

CITY COUNCIL MEETING AGENDA - VERSION 1
REMOTE

September 29, 2020

Link to join Webinar

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84841864777>

Or iPhone one-tap :

US: +19292056099,,84841864777# or +13017158592,,84841864777#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1
346 248 7799

Webinar ID: 848 4186 4777

International numbers available: <https://us02web.zoom.us/j/84841864777>

7:30 PM
Council Meeting

- 1. MOMENT OF SILENCE**
- 2. CALL TO ORDER**
- 3. LATE FILE ITEMS**
- 4. PUBLIC COMMENT**
- 5. MAYOR'S COMMENT**

CONSENT AGENDA

NOTE: ALL ITEMS LISTED UNDER CONSENT AGENDA WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

6. APPROVAL OF MINUTES

- September 14, 2020

(Approve)

7. COMMUNICATIONS - None

8. TRANSFERS

- TRAN085_09_29_2020 Multiple (attached) \$484K to WWTF Resiliency/CCRT Project \$484K (B&F)

9. APPOINTMENTS - none

ALL ITEMS NOTED BELOW ARE REMOVED FROM THEIR RESPECTIVE COMMITTEES WITH THE MOTION TO APPROVE THE CONSENT AGENDA:

Budget & Finance

- ORDR206_08_20_2020 FY 21 Budget Order (Second Submission) & COTW
- ORDR209_09_14_2020 Borrowing Authorization 9/14/20
- COMM260_08_31_2020 FY2020 Year-End Financial Report

Neighborhoods & City Services

- ODNC050_02_24_2020 Curb Cuts and Notice of Work Involving Sidewalks

Planning & Development

- COMM257_08_20_2020 Ltr re: Harrison Street, J Tymon

Public Utilities

- | | | | | |
|----------------------|----------------|--------------------|------------------|-----------|
| • APPT156_03_09_2020 | John Tomasz | 38 Storeybrooke Dr | Water/Sewer Comm | 3/31/2023 |
| • APPT166_04_13_2020 | Robert A. Cook | 19 Everette Dr | Water/Sewer Comm | 3/1/2023 |
| • APPT166_04_13_2020 | Robert A. Cook | Resume | | |

END OF CONSENT AGENDA REGULAR AGENDA

10. MAYOR'S UPDATE

11. SECOND READING APPOINTMENTS

- APPT189_08_31_2020 Karen Sakaniwa 71 Middle St. Comm. on Disabilities 9/30/2023
CONTINUED FROM SEPTEMBER 14, 2020 on a motion by Councillor Tontar, seconded by
Councillor Khan, so voted.

12. COMMUNICATIONS

- COMM263_08_31_2020 Budget Revision – Vocational School Assessments

13. ORDERS

- ORDR211_09_29_2020 Preservation Restriction 272 High Street (Kemble Widmer II Trust)
- ORDR212_09_29_2020 Prior Fiscal Year Bills
- ORDR213_09_29_2020 Resiliency Project Grant Acceptance

14. ORDINANCES - None

ODNC062_09_29_2020 Residential Permit Zones seasonal hours extension

ODNC063_09_29_2020 Bond and Transfer Limit

15. COMMITTEE ITEMS

Ad Hoc Committee on Economic Development

In Committee:

- COMM262_08_31_2020 Gasbarro Ltr re: Awareness

Ad Hoc Committee on Waterfront and COTW

In Committee:

- COMM261_08_31_2020 Proposed Timeline, Waterfront

Budget & Finance

In Committee:

- ORDR132_07_15_19 CPC FY2020 Recommended Appropriations (COTW)
City Council Agenda September 29, 2020v1

Project No. 9 held in committee.

- ORDR136_08_19_19 Fuller Track Phase II Loan Order
- COMM189_09_09_19 CPC Revised Recommendation for FY2020 Appropriations
- **COMM260 08 31 2020 FY2020 Year-End Financial Report**
- **ORDR206 08 20 2020 FY 21 Budget Order (Second Submission) & COTW**
- **ORDR209 09 14 2020 Borrowing Authorization 9/14/20**

Education

In Committee:

- COMM235_03_30_2020 Ltr re: SC Appt. of Brett Murphy to Whittier Vo-Tech Cmte
- COMM240_04_27_2020 Memo re: SOI Submission Info
- ORDR178_04_27_2020 Acts of 1987 (w/ B&F)

General Government

In Committee:

