

RESOLUTION OF THE CITY COUNCIL

No. 102

Approved FEBRUARY 29, 2008

IT IS HEREBY RESOLVED, That His Honor, the Mayor, is authorized to grant non-exclusive sub-surface easement below Pine Street and its abutting sidewalk areas in the City of Providence to Johnson & Wales University ("J&W"). Said easement shall be granted specifically upon the following provisions:

1. The easement shall be utilized only for the installation and maintenance of duct banks and/or conduit for electrical cables, telephone cables and for communications cables connecting AP 24, Lot 158 and AP 24, Lot 634. The easement shall not exceed the area of 571 square feet, plus or minus, with dimensions indicated as a shaded area on the accompanying plan entitled: "Providence, RI Department of Public Works - Engineering Office, Street Line Section Plan No. 064815 dated January 30, 2008.

2. The easement shall be deemed to run with the land and shall operate against any successors in title and the easement or a memorandum of same shall be recorded by J&W in the Office of Land Records for the City of Providence.

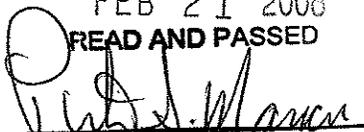
3. J&W shall tender to the City the sum of Eleven Thousand Four Hundred Twenty Dollars (\$11,420.00) Dollars in legal tender of the United States of America.

4. J&W shall execute an indemnification and hold-harmless agreement with the City of Providence, to be approved by the City's Department of Law.

5. J&W shall supply the City of Providence with an insurance policy naming said City of Providence, its agents, officers, servants and employees as additional-named insureds in a sum not less than one hundred thousand dollars (\$100,000.00) which policy shall be approved by the City's Department of Law.

6. J&W recognizes the applicability of Sections 23-107, 23-108 and 23-109 of the Code of Ordinances which read as follows:

IN CITY COUNCIL
FEB 21 2008
READ AND PASSED


PRES.


CLERK

APPROVED


MAYOR

2/29/08

23-107. Public work of city to take precedence over installations. No right of any person to maintain, use or operate any poles, wires, cables, conduits, ducts, pipes, manholes, handholes, or other appliances or appurtenances in any street or other traveled way in the city, shall be in preference or hindrance of public work in the city, and should any of the same in any way interfere with the construction, alteration or repair of any public work in, under, or over any such street or way, whether done by the city directly or by any contractor for the city, such person shall at his own expense protect, alter or move any of the same so interfering to some other location, or discontinue the use and operation thereof for the time being, as directed by the director of public works, without the city being liable for any damages suffered by such person thereby. The City shall notify such person not fewer than ninety (90) days prior to such public work, which will interfere with any of the same or the use or operation thereof. In case such person shall fail to comply with any such direction of said director, the city may protect, alter or move the same, and recover the cost thereof from such person.

23-108. Precedence of wires, apparatus of city signal service. The wires, poles, posts, structures and supports of the telephone, fire alarm and police signal service maintained by the city shall at all times take precedence and right-of-way as to all other wires, poles, posts, structures and supports maintained or erected in the city; and no lineman or other person, either in erecting wires, poles, posts, structures or supports in any way whatsoever shall interfere with, or disturb, disarrange or change any wires maintained by the city, or any appurtenance thereof; and in every instance of removal of any of said wires, poles, posts, structures or supports for the accommodation of any other corporation or party, or to place the same beyond danger from the electric current of any other corporation or party, the expense incident to said removal shall be paid immediately by such other corporation or party.

23-109. Indemnity of city against claims arising out of electrical installation.

Every person erecting, maintaining or using electric wires or poles, fixture or structures, for the support or conducting of the same shall indemnify and save harmless the city, its officers, agents and servants, from and against all lawful claims and demands for injuries to persons or property occasioned by the existence of such poles, wires, fixtures or structures or the transmission of electric current by means thereof or by the digging up, opening or keeping open of any street, highway, traveled way, public place or part thereof, which shall be or has been opened for the purpose of installing, constructing or repairing any underground conduit, duct, structure, appliance or appurtenance by or for such person, or by any failure of such person to restore and keep in sound and safe condition for the required time any ground opened or dug up in the prosecution of any of its work in any street, way or place. The city, city council, or the officers, agents or servants of the city, exercising the rights, powers or permission, and subject to the restrictions, respectively given and reserved herein shall not be held liable by such person or corporation on account thereof, or by reason of any injury or damage caused thereby.

and J&W, for itself and its successors, agrees to comply with the same.

7. J&W shall repave Pine Street in accordance with relevant ordinances, industry standards and to the reasonable satisfaction of the Director of Public Works.

