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PRESERVATION RESTRICTION AGREEMENT  
between the CITY OF NEWBURYPORT  
by and through the NEWBURYPORT HISTORICAL COMMISSION  
and

FLA NUT RESEARCH, LLC

THIS PRESERVATION RESTRICTION AGREEMENT is made this 15 day of Nov 2017 by and between FLA NUT RESEARCH, LLC ("Grantor"), and the CITY OF NEWBURYPORT ("Grantee"), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, to be administered, managed and enforced by it agent, the NEWBURYPORT HISTORICAL COMMISSION, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950 ("Commission"),

WHEREAS, the Grantor is the owner of certain real property located at 223 High Street, Newburyport, Massachusetts, 01950, and described in a deed dated FEBRUARY 8, 2017 RECORDED AT BOOK 35882, PAGE 194, hereinafter referred to as the "Property", and further described in Exhibit A, which is improved by a single-family residence, hereinafter referred to as the "Building", described as follows:

The Building, built by William W. Goodwin in 1867, is a vernacular interpretation of the High Victorian Gothic style. The external woodwork is solid rather than gingerbread ornament, as seen in the roof gables and in the simple window frames of the building. The home has varied roof lines and several gables and the porch rails exhibit a contrast in scale typical of Victorian Gothic. The Property is also improved by a garage constructed in 1993.

WHEREAS, the cultural, historical and architectural significance of the Building emanates from its construction in 1867, its status as one of the few Victorian Gothic buildings in the City, its location within the Newburyport National Register Historic District, designated November 3, 1972, and its listing on the State and National Registers of Historic Places as a contributing property to the Newburyport Historic District, the Building is important to the public enjoyment and appreciation of its 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 the Property, and have the common purpose of preserving the aforesaid preservation values and significance of the exterior of the Building and the Property; and

WHEREAS, the preservation values of the Building and the Property are documented in a series of photographs and documents (hereinafter, "Baseline Documentation") incorporated herein and attached hereto as by reference as Exhibit B, which Baseline Documentation the parties agree provides an-accurate representation of the Building as of the date of this grant; and

WHEREAS, the Baseline Documentation (Exhibit B) shall consist of the following:

1. A set of six (6) exterior photographs of the Building taken in —, 2015;
  - a. Photo 1: East and North (front) Elevations
  - b. Photo 2: North Elevation
  - c. Photo 3: North and West Elevations

- d. Photo 4: West and South Elevations
- e. Photo 5: East Elevation
- f. Photo 6: South Elevation

2. Newburyport Assessors' Parcel Map with Building Footprint; and

3. Massachusetts Historical Commission Inventory Form B for the Property, prepared by Mary Jane Stirgwolt, dated August 11, 1980.

WHEREAS, there are certain aspects of the Building in need of preservation and restoration; and

WHEREAS, the Newburyport Planning Board voted on January 5, 2011 to approve an Open Space Residential Development Special Permit Application and Definitive Subdivision Plan for the use of the Property, and considered this Agreement in granting a waiver of the required provision of open space from sixty-percent to fifty-one percent; and

WHEREAS, the Grantors, in further consideration of the receipt of approvals and to ensure the preservation of the aforementioned Building agree and desire 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 and in particular those features of the Façade included in a list developed by the Newburyport Historical Commission (Exhibit C); and

WHEREAS, the preservation of the Building is important to the public for the enjoyment and appreciation of its architectural and historical heritage and serves the public interest in a manner consistent with the purposes of Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 ("Act"); 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 40C, authorized and directed by the Grantee to manage the Property and Buildings burdened by such restrictions, consistent with the provisions of the Act and to administer and enforce this preservation 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 in perpetuity this Restriction over the Property and exterior of the Building, except as set forth herein, to be administered, managed and enforced by the Commission.

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 forever substantially in its current condition or in a restored condition approved by the Commission for preservation purposes and to prevent any use or change of the Property or 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.

2. Preservation Restriction: The Grantor grants the Grantee the right to forbid or limit:

- a. any alteration to the appearance, materials, workmanship, condition or structural stability of the Building unless (i) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the Building and the Property, or (ii) the Grantee has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by Grantor in accordance with the requirements of paragraph 7, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency promptly reported to Grantee in accordance with the requirements of paragraph 9. For the purposes of this Agreement, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines, which are attached hereto as Exhibit C and hereby incorporated by reference.
- b. any other act or use that may be harmful to the historic preservation of the Building or the Property.
- c. Notwithstanding anything to the contrary in this Section 2:
  - i. in the event the Grantor is required by law to make improvements to the Building or Property or is required in writing by its insurance carrier to make improvements to the Building or Property in order to avoid revocation of insurance and the Grantor has exhausted all methods of variance or appeal process related to either applicable law or insurance qualifications, the Grantee and the Grantor agree that the Grantee may not forbid or limit the Grantor's ability to make the improvements. Said changes or improvements shall comply with the Secretary of Interior's Standards for the Rehabilitation of Historic Buildings, and shall be designed in consultation with and subject to reasonable review by Grantee.

3.1. Grantor's Covenants: Covenant to Maintain. Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission and the Grantor may reasonably and mutually agree upon to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the Building in the same structural condition and state of repair to that exists on the date hereof. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the exterior of the Building. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with the policies and procedures of the Commission and 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 CFR 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards"). Notwithstanding the foregoing, the Grantees recognize and represent that they are familiar with the current condition of the Building and that this provision and any other provisions in this Agreement do not impose an immediate obligation on the Grantor to undertake any construction, rebuilding or replacement on the Building but that in the event the Grantor's undertake same in the future it will be done in conformance herewith.