- COMM241_05_11_2020 Charter Review Final Report
- COMM242_05_11_2020 Confirmatory Legal Opinion from KP Law re: Charter Changes

License & Permits

In Committee:

- ODNC047_1_27_20 General Ordinance - Short Term Rental Units Rules
- COMM229_02_24_2020 Ltr re: Implementation of Short-Term Rental Ordinance
- COMM230_03_09_2020 Yearly Report, Section 16A of the Liquor Control Act
- APPL014_06_08_2020 Outdoor Seating application from Vera Ristorante LLC
- APPL015_06_08_2020 Ltr with Layout from Ted Epstein re: Outdoor Seating

Neighborhoods & City Services

In Committee:

- COMM197_10_28_19 Ltr re: Phillips Drive Neighborhood Drainage (COTW)
- **ODNC050 02 24 2020 Curb Cuts and Notice of Work Involving Sidewalks**
- COMM233_03_09_2020 Ltr re: MVRTA State Street Bus Stop Shelter
- COMM234_03_30_2020 Ltr from Newburyport Livable Streets March 11, 2020
- COMM252_07_30_2020 Ltr re: Face Masks in public
- ODNC061_07_30_2020 Amendment to Ch. 11 Parks and Recreation for Covid-19

Planning & Development

In Committee:

- COMM214_01_13_2020 Ltr from Central Cong Church re: CPA Funding, Historic Pres
- COMM215_01_13_2020 Ltr re: Colby Farm Open Space Beautification
- ODNC046_1_27_20 Zoning Amendment - Short Term Rental Units Definition
- COMM231_03_09_2020 Ltr re: Short-Term Rental Ordinance
- ODNC054_03_09_2020 Enforcement of the State Building Code
- ORDR196_07_13_2020 Open Space and Recreation Plan 2020 (COTW)
- **COMM257 08 20 2020 Ltr re: Harrison Street, J Tymon**
- APPT187_08_31_2020 Robert Armstrong 35 Louise Ave. Bldg Commissioner 1/1/2023

Public Safety

In Committee:

- COMM216_01_13_2020 Ltr re: Ban the Use of Glyphosate
- COMM221_01_27_2020 Letter re: Sign at 43 Pine Hill Road
- COMM227_02_10_2020 Update and Request from Waste Stream Task Force
- APPL010_03_09_2020 Witches' Night Out - 10/23/2020
- APPL011_03_09_2020 Downtown Trick or Treat - 10/30/2020
- APPL012_03_09_2020 Invitation Nights - 12/4, 12/11, 12/18 2020
- COMM243_05_11_2020 Ltr from Jane Rascal re: NMMCD
- ODNC059_06_29_2020 Truck Routes
- APPT165_04_13_2020 Dr. Robin Blair 18 Market St Board of Health 4/30/2023
- COMM254_08_10_2020 Moseley Ave Ltr re: Sidewalk Safety and Roadway Speeding
- ORDR200_07_30_2020 List of Crosswalks Amended

Public Utilities

In Committee:

- APPT156 03 09 2020 John Tomasz 38 Storeybrooke Water/Sewer 3/31/2023
Dr Comm
- APPT166 04 13 2020 Robert A. Cook 19 Everette Dr Water/Sewer 3/1/2023
Comm
- APPT166 04 13 2020 Resume of Robert Cook, Water/Sewer Commission

Rules

In Committee:

- COMM220_01_27_2020 Proposed City Council Rule 9F
- ORDR170_02_24_2020 Amendment Council Rules 2020 (COTW)
- ORDR171_02_24_2020 Amendment to Rule 17B (COTW)

16. GOOD OF THE ORDER

17. ADJOURNMENT

CONSENT AGENDA

MINUTES - CITY COUNCIL MEETING AGENDA - VERSION 1
REMOTE

September 14, 2020

Link to join Webinar

When: Sep 14, 2020 07:30 PM Eastern Time (US and Canada)

Topic: Newburyport City Council Regular (Remote) Meeting

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/89564385895>

Or iPhone one-tap :

US: +19292056099,,89564385895# or +13017158592,,89564385895#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 6833 or +1 253 215 8782 or +1
346 248 7799

Webinar ID: 895 6438 5895

International numbers available:

7:30 PM
Council Meeting

1. MOMENT OF SILENCE

Remembering Ida Furnari, Michael Hines, and Joan Russell

2. CALL TO ORDER

The City Council President, Jared Eigerman, called the meeting to order at 7:30pm. The City Council President then instructed the City Clerk to call the roll. The following Councillors answered present: Lane, McCauley, Connell, Tontar, Vogel, Wallace, Zeid, Khan, and Eigerman. 9 present, 2 absent (Shand, Devlin) using Zoom as a platform.

