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PRESERVATION RESTRICTION AGREEMENT

Between

MARK E. WOJCICKI AND BRADLEY M. KUTCHER

TRUSTEES OF

ELITE BUILDERS REALTY TRUST

and the

CITY OF NEWBURYPORT, MASSACHUSETTS

BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION is made this 29th day of April, 2015 (this "Restriction") by and between MARK E. WOJCICKI AND BRADLEY M. KUTCHER, TRUSTEES OF ELITE BUILDERS REALTY TRUST located at 247 Main Street, Suite 5, Amesbury, MA 01913 ("**Grantor**"), and the CITY OF NEWBURYPORT ("**Grantee**"), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Essex, Massachusetts, to be administered, managed and enforced by its agent, the NEWBURYPORT HISTORICAL COMMISSION, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950 (the "**Commission**").

WHEREAS, the Grantor is the owner in fee simple of certain real property located at 386 High Street, Newburyport, Massachusetts (hereinafter referred to as "**the Premises**"), described in a deed recorded with the Essex South Registry of Deeds on April 30, 2014, Book 33248, Page 98, (attached hereto as Exhibit A and incorporated herein by reference), said Property improved by one (1) principle building thereon, referred to hereinafter as "**the Building**", described as follows:

The Plummer-Dyer House (c. 1790) which is located at 386 High Street in Newburyport is one of the earliest houses to remain from the rural west-end neighborhood. The historic survey completed in 1984 listed the Plummer-Dyer House as a "Contributing Structure" due to its major identifiable elements from its original design. The house was originally designed as a Georgian Gambrel but has been adapted and altered over the past 225 years and non-contributing elements and changes have been made to the exterior of the structure. Exceptional architectural features include Georgian moldings and trim around the windows and early period double-hung, true divided 6/6 solid wood windows with a 5/8" mullions. The Building is further depicted and described in Exhibit B (site plan) and Exhibit E (elevations) incorporated herein and attached hereto;

WHEREAS, the house which is located at the western gateway to the Newburyport National Register Historic District has cultural, historical and architectural significance which is important to the public enjoyment and appreciation of their architectural and historical heritage; and

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter "**preservation values**") and significance of the Building and have the common purpose of preserving the aforesaid preservation values and significance of the exterior of the Building as conditioned in the conditions enumerated and listed in Exhibit D; and

WHEREAS, the Building preservation values are documented in a series of photographs and documents (hereinafter, "**Baseline Documentation**") incorporated herein and attached hereto as Exhibit D, which Baseline Documentation the parties agree provides an accurate representation of the Building as of the date hereof.

WHEREAS, the Baseline Documentation (Exhibit C) approved by the Historic Commission, as reflected in the elevations (Exhibit E) shall consist of the following:

1. Existing early period true double-hung, 6/6, divided-light windows on the Georgian Gambrel structure and early period rear addition;
2. Existing or replacement pine or cedar clapboard siding (with a 3 ¼ inch exposure) on the Georgian Gambrel structure and early period rear addition;
3. Existing Georgian molding and trim around windows on the Georgian Gambrel structure and early period rear addition;
4. Existing louvered storm door on High Street façade of the Georgian Gambrel structure;
5. Existing masonry chimneys in the Georgian Gambrel structure;
6. Existing stone foundation;
7. Replacement cedar roof on the Georgian Gambrel structure and early period rear addition;
8. Optional replacement wood shutters with pintels and dogs on the Georgian Gambrel structure and early period rear addition;
9. Replacement wood storm windows on the Georgian Gambrel structure and early period rear addition; and
10. Replacement granite steps and landing on the Georgian Gambrel structure.

The existing fireplaces in the Georgian Gambrel structure, the existing first and second floor stairwells, balusters and handrails in the Georgian Gambrel structure, and the existing interior doors in the Georgian Gambrel structure and the early period rear addition will be restored although such preservation is not mandated by or enforceable under this Restriction,

WHEREAS, the Building is in need of preservation and restoration; and

WHEREAS, the Grantor has applied for a Dimensional Variance pursuant to Section X-H-6 of the Newburyport Zoning Ordinance and as a condition of said Variance the Grantor has agreed to impose a restriction on the Building for the preservation and renovation of the aforementioned Building, under the terms and conditions set forth herein and in such other documents as the parties may execute (the "**Restriction**" or "**Preservation Restriction**");

