preservation, through its Chairman, Alderman Stephen Linsky; and the Finance Committee through its Chairman, Alderman Paul Coletti: the sum of One Hundred Sixty Thousand, Two Hundred Seventy-Three Dollars (\$160,273) be and is hereby appropriated and transferred from the Community Preservation Historic Preservation Reserve, to be expended under the direction and control of the Director of Planning and Development for purposes of funding a grant for \$160,273 to restore 66 historic exterior windows on the first and second story of the YMCA building, as described in the Community Preservation Committee Recommendation (dated 29 September 2004) and the application (submitted on 1 November 2003).

FROM:	Community Preservation Historic Preservation Reserve (21-3321B).....	\$160,273
TO:	Historic Preservation Projects West Suburban YMCA (21B114B-5797).....	\$160,273

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

EXECUTIVE DEPARTMENT  
Approved: February 9, 2005

  
(SGD) EDWARD G. ENGLISH  
City Clerk

  
(SGD) DAVID B. COHEN  
Mayor

  
(SGD) PAUL E. COLETTI  
Chairman, Finance Committee



**Attachment B**  
**Certificate of Authority**  
**(Non-Profit Corporation)**  
**and**  
**List of Officers and Directors**

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

West Suburban YMCA; and that  
*(Print name of corporation)*

2. Patrick Palmer / Joseph Stone is the duly elected  
*(Print name of officer who signs the contract)*

Exec Dir + CEO / Treasurer of said corporation; and that  
*(Print title of officer who signs the contract)*

3. on 6/25/03/per By-Laws at a duly authorized meeting of the Board of Directors  
*(insert date of meeting)\**

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

Patrick Palmer / Joseph Stone, Treasurer of this  
*(Print name and title of officer who signs the contract, as in number 2 above)*

corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that

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

ATTEST: Anne McCormack  
*(signature of Clerk/Secretary)*

NAME: Anne McCormack  
*(printed or typed name of Clerk/Secretary)*

DATE: 8/12/05  
*(insert date Certificate signed by Clerk/Secretary)\*\**

\* This date must be on or before the date of the contract and the date the corporate officer signs.

\*\* This date must be on or after the date that the corporate officer signs the contract.

WEST SUBURBAN YMCA  
Board of Directors  
2005-2006

**Fred Becker**

30 Ridge Rd.  
Belmont, MA 02478  
H: 617-484-5028  
Cambridge School of Weston  
Georgian Rd.  
Weston, MA 02493  
W: 781-642-8666  
Term: 2007  
fbecker@csww.org

**Tim Braceland**

16 Winter St., #44A  
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Edward Jones Investment  
130 Rumford Ave.  
Newton, MA 02466  
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**Grace Carr**

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Term: 2007

**John Connaughton**

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FAX: 617-572-3274  
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[jconnaughton@baincapital.com](mailto:jconnaughton@baincapital.com)

**Mark DiGiovanni**

P.O. Box 78038  
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FAX: 617-887-2802  
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[mark@digiovanni.org](mailto:mark@digiovanni.org)

**Gretchen Friend**

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[gfriend@lasell.edu](mailto:gfriend@lasell.edu)

**James Ho**

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**Christopher Gaffney**

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**Kay Khan**

State House, Room 23  
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W: 617-722-2140  
FAX: 617-722-2339  
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[Rep.KayKhan@hou.state.ma.us](mailto:Rep.KayKhan@hou.state.ma.us)

**Peter Koutoujian**

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**Jack Leslie**

The Village Bank  
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Term: 2007  
[jleslie@village-bank.com](mailto:jleslie@village-bank.com)

**Beth Maloney**

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Term: 2006  
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WEST SUBURBAN YMCA  
Board of Directors  
2005-2006

**Mark Mancuso**  
**President**

34 Rochester Road  
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CBL & Assoc. Properties, Inc.  
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Term: 2007  
mark\_mancuso@cblproperties.com

**Shawna Giggey Mashal**

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**CLERK**

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anne.mccormack@comcast.net

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memcandrews@comcast.net

**Peter McKelvey**

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Term: 2005  
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**Vice President**

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**Tony Rufo**

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State House  
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**Joseph Stone**  
**Treasurer**

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FAX: 617-796-2099  
Term: 2008  
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**Hal Thayer**

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**Susi Wilder**

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Term: 2006  
tswilder@rcn.com

WEST SUBURBAN YMCA  
Board of Trustees  
2004-2005

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Term: 2009  
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Wellesley, MA 02481  
W: 781-235-3999  
FAX: 781-235-6251  
Term: 2009  
nvstar@bellatlantic.net

**William B. Lawrence, III**  
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Weston, MA 02493  
H: 781-235-8632  
Beacon Fiduciary Advisors, Inc.  
222 Berkeley St., 16th floor  
Boston, MA 02116-3748  
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FAX: 617-850-6420  
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Term: 2008

**CLERK**  
**Mark Mancuso**  
**President**  
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W: 781-647-3330  
FAX: 781-647-1611  
Term: 2007  
[mark\\_mancuso@cblproperties.com](mailto:mark_mancuso@cblproperties.com)

**TREASURER, BD. DIRECTORS**  
**Joseph Stone**  
14 Brook Drive  
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Benjamin Franklin Bank  
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FAX: 617-796-2099  
Term: 2008  
[jstone@benfranklinbank.com](mailto:jstone@benfranklinbank.com)

**Certificate of Authority  
and  
List of Officers and Directors**

**List of *Officers* of the Board of Directors / Trustees**

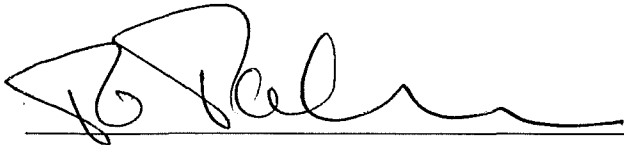
Names	Titles
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**List of Board of Directors / Trustees**

Names	Names
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**Attachment C  
State Tax Attestation**

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
West Suburban Young Men's Christian Association

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

8/5/05  
\_\_\_\_\_  
Date

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

**Attachment D  
Insurance**

**1. General.** The YMCA, and contractors and subcontractors engaged by the YMCA, its agents or designees to perform the YMCA historic window restoration, shall, at all times, be required to maintain insurance coverage consistent with the character of the project. The YMCA agrees to keep copies of each policy and certificate on file, and to provide such copies to the City upon request.

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

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

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

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

**2. Property Insurance.**

**a. Hazard Insurance.** YMCA shall keep the property continuously insured against damages resulting from hazards by maintaining an adequate extended coverage policy. In the event of distribution of hazard insurance proceeds in lieu of restoration or repair following loss to the Building, an amount of the proceeds equal to the amount of the grant distributed to the YMCA by the City under the terms of this agreement are hereby assigned and shall be paid to the City.

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