8. In addition to Paragraph 6 above, in the event that the City of Providence or its designee shall, for any public purpose, require the extinguishment of the easement granted herein, upon the ninety (90) days notice, J&W shall, at its own expense, and without claim against the City, its officers, servants or employees, for any damages whatsoever, remove said improvements to the easement area.

9. Such other terms and conditions as may be reflected in the record and minutes of the City Council Committee on Public Works and/or as may be deemed appropriate by the Mayor or the Department of Law.

CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PETITION TO THE CITY COUNCIL

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:

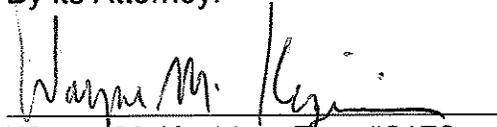
The undersigned respectfully petitions your honorable body for the grant of a permanent underground easement below a portion of Pine Street, which easement would have a total area of approximately 571 square feet and which would allow the Petitioner to install and maintain underground conduit (for communications cabling) in order to enable Petitioner to connect its information system in order to service its properties on both sides of Pine Street.

In support of this petition, Petitioner represents that Petitioner currently owns the parcel that is known as Assessor's Plat 24, Lot 634 (known as the "Xavier Complex") and the parcel that is known as Assessor's Plat 24, Lot 158 (which is currently used for parking but is intended for future development), which two parcels are located directly across Pine Street from each other. The granting of this petition would allow the Petitioner to extend its communications cabling to Lot 158 from the Xavier Complex and, in turn, will allow the Petitioner to connect its information system network to its adjacent properties, including to Plat 24, Lot 302 (known as the "Rolo Building") which is currently undergoing extensive renovation.

Exhibit A, attached hereto, is a plan showing the requested easement area and Exhibit B, attached hereto, is a metes and bounds description of the proposed easement.

Respectfully submitted this 16th day of October, 2007:

JOHNSON & WALES UNIVERSITY
By its Attorney:



Wayne M. Kezirian, Esq. #2172
GAEBE & KEZIRIAN
128 Dorrance Street
Providence, RI 02903
(401) 331-0800 - Fax: (401) 861-2260

Mailing Address of Petitioner:

Johnson & Wales University
8 Abbott Park Place
Providence, RI 02903

Attention: Merlin A. DeConti, Jr., Sr. V.P.

