

CITY OF NEWBURYPORT



 IN CITY COUNCIL

 SO.ESSEX #163 Bk:37083 Pg:161
 10/16/2018 09:39 AM RSTR Pg 1/39
 eRecorded

ORDERED:

July 16, 2018

Be it ordained by the City Council of the City of Newburyport as follows:

THAT the City Council of the City of Newburyport hereby approves and authorizes the acceptance of a Preservation Restriction between the City, acting by and through the Newburyport Historical Commission, and 58 Middle Street Realty Trust, for the property located at 50-58 Middle Street, Newburyport; and

Further, that the Mayor of the City of Newburyport, the City Council President and City Clerk are hereby authorized to sign the said Preservation Restriction as may be required, to act on behalf of the City and enter into any and all instruments, including acceptance of said Preservation Restriction, and in accordance with Massachusetts General Laws Chapter 184, and to take any other actions necessary to execute this acceptance and the associated Preservation Restriction accordingly.

 Councilor Jared J. Eigerman
In City Council September 10, 2018:

Motion to remove from Planning & development by Councilor Eigerman, seconded by Councilor Zeid. So vote
 Motion to approve with opinion of the City Solicitor by Councilor Eigerman, seconded by Councilor Zeid. So voted.

Approve:

Donna D. Holaday, Mayor

Attest:

Richard B. Jones, City Clerk

OCT - 3 2018

Date: _____

PRESERVATION RESTRICTION AGREEMENT

Between

58 Middle Street Realty Trust
and the

CITY OF NEWBURYPORT, MASSACHUSETTS

BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION is made this 12th day of October 2018 (this "Restriction") by and between 58 Middle Street Realty Trust, located at 50-58 Middle Street, Newburyport, Essex County, Massachusetts 01950 ("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 managed and enforced by its agent, the NEWBURYPORT HISTORICAL COMMISSION (the "Commission"), located at 60 Pleasant Street, Newburyport, Massachusetts, 01950.

WHEREAS, the Grantor is the owner in fee simple of certain real property located at 50-58 Middle Street, Newburyport, Massachusetts which was conveyed to 58 Middle Street Realty Trust by deed recorded with the Essex South Registry of Deeds on September 26, 2016 in Book 35617 and Page 183, attached hereto as Exhibit A. A portion of the foregoing property is that shown as **Lot B** on a plan titled "Plan of Land in Newburyport, MA, Showing Proposed Site Plan at 50-58 Middle Street (Map 7 – Lot 21)" prepared by Millennium Engineering for 58 Middle Street Realty Trust, George A. Haseltine Trustee and recorded in the Essex South Registry of Deeds Plan Book 465 Plan 21 on April 26, 2018 (the "Plan"), which Plan is attached hereto as Exhibit B, and incorporated herein by reference (the "Property"). This Restriction shall apply to the Property the exterior of said existing principal building, referred to as the "50 Middle Street House", and described as follows:

A gable-front-and-wing shaped house, believed to have been built circa 1900-1904. The house has a shed-roofed porch placed within the L made by the two wings, which is common in urban, folk-Victorian style buildings in the northeast. The roof ridge is of uniform height across both the front and the wing. The key architectural features of the house are described and shown in further detail in the Baseline Documentation.

WHEREAS, the Property is a contributing resource to the Newburyport Historic District listed in the State and National Registers of Historic Places on August 2, 1984, is historically significant for its architecture, associations, and/or archeology, and qualifies for the protections of perpetual preservation restrictions under Massachusetts General Laws, Chapter 184, sections 31, 32 and 33; and

WHEREAS, Grantor and Grantee recognize the architectural, historic and cultural values (hereinafter "preservation values") and significance of the Property, and have the common purpose of preserving the aforesaid preservation values and significance of the exterior of the Property; and

WHEREAS, the preservation values of the 50 Middle Street House are documented in a series of photographs and documents (hereinafter, "Baseline Documentation") incorporated herein and attached hereto as Exhibits A (Property Description), B (Site Plans), C (Massachusetts Historical Commission Inventory Form B) which Baseline Documentation the parties agree provides an accurate representation of the 19. Runs with the Land: Except as provided in paragraphs 9 and 10, 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 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 as of the date hereof.

WHEREAS, the Photographic Documentation (Exhibit D)

Digital and archival photographic print copies of the Baseline Photographs shall be maintained by the Grantee with an address of:

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

WHEREAS, the 50 Middle Street House is in need of preservation and restoration; and will have its exterior restored in the following manner:

1. Vinyl siding to be replaced by cedar clapboards with four-inch reveal.
2. Bay window in front to be replaced by two windows to match above on second floor.
3. All windows to be replaced with aluminum clad, wood interior units with 2/2 muntin pattern, simulated divided light.
4. Asphalt used as driveway will be removed and replaced with Boston City Brick Pavers per the proposed site plan.
5. Boston City Brick Pavers will also be used for the driveway for Lot A.
6. Existing asphalt walkways around existing house on Lot B will be removed and replaced with natural stone.

