



# PRESERVATION RESTRICTION AGREEMENT

Between

90 WATER STREET REALTY TRUST

and the

CITY OF NEWBURYPORT, MASSACHUSETTS

BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION is made this 30<sup>th</sup> day of June 2022 (this "Restriction") by and between 90 Water Street Realty Trust, located at 66 Gilcreast Road, Londonderry New Hampshire ("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 90 Water Street, Newburyport, Massachusetts (hereinafter referred to as "the Property"), being that same Property conveyed by Ann Twiss to Grantor in a deed recorded with the Essex South Registry of Deeds on June 24, 2016 in Book 35027 and Page 362, its legal description included as Exhibit A, attached hereto and incorporated herein by reference, said Property improved by one (1) principal building thereon, referred to hereinafter as "the Building", described as follows:

Built in or around 1914 structure is a two-story, wood frame structure with some late Victorian-like features. The front façade faces north, with a front facing gable forming an unusual low slope roofline paralleling Water Street. The style and details of this structure are simple and a part of the tight knit Water Street streetscape. The Building is more fully described in a series of documents included in the Baseline Documentation attached hereto and incorporated herein by this reference as Exhibits D, E and F;

WHEREAS, the cultural, historical and architectural significance of the Building and Property emanates from its size and place along Water Street and likely early home of tradesman or factory workers. Its contribution to the historic Water Street streetscape and more generally to the historic architectural character of the Newburyport Historic District, the Building and the Property being important to the public enjoyment and appreciation of their architectural and historical heritage;

WHEREAS, the Building is a contributing resource to the Newburyport Historic District, , is historically significant for its architecture, associations, and/or archeology, and qualify for the protections of perpetual preservation restrictions under Massachusetts General Laws, Chapter 184, sections 31, 32 and 33;

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

WHEREAS, the preservation values of the Building and the Property values are documented in a series of photographs and documents (hereinafter, "Baseline Documentation") incorporated herein and attached

hereto as Exhibits D, E, and F, which Baseline Documentation the parties agree provides an accurate representation of the Building as of the date hereof;

WHEREAS, the Photographic Documentation (Exhibit D) approved as a condition of approval of the sale of the Building and Property by the City of Newburyport shall consist of the following:

A set of four exterior photos taken in June 2016:

Photo A: South Facade showing single story later added addition on two story original structure.

Photo B: East Facade

Photo C: West Facade

Photo D: North Façade on Water Street showing windows to be changed

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

WHEREAS, the Grantor has been granted a variance for the purpose of maintaining a two family use on the property and as a condition thereof, the Grantor has agreed to impose a restriction on the Building and Property 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 successful sale of 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 Grantee has approved the proposed changes to the Building and which are documented in Exhibit G attached hereto ("Grantor's Plans");

WHEREAS, the preservation of the Building is important to the public for the enjoyment and appreciation of its architectural and historical heritage and serves the public interest in a manner consistent with the purposes of Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 ("Act"); and

WHEREAS, the Commission is authorized to accept preservation restrictions in the name of the City of Newburyport and the Commission is a governmental body duly organized under the laws of the Commonwealth of Massachusetts, including the General Laws, Chapter 40, Section 8D, authorized and directed by the Grantee to manage the Property 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 Property 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 forever 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 Property or the exterior of the Building that will significantly impair or interfere with the Building's preservation values or alter views of the exterior of the Building.

Grantor agrees at all times to maintain the Property and the exterior of the Building in accordance with this Restriction and in compliance with all Federal, state and local laws, codes and ordinances applicable to the Property 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.