Grantor's covenant herein shall be limited to funds reasonably available therefore. Should the parties disagree as to the need of maintenance or the availability of funds the matter may be submitted by either party for arbitration pursuant to the Massachusetts arbitration statute then in effect.

3.2. Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:

- a. the Building shall not be demolished, removed, or razed except as provided in Paragraphs 8 and 9;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property near the Building;
- c. except to the extent that said easements may be taken, the Grantor shall not voluntarily, place above-ground utility transmission lines, and except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded;
- d. no additions and/or outbuildings may be attached to the Building without prior approval of the Grantor; and
- e. moving the Building to another location shall be forbidden without prior approval of the Commission.

**4. Conditional Rights Requiring Grantee Approval:** Subject to Paragraph 3 and the terms and conditions of this Restriction and such other terms and conditions as the Commission and the Grantor may mutually and reasonably agree upon and thereafter impose to accomplish the purposes of this Restriction, the Grantor shall not alter the Building without prior express written approval of the Commission, which said approval shall not be unreasonably withheld. Without said approval Grantor shall not make any changes to the exterior of the Building, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, except those signs currently existing, and any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the Building. Grantor shall similarly not make any alterations to the surrounding Property that would obscure the current view of the Building, such as the installation of permanent signage or trees or very large shrubs without approval of the Commission. Notwithstanding the foregoing, this restriction shall not apply to the subdivision which is approved by the Planning Board and any requirement thereof. Nothing herein shall prevent the Grantor from removing and/or replacing existing shrubs and/or trees as the Grantor deems appropriate and necessary for the general maintenance and improvement of the Property.

Grantee acknowledges that the Grantor has constructed a new addition to the rear of the Building which is not yet complete and notwithstanding any provision in the Agreement to the contrary, the Grantor may complete the addition as contemplated including the construction of a porch thereon.

Activities by Grantor to maintain the Building and the Property which are intended to be performed in accordance with the provisions of paragraph 3.1, and which are of a minor nature, shall not require the prior approval of the Commission. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines (Exhibit C), which are attached to this Agreement and hereby incorporated by reference.

**5. Grantor's Reserved Rights Not Requiring Further Approval by the Grantee:** Subject to the provisions of paragraphs 2 and 3.2, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by the Commission without further approval by the Commission:

- a. the right to engage in all those acts and uses that:
  - (i) are permitted by governmental statute or regulation;
  - (ii) do not substantially impair the preservation values of the Building and Property; and
  - (iii) are not inconsistent with the Purpose of this Restriction;
- b. pursuant to the provisions of Paragraph 3.1, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the Building. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the Commission in accordance with the provisions of Paragraph 4.
- c. the right to apply this restriction ONLY to those portions of the Property as more fully set forth on Exhibit D.

6. Review of Grantor's Requests for Approval: Grantor shall submit to the Commission for the Commission's approval of those conditional rights set out at Paragraphs 2 and 4 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to the Commission a timetable for the proposed activity sufficient to permit the Commission to monitor such activity. Within forty-five (45) days of the Commission's receipt of any plan or written request for approval hereunder, the Commission shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Commission shall provide Grantor with written suggestions for modification or a written explanation for the Commission's disapproval. Any failure by the Commission to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Commission of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

7. Standards for Review: In exercising any authority created by this Restriction to inspect the Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the Commission shall apply the Secretary's Standards.

8. Casualty Damage or Destruction: In the event that Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and Property and to protect public safety, shall be undertaken by Grantor without the Commission's prior written approval of the work which said approval shall not be unreasonably withheld. Within one hundred twenty (120) days of the date of damage or destruction, if required by the Commission, Grantor at its expense shall submit to the Commission a written report

prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Commission, which report shall include the following:

- a. an assessment of the nature and extent of the damage;
- b. a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and
- c. a report of such restoration/reconstruction work necessary to return the Building to the condition existing at the date hereof or the condition subsequently approved by the Commission.

9. Review After Casualty Damage or Destruction: If, after reviewing the report provided in Paragraph 8 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 10, Grantor and the Commission agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and the Commission shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 10, Grantor and the Commission agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction and Grantor may, with prior written consent of the Commission, alter, demolish, remove or raze the Building, and/or construct new improvements on the Property, Grantor and Grantee may agree to extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts and paragraph 23 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 10, Grantor and the Commission are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts arbitration statute then in effect, and all other applicable laws, rules, regulations, and ordinances. Arbitrator shall have experience in historic preservation matters.

10. Insurance: Grantor shall keep the Building insured by an insurance company rated "A-1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Commission, within ten (10) business days of the Commission's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

11. 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 Property, 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 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.

12. Written Notice: Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing;

Grantor: Fla Nut Reasearch, LLC  
58 Winnacunnet Road  
Hampton, NH 03842

Grantee: City of Newburyport  
c/o Newburyport Historical Commission  
City 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.

13. Evidence of Compliance: Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidence the status of this Restriction to the extent of Grantee's knowledge thereof.

