

## PRESERVATION RESTRICTION AGREEMENT

Between

**BRADLEY M. KUTCHER, TRUSTEE OF KIMBERLY REALTY TRUST**

and the

**CITY OF NEWBURYPORT, MASSACHUSETTS**

**BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION**

THIS PRESERVATION RESTRICTION is made this 19 day of July, 2013 (this "Restriction") by and between the BRADLEY M. KUTCHER, TRUSTEE OF KIMBERLY REALTY TRUST located at 11A Macy Street, 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 251 Merrimac Street, Newburyport, Massachusetts (hereinafter referred to as "**the Premises**"), described in a deed recorded with the Essex South Registry of Deeds on November 8, 2010, Book 29946, Page 565, (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 house is an excellent example of the Greek Revival style that predominated in Newburyport during the early-nineteenth century. The two and a half story house, four fireplaces, and Greek Revival era modifications. Exceptional architectural features include the existing and original corner trim, the roof edge trim, the new replicated window trim, the entry roof pediments, and the original restored front and side doors. The Building is further depicted and described in Exhibit B incorporated herein and attached hereto;

WHEREAS, the cultural, historical and architectural significance of the Building emanates from Colonial Period Architecture, the Building being 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 the Premises, and have the common purpose of preserving the aforesaid preservation values and significance of the exterior of the Building and the Premises as conditioned in the conditions enumerated and listed in Exhibit C; and

WHEREAS, the Building and the Premises 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 D) approved as a condition of approval of the Demolition Permit from the Historic Commission shall consist of the following:

List of Features:

- Wood window trim
- Corner trim
- Entablature features including cornice moldings and trim
- Roof edge trim
- Entry roof pediments
- Front and side doors

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

WHEREAS, the Grantor has applied for a Special Permit pursuant to Section VI-C Special Permit Plans. of the Zoning Code and as a condition of said permit the Grantor has agreed to impose a restriction on the Building and Premises 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 Special Permit 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 Premises and 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 Premises and the interior and 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 Premises 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. 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 Premises and 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 Premises and/or 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 corner trim, the roof edge trim, the new replicated window trim, the entry roof pediments, the pillars on the front portico and the original restored front and side doors; provided, however, full glass storm doors may be installed at the front and side doors. Said architectural elements are to be preserved in accordance with Section 1 (above) and as shown in Exhibit C (Conditions of the Historic Commission) and Exhibit D (Baseline Documentation).
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: Bradley M. Kutcher, Trustee of Kimberly 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 and 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

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 following the plans approved by Grantee, 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 granted to Newburyport Five Cents Savings Bank, recorded with the Essex South District Registry of Deeds in Book 29946, Page 569, which has subordinated its mortgage 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 19 day of July, 2013.

Kimberly Realty Trust

By: [Signature]

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 19 day of July, 2013, before me, the undersigned notary public, personally appeared Bradley M. Kutcher, Trustee as aforesaid, proved to me through satisfactory evidence of identification, which was a current driver's license, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

[Signature]  
Notary Public

My Commission Expires: 4/3/2020

GRANTEE:

City of Newburyport

By: [Signature]

Linda Smiley, It's duly authorized Chairperson  
Newburyport Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 19 day of July, 2013, before the undersigned notary public, personally appeared Linda Smiley, 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.

[Signature]  
Notary Public:

My Commission Expires 4/3/2020

Print Notary Public's Name: Richard B. Jones

## List of Exhibits / Attachments

Exhibit A: Deed to Premises – See Attachment.

Exhibit B: Site Plan – See Attachment.

Exhibit C: Conditions of the Historic Commission

Exhibit D: Baseline Documentation. See attached photos.

## RESTRICTION GUIDELINES

### ATTACHMENT TO PRESERVATION RESTRICTION AGREEMENT BETWEEN THE CITY OF NEWBURYPORT AND BRADLEY M. KUTCHER, TRUSTEE OF KIMBERLY 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 Premises, including 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.

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.

