

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

NEWBURYPORT SOCIETY FOR THE RELIEF OF AGED WOMEN

The parties to this Agreement are the City of Newburyport, by and through the Newburyport Historical Commission located at 60 Pleasant Street, Newburyport, Massachusetts 01950, hereinafter referred to as the Commission, and the **Newburyport Society for the Relief of Aged Women, F/K/A Society for the Aid of Aged and Indigent Females of Newburyport**, 75 High Street, Newburyport, Massachusetts 01950 hereinafter referred to as the Grantor.

WHEREAS, the Grantor is the owner in fee simple of certain real property located at 75 High Street, Newburyport, Massachusetts 01950 and described in a deed dated May 17, 1886, from Paul Carl Louis Emil Krell to Martha G. Wheelwright, et al, recorded with the Essex South Registry of Deeds, Book 1181, Page 138 (hereinafter referred to as the "Premises"), which is improved by a building thereon known as Wheelwright House and by a carriage house. The Wheelwright House and the carriage house are collectively referred to hereinafter as the "Buildings."

WHEREAS, the Grantor wishes to impose certain restrictions, obligations and duties upon it as the owner of the Premises and on the successors to its right, title and interest therein, with respect to maintenance, protection, and preservation of each of the façades of the Buildings (hereinafter "Façades") in order to protect the architectural and historical integrity thereof; and

WHEREAS, the preservation of the Façades is important to the public for the enjoyment and appreciation of its architectural and historical heritage and will serve the public interest in a manner consistent with the purposes of M.G.L. chapter 184, section 32, hereinafter referred to as the Act; and

WHEREAS, the Commission is authorized to accept these preservation restrictions under the Act;

NOW, THEREFORE, for good and valuable consideration, the Grantor conveys to the Commission the following preservation restrictions, which shall apply in perpetuity to the Façades.

PLEASE RETURN TO:
CONNOLLY & CONNOLLY
REGISTRY BOX 55

These preservation restrictions are set forth so as to ensure the preservation of those characteristics which contribute to the architectural and historical integrity of the Façades.

Characteristics which contribute to the architectural and historical integrity of the Facades include, but are not limited to, the features, appearance, and workmanship of the Facades.

The terms of the Preservation Restriction are as follows:

1. Maintenance of Facades: The Grantor agrees to assume the total cost of continued maintenance, repair and administration of the Facades so as to preserve the characteristics which contribute to the architectural and historical integrity of the Facades in a manner satisfactory to the Commission according to the Secretary of the Interior's "Standards for the Treatment of Historic Properties." The Grantor may seek financial assistance from any source available to it. The Commission does not assume any obligation for maintaining, repairing or administering the Premises.
2. Inspection: The Grantor agrees that the Commission may inspect the Facades from time to time upon reasonable notice to determine whether the Grantor is in compliance with the terms of this Agreement
3. Alterations: The Grantor agrees that no alterations shall be made to the Façades by the Grantor unless (a) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the Facades, or (b) the Commission has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by the Grantor, which determination shall not be unreasonable withheld, or (c) required by casualty or other emergency promptly reported to the Commission, or (d) for compliance with the Americans with Disabilities Act (hereinafter the "ADA") or the Commonwealth of Massachusetts Architectural Access Board (hereinafter "AAB"), provided the Grantor's plans and specifications for this purpose are first approved by the Commission, which said approval shall not be unreasonably withheld. In any event, if the Commission's determination shall cause the Grantor to be out of compliance with the ADA or the AAB and should the Grantor determine that it cannot satisfy both the Commission and the ADA or AAB, the Grantor shall notify the Commission in writing of said conflict prior to undertaking any work, and, if the Commission reasonably determines that such a conflict exists

and that a waiver of the requirements of the ADA should be requested, cooperate with the Commission in seeking such a waiver. The Grantor, its successors and assigns shall bear all costs associated with the seeking of a waiver hereunder. In the event that the Commission decides in writing not to seek a waiver, or if the requested waiver is not granted, the Grantor shall comply with satisfy the ADA and the AAB, notwithstanding this Preservation Restriction and any terms herein to the contrary. Ordinary maintenance and repair of the Premises may be made without the permission of the Commission. For purposes of this section, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines which are attached to this Agreement and hereby incorporated by reference.