WHEREAS, the Grantor has received a Variance from the City of Newburyport issued June 20, 2017 and filed with the City Clerk June 20, 2017 and recorded with the Essex (South) District Registry of Deeds in Book 36012, Page 205 for the construction and renovation of the structure along with a second Variance from the City of Newburyport issued June 20, 2017 and filed with the City Clerk June 20, 2017 and recorded with the Essex (South) District Registry of Deeds in Book 36012, Page 193 for the construction of another residential structure at 58 Middle Street, Newburyport, Essex County, Massachusetts on Lot A as shown on the Plan and the Grantor has agreed to impose a restriction in perpetuity on the Property for the preservation and renovation of the 50 Middle Street House, 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 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 50 Middle Street House; and

WHEREAS, the preservation of the 50 Middle Street House 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 40, Section 8D, authorized and directed by the Grantee to manage the Property and 50 Middle Street House 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 Property and the exterior of the 50 Middle Street House 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 50 Middle Street House, as described and documented in the Baseline Documentation, will be retained and maintained forever substantially in their historically-appropriate condition for preservation purposes and to prevent any use or change to the exterior of the 50 Middle Street House and specified interior features of the 50 Middle Street House or the Property that will significantly impair or interfere with the 50 Middle Street House’s Preservation Values (the “Purpose of this Restriction”). Characteristics that contribute to the architectural and historical integrity of the Property including include, but are not limited to, the setting and location of the 50 Middle Street House; and the architectural features, materials, appearance, and workmanship thereof. All Exhibits shall be attached to and recorded with this Restriction.
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 50 Middle Street House unless (i) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the 50 Middle Street House, 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 requirements in 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 E.
 - b. Any alteration to the appearance, materials, workmanship, condition or structural stability of the 50 Middle Street House governed by the Newburyport Historical Commission as listed and attached hereto as Exhibit E.
 - c. Any other act or use that may be harmful to the historic preservation of the 50 Middle Street House or the Property.
 - d. Notwithstanding anything to the contrary in this section 2, in the event the Grantor is required by law to make improvements to the 50 Middle Street House or the Property or is required in writing by its insurance carrier to make improvements to the 50 Middle Street House or the 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 Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (36CFR 67 and 68) (hereinafter the "Secretary's Standards"), and shall be designed in consultation with and subject to reasonable review by Grantee.

- e. Grantor agrees at all times to maintain the exterior of the 50 Middle Street House or the Property, as shown in the Restoration plans and in accordance with this Restriction and in compliance with all Federal, state and local laws, codes and ordinances applicable to the 50 Middle Street House or the Property. Grantor's obligation to maintain shall require repair, reconstruction and, where necessary, replacement in kind whenever necessary to preserve the 50 Middle Street House in a good, sound condition and state of repair.
3. 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 may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the 50 Middle Street House in the same structural condition and state of repair existing as of the date of this Restriction, and thereafter to that existing following the substantial completion of restoration work to be completed. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the exterior of the 50 Middle Street House. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the 50 Middle Street House whenever necessary in accordance with the policies and procedures of the Commission and in accordance with the Secretary's Standards.
 4. Grantor's Covenants: Prohibited Activities: The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:
 - a. The 50 Middle Street House shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
 - b. The dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;
 - c. No above-ground utility transmission lines, except those reasonably necessary for the existing 50 Middle Street House, may be created on the Property, subject to utility easements already recorded;
 - d. No additions and/or outbuildings may be attached to the 50 Middle Street House without prior approval of the Commission; and
 - e. Moving the 50 Middle Street House to another location shall be forbidden without prior approval of the Commission.
 5. Conditional Rights Requiring Grantee Approval: Subject to Paragraphs 3 and 4, and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the 50 Middle Street House without prior express written approval of the Commission. Without said approval Grantor shall not make any changes to the 50 Middle Street House, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, and any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the 50 Middle Street House. Grantor shall similarly not make any alterations to the surrounding Property that

would obscure the current view of the 50 Middle Street House, such as the installation of permanent signage without approval of the Commission.

Activities by Grantor to maintain the 50 Middle Street House and the Property, which are intended to be performed in accordance with the provisions of paragraph 3, 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 Restriction Guidelines (Exhibit E), which are attached to this Agreement and hereby incorporated by reference.

6. Grantor's Reserved Rights Not Requiring Further Approval by the Grantee: Subject to the provisions of paragraphs 2 and 4, 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 50 Middle Street House and the Property; and
 - iii. Are not inconsistent with the Purpose of this Restriction;
 - iv. Without further approval, are in conformance with the Restriction Guidelines attached as Exhibit E and Restoration Plan attached as Exhibit F.
 - b. Pursuant to the provisions of paragraph 3, the right to maintain and repair the 50 Middle Street House 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 50 Middle Street House. 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 5.
7. 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 5 two copies of information (including plans, specifications, and designs where appropriate) identifying 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 or 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, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time, provided nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.
8. Standards for Review: In exercising any authority created by this Restriction to inspect the 50 Middle Street House; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the 50 Middle Street House following casualty damage, the Commission shall apply the Secretary's Standards.

9. Casualty Damage or Destruction: In the event the 50 Middle Street House 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 damage or destruction, such notification including what, if any, temporary emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the 50 Middle Street House and to protect public safety, shall be undertaken by Grantor without the Commission's prior written approval of the work. 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 Commission approval shall not be unreasonably withheld, which report shall include the following:

- a. An assessment of the nature and extent of damage;
- b. A determination of the feasibility of the restoration of the 50 Middle Street House and/or reconstruction of damaged or destroyed portions of the 50 Middle Street House; and
- c. A report of such restoration/reconstruction work necessary to return the 50 Middle Street House to the condition existing at the date hereof or the condition subsequently approved by the Commission.