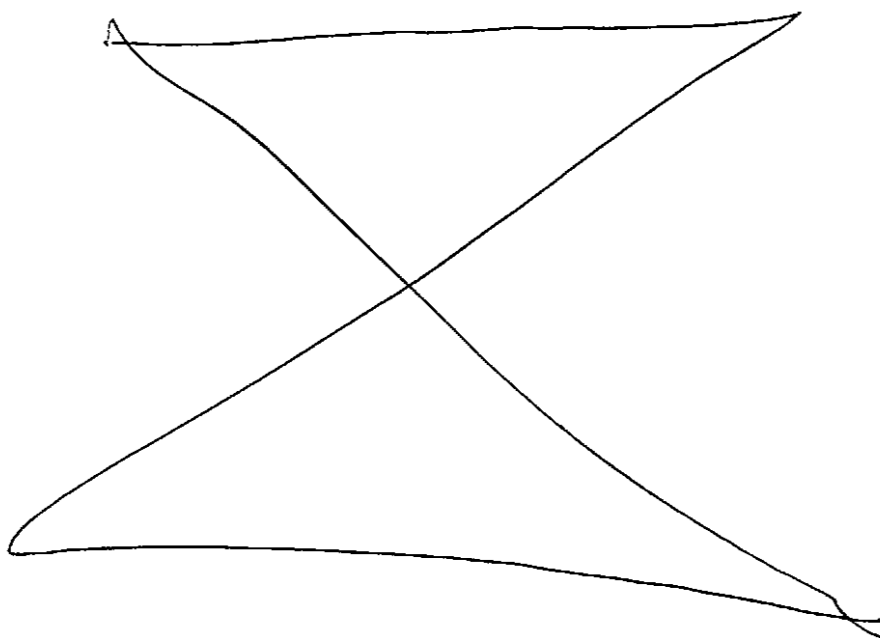
It is the responsibility of the property owner to notify the Commission in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

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 Premises.

## EXHIBIT A

- Deed to Premises -

See attached copy of deed





2

br/2

2012120600133 Bk:31990 Pg:564  
12/06/2012 11:07 DEED Pg 1/2

MASSACHUSETTS SOUTHERN ESSEX DISTRICT  
Southern Essex District ROD  
Date: 12/06/2012 11:07 AM  
ID: 934170 Doc# 20121206001330  
Fee: \$2,941.20 Cons: \$645,000.00

**MERRIMAC STREET CONDOMINIUM  
CONDOMINIUM UNIT DEED**

I, Bradley M. Kutcher, Trustee of Kimberly Realty Trust under a declaration of trust dated June 5, 1997 and recorded with the Essex South District Registry of Deeds in book 14151 page 516 of 11A Macy Street Amesbury, Massachusetts 01913 (the "Grantor")

for consideration paid of \$645,000.00

Grants to: Jeffrey Neal Goodman and Melissa Gladys Goodman, husband and wife, as Tenants by the Entirety

with QUITCLAIM COVENANTS

Property: Unit #1- 251 Merrimac Street Newburyport, Essex County, Massachusetts 01950

Unit #1 the of Merrimac Street Condominium created by Master Deed dated December 4, 2012 and recorded with the Essex South District Registry of Deeds at herewith and in accordance with and subject to the provisions of Chapter 183A of the General Laws of the Commonwealth of Massachusetts.

The Post Office Address of the Condominium Unit is: Unit #1 -251 Merrimac Street Newburyport, Massachusetts 01950

The unit is shown on a plan recorded herewith to which is affixed a verified statement in the form provided in G.L. c. 183A, section 9 and is conveyed subject to and with the benefit of the obligations, restrictions, rights and liabilities contained in G.L. c. 183A, the Master Deed, the documents establishing the organization of unit owners and the By-Laws as amended of record.

The Unit is conveyed together with the exclusive use of the areas as described in the Master Deed, as amended, and as shown on the Site Plan immediately adjacent to the Units. The Units are conveyed together with the exclusive use of the parking space (s) as shown on the Site Plan.

Unit 1 is conveyed together with a 50% undivided percentage interest in the common areas and facilities as described in the Master Deed.

The unit in the Condominium is intended for residential purposes only and such other uses as are set forth in the Master Deed.

The Unit is conveyed subject to the right of the Grantor to create and construct one additional phase for a detached single family residential dwelling to the Condominium as described in the Master Deed. By acceptance

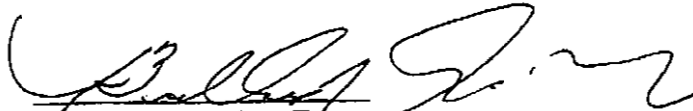
6x60

of this deed as evidenced by the Grantee's signature below, the Grantee acknowledges the Grantor's right to create and construct one additional phase creating a detached single family residential structure.

Being a portion of the premises conveyed to Bradley M. Kutcher, Trustee of Kimberly Realty Trust by Charles Kosta Trustee of Kosta Realty Trust by deed dated November 5, 2010 and recorded with the Essex South District Registry of Deeds in book 29946 page 565

Executed under seal this 4<sup>th</sup> day of December, 2012

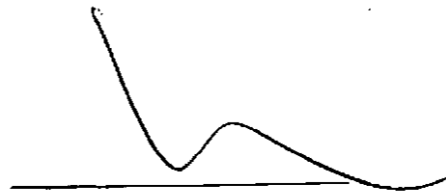
Kimberly Realty Trust

  
Bradley M. Kutcher, Trustee

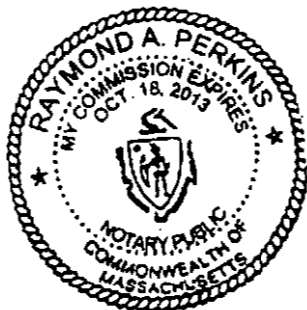
COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 4<sup>th</sup> day of December, 2012 before me, the undersigned notary public, personally appeared Bradley M. Kutcher, Trustee of Kimberly Realty Trust proved to me through satisfactory evidence of identification which was a drivers license to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.



