

This agreement made this 19th day of January 1968, between City of Newton, a municipal corporation existing under the laws of the Commonwealth of Massachusetts, with its usual place of business in Newton, Middlesex County, said Commonwealth, and Florence Avery Moore, of said Newton, and Frederick H. Blake, of Montclair, New Jersey, individually and as co-executors of the estate of Gladys Avery Lebert and the said Florence Avery Moore as executrix of the estate of May U. Avery.

WITNESSETH

That, whereas the City of Newton by order of its Board of Aldermen No. 261-59(2) adopted March 2, 1959, approved March 4, 1959, and recorded in Middlesex County South District Registry of Deeds at Book 9342, page 392, took by right of eminent domain certain land in said Newton as described in said order from the executors or devisees of Gladys Avery Lebert and May Urquart Avery for municipal purposes, to wit: playground and recreational purposes, and

Whereas by an agreement dated September, 1959, between the parties hereto and also Eugene M. Lebert, as part of the settlement of damages for the aforesaid taking the city agreed to certain restrictions upon the property so taken as set forth in said agreement, among which was the restriction that such property will be used for general recreation and playground purposes, and

Whereas the city has urgent need to make use of a portion of the premises so taken for school and schoolyard purposes to replace its present F. A. Day Junior High School which is now obsolete, no other reasonably suitable site being available for such replacement,

NOW THEREFOR

The parties, in consideration of the premises, and each in consideration of the agreements of the others herein contained, agree as follows:

1. The city may change its municipal use of a portion of the premises taken by it as aforesaid from general recreation and playground purposes to school and school yard purposes. The premises, the use of which may be so changed are bounded and described as follows:

Beginning at a point on the easterly line of Edinboro Street, distant 322.52 feet from the accepted portion of said Edinboro Street as laid out by the City of Newton Dec. 29, 1898; thence N.85°59'59"W., 310.00 feet across the end of the private portion of said Edinboro Street and by land now or formerly of Thomas F. Copp and Isabel C. Copp; thence N.22°23'34" E., 538.76 feet over land of the City of Newton, Recreation Department; thence S.20°35'19"E., 137.00 feet;

thence S.55°21'40"E., 108.89 feet, the last two described lines being by land, now or formerly of Florence Avery Moore; thence S.20°44'56"W., 142.03 feet; thence S.68°26'31"E., 78.95 feet, the last two described lines being by land now or formerly of Elizabeth Hedland; thence S.45°57'36"W., 85.68 feet by land now or formely of Orvil F. Hagaman and Isabel C. Hagaman; thence S.7°10'01"W., 118.27 feet by land now or formerly of Fred L. Atwell to the point of the beginning.

The above described parcel contains 106,889 square feet and is a portion of Lot 2, Section 21, Block 22, in the records of the Assessors.

The city may also construct a service roadway to serve the school to be constructed on said premises over other portions of the property taken by it as aforesaid provided that the said service roadway shall pass westerly of and shall not impinge upon the wooded area of approximately 2.5 acres referred to in the aforesaid agreement.

The areas of land describe in this paragraph are the minimum areas required, in conjunction with other land to be acquired by the city from other owners for the purpose, for the construction and operation of the proposed school.

2. The balance of the land taken by the city as aforesaid shall continue to be used for the purposes for which it was originally taken.

3. If the city's use of the premises described in paragraph 1 of school and school yard purposes shall be terminated at any time in the future, said premises shall thereafter be used only for general recreation and playground purposes, and shall again become part of the Avery Memorial Park and subject in all respects to the terms of said agreement of September, 1959.

4. None of the land taken by the city as aforesaid shall be used for parking purposes except as incidental to use of the service roadway for deliveries to and from said school. This restriction shall also apply to land which the city proposes to acquire at the northeasterly corner of Edinboro Street.

5. The city will make inspections of the subject property, including the wooded area of approximately 2.5 acres referred to in the aforesaid agreement not less often than semi-annually and will maintain said area in reasonably clean and well-kept condition, including the removal of debris and the trimming of trees and brush thereon and including such supervision and policing as may be necessary to prevent improper or destructive use of the area consistently with the standards of maintenance and policing followed by the city with respect to its park and recreation

lands generally, but subject, however, to the limitations upon its obligation contained in said agreement to restore said area in the event of its destruction.

6. Except as herein expressly modified the provisions of said agreement of September, 1959 shall continue in full force and effect and this agreement shall in no way be deemed to abrogate said agreement.

7. At no time at which Florence Avery Moore or her daughter own or occupy the property now occupied by the said Florence Avery Moore adjacent to the northerly portion of the premises described in paragraph 1 will the city erect a fence on or near the division line between the said Moore property and property of the city which runs southerly from Crafts Street without the consent in writing of the said Florence Avery Moore or her daughter. The City will, on written request by the said Florence Avery Moore or her daughter at any time at which either owns or occupies the said Moore property, erect a suitable fence along the division lines between the said property and property of the City, including the premises described in paragraph 1 or such portions thereof *[end of paragraph 7 missing from photocopy]*

8. This agreement shall be binding up and insure to the benefit of the heirs, executors, administrators, successors and assigns of the parties and of the said Gladys Avery Lebert and the said May U. Avery.

9. The city agrees to pay the reasonable attorney's fees of the said Florence Avery Moore and Frederick H. Blake incurred in the negotiation and execution of this agreement.

In witness whereof the parties have executed this instrument in triplicate as of the day and year first above written, intending it to take effect as a sealed instrument.

CITY OF NEWTON

[signature]

Monte G. Basbas, Mayor

[signature]

Florence Avery Moore

[signature]

Frederick H. Blake