10. Review After Casualty Damage or Destruction: If, after reviewing the report provided in paragraph 9 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, 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 50 Middle Street House 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 11, Grantor and the Commission agree that restoration/reconstruction of the 50 Middle Street House 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 50 Middle Street House, 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 11, 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.

11. Insurance: Grantor shall keep the 50 Middle Street House 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 50 Middle Street House, if damaged, 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.

12. 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 50 Middle Street House; 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 50 Middle Street House; unless such injury, death, or damage is caused by Grantee or its boards, commission, 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.

13. 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: 58 Middle Street Realty Trust
c/o Lisa Mead, Mead, Talermin & Costa
30 Green Street,
Newburyport, Massachusetts 01950

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

14. Evidence of Compliance: Upon reasonable 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.
15. Inspection: With the consent of Grantor, Grantee or its representatives shall be permitted at reasonable times to inspect the exterior of the 50 Middle Street House and the Property on an annual basis. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.
16. Grantee's Remedies: The Grantor, for itself, its assigns and successors, expressly acknowledges that a violation of this Preservation Restriction Agreement 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 50 Middle Street House 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 50 Middle Street House.

Nothing in this Restriction shall impose upon the Commission any duty to maintain or require that the 50 Middle Street House 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 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 50 Middle Street House or the Property, including compliance with hazardous materials or other environmental laws and regulations.

17. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the 50 Middle Street House or Property received by Grantor from any government authority within five (5) business 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.
18. 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.
19. Runs with the Land: Except as provided in paragraphs 9 and 10, the restrictions, obligations and duties set forth in this Restriction shall run with the Property. The Grantor covenants that the Property will at all times be held, used, and conveyed subject to and not used in violation of the following restrictions, obligations and duties that shall run with the Property for ninety-nine (99) years. In any event, at the expiration of twenty-nine (29) years, the Grantor does hereby grant to the Commission the right to file an extension of this Restriction pursuant to the powers and assignment herein set forth, for any additional amount of time the Commission determines is in the best interest of the Commission to so file. The Commission is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Preservation Restriction; the Grantor on behalf of the Grantor and the Grantor's successors and assigns appoints the Commission as the Grantor's attorney-in-fact to execute, acknowledge and deliver any such instruments on the Grantor's behalf. Without limiting the foregoing, the Grantor and the Grantor's successors and assigns agree to execute any such instruments upon request.
20. Assignment: Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government, to a 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. Conveyance, assignation, or transfer of this Restriction requires that the Purpose for which the Restriction was granted will continue to be carried out. Grantee shall seek Grantor's approval of said conveyance, assignment or transfer and Grantor shall give prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.
21. 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. In the event Grantee does so remove, the Grantee shall provide notice of same to the Grantor and shall forthwith provide the Grantor with the name, address and further contact information of the designee.

22. 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, by and through its Historical Commission, and its being recorded with the Essex (South) District Registry of Deeds.
23. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in 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 50 Middle Street House resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including approvals by the City of Newburyport by and through its Historical Commission following public hearings 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.
24. 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 interest in the Property that are subject to the taking and all incidental and direct damages resulting from taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to Grantor.
25. 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 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.

26. 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 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 requirements of the Act with respect to amendments have been met and the amendment is recorded in the Southern Essex 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.
27. 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 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.
28. Archeological 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 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).
29. Revised Baseline Documentation: Following completion of the approved work as specified in the Restoration Plan (Exhibit F), a new set of comprehensive Baseline photographs shall be prepared to be filed with the Grantor and Grantee. Digital and archival photographic print copies of the Baseline Photographs shall be maintained by the Grantee with an address of:

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

IN WITNESS WHEREOF, the Grantor sets its hand and seal this 29th day of June, 2018.
By:

GRANTOR:

58 Middle Street Realty Trust



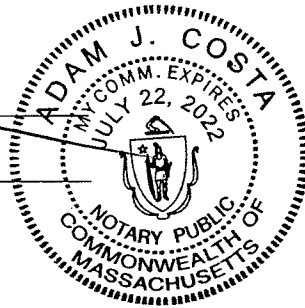
Its Trustee,
George Haseltine

Massachusetts

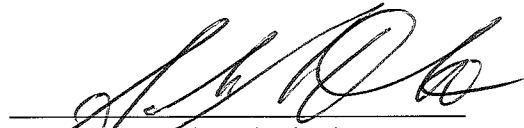
Essex, ss.

On this 29th day of June, 2018, before me, the undersigned notary public, personally appeared George A. Haseltine, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

Notary Public
My Commission Expires:



ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION



Sarah White, duly authorized
Chair, Newburyport Historical Commission

COMMONWEALTH OF MASSACHUSETTS

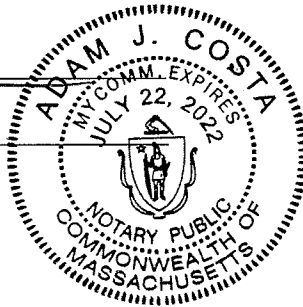
Essex, ss.

On this 27 day of June, 2018, before me, the undersigned notary public, personally appeared Sarah White, 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 above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.