For avoidance of doubt, this Restriction shall not apply to the interior of the Building and the Commission shall have no oversight on alterations to the interior of the Building. Notwithstanding the foregoing, following completion of the approved rehabilitation work according to the approved Grantor's Plans, any interior activities that may potentially affect the structural integrity of the Building, or which may result in an alteration to any exterior structural or decorative element, or to the material or appearance of the exterior of the Building shall be subject to prior review and approval of the Commission according to the terms of 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 Building unless (i) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the Building and the Property, or (ii) the Grantee has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by Grantor in accordance with the requirements of paragraph 7, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency promptly reported to Grantee in accordance with 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 Building governed by the Newburyport Historical Commission Conditions as listed and attached hereto as Exhibit F.
  - c. Any other act or use that may be harmful to the historic preservation of the Building 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 Building or Property or is required in writing by its insurance carrier to make improvements to the Building or Property in order to avoid revocation of insurance and the Grantor has exhausted all methods of variance or appeal process related to either applicable law or insurance qualifications, the Grantee and the Grantor agree that the Grantee may not forbid or limit the Grantor's ability to make the improvements. Said changes or improvements shall comply with the Secretary of Interior's Standards for the Rehabilitation of Historic Buildings, and shall be designed in consultation with and subject to reasonable review by Grantee.
3. 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 Building 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 Building. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with the policies and procedures of the Commission and in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

4. Grantor's Covenants: Prohibited Activities: The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:
- a. The Building shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
  - b. The dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property on the sides adjacent to Water Street;
  - c. No above-ground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded;
  - d. No additions and/or outbuildings may be attached to the Building without prior approval of the Grantee; and
  - e. Moving the Building 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 Building without prior express written approval of the Commission. Without said approval Grantor shall not make any changes to the Building, 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 Building. Grantor shall similarly not make any alterations to the surrounding Property that would obscure the current view of the Building, such as the installation of permanent signage without approval of the Commission.

Activities by Grantor to maintain the Building 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 Building and Property; and
    - iii. Are not inconsistent with the Purpose of this Restriction;
    - iv. Are in conformance with the Grantor's Plans as attached hereto as Exhibit G.
  - b. Pursuant to the provisions of paragraph 3, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or

application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the Building. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the Commission in accordance with the provisions of paragraph 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 of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Commission of the plan or request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.
8. Standards for Review: In exercising any authority created by this Restriction to inspect the Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the Commission shall apply the Secretary's Standards.
9. Casualty Damage or Destruction: In the event the Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of 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 Building and Property 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 Building and/or reconstruction of damaged or destroyed portions of the Building; and
  - c. A report of such restoration/reconstruction work necessary to return the Building to the condition existing at the date hereof or the condition subsequently approved by the Commission.
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 Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction and Grantor may, with prior written consent of the Commission, alter, demolish, remove or raze the Building, and/or construct new improvements on the Property, Grantor and Grantee may agree to extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts and paragraph 23 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 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 Building insured by an insurance company rated "A-1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire, injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Commission, within ten (10) business days of the Commission's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.
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 Building; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the Building; unless such injury, death, or damage is caused by Grantee or its boards, 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: 90 Water Street Realty Trust  
George Haseltine, Trustee  
10 Oak Street  
Newburyport MA 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 Buildings and the Property on an annual basis. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.
16. Grantor's Remedies: In the event Grantee is found to have violated any of its obligations, Grantee shall reimburse Grantor for any costs or expenses incurred in connection with Grantor's enforcement of the terms of this Restriction, including all court costs, and attorneys', architectural, engineering, and expert witness fees.
17. 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 Building and such other legal and equitable remedies as may be available to the Commission to effectuate the purposes of this Restriction and to enforce the Grantor's obligations hereunder.

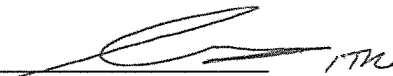
In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including all court costs, and attorneys', architectural, engineering, and expert-witness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

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

18. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Buildings 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.
19. 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.
20. 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 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 in perpetuity. 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.

Signature of the Grantor: \_\_\_\_\_



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.