EXHIBIT A

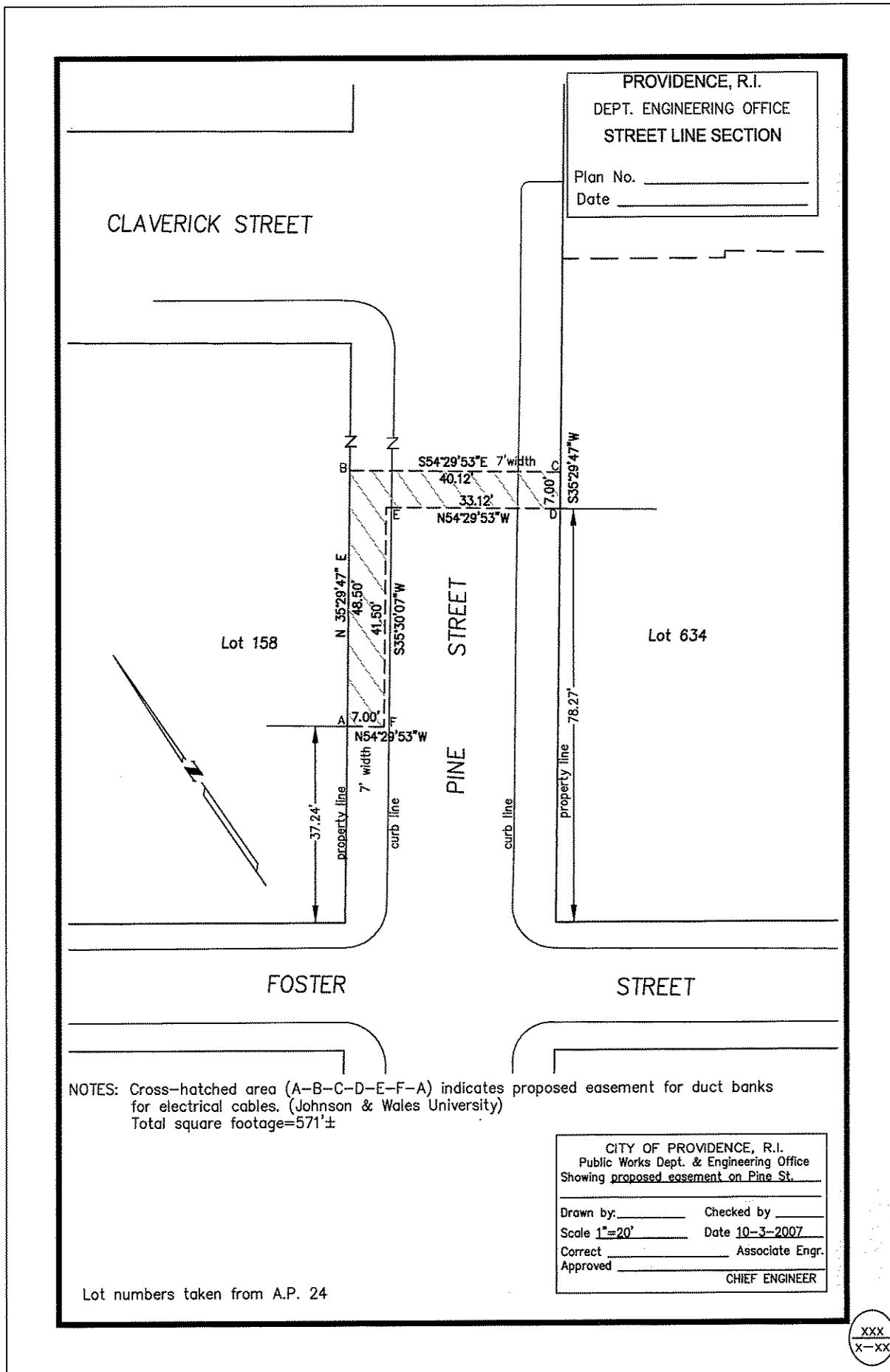


EXHIBIT B

EASEMENT DESCRIPTION:

A CERTAIN PARCEL OF LAND KNOWN AS A PORTION OF FOSTER STREET, BEING SITUATED IN THE CITY OF PROVIDENCE, COUNTY OF PROVIDENCE, AND THE STATE OF RHODE ISLAND, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY SIDELINE OF PINE STREET, BEING 37.24 FEET DISTANT FROM THE INTERSECTION OF THE NORTHWESTERLY SIDELINE OF PINE STREET AND THE NORTHEASTERLY SIDELINE OF FOSTER STREET, THENCE RUNNING N35°29'47"E, BY SAID NORTHWESTERLY SIDELINE OF PINE STREET AND LAND NOW OR FORMERLY OF JOHNSON & WALES UNIVERSITY, A DISTANCE OF 48.50 FEET TO A POINT;

THENCE S54°29'53"E, A DISTANCE OF 40.12 FEET TO A POINT ON THE SOUTHEASTERLY SIDELINE OF PINE STREET;

THENCE S35°29'47"W, BY SAID SOUTHEASTERLY SIDELINE OF PINE STREET AND LAND NOW OR FORMERLY OF JOHNSON & WALES UNIVERSITY, A DISTANCE OF 7.00 FEET TO A POINT;

THENCE N54°29'53"W, A DISTANCE OF 33.12 FEET TO A POINT;

THENCE S35°30'07"W, A DISTANCE OF 41.50 FEET TO A POINT;

THENCE N54°29'53"W, A DISTANCE OF 7.00 FEET TO A POINT ON THE NORTHWESTERLY SIDELINE OF PINE STREET, ALSO BEING THE POINT OF BEGINNING.

CONTAINING APPROXIMATELY 571 SQUARE FEET OF LAND.

AAA
ANDOLFO APPRAISAL ASSOCIATES, INC.

REAL ESTATE APPRAISERS AND CONSULTANTS
THE BUSH BUILDING
216 WEYBOSSET STREET • PROVIDENCE • RHODE ISLAND 02903
(401) 273-8989 • FAX (401) 273-2510

November 19, 2007

Mr. John Gelati
City Tax Assessor
City of Providence
25 Dorrance Street / City Hall
Providence, Rhode Island 02903

Re: Proposed Sidewalk and Street Easement
Pine Street, Providence
Easement A, B, C, D, E, F, and A

Dear Mr. Gelati:

Pursuant to your request, we have personally inspected the real estate located on Pine Street, otherwise identified as Lots 156 and 634 on Assessor's Plat 24. The purpose of our inspection was to estimate the fee simple market value of a Permanent Utility easement in the sidewalk and street.

The subject easement is proposed to contain a total of 571 square feet, and was requested by Johnson & Wales University. It is located in Providence's downtown neighborhood and the site area is zoned D1-150. The proposed easement runs along the sidewalk on Pine Street at Plat 24, Lots 156 and 634 and varies in width and depth. The City's Department of Public works has no objection to this request; however, they will require a Class 1 survey for recording purposes.

