

AGREEMENT

WHEREAS, the City of Newton in the County of Middlesex and Commonwealth of Massachusetts, did under the powers granted in by the General Laws of said Commonwealth take by eminent domain certain lands situated in said Newton and described in an order of taking date March 2, 1959, which was recorded with Middlesex County South District Deeds Book 9342, page 392, and shown as lots 1-A, 6-A, 8, and C on a plan entitled "City of Newton, Massachusetts, Crafts Street, Southerly Side, West of California Street," which was duly recorded as plan No. 321 of 1959 in the above Book 9342, page 392;

WHEREAS, the said order of taking empowered His Honor the Mayor to enter into an agreement with the record owners of the property at the time of the taking (herein called the "record owners") in form satisfactory to the City Solicitor imposing upon the property above described and taken in fee certain specified restrictions on the use of the property if such agreement was required by said owners as a condition in settling the amount of damages; and

WHEREAS, the record owners of the property, the executors of the will of Gladys Avery Lebert and May Urquhart Every, do desire such an agreement setting forth the restrictions referred to as partial consideration for the land taken;

NOW THEREFORE, it is covenanted and greed by the said City of Newton, acting by its Mayor, but without personal liability to himself, with the record owners and their heirs and descendants as follows:

1. That the area of approximately 2.5 acres in Lot 1-A shown as "Wooded Area" on the plan above referred to will be maintained by the City as a wooded recreation area. IN the event of the destruction of all or a part of said area by some natural disaster such as (but not limited to) hurricane or fire, the City will restore the area by the process of natual growth and such planting as it deems most appropriate for the area without reducing its size or changing its use or purposes from that of a wooded recreation area.

2. That all the property so taken will be named the "Avery Memorial Park" and will be used for general recreation and playground purposes.

3. That the record owners or their heirs or descendants shall have the right to erect a memorial in memory of Mr. and Mrs. Charles F. Avery suitable to the purpose thereof and to the area and use of the land in question.

4. That if the City continues to maintain the building now numbered 346 Crafts Street, which, however, the City shall not be obligated to do, it will keep the building in reasonably

good condition and repair. If said building is demolished or removed from the premises, the previous location of said house shall be filled and reasonably seeded or landscaped.

IN WITNESS WHEREOF, I, Howard Whitmore, Jr., Mayor of Newton, set my hand and seal this day of \_\_\_\_\_, 1959.

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COMMONWEALTH OF MASSACHUSETTS

Then personally appeared the above-named Howard Whitmore, Jr., Mayor of the City of Newton, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the City of Newton.

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Notary Public

My commission expires:\_\_\_\_\_

The foregoing covenant and agreement of the City of Newton is approved this day of \_\_\_\_\_, 1959 and in consideration thereof and the payment to us by said City of Newton of \$37,159.60 already paid and additional expenses of \$338.34 plus total 1959 tax on property taken (apportioned by assessors), the receipt of which is hereby acknowledged, we hereby release and discharge said City of Newton, its successors and assigns from any and all damages, claims and demands arising out of said taking by eminent domain.

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Executors o/w Gladys Avery Lebert

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Eugene M. Lebert

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May U. Avery

*Note: The copy of this document held by the Newton Conservators is unsigned.*