14. Inspection: With the consent of Grantor, Grantee or its representatives shall be permitted at reasonable times to inspect the Building and the Property on an annual basis. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

15. Grantee's Remedies: The Grantor, for itself, its assigns and successors, expressly acknowledges that a violation of this Preservation Restriction Agreement, including a failure to expend such Funds for their intended purposes, may result in the Commission exercising its right to enforce the terms and conditions of the Restriction by seeking appropriate legal and equitable relief, including, but not limited to, restoration of the Building, repayment of the Funds, and such other legal and equitable remedies as may be available to the Commission to effectuate the purposes of this Restriction and to enforce the Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including all court costs, and attorneys', architectural, engineering, and expert-witness fees. Grantor shall, at its own expense and with approval of Commission, reverse any actions or activities which violated this restriction and altered the Building.

Nothing in this Restriction shall impose upon the Commission any duty to maintain or require that the Building be maintained in any particular state or condition, notwithstanding the Commission's acceptance hereof. Enforcement of the terms of this Preservation Restriction shall be at the discretion of the Commission. Any election by the Commission as to the manner and timing of the exercising of its right to enforce this Preservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. By its acceptance of this Preservation Restriction, the Commission does not assume any liability or obligation relating to the condition of the Building or the Property, including compliance with hazardous materials or other environmental laws and regulations.

16. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Building or Property 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.

17. Notice of Proposed Sale: Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Restriction to potential new Grantors prior to sale closing.

18. Runs with the Land: A. Except as provided in Paragraphs 8 and 9, the restrictions, obligations and duties set forth in this Restriction shall run with the Property 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 perpetual right of the Commission to enforce this Preservation Restriction Agreement. The Grantor hereby covenants for itself to stand seized and hold title to the Property subject to the terms of this Restriction. 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, 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, Grantor of the Property shall have no obligation pursuant to this instrument where such Grantor shall cease to have any Grantorship 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.

B. Execution of Instruments: The Commission is authorized to record this Preservation Restriction. The Commission is authorized to record or file the approval of the Massachusetts Historical Commission, notices of restriction under G.L. c. 184, Sec 27, or other required documents pursuant thereto for the exclusive purpose of ensuring the perpetual enforceability of this Preservation Restriction and the Grantor and its successors and assigns agree to execute any such instrument upon request so long



as said instrument does not change or modify the purpose and intent hereof or the extent to which the Restriction shall apply to the building.

19. Assignment: Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government or to a similar local, state, or national charitable corporation or trust that qualifies under the Act, and whose purposes, inter alia, are to promote preservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out. Grantee shall obtain Grantor's prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.

20. Alternate Designee: Grantee may, at its discretion, remove and replace the Commission as its designee to administer, manage, and enforce this Restriction, provided that any new designee is qualified as such under the Act and other applicable law.

21. Recording and Effective Date: Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction which shall become effective upon its being duly executed by the Grantor, the City of Newburyport, and the Newburyport Historical Commission, its being approved by the Massachusetts Historical Commission, and its being recorded with the Southern Essex County District Registry of Deeds.

22. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Property may make impossible the continued Grantorship or use of the Property 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. Such an extinguishment must meet all the requirements of the Act for extinguishment, including public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such extinguishment is in the public interest. In the event of a sale of the Property, net proceeds of sale shall be paid to Grantor.

23. Condemnation: If all or any part of the Property 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 Property 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.

24. 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 Property 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. This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private Restriction 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 Preservation 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.

25. 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 Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private increment 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 requirements of the Act with respect to amendments have been met and the amendment is recorded in the Southern Essex County 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.

26. Release: This Preservation Restriction is intended to be a restriction in gross in perpetuity and may only be released, in whole or in part, by the Grantee pursuant to the procedures for release established by the Act, and otherwise by law, including but not limited to G.L. c. 184 §32 and including approvals following public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such a release is in the public interest.

27. Archaeological Activities: The conduct of archaeological activities on the Property, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (M.G.L. C. 9, Sec. 27C, 950 C.M.R. 70.00).

IN WITNESS WHEREOF, the Grantor sets its hand and seal this 15 day of Nov, 2017.

**GRANTOR:**


By: FLA NUT RESEARCH, LLC


  
RICHARD SCIMONE DULY AUTHORIZED

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 15 day of November, 2017, before me, the undersigned notary public, personally appeared RIC SCIMONE proved to me through satisfactory evidence of identification, which was (a 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 s/he signed it voluntarily for its stated purposes.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 8/3/2023

 **CASSANDRA M. GREEN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
August 3, 2023

**ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION**

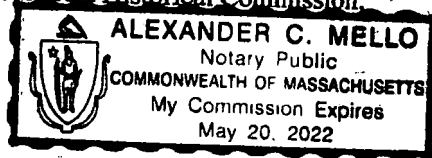


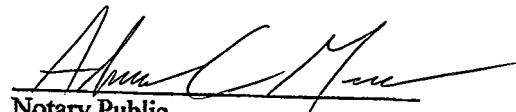
Sarah White, duly authorized  
Chair, Newburyport Historical Commission

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this 10 day of January, <sup>2018</sup>2015, before me, the undersigned notary public, personally appeared Sarah White, 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 s/he signed it voluntarily for its stated purposes as duly authorized Chair of the Newburyport Historical Commission.