21. 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, or to a private entity for the purpose of adaptive reuse of the structure according to the provisions of the Restriction. Conveyance, assignment, 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.
22. 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.
23. Recording and Effective Date: Grantor 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 and the City of Newburyport, and its being recorded with the Southern Essex County District Registry of Deeds.
24. 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 Building resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including public hearings by the City of Newburyport and the Massachusetts Historical Commission to



determine that such extinguishment is in the public interest. In the event of a sale of the Property, net proceeds of sale shall be paid to Grantor.

25. 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.
26. 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 is 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.

27. Amendment: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Restriction or the status of Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private 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 County District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

28. 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.
29. 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).

IN WITNESS WHEREOF, the Grantor sets its hand and seal this 29<sup>th</sup> day of JUNE, 2022.  
By:

**GRANTOR:**

90 Water Street Realty Trust

  
\_\_\_\_\_

George Haseltine, Trustee

Essex, ss. COMMONWEALTH OF MASSACHUSETTS

On this 29<sup>th</sup> day of June, 2022, before me, the undersigned notary public, personally appeared George 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 as the Trustee of 90 Water Street Realty Trust, voluntarily for its stated purpose.

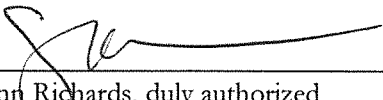
  
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Notary Public

My Commission Expires: 11/28/25



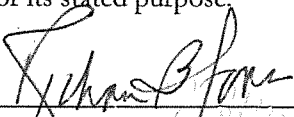
ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION

  
\_\_\_\_\_  
Glenn Richards, duly authorized  
Chair, Newburyport Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 30<sup>th</sup> day of June, 2022, before me, the undersigned notary public, personally appeared Glenn Richards, 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: 3/18/2027

**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 June 27, 2022, 2022, 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  
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

Sean Reardon, Mayor

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this 27 day of June, 2022, 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.

Kathleen Sullivan

Notary Public

My Commission Expires: June 17, 2027



**KATHLEEN SULLIVAN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
June 17, 2027

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this 27<sup>th</sup> day of June, 2022, before me, the undersigned notary public, personally appeared Sean Reardon, 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.

Kathleen Sullivan

Notary Public

My Commission Expires: June 17, 2027



**KATHLEEN SULLIVAN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
June 17, 2027

### List of Exhibits/Attachments

Exhibit A: Legal Property Description

Exhibit B: Newburyport Assessor's Parcel Map

Exhibit C: Massachusetts Historical Commission Inventory Form B

Exhibit D: Baseline Photographic Documentation

Exhibit E: Restriction Guidelines

Exhibit F: Conditions of the Newburyport Historical Commission

Exhibit G: Grantor's Plans

**Exhibit A**  
**Legal Property Description**

Beginning at the North corner thereof on Water Street by land of Joseph Wicko, now or formerly of Joseph Roseyna, thence running

SOUTHEASTERLY by said Water Street thirty (30) feet to a stone post on land formerly of Woods, now or formerly of Korney; thence turning and running

SOUTHWESTERLY by said land of Korney sixty (60) feet to another stone post on the land now or formerly of Korney; then turning

NORTHWESTERLY by land of Korney and by a stone post thereon twenty-five (25) feet to land now or formerly of Orzechowsky; thence turning and running

NORTHEASTERLY by said land now or formerly of Orzechowsky and said land now or formerly of said Joseph Roseyna seventy (70) feet to Water Street and the corner and place begun at. All of said measurements being more or less.