WHEREAS, the Grantor, in further consideration of the receipt of such Variance and to ensure the preservation of the aforementioned Building, agrees and desires to impose certain restrictions, obligations and duties upon itself, its successors and assigns, so as to maintain, protect and preserve the architectural and historical integrity of the Building;

WHEREAS, the preservation of the Building is important to the public for the enjoyment and appreciation of their architectural and historical heritage and serves the public interest; and

WHEREAS, the Commission is authorized to accept preservation restrictions in the name of the City of Newburyport and the Commission is a governmental body duly organized under the laws of the Commonwealth of Massachusetts, including the General Laws, Chapter 40, Section 8D, authorized and directed by the Grantee to manage the Building burdened by such restrictions and to administer and enforce this Restriction;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby irrevocably grant and convey to the Grantee in gross this Restriction over the exterior of the Building to be administered, managed and enforced by the Commission during the Term of this Restriction.

1. Purpose: It is the Purpose of this Restriction to assure that the architectural, historic, and cultural features of the exterior of the Building will be retained and maintained during the Term substantially in their current condition or in a restored condition approved by the Commission for preservation purposes and to prevent any use or change of the exterior of the Building that will significantly impair or interfere with the Building's preservation values or alter views of the exterior of the Building. It is the further purpose of this Restriction to recommend the preservation of interior features, although such preservation is not mandated by or enforceable under this Restriction. Grantor agrees at all times to maintain the exterior of the Building in accordance with this Restriction and in compliance with all federal, state and local laws, codes and by-laws applicable to the Building. Grantor's obligation to maintain shall require repair, reconstruction and, where necessary, replacement in kind whenever necessary to preserve the Building in a good, sound and attractive condition and state of repair.

2. Preservation Restriction: Grantor hereby agrees to maintain the existing and original features listed under Exhibit C and shown on Exhibit E.

3. Indemnification: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend, at its own cost and expense, Grantee, its boards, commissions, appointees, agents, directors, employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including attorneys' 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 Building; the presence or release in, on, or about the Premises, 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 or other damage occurring on or about the Building; unless such injury, death, or damage is caused directly by Grantee or its boards, commissions, appointees, agents, directors, employees, or independent contractors. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

4. Written Notice: Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing, sent by overnight courier, registered or certified mail with return receipt requested, or hand-delivered:

Grantor: Mark E. Wojcicki & Bradley M. Kutcher, Trustees of Elite Builders Realty Trust
242 Main Street, Suite 5, Amesbury, MA 01913

Grantee: City of Newburyport, c/o Newburyport Historical Commission, Town Hall,
60 Pleasant Street, Newburyport, MA 01950

Each party may change its address set forth herein by a notice to such effect to the other party.

5. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Building or Premises received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

6. Term of Restriction: The restrictions, obligations and duties set forth in this Restriction shall run with the Premises for a period of thirty (30) years from the date on which this Restriction is recorded with the Essex South District Registry of Deeds (the "Term") and shall inure to the benefit of the Commission and all parties claiming by, through or under the Commission and shall bind the Grantor and all parties claiming by, through or under the Grantor. The rights hereby granted to the Commission constitute the right of the Commission to enforce this Preservation Restriction Agreement during the Term. The Grantor hereby covenants for itself to stand seized and hold title to the Premises subject to the terms of this Restriction during the Term. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee during the Term, and the words "Grantor", "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, the 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 Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property. Notwithstanding anything to the contrary contained herein it is expressly agreed that upon the Grantor divesting itself of its title to the Premises its obligations pursuant to this Restriction shall cease and such obligations shall become the obligations of the Grantor's successor(s) in interest.

7. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Premises may make impossible the continued ownership or use of the Premises for the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such a change in conditions may include, but is not limited to, partial or total destruction of the Building resulting from casualty. Prior to such an extinguishment, a public hearing shall be held by the City of Newburyport to determine that such extinguishment is in the public interest. In the event of a sale of the Premises, net proceeds of sale shall be paid to Grantor.

8. Condemnation: If all or any part of the Premises 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, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Premises that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to Grantor.