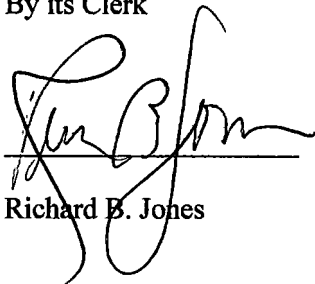
  
Notary Public  
My Commission Expires:

**ACCEPTANCE AND APPROVAL BY THE CITY OF NEWBURYPORT**

I, the undersigned City Clerk of the City of Newburyport, Massachusetts, hereby certify that at a meeting duly held on August 18, 2015, the City Council voted to approve and accept the foregoing Preservation Restriction Agreement for the preservation of the historic resources of said City and being in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

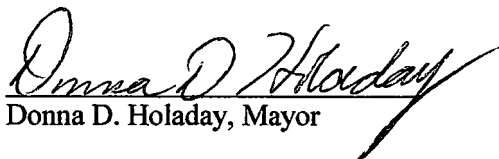
CITY OF NEWBURYPORT

By its Clerk

  
Richard B. Jones

The undersigned hereby certifies that the foregoing preservation restrictions have been approved and accepted by the City of Newburyport

CITY OF NEWBURYPORT

  
Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 30th day of November, 2017, before me, the undersigned notary public, personally appeared Richard B. Jones, 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 s/he signed it voluntarily for its stated purposes as Clerk of the City of Newburyport.



**CASSANDRA M. GREEN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
August 3, 2023

  
\_\_\_\_\_

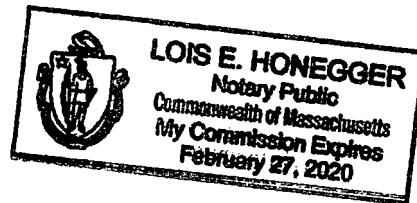
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 19 day of November 2017, before me, the undersigned notary public, personally appeared, Donna D. Holaday, 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 purposes as Mayor of the City of Newburyport.

Lois E. Honegger  
Notary Public  
My Commission Expires:



**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**  
223 High Street, Newburyport, MA

A certain parcel of real estate situate in Newburyport, Essex County, Massachusetts, with the improvements thereon, shown as Lot 2B on a plan of land entitled "Definitive Plan of Land in Newburyport, Massachusetts, Owner, Jutras Family Trust, 225 High Street, Newburyport, Mass., December 3, 1981, scale 1 inch = 40 feet, Port Engineering Associates, Inc., 31 State St., Newburyport, Mass.", which plan is recorded at Essex South District Registry of Deeds in Plan Book 173, as Plan 94. Included with this conveyance is the fee in the way and cul-de-sac shown on the above-referenced plan.

The above described Lot 2B comprises approximately 2.85 acres more or less, as shown on such plan.

The above-described premises are conveyed subject to and together with the benefit of the following:

1. Restrictions set forth in deed dated August 26, 1981, and recorded with said Registry of Deeds in Book 6857, Page 726, in so far as they are still in effect and applicable.
2. Rights reserved in a deed dated December 8, 1982, and recorded in said Registry of Deeds in Book 7012, Page 734.
3. Rights reserved in a deed dated August 17, 1983, and recorded in said Registry of Deeds in Book 7190, Page 301.
4. Easement granted to Stephen P. Holmes, et al, dated May 9, 1986, and recorded in said Registry of Deeds in Book 8258, Page 358.
5. All matters shown on a plan recorded in said Registry of Deeds in Plan Book 173, Plan 71.

The Grantor hereby releases any homestead benefit in this property, and does not have any former spouse, partner or former partner in a civil union who can claim the benefit of the Massachusetts Homestead Act, M.G.L. c. 188.