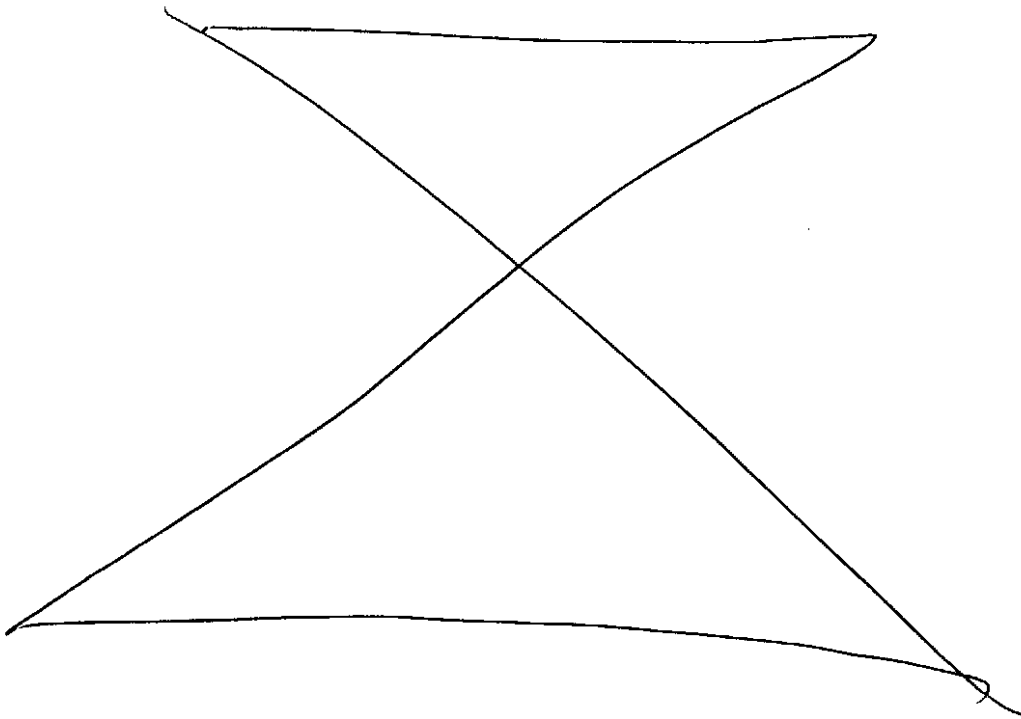
Notary Public  
My commission expires:



## EXHIBIT B

- Site Plan -

See attached site plan.