Notary Public

My Commission Expires: _____

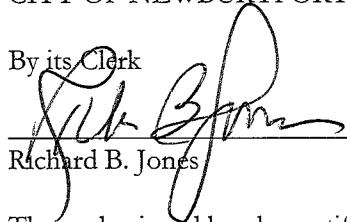


ACCEPTANCE AND APPROVAL BY THE CITY OF NEWBURYPORT

I, the undersigned City Clerk of the City of Newburyport, Massachusetts, hereby certify that at a meeting duly held on September 10, 2018, 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 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 12 day of October, 2018, before me, the undersigned notary public, personally appeared Richard B. Jones, 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 above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.


Notary Public
My Commission Expires: 8/3/2023

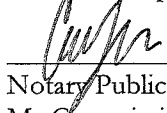


CASSANDRA M. GREEN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
August 3, 2023

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 12 day of October, 2018, before me, the undersigned notary public, personally appeared Donna D. Holaday, 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 above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.


Notary Public
My Commission Expires: 8/3/2023



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

List of Exhibits/Attachments

Exhibit A: Legal Property Description

Exhibit B: Plot Plans

Exhibit C: Massachusetts Historical Commission Inventory Form B

Exhibit D: Baseline Photographic Documentation

Exhibit E: Restriction Guidelines

Exhibit F: Restoration Plan

Exhibit A
Legal Property Description

PARCEL ONE: The land in said Newburyport with the buildings thereon numbered 58 Middle Street, bounded and described as follows:

Commencing at the Northerly corner thereof on Middle Street by land formerly of Walter Piecuch; thence running Southeasterly by said Street, 8 feet to land now or formerly of George F. Poor; thence by said land now or formerly of Poor, Southwesterly 83 5/10 feet to a corner; Southeasterly 2.75 feet; and Southwesterly again 4 8/10 feet to land now or formerly of Charles F. Badger; thence by said land now or formerly of said Badger 71 9/10 feet to land now or formerly of Edith A. Fowler; thence Northeasterly by said land now or formerly of Fowler 19 feet 9 inches to said land formerly of Piecuch; thence by the last mentioned land Southeasterly, 35 feet, 3 inches to a corner; Northeasterly 21 feet to a corner; Southeasterly again 11 feet, 8 inches to a corner; and Northeasterly again 47 feet, 6 inches to the point of beginning. All of said measurements being more or less.

Together with a right of way 3 feet wide running Southwesterly from said Middle Street along the Southeasterly side of said land now or formerly of Piecuch 47 feet, 6 inches.

PARCEL TWO: A parcel of land being the same premises known as No. 50 to 56 Middle Street on Newburyport Assessors' Map No. 7, supposed to contain 3,544 square feet.

The above-described premises are conveyed subject to and together with a right of way referred to in a deed dated May 8, 1944, and recorded with the Essex South District Registry of Deeds in Book 3370, Page 73.

Being the same premises conveyed to the Grantor by deed of Wojcicki Development Corp. dated January 17, 2017, and recorded with the Essex South District Registry of Deeds in Book 35617 Page 183.