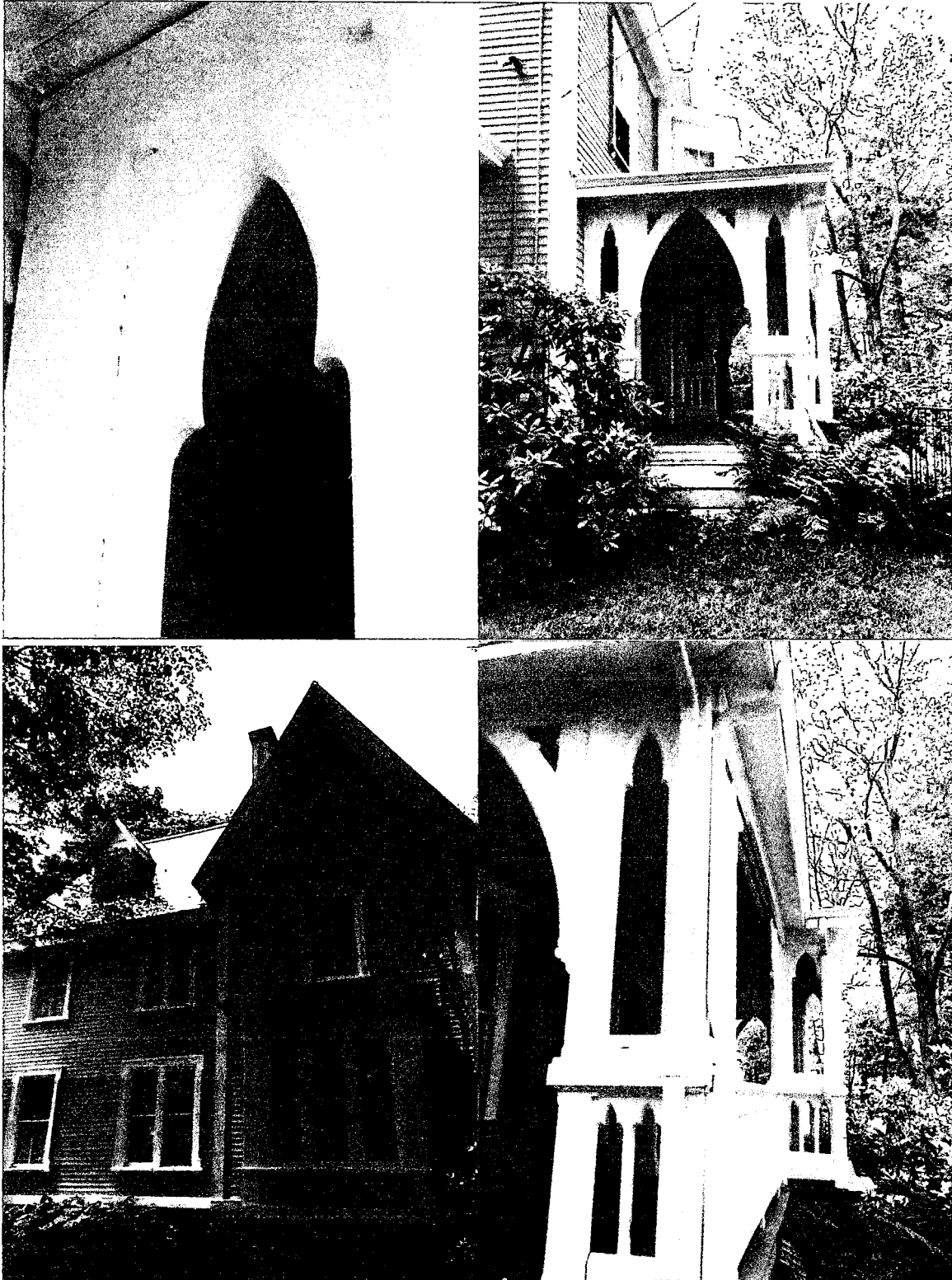
Being the same premises conveyed to the Grantor by deed of Douglas A. Wine, et al, dated December 1, 2011, and recorded with the Essex South District Registry of Deeds in Book 30924, Page 422.

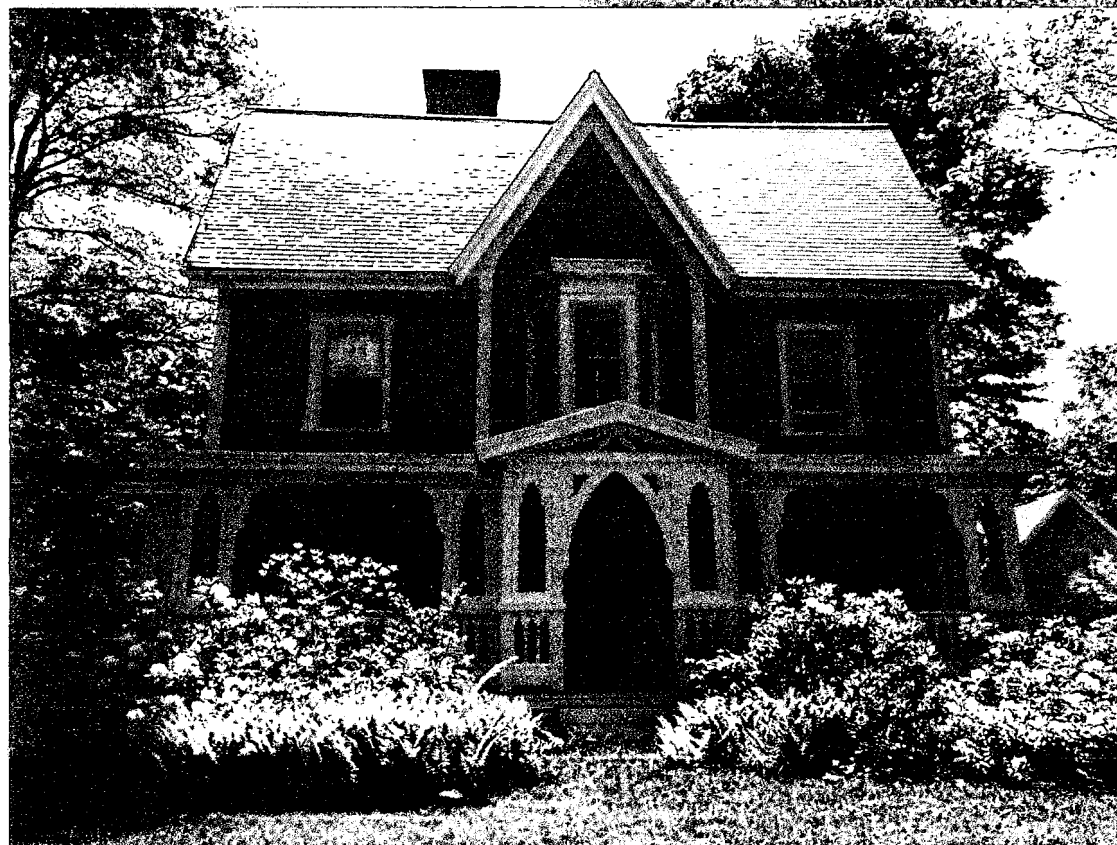
**EXHIBIT B**  
**BASELINE DOCUMENTATION**