# PLAN BOOK 436 PLAN 20

ESSEX REGISTRY OF DEEDS DISTRICT MASS

Received December 6 2012

with MADED Merrimac

Street Condominium

Rec B 31990P 528

Attest

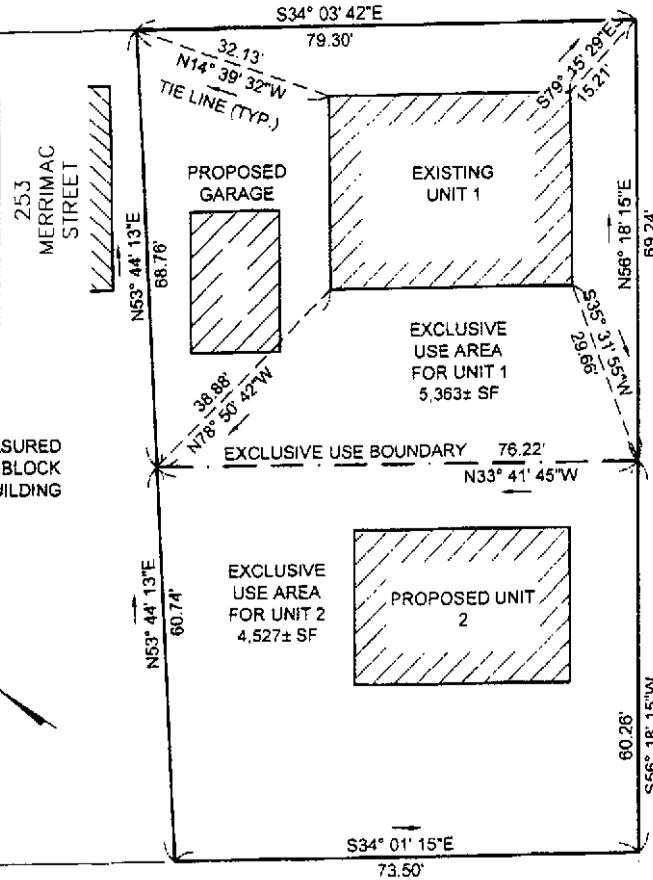
*[Signature]*

Register of Deeds

3P15

For Registry Use Only

MERRIMAC STREET



TIE LINES MEASURED FROM GRANITE BLOCK CORNER OF BUILDING

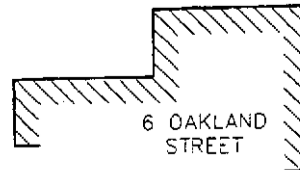
0 10 20  
Scale in Feet

I CERTIFY THAT:

(1) THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS;

(2) THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING EXISTING OWNERSHIPS, AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIPS OR FOR NEW WAYS ARE SHOWN;

(3) THIS PLAN FULLY AND ACCURATELY DEPICTS THE LOCATION AND DIMENSION OF UNIT 1, AS BUILT, AND FULLY LISTS THE UNIT CONTAINED THEREIN, AND THE EXCLUSIVE USE AREAS FOR THE CONDOMINIUM KNOWN AS MERRIMAC STREET CONDOMINIUM.



*[Signature]*

DANIEL W. MACKENZIE  
PROFESSIONAL LAND SURVEYOR

12-4-12  
DATE



20  
436  
528

Prepared For:  
BRAD KUTCHER  
BRADKU INC.  
11A AMES STREET  
AMESBURY, MA

Plan Set:

**MERRIMAC STREET  
CONDOMINIUM ASSOCIATION  
NEWBURYPORT, MA**

DATE: 11-21-2012

Plan Title:

**CONDOMINIUM SITE PLAN**

H:\Projects\2011\11004 BradKu-Merrimac St Permitting\Drawings - 11004\dwg\11004 Condo Site Plan.dwg

**Horsley Witten Group, Inc.**  
Sustainable Environmental Solutions  
www.horsleywitten.com  
90 Route 6A  
Sandwich, MA 02563  
508-833-6600 voice  
508-833-3150 fax



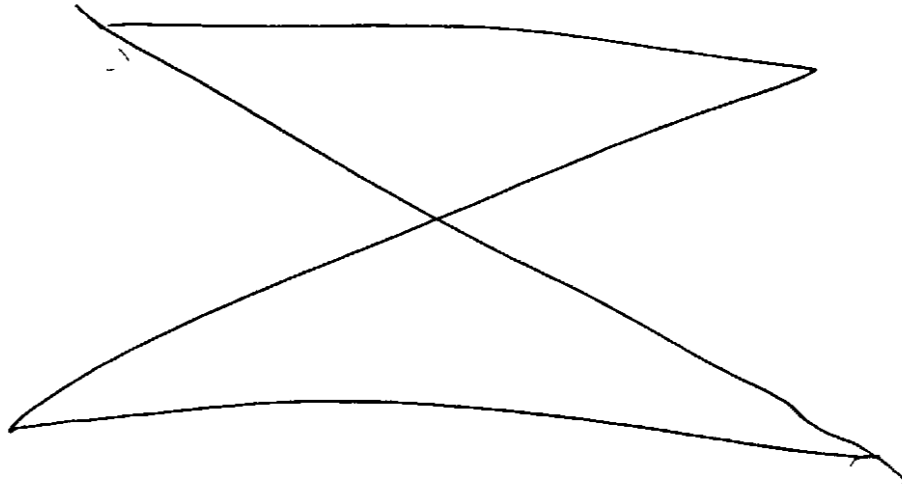


## EXHIBIT C

### – Conditions of the Historic Commission –

All of the following architectural elements shall be maintained and preserved in accordance with Sections 1 and 2 of this Preservation Restriction, and Exhibit D (Baseline Documentation) which depicts the existing conditions as of the date of this Restriction:

- New replicated wood window trim
- Existing and original corner trim
- Entablature features including cornice moldings and trim
- New and original roof edge trim
- Entry roof pediments
- Original restored front and side doors
- Pillars on the front portico



## EXHIBIT D

– Baseline Documentation –



**Above:** North/Front (Merrimac Street) Façade / Portico & Columns – July 18<sup>th</sup>, 2013



**Above:** East/Side (Oakland Street) Façade – July 18<sup>th</sup>, 2013



**Above:** East/Side (Oakland Street) Façade – July 18<sup>th</sup>, 2013





Above: East/Side (Oakland Street) Façade – July 18<sup>th</sup>, 2013



Above: West/Side Façade – July 18<sup>th</sup>, 2013