4. Notice and Approval. Whenever approval by the Commission is required under this restriction, Grantor shall send written notice thereof to the Commission, by certified mail, return receipt requested, not less than thirty (30) days prior to the date on which Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Commission to make an informed judgment as to its consistency with the purposes of this Preservation Restriction. Within thirty (30) days of receipt of Grantor's reasonably sufficient request for said approval, the Commission shall, in writing, grant or withhold its approval, or request additional information relevant to the request and necessary to provide a basis for its decision. However, should the Commission, for good cause, determine that additional time is necessary in order to make its decision the Commission shall so notify the Grantor. The Commission's approval shall not be unreasonably withheld, and shall be granted upon a reasonable showing that the proposed activity shall not materially impair the purpose of this Preservation Restriction. Failure of the Commission to make a decision within thirty (30) days from the date on which the request is accepted by the Commission or to send notice of a time extension within said time shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.
5. Assignment: Upon written notice to the Grantor, the Commission may assign this Agreement to another governmental body or to any charitable corporation or trust among the purposes of which is the maintenance and preservation of historic properties only in the event that the Commission should cease to function in its present capacity.

6. Legal Remedies of the Grantee:

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right in the Commission to enforce this Preservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation, relief requiring restoration of the property to its condition prior to the time of the injury complained of (it being agreed that the Commission may have no adequate remedy at law). The rights hereby granted shall be in addition to and not in limitation of, any other rights and remedies available to the Commission for the enforcement of the Preservation Restriction.

B. Costs of Enforcement.

In the event the Grantor violates this restriction, the Grantor and thereafter its successors and assigns agree to bear the costs and expenses (including without limitation counsel fees) incurred by the Commission in enforcing this Preservation Restriction or in remedying or abating any violation thereof occurring during such person's ownership.

C. Commission's Disclaimer of Liability.

By its acceptance of this Preservation Restriction, the Commission does not undertake any liability or obligation relating to the condition of the Premises.

D. Non-waiver.

Any election by the Commission as to the manner and timing 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 any such rights.

7. 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, § 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.

8. Controlling Law: The interpretations and performance of this Preservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

9. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Preservation Restriction shall be liberally construed in favor of the grant to affect the purposes of the Preservation Restriction and the policy and purposes of Grantee. If any provision is found to be ambiguous, an interpretation consistent with the purpose of this

Preservation Restriction that would render the provision valid shall be favored over any interpretation that renders it invalid.

10. Validity and Severability: The invalidity of M.G.L. c. 184 or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
11. Recording: The Grantor agrees to record this Agreement with the appropriate Registry of Deeds and file a copy of such recorded instrument with the Commission.

The burden of these restrictions enumerated in paragraphs 1 through 7, inclusive, shall run with the land and is binding upon future owners of an interest therein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of

May 4, '06, 2006.

GRANTOR:

Newburyport Society for the
Relief of Aged Women
F/K/A Society for the Aid of Aged and
Indigent Females of Newburyport

By:

Margaret Stokes, Pres.
_____, Its duly authorized President of the Board

GRANTEE:

City of Newburyport

By: _____

_____, Its duly authorized Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 4th day of May, 2006, before the undersigned notary public, personally appeared Margaret Stokes, the President of Newburyport Society for the Relief of Aged Women proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he/she) signed it voluntarily for its stated purpose on behalf of the Newburyport Society for the Relief of Aged Woman.



Notary Public:

My commission Expires:

Lisa Louise Mead
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 14, 2011

COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this ____ day of _____, 2006, before the undersigned notary public, personally appeared _____, member of the Newburyport Historical Commission, as aforesaid, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the City of Newburyport.

Notary Public:

My Commission Expires

ACCEPTANCE OF PRESERVATION RESTRICTION

The City of Newburyport, acting by and through its Historical Commission pursuant to the authority granted to said Commission under G.L. c. 40, § 8D, hereby accepts the foregoing Preservation Restriction on this 24 day of May, 2006.

CITY OF NEWBURYPORT, by its
Historical Commission

Linda Smiley, CHAIRMAN

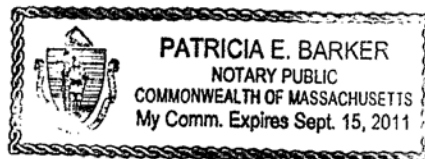
COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 24 day of May, 2006, before me, the undersigned Notary Public, personally appeared Linda Smiley, member of the Newburyport Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which were MP LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the City of Newburyport.

Patricia E. Barker
(Official Signature and Seal of Notary)

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APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION

The undersigned hereby certifies that the foregoing preservation restrictions have been approved pursuant to Massachusetts General Laws, Chapter 184, section 32.

MASSACHUSETTS HISTORICAL
COMMISSION

By: Brona Simon
Brona Simon
Acting Executive Director and Clerk
Deputy SHPO
Massachusetts Historical

Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk ss.

On this 24th day of August, 2006, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was 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.

Nancy Maida

Notary Public
My commission expires:
January 19, 2012