We have taken into account a number of factors in arriving at a fee simple market value for the requested easement. The petitioner will gain use of the public right-of-way and a city sidewalk to further enhance the commercial viability of their property.

Mr. John Gelati
Page 2
November 19, 2007

Based on an analysis of comparable sales as contained within the offices of Andolfo Appraisal associates, Inc., a value of \$80.00 per square foot is hereby estimated for this site. This value must be reduced by 75% due to fact that the City is not giving up its full fee to the property, i.e., the sidewalk and street, only allowing an easement in a portion of it.

Therefore, 571 square feet x \$80.00 per square foot =
\$45,680 x .25 = \$11,420.

Respectfully submitted,

APPRAISAL ASSOCIATES, INC.

William G. Floriani (fad)
William G. Floriani
Certified Residential Appraiser

Thomas S. Andolfo MAI
Thomas S. Andolfo, MAI
Certified General Appraiser

WGF:TSA/fad



Providence City Plan Commission

DAVID N. CICILLINE
Mayor

December 5, 2007

Honorable Leon F. Tejada, Chair
Committee on Public Works
Providence City Hall
25 Dorrance Street
Providence, RI 02903

Attn: Anna Stetson, City Clerk

Dear Councilman Tejada:

Re: CPC Referral No. 3296: Petition from Wayne M. Kezirian, Esq., for Johnson & Wales University, Requesting an Underground Easement below a portion of Pine Street

Dear Councilman Tejada:

The City Plan Commission (CPC), at its regular meeting on Tuesday, November 20, 2007, reviewed and evaluated the Committee on Public Works request for the Commission's recommendation on the above-referenced matter.

The easement would have a total area of 571 square feet and would allow the installation and maintenance of underground conduit to be used for communications cabling. This will allow the University to connect its information system in order to service its properties on both sides of Pine Street and eventually to the 'Rolo Building' which is currently undergoing an extensive renovation.

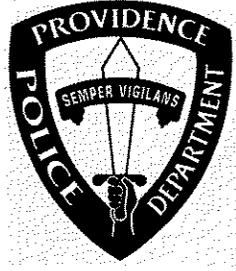
The Commission determined that the proposed easement is consistent with the Comprehensive Plan and voted to recommend that the Committee on Public Works approve the easement with the condition that the applicant return the sidewalk and roadway affected by utility work to their original condition.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Ise".

Christopher J. Ise
Administrative Officer

cc: Wayne M. Kezirian, Esq.
Merlin A. DeConti, Jr.



Department of Public Safety, Police Department
"Building Pride in Providence"

November 8, 2007

To: Anna M. Stetson, Second Deputy City Clerk

From: Capt. James T. Nolette

Subject: Petition from Wayne Kezirian

Dear Anna:

After looking at the plans and descriptions enclosed, the Police Department has no objections to proposed granting of an easement to Mr. Kezirian on behalf of Johnson and Wales University.

Sincerely,

Capt. James T. Nolette

Anthony J. Di Giulio
Fire Marshal

George D. Calise
Deputy Fire Marshal



David N. Cicilline
Mayor

George S. Farrell
Chief of Department

Providence Fire Prevention Division
"Smoke Detectors Save Lives"

November 16, 2007

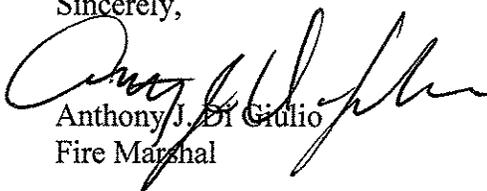
Ms. Anna Stetson, City Clerk
Providence City Hall, Department of City Clerk
25 Dorrance Street
Providence, Rhode Island 02903

Re: Petition by Wayne M. Kezirian on behalf of Johnson & Wales University requesting a permanent underground easement below a portion of Pine Street

Dear Ms. Stetson,

The Providence Fire Department offers no objection to the proposed petition from Wayne M. Kezirian on behalf of Johnson & Wales University requesting a permanent underground easement below a portion of Pine Streets indicated in his petition to the City Council dated October 16, 2007.

Sincerely,


Anthony J. Di Giulio
Fire Marshal



Department of Public Works
"Building Pride in Providence"

January 29, 2008

Honorable Leon F. Tejada
Chairman of the Public Works Committee
Providence City Council-City Hall
Providence, R.I. 02903

RE: Proposed Abandonment of a Portion of Pine St..