9. 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 the Premises shall not apply in the construction or interpretation of this Restriction and this instrument shall be interpreted broadly to affect its Purpose and the transfer of rights and the restrictions on use contained herein.

    b. This instrument may be executed in two counterparts, one of which is to be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided in the preceding sentence, each counterpart shall constitute the entire Restriction of the parties.

c. It is the intent of the parties hereto to agree and to bind themselves, their successors and their assigns to each term of this instrument for the Term of this Restriction, whether this instrument be enforceable by reason of any statute or common law either in existence now or at any time subsequent hereto.

d. Nothing contained herein shall be interpreted to authorize or permit Grantor 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 Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been incorporated herein automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event any provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted from this Restriction as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

10. Amendment: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Restriction or the status of Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Premises and the Purpose of this Restriction; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural and historic values protected by this Restriction. Any such amendment shall be effective when the amendment is recorded in the Essex South District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

11. Release: This Preservation Restriction is intended to be a restriction in gross binding for the Term and may only be released, in whole or in part, by the Commission in accordance with any applicable laws, ordinances, rules and regulations.

12. Revised Baseline Documentation: Following the substantial completion of the restoration and rehabilitation of the Building, Grantor shall record promptly a new, comprehensive set of high resolution photographic documentation depicting the exterior of the Building, said photographic documentation to be filed with and maintained by the Commission in archival print and digital CD format at the Newburyport Historical Commission, in care of the City of Newburyport, Office of Community and Economic Development, 60 Pleasant Street, Newburyport, MA, 01950, together with a numbered list of photographs indicating photographic view and date taken, said documentation to be used in the administration and enforcement of the purposes and terms of this Restriction.

13. Mortgage Subordination: Grantor represents and warrants to Grantee that the Premises are not subject to any mortgages, liens, or leases prior in right to this Restriction other than the Mortgage and Assignment of Rents granted to Newburyport Five Cents Savings Bank, recorded with the Essex South District Registry of Deeds in Book 33248, Pages 102 & 119, respectively, which have been subordinated to this Restriction. Grantor agrees not to enter into or permit other mortgages, liens or leases affecting the Premises prior in right to this Restriction.

IN WITNESS WHEREOF, the Grantor sets its hand and seal this 29th day of April, 2015.

Elite Builders Realty Trust

By: _____

By: _____

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 29th day of April, 2015, before me, the undersigned notary public, personally appeared Mark E. Wojcicki and Bradley M. Kutcher, Trustees as aforesaid, proved to me through satisfactory evidence of identification, which were current driver's licenses, to be the persons whose names are signed above, and acknowledged the foregoing to be signed by them voluntarily for its stated purpose.

PAUL J. GAGLIARDI NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS MY COMMISSION EXPIRES DECEMBER 26, 2019

_____ Notary Public
PAUL J GAGLIARDI
My Commission Expires: 12-26-19

GRANTEE:

City of Newburyport

By: _____
Chairperson
Its duly authorized Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 16th day of July, 2015, before the undersigned notary public, personally appeared , Chairperson of the Newburyport Historical Commission, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the City of Newburyport.

_____
Notary Public:
My Commission Expires 4/3/2020

Print Notary Public's Name: Richard B Jones

INTENTIONALLY DELETED

Exhibit A: Deed to Premises – See Attachment.

Exhibit B: Site Plan – See Attachment.

Exhibit C: Conditions of the Historic Commission.

Exhibit D: Baseline Documentation.

Exhibit E: Elevations

RESTRICTION GUIDELINES

ATTACHMENT TO PRESERVATION RESTRICTION AGREEMENT
BETWEEN THE CITY OF NEWBURYPORT AND MARK E. WOJCICKI AND
BRADLEY M. KUTCHER, TRUSTEES OF ELITE BUILDERS REALTY TRUST

The purpose of the Restriction Guidelines is to clarify paragraph three of the terms of the Preservation Restriction, which deals with alterations to the Building. Under this paragraph, permission from the Commission is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require Commission review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the Commission, the following list has been developed. By no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by building owners.

PAINT

Minor – Exterior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major – Painting or fully stripping decorative surfaces or distinctive stylistic features including ornamental ironwork, stone, decorative or significant woodwork.

WINDOWS AND DOORS

Minor – Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major – Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor – Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major – Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of chimneys or cornice detailing, existing and original corner trim, roof edge trim, the new replicated window trim, entry roof pediments and the original restored front and side doors; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

assified as major alterations are not necessarily unacceptable. In fact approval of such all not be unreasonably withheld. Under the Preservation Restriction such changes viewed by the Commission and their impact on the historic integrity of the Building

ponsibility of the property owner to notify the Commission in writing when any major are contemplated. Substantial alterations may necessitate review of plans and ns.

of the Preservation Restriction is to enable the Commission to review proposed and assess their impact on the integrity of the structure, not to preclude future change. ission will attempt to work with property owners to develop mutually satisfactory at are in the best interests of the Premises.