Exhibit B
Plot Plans

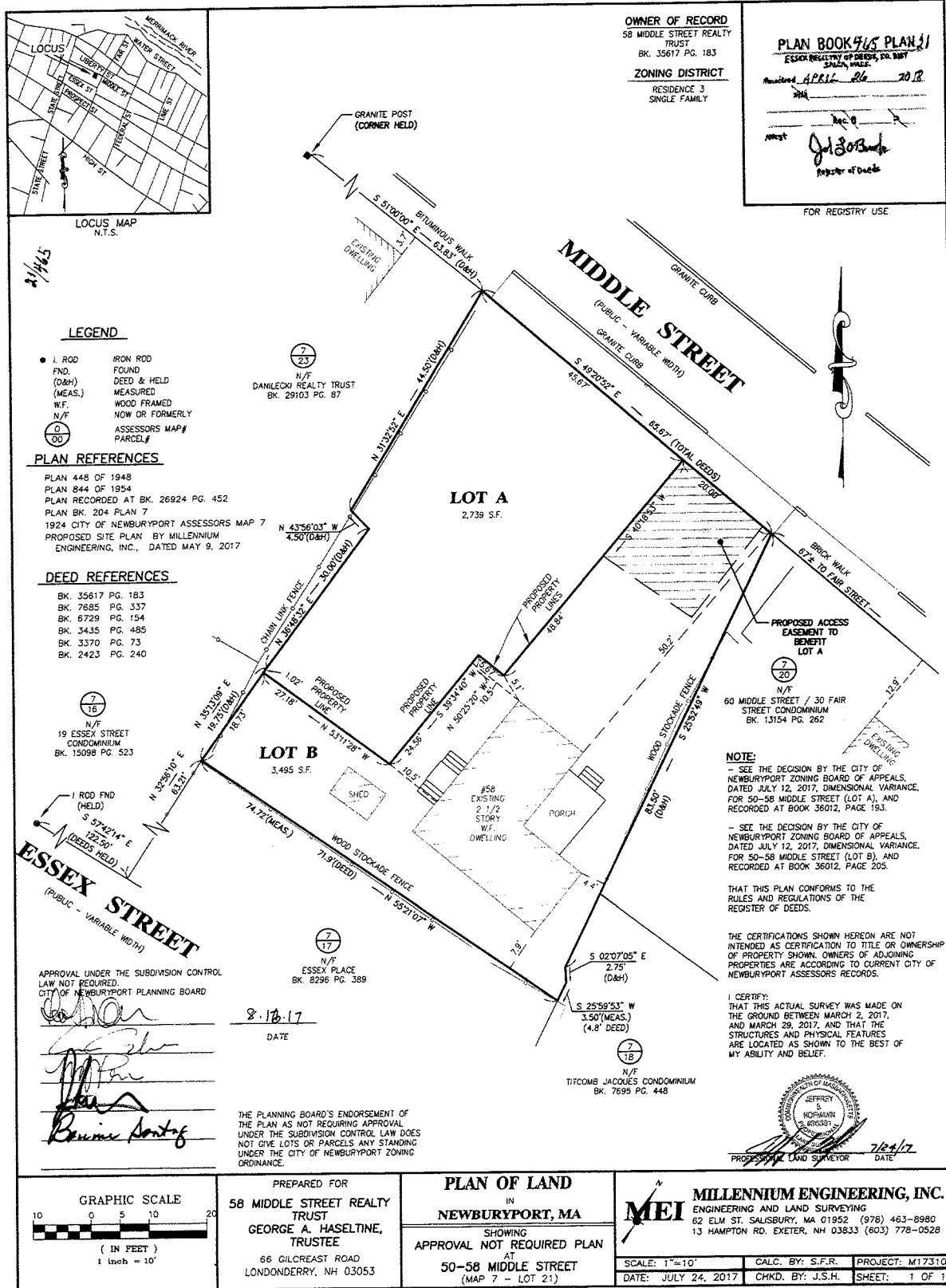


Exhibit C
Massachusetts Historical Commission Inventory Form B

FORM B – BUILDING

MASSACHUSETTS HISTORICAL COMMISSION
MASSACHUSETTS ARCHIVES BUILDING
220 MORRISSEY BOULEVARD
BOSTON, MASSACHUSETTS 02125

Photograph

Insert here or on a Continuation Sheet a digital photograph (either color or black and white).

A paper photographic print (3½x5¼" or 4x6" must also be attached to the form in this space or to a Continuation Sheet. Prints, from a photo-quality inkjet printer, must use brand name paper and inks approved by MHC. Attached photographs should be clearly identified with town name and property address. See MHC's Guidelines for Inventory Form Photographs.

Locus Map

Insert here or on a Continuation Sheet a map clearly showing the location of the property including the name of the nearest road or street and at least one other intersecting road or feature.

Assessor's maps are preferred, but other forms of detailed plans such as an excerpt from a USGS topographic map or an aerial or satellite photo clearly marked are also acceptable. See MHC's Guidelines for Inventory Form Locational Information.

Assessor's Number USGS Quad Area(s) Form Number

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Town/City: Newburyport

Place: *(neighborhood or village):*

Address: 50-58 Middle Street

Historic Name:

Uses: Present: Residential

Original: Residential

Date of Construction: Circa 1900-1904

Source: Southern Essex Registry of Deeds;

Sanborn maps

Style/Form: Folk-Victorian

Architect/Builder: Unknown

Exterior Material:

Foundation: Brick

Wall/Trim: Vinyl siding

Roof: Asphalt shingle

Outbuildings/Secondary Structures:

None

Major Alterations *(with dates):*

Condition: Average

Moved: no ☒ yes ☐ **Date:**

Acreage: 0.086 SF

Setting: Urban residential; Historic District

Recorded by:

Organization:

Date *(month / year):*

INVENTORY FORM B CONTINUATION SHEET

TOWN

ADDRESS

MASSACHUSETTS HISTORICAL COMMISSION

220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Farm No.

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☐ Recommended for listing in the National Register of Historic Places.
If checked, you must attach a completed National Register Criteria Statement form.

Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.

ARCHITECTURAL DESCRIPTION:

Describe architectural features. Evaluate the characteristics of this building in terms of other buildings within the community.

This is a gable-front-and-wing shaped house, believed to have been built circa 1900 - 1904. Common in urban, folk-Victorian style buildings in the northeast, the house has a shed-roofed porch placed within the L made by the two wings. The roof ridge is of uniform height across both the front and wing.

HISTORICAL NARRATIVE

Discuss the history of the building. Explain its associations with local (or state) history. Include uses of the building, and the role(s) the owners/occupants played within the community.

The house was built between 1900 and 1904.

The local Newburyport Historic Commission has listed the house as being contributory to the overall historic character of the neighborhood.