Dear Councilman Tejada:

This department has no objection to the proposed easement on a portion of Pine St. in conjunction with the attached plan, entitled "Prov., R.I.-P.W. Dept- Engineering Office, Street Line Section, Plan No. 064815. Area of abandonment is designated as (A-B-C-D-E-F-A) on the accompanying plan.

Total square footage equals 571 square feet. (+)
See accompanying plan for plat and lot numbers.

If we can further assist you in this regard, please advise.

Very truly yours,

for John D. Nickelson, PE
Director

cc: Ann Stetson-City Clerk
BB, AZ-DPW
A. Southgate, Esq.- Law Dept.
T. Deller- Planning
J. Gelati- Tax Assessors

CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PETITION TO THE CITY COUNCIL

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:

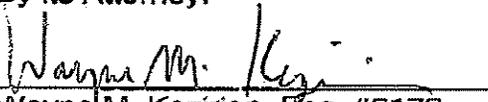
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Respectfully submitted this 16th day of October, 2007:

JOHNSON & WALES UNIVERSITY
By its Attorney:


Wayne M. Kezirian, Esq. #2172
GAEBE & KEZIRIAN
128 Dorrance Street
Providence, RI 02903
(401) 331-0800 - Fax: (401) 861-2260

Mailing Address of Petitioner:

Johnson & Wales University
8 Abbott Park Place
Providence, RI 02903

Attention: Merlin A. DeConti, Jr., Sr. V.P.

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CONTAINING APPROXIMATELY 571 SQUARE FEET OF LAND.

PROVIDENCE, R.I.

DEPT. ENGINEERING OFFICE

STREET LINE SECTION

Plan No. 064815

Date January 30, 2008

CLAVERICK STREET

Lot 158

Lot 634

PINE STREET

FOSTER STREET

STREET

NOTES: Cross-hatched area (A-B-C-D-E-F-A) indicates proposed easement for duct banks for electrical cables. (Johnson & Wales University)
Total square footage=571'±

CITY OF PROVIDENCE, R.I.
Public Works Dept. & Engineering Office
Showing proposed easement on Pine St.

Drawn by: PRL Checked by: PSL
Scale 1"=20' Date 1-30-2007
Correct Approved: *William J. ...* Associate Engr.
CHIEF ENGINEER

Lot numbers taken from A.P. 24

GAEBE & KEZIRIAN
ATTORNEYS AT LAW
128 DORRANCE STREET
PROVIDENCE, RHODE ISLAND 02903

(401) 331-0800

FAX (401) 861-2260

DANA H. GAEBE
WAYNE M. KEZIRIAN
ALLISON ROCK

February 5, 2008

Hand Delivered

Anna M. Stetson, City Clerk
Providence City Hall
25 Dorrance Street
Providence, RI 02903

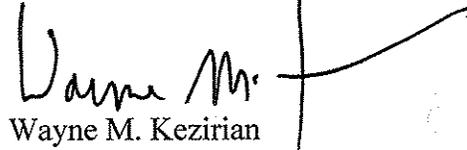
Dear Ms. Stetson:

I have enclosed a check from Johnson & Wales University in the amount of \$11,420.00 in payment for the easement under Pine Street that was favorably voted upon by the Public Works Committee at the hearing that took place on January 29, 2008.

I have reviewed the proposed resolution in this matter that was forwarded to me by Adrienne Southgate and that resolution appears to be correct. Ms. Southgate has been satisfied that the plan has been updated to meet all of the City's requirements. I would appreciate it, therefore, if you would accept this check on behalf of the City and proceed to docket this matter for final passage before the City Council.

I sincerely appreciate your assistance in this matter.

Very truly yours,


Wayne M. Kezirian

WMK/ll
Enclosure

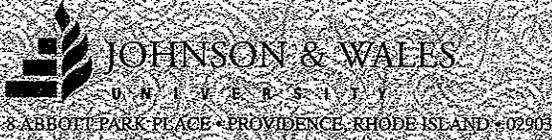
cc: *Barbara L. Bennett, Esq.*
Merlin A. DeConti, Jr., PE



CITIZENS TRUST COMPANY
PROVIDENCE, RHODE ISLAND

5712
115

No 191391



DATE: 30 JAN 08 CHECK NO: 191391 AMOUNT: *****11,420.00

Eleven Thousand Four Hundred Twenty Dollars And 00 Cents *****

PAY TO THE ORDER OF: CITY OF PROVIDENCE
CITY HALL
DEPT OF ADMINISTRATION
25 DORRANCE ST
PROVIDENCE, RI 02903

VOID AFTER 180 DAYS

[Handwritten Signature]

AUTHORIZED SIGNATURE

⑈191391⑈ ⑆011500120⑆ 006 528 5⑈