A East and North

A





B. North Elevation



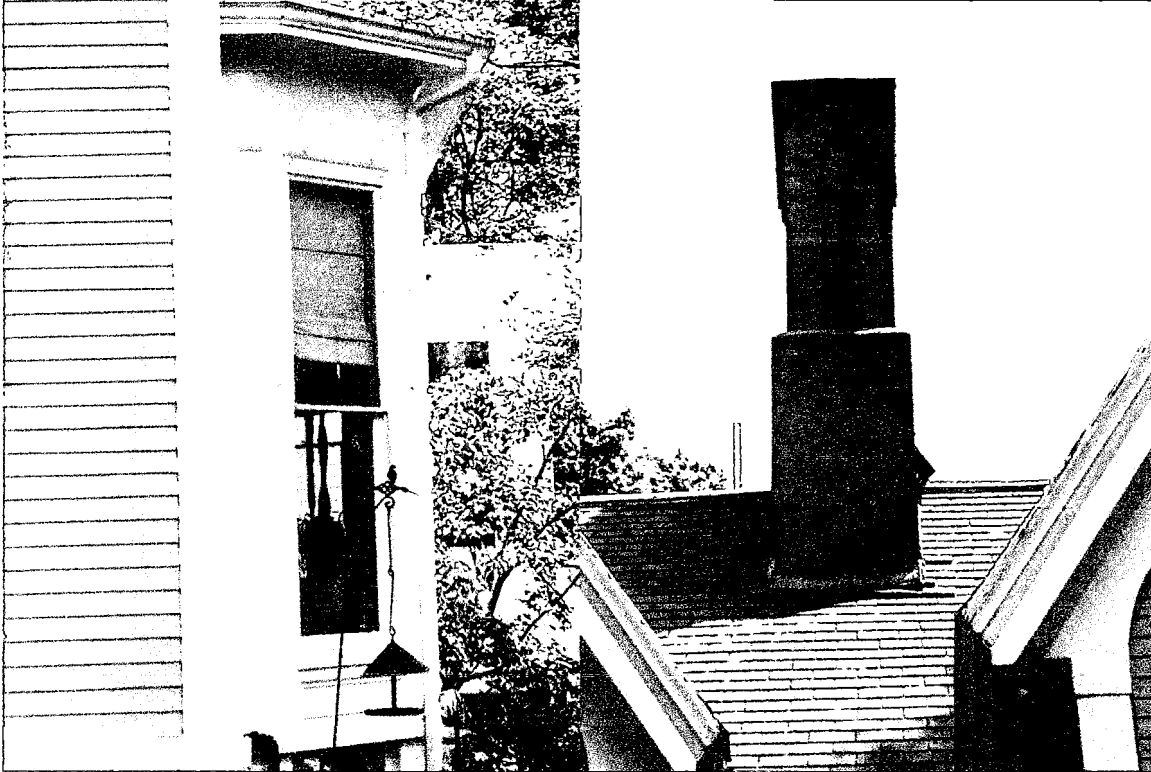
C. North and West Elevation

West and south elevations



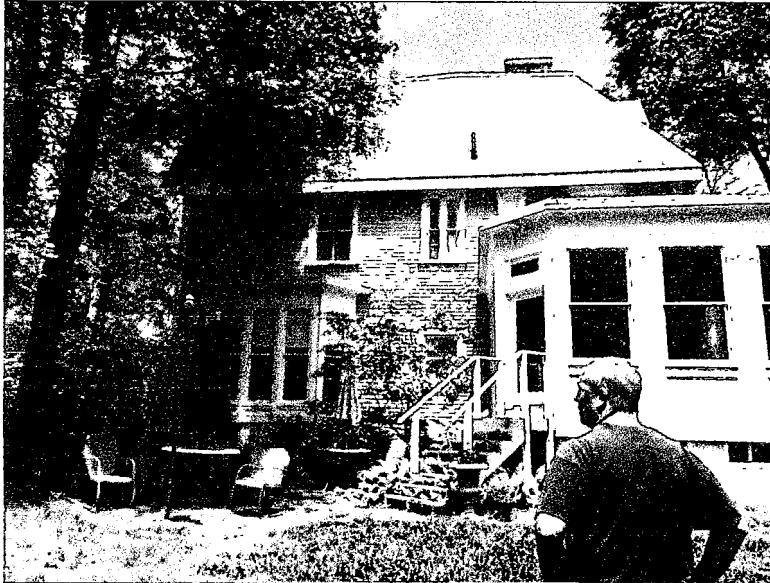
d.