BIBLIOGRAPHY and/or REFERENCES

Southern Essex County Registry of Deeds; Sanborn maps

Continuation sheet 1

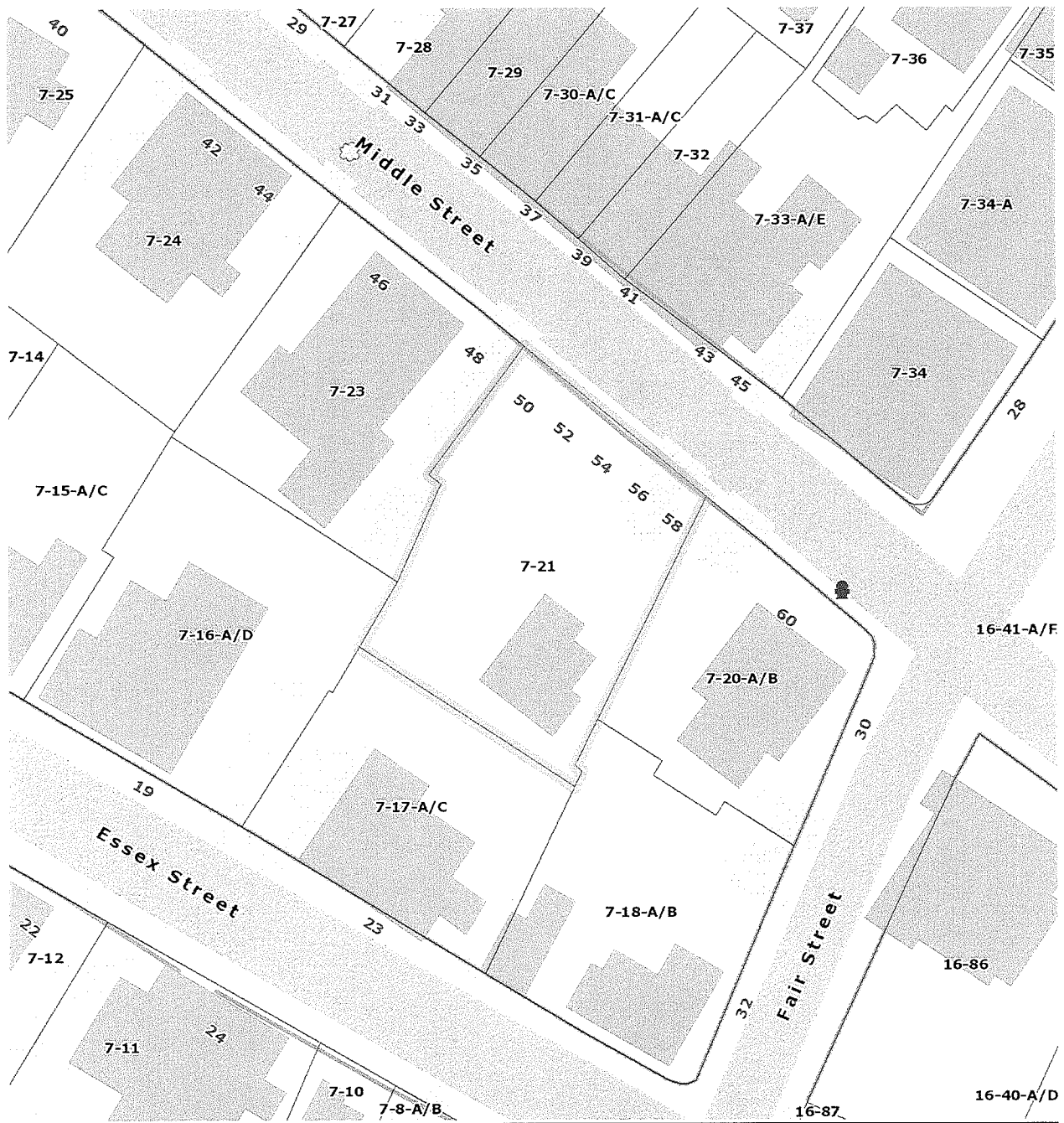


Exhibit D
Baseline Photographic Documentation

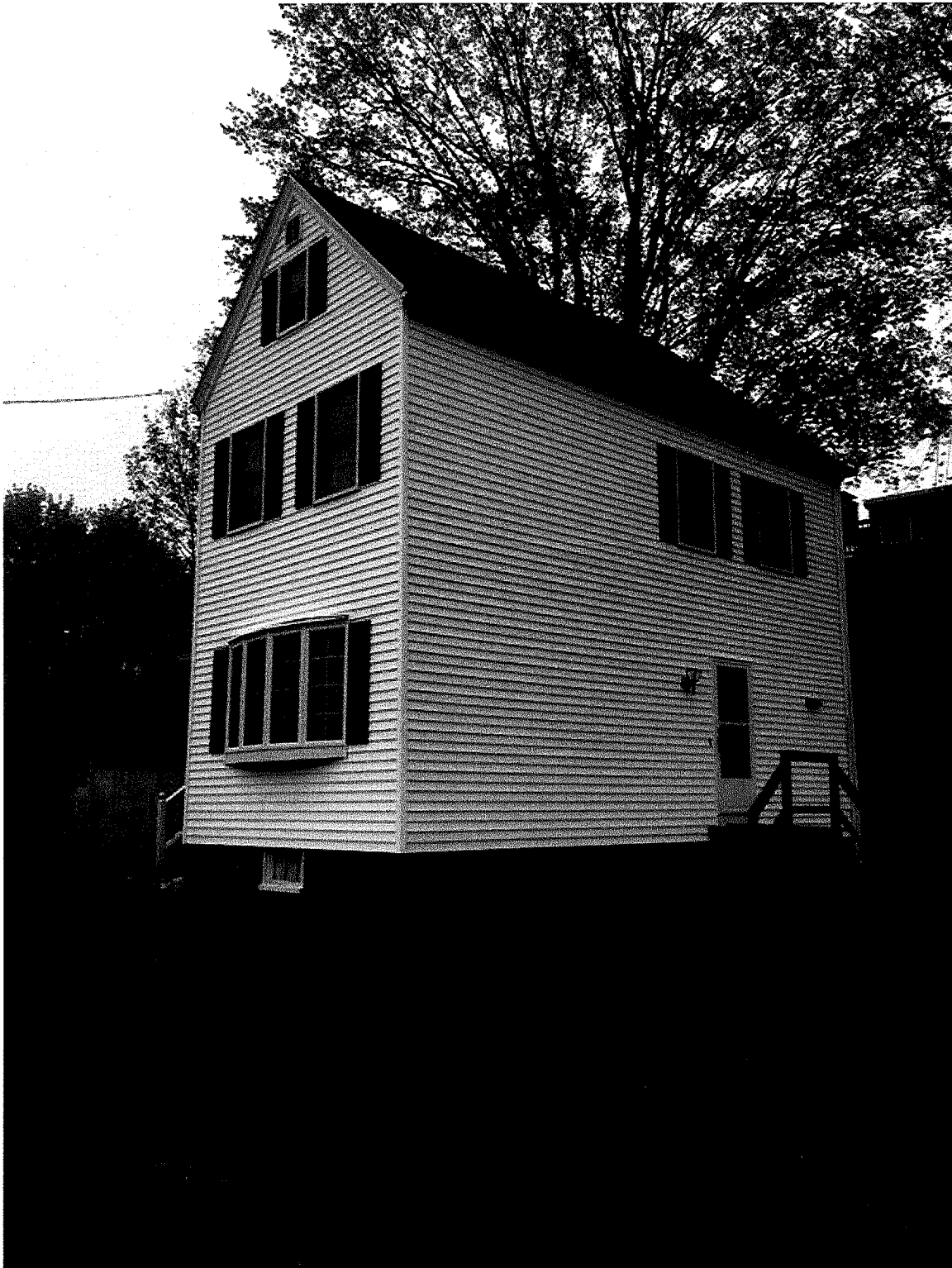
1. East Elevation 2017



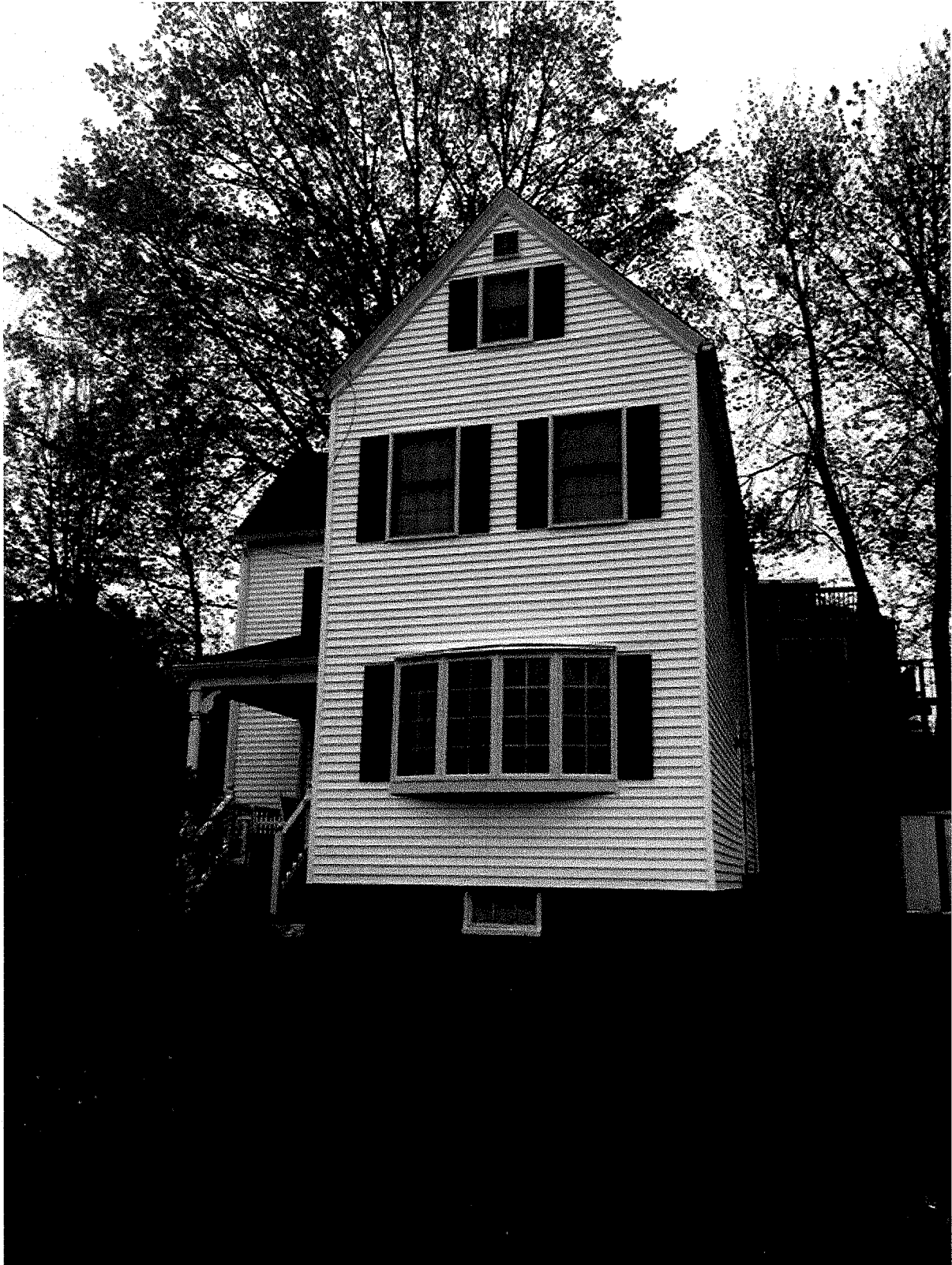
2. East Front Elevation 2017



3. Front and West Elevation 2017



4. Front Elevation 2017



5. Porch



6. Porch



7. Porch Detail



8. Porch Detail



Exhibit E

Restriction Guidelines

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

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the GRANTEE, 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 the property owner.