Map 19 Lot 74

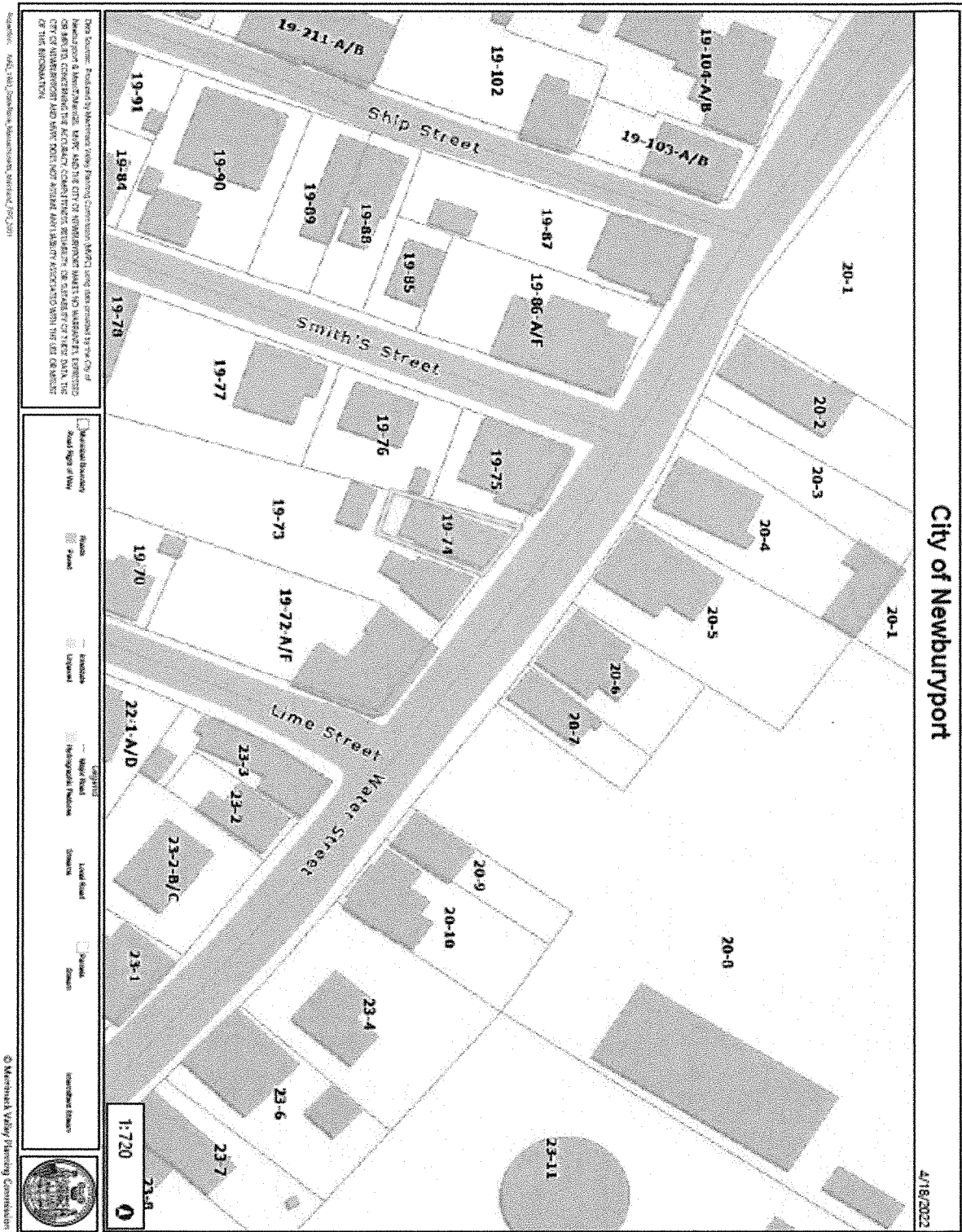


Exhibit C

Massachusetts Historical Commission Inventory Form B



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

19-74	Newburyport	NWB.W	
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**Place:** (neighborhood or village):  
Water Street

**Setting:** This house is located on the south side of Water Street near the banks of the Merrimack River. The house is set close to the street. This section of the street is densely built with many 19<sup>th</sup> Century houses, all set close to the Street. The parcel is a narrow, small rectangular shape, and the structure takes up much of the parcel. There is no driveway for the lot as it is narrow and the structures on the abutting lots are located close by. A small white fence runs off the northwest front of the structure along the cement sidewalk in front of the structure.