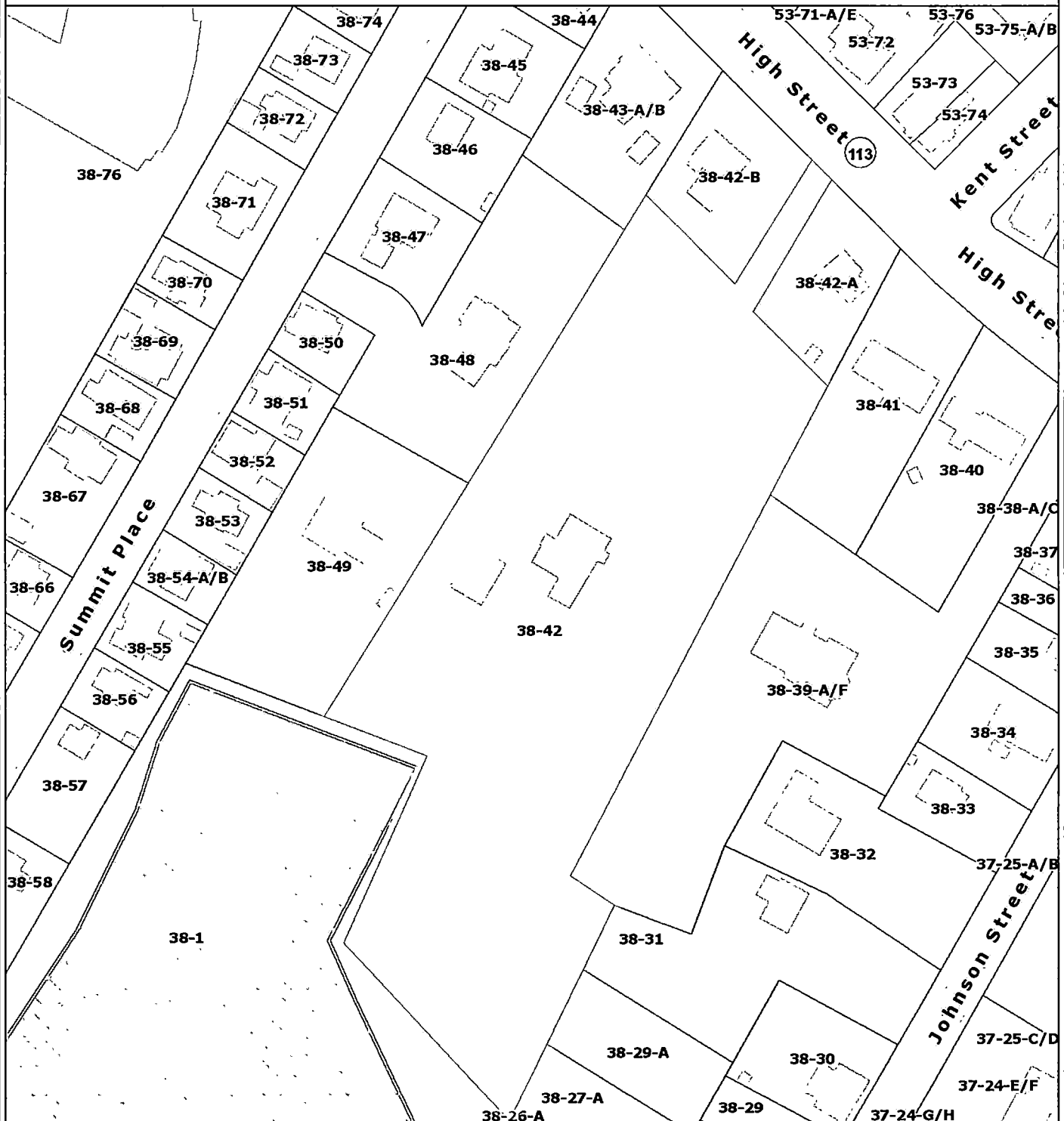
e. East Elevation



d.

f. South Elevation





- ☐ MVPC Bo
- ☐ Newburyport Boundary
- ☐ Railroad
- ☐ Parcels
- ☐ Trails
- ☐ Building Footprints
- ☐ Driveways
- ☐ Easements
- ☐ Road Right of Way
  - Paved
  - Unpaved
- ☐ Hydrographic Features
  - Streams
    - Stream
    - Intermittent Stream
  - Exempt Lands

1" = 119 ft



Horizontal Datum: MA Stateplane Coordinate System, Datum NAD83, Meters  
 Data Sources: The data for this map was produced by Merrimack Valley Planning Commission (MVPC) using data provided by the City of Newburyport. Additional data provided by the Executive Office of Environmental Affairs/MassGIS. The information depicted on this map is for planning purposes only. It may not be adequate for legal boundary definition or regulatory interpretation. THE CITY OF NEWBURYPORT MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY, COMPLETENESS, RELIABILITY, OR SUITABILITY OF THESE DATA. THE CITY OF NEWBURYPORT DOES NOT ASSUME ANY LIABILITY ASSOCIATED WITH THE USE OR MISUSE OF THIS INFORMATION

FORM B - BUILDING

Area A	Form no. 46
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MASSACHUSETTS HISTORICAL COMMISSION  
294 Washington Street, Boston, MA 02108



Newburyport

Address 223 High Street

Historic Name Goodwin-Hamilton House

Original Residence

Present Residence

Ownership: ☒ Private individual  
Private organization

Public

Original owner William W. Goodwin

DESCRIPTION:

Date c. 1865

Source Currier, "History of Nbpt."

Style Victorian Gothic

Architect Unknown

Exterior wall fabric Clapboards

Outbuildings

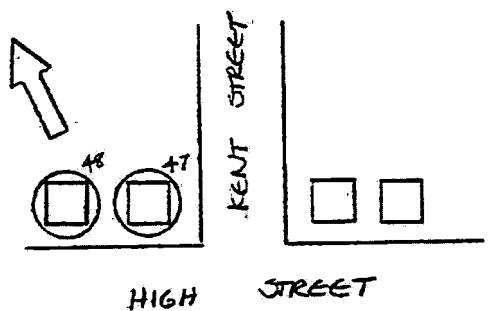
Major alterations (with dates)

Moved Date

Approx. acreage 3.90 acres

Setting on Newburyport's main  
thoroughfare noted for its excellent  
examples of domestic architecture  
dating from the Colonial period through  
the early 20th century.