PAINT

Minor - Exterior or interior 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 murals, stenciling, ornamental woodwork, stone, masonry, decorative or significant original stucco or plaster.

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.

LANDSCAPE/OUTBUILDINGS

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, walls, fences; ground disturbance affecting archaeological resources.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major exterior appearance changes (i.e. exterior ducts, piping, ventilators, HVAC units); the removal of substantial quantities of original materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the preservation restriction such changes must be reviewed by the GRANTEE and their impact on the historic integrity of the property assessed.

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

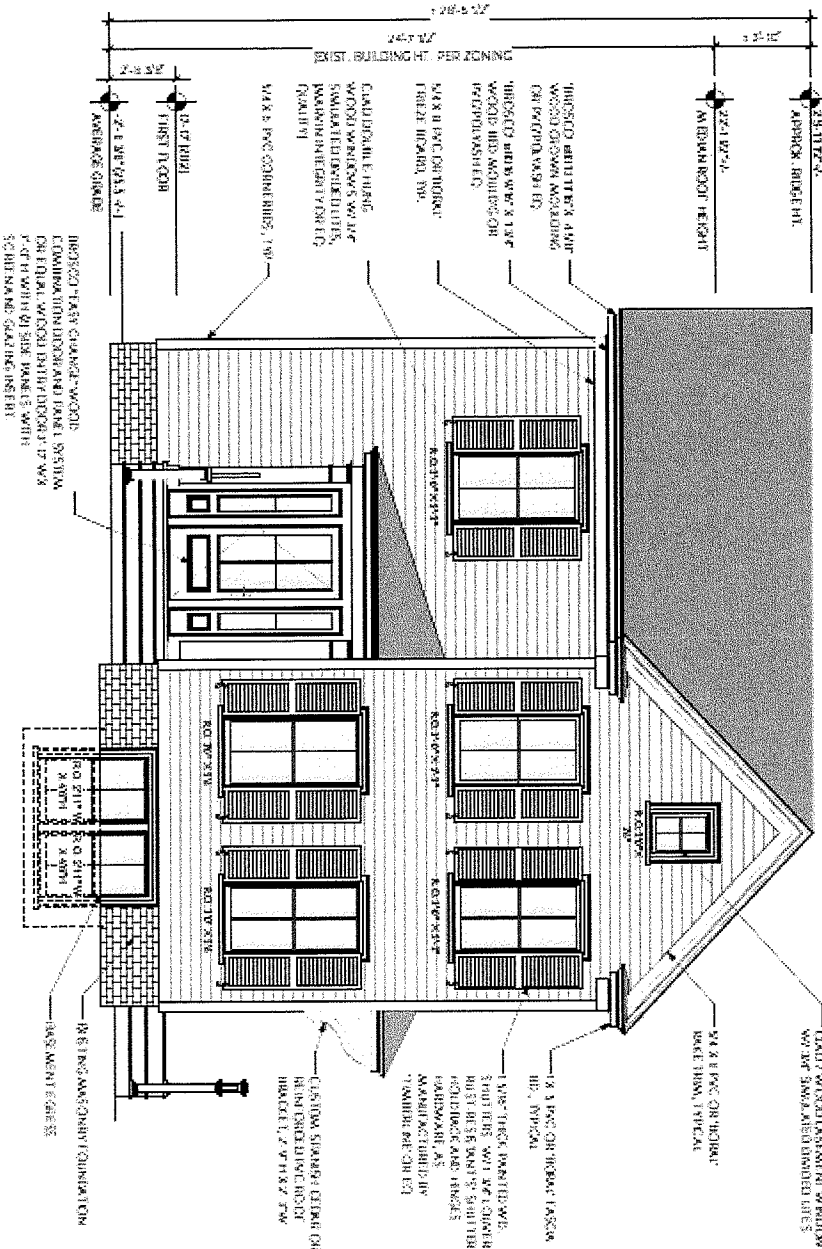
The intent of the preservation restriction is to enable the GRANTEE to review proposed alterations and assess their impact on the integrity of the building, not to preclude future change. GRANTEE will attempt to work with property owner to develop mutually satisfactory solutions, which are in the best interests of the Property.

Exhibit F:
Restoration Plan

Left Elevation
 Scale: $1/4" = 1'-0"$

See SHEET
FOR MORE INFORMATION

FRONT ELEVATION Scale: 1/4" = 1'-0"



SCOTT & BROWN
ARCHITECTS
300 WEST 11TH STREET
NEWBURYPORT, MA 01950
TEL: 978-535-1111

RENOVATION TO:
58 MIDDLE STREET
NEWBURYPORT, MA

PROJECT NO. 1005
DATE: 10/10/10
SCALE: 1/4" = 1'-0"

PROPOSED
ELEVATIONS

A5

REVISIONS

NO.	DATE	DESCRIPTION
1	10/10/10	ISSUED FOR PERMIT

DATE: 10/10/10
SCALE: 1/4" = 1'-0"

[illegible]

9 also S15111
10 also S561105L5D **200001** (11/11/2000)