## A black and white photograph of a two-story wooden building with a gabled roof, likely a residential structure. The building has several windows and a small porch area on the right side. A utility pole is visible in the foreground on the left.

**Date (month / year):** April, 2022

**INVENTORY FORM B CONTINUATION SHEET**

NEWBURYPORT

90 WATER STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125**DRAFT**

Area(s) Form No.

NWB.W

☐ 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.*

Built in or around 1914 structure is a two-story, wood frame structure with some late Victorian-like features. The front façade faces north, with a front facing gable forming an unusual low slope roofline paralleling Water Street. The style and details of this structure are simple and a part of the tight knit Water Street streetscape.

**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.*

This house is located within the Water Street District Area Form (NWB.W). This area stretches southward from the Market Square Historic District, along the Merrimack River, to the Plum Island Turnpike. It was originally an area of wharves and landing places for the City's fishermen and shippers. Many of the homes along Water Street were built before the Revolution or immediately after. They are smaller than the homes along High Street because they were residences of those who worked along the waterfront, on the ships or the fishing industry.

The way along the river, from Market Square to the foot of Marlborough St., forms part of the way laid out in 1739 by the selectmen of Newbury from "Peirce's farm at the foot of Rolfe's Lane (Ocean Ave.) up to Ordway's Lane (Market St.)." It was evidently a highway for many years before this date. After the incorporation of Newburyport in 1764, a petition was presented to the selectmen for a relocation of the street near its junction with Market Square. In 1771, it was still called Merrimack St., however. As evidenced by the map of 1843, its name was Water St. and its limits are as we know them today. In 1873, the city discontinued all landing places between the northern boundary of the Middle Shipyard (Fire Station) and the lower end of Bromfield St. They were subsequently wholly or partially filled to form the roadbed of the Newburyport City Railroad.

Little to no significant information is available regarding the structure itself or its former owners/occupants. In the Newburyport District Data Sheets, an inventory containing descriptions of the structures within the Newburyport Historic District that were listed in the National Register of Historic Places in 1984, the house is listed as "MC" which signifies it as a "minor contributing" structure. The District Data Sheet further includes that the structure was constructed circa 1850 in a "mid-Victorian" architectural style, with alterations occurring in the 20<sup>th</sup> Century. However, Newburyport Assessor Data indicates that the structure may have been constructed at the later date of 1914. A review of historical maps of the neighborhood from 1851, 1888, 1894, 1900, 1906, 1914, and 1924, shows the structure first appearing in 1914.

**BIBLIOGRAPHY and/or REFERENCES**

Water Street District Area Form (NWB.W)  
City of Newburyport District Data Sheets  
City of Newburyport-Assessor's Office  
"Plan of Newburyport Mass. from an actual survey" dated 1851 McIntyre, H (Henry)  
Sanborn Insurance Maps

Exhibit D  
Photographic Documentation

**Photo A**

South Facade showing single story later added addition on two story original structure.



**Photo B**  
East Facade



**Photo C**  
West Façade





**Photo D**  
North Façade On Water Street



## 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, 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 property is also considered a major alteration.

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

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

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

**Exhibit F**  
**Conditions of the Newburyport Historical 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, which describes and depicts the existing conditions as of the date of this Restriction:

- The roofline of the original building shall never be raised.
- Any changes to the rear addition shall not include a roofline that extends beyond that of the original portion of the building.
- The roofline pediment at the front elevation (Water Street or North), shall be retained. Any repair shall be done in-kind.
- On the front elevation (Water Street or North), the two existing first floor windows shall be replaced with windows that match those of the second floor front elevation in size, dimension, muntin pattern, sash, and detail. The replacement windows shall be wood (or aluminum clad wood) and shall be either true-divided light or simulated divided light. If the latter, dark spacers shall be used between the glass and muntins shall be applied to the exterior portions of the sash. Lite patterning shall be two-over-one.



Exhibit G  
Grantor's Plans