Location in town  
cross streets and other buildings  
or geographical features.  
Indicate north.



Recorded by Mary Jane Sturgwolt

Organization Office of Community  
Development

Date 8-11-80

(Staple additional sheets here)



ARCHITECTURAL SIGNIFICANCE (describe important architectural features and evaluate in terms of other buildings within community)

This house is significant in that it is one of very few Victorian Gothic buildings in the City of Newburyport. The house is probably a vernacular interpretation of the High Victorian Gothic style. The pointed arch is, of course, a Gothic feature. In the High Victorian Gothic the details such as porch rails are heavier and lack the feeling of delicacy seen in the Early Gothic Revival. The external woodwork of the later revival is solid rather than gingerbread ornament. This is seen in both the roof gables and in the simple window frames of the building. The roof lines in this house are varied with

(cont.)

HISTORICAL SIGNIFICANCE (explain the role owners played in local or state history and how the building relates to the development of the community)

At the turn of the nineteenth century this lot of land was part of a larger parcel owned by William Hoyt. In 1813 the land was conveyed to Thomas Cary who willed it to Howard College for the benefit of young men studying for the Christian ministry. The land was sold to Ephraim W. Allen, proprietor and publisher of the Newburyport Herald in 1831 who then sold it to Charles W. Storey and Thomas W. Burnham.

The land was partitioned after Storey's death and in 1862 this lot assigned to Thomas Burnham, was sold to William W. Goodwin. Goodwin built the house presently standing on the site. The house has had very few owners. In 1913 it passed to Mary E. Goodwin upon the death of her husband.

In 1920 the house was sold to Eudora C. Hamilton, the wife of Robert D. Hamilton. Mrs. Hamilton lived in the house until her death in the spring of 1980. In her will the house was left to the City of Newburyport. Whether or not the City will accept the bequest has yet to be decided.

BIBLIOGRAPHY and/or REFERENCES

Assessor's Records 1890-1980

J. J. Currier, History of Newburyport, 1764-1905, vols. I and II, reprint, Newburyport 1977.

1851 Plan of Newburyport, Mass. H. McIntire

1872 Map of the City of Newburyport, Mass. D. G. Beers and Co.

1871 City Directory

INVENTORY FORM CONTINUATION SHEET

MASSACHUSETTS HISTORICAL COMMISSION  
Office of the Secretary, Boston

Community: Newburyport	Form No: 46
Property Name: Goodwin-Hamilton Hse. 223 High Street	

Indicate each item on inventory form which is being continued below.

ARCHITECTURAL SIGNIFICANCE (CONTINUED)

several gables. This too is a feature of the style. The porch rails exhibit the contrast in scale typical of the Victorian Gothic. Here there are large and small versions of similar pointed arch motifs.

Staple to Inventory form at bottom

## **EXHIBIT C**

### **ALTERATIONS AND MODIFICATIONS**

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; 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.

Changes classified as major alterations are not necessarily unacceptable. In fact approval of such changes shall not be unreasonably withheld. Under the Preservation Restriction such changes must be reviewed by the Commission and their impact on the historic integrity of the Building assessed.

It is the responsibility of the property owner to notify the Commission in writing when any major alterations are contemplated. Substantial alterations may necessitate review of

plans and specifications.

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

## **EXHIBIT D**

### **Explanation of Reservations by the Grantor**

The purpose of this Exhibit D is to clarify Paragraph five of the terms of the Preservation Restriction, which deals with reservations of the Grantor. The Grantor reserves the right to undertake all necessary improvements and maintenance of the entire structure as the Grantor determines to be appropriate, EXCEPT the Grantor shall comply with the requirements of this Preservation Restriction when making repairs, constructing or maintaining the following portions of the Building.

### **FACADES**

The following is a list of are features included in the Façade and the requirements for their maintenance, preservation and/or replacement:

#### **Roof and Chimney**

1. Roof angle. The steep angle pitched roof with deep overhangs must be preserved.
2. Slate roof. All efforts must be made to preserve the slate roof if at all economically feasible however it is possible that at some point in the future, the cost of maintaining or replacing the slate could become prohibitive. In such an event, the slate may be replaced with a new material that resembles the current roof as closely as possible.
3. Chimneys: All efforts must be made to preserve the decorative brick chimneys above roof line including projecting chimney caps and pointed Gothic arch supports if at all economically feasible. If in the future, the cost of maintaining or replacing such features becomes prohibitive, they may be replaced with modern replicas.

#### **Front porch:**

1. The carpenter Gothic pointed arches, brackets and trefoils must be preserved
2. The steep pitched center entrance roof above the porch and the Gothic Oriel window must be preserved
3. The porch railings with pointed Gothic arched balusters must be preserved.

#### **Windows:**

1. The windows in the Home must be preserved. In the event the windows must be replaced in the future, they must be replaced with 2 over 2 windows with moldings and supporting brackets.

**Side porch:**

1. The Carpenter Gothic pointed arch trim, brackets, and trefoil trim, pointed Gothic arched balusters and shallow pitched roof in-between asymmetrically projecting gable ends must be preserved.
2. The pointed windows with diamond panes centered within each gable at the third story must be preserved.
3. The steeply pitched dormers (which match the pitch of the gable roofs) must be preserved.