3. LATE FILE ITEMS

4. PUBLIC COMMENT

Louis Blatt, 10 77th Street

5. MARSHAL'S COMMENDATION FOR MICHAEL FALITE & CHARLES VORDERIS

Marshal Murray commended Officers Falite and Vorderis for their kindness to a homeless mother of 4 children as she passed through Newburyport from Maine on her way to New Jersey.

6. MAYOR'S COMMENT

CONSENT AGENDA

NOTE: ALL ITEMS LISTED UNDER CONSENT AGENDA WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

7. APPROVAL OF MINUTES

- August 31, 2020

(Approve)

8. COMMUNICATIONS - none

9. TRANSFERS - none

10. APPOINTMENTS - none

ALL ITEMS NOTED BELOW ARE REMOVED FROM THEIR RESPECTIVE COMMITTEES WITH THE MOTION TO APPROVE THE CONSENT AGENDA:

Planning & Development

- COMM257_08_20_2020 Ltr re: Harrison Street, J Tymon
Held in Committee, Councillor McCauley
- APPT187_08_31_2020 Robert Armstrong 35 Louise Ave. Bldg Commissioner 1/1/2023
Held in Committee, Councillor McCauley
- APPT185_08_31_2020 Brendan Banovic 1 Walnut St. ZBA 8/31/2021
- APPT188_08_31_2020 Rachel D. Webb 19 Chapel St ZBA 10/1/2025

END OF CONSENT AGENDA

Motion to approve the Consent Agenda as Amended by Councillor Zeid, seconded by Councillor Tontar. So voted.

REGULAR AGENDA

Note: Councillor Devlin is now present.

11. MAYOR'S UPDATE

Motion to receive & file by Councillor Zeid, seconded by Councillor Khan. So voted.

12. SECOND READING APPOINTMENTS

- APPT186_08_31_2020 Rosemary Decie 8 Fenders Ave. Council on Aging 5/31/2025
Motion to approve by Councillor McCauley, seconded by Councillor Tontar. Roll call vote. 9 yes, 2 absent (HS, JD). Motion passed.
- APPT189_08_31_2020 Karen Sakaniwa 71 Middle St. Comm. on Disabilities 9/30/20
Motion to table by Councillor Zeid, seconded by Councillor Vogel. So voted. Motion to take off the table by Councillor Eigerman, seconded by Councillor Khan. So voted. Motion to continue until 9/29/2020 meeting by Councillor Tontar, seconded by Councillor Khan. So voted

13. COMMUNICATIONS – None

14. ORDERS

ORDR210_09_14_2020 Resolution Nancy Peace

Motion to suspend the rules and take up in one reading, by Councillor Connell, seconded by Councillor McCauley. So voted. Emergency Preamble – Motion to Appv. Councillor Connell, seconded by Councillor McCauley, Roll Call vote, 10 Y, 1 Ab. Motion to approve by Councillor Connell, seconded by Councillor McCauley Roll call vote. 10 yes, 1 absent (HS). Motion passed.

ORDR209_09_14_2020 Borrowing Authorization 9/14/20

Motion to refer to B&F by Councillor Tontar, seconded by Councillor Khan. So voted.

15. ORDINANCES - None

16. COMMITTEE ITEMS

NOTE: UNDERLINED COMMITTEE ITEMS WILL BE CONSIDERED AT THIS MEETING

Ad Hoc Committee on Economic Development

In Committee:

- COMM262_08_31_2020 Gasbarro Ltr re: Awareness

Ad Hoc Committee on Waterfront and COTW

In Committee:

- COMM261_08_31_2020 Proposed Timeline, Waterfront
JE - Meeting scheduled for 9/29/2020

Budget & Finance

In Committee:

- ORDR132_07_15_19 CPC FY2020 Recommended Appropriations (COTW)
Project No. 9 held in committee.
- ORDR136_08_19_19 Fuller Track Phase II Loan Order
- COMM189_09_09_19 CPC Revised Recommendation for FY2020 Appropriations
- **ORDR178 04 27 2020 Acts of 1987 (w/ Education)**
Motion to remove from Committee by Councillor Tontar, seconded by Councillor Khan. So voted.
8:30pm Councillor Connell Pro Tempore Council President.
Motion to approve by Councillor Tontar, seconded by Councillor Khan. Roll Call vote. 8 yes, 2 no (CT, BV), 1 absent (HS). Motion passed, Requires Mayor's signature.
- **COMM260 08 31 2020 FY2020 Year-End Financial Report**
- **TRAN084 08 31 2020 Plum Is Utility Trust Fund \$50K to Res. Terr.Shoreline Protection \$50K**
Motion to remove from Committee by Councillor Tontar, seconded by Councillor Khan. So voted.
Motion to approve, Councillor Tontar, seconded by Councillor Khan Roll call vote. 10 yes, 1 absent (HS). Motion passed.
- **ORDR208 08 31 2020 – Pioneer League Gift**
Motion to remove from Committee by Councillor Tontar, seconded by Councillor Khan. Motion to approve by Councillor Tontar, seconded by Councillor Khan. So voted.
- ORDR206_08_20_2020 FY 21 Budget Order (Second Submission) & COTW

Education

In Committee:

- COMM235_03_30_2020 Ltr re: SC Appt. of Brett Murphy to Whittier Vo-Tech Cmte

- COMM240_04_27_2020 Memo re: SOI Submission Info
- ORDR178_04_27_2020 Acts of 1987 (w/ B&F)

General Government

In Committee:

- COMM241_05_11_2020 Charter Review Final Report
- COMM242_05_11_2020 Confirmatory Legal Opinion from KP Law re: Charter Changes

License & Permits

In Committee:

- ODNC047_1_27_20 General Ordinance - Short Term Rental Units Rules
- COMM229_02_24_2020 Ltr re: Implementation of Short-Term Rental Ordinance
- COMM230_03_09_2020 Yearly Report, Section 16A of the Liquor Control Act
- APPL014_06_08_2020 Outdoor Seating application from Vera Ristorante LLC
- APPL015_06_08_2020 Ltr with Layout from Ted Epstein re: Outdoor Seating

Neighborhoods & City Services

In Committee:

- COMM197_10_28_19 Ltr re: Phillips Drive Neighborhood Drainage (COTW)
- ODNC050_02_24_2020 Curb Cuts and Notice of Work Involving Sidewalks
- COMM233_03_09_2020 Ltr re: MVRTA State Street Bus Stop Shelter
- COMM234_03_30_2020 Ltr from Newburyport Livable Streets March 11, 2020
- COMM252_07_30_2020 Ltr re: Face Masks in public
- ODNC061_07_30_2020 Amendment to Ch. 11 Parks and Recreation for Covid-19 Motion to Remove by Councillor Connell, seconded by Councillor Lane, so voted, Motion to waive rule 17B & 9B by Councillor Connell, seconded by Councillor Lane So voted. Motion to Apr by Councillor Connell, seconded by Councillor Zeid, Roll Call 10 Y, 1 A So voted.

Planning & Development

In Committee:

- COMM214_01_13_2020 Ltr from Central Cong Church re: CPA Funding, Historic Pres
- COMM215_01_13_2020 Ltr re: Colby Farm Open Space Beautification
- ODNC046_1_27_20 Zoning Amendment - Short Term Rental Units Definition
- COMM231_03_09_2020 Ltr re: Short-Term Rental Ordinance
- ODNC054_03_09_2020 Enforcement of the State Building Code
- ORDR196_07_13_2020 Open Space and Recreation Plan 2020 (COTW)
- COMM257_08_20_2020 Ltr re: Harrison Street, J Tymon
- APPT185 08 31 2020 Brendan Banovic 1 Walnut St. ZBA 8/31/2021
- APPT188 08 31 2020 Rachel D. Webb 19 Chapel St ZBA 10/1/2025
Motion to approve collectively Appt 185 and Appt 188 by Councillor McCauley, seconded by Councillor Khan. Roll call vote. 9 yes, 2 absent (JD - recused, HS). Motion passed.
- APPT187_08_31_2020 Robert Armstrong 35 Louise Ave. Bldg Commissioner 1/1/2023

Public Safety

In Committee:

- COMM216_01_13_2020 Ltr re: Ban the Use of Glyphosate
- COMM221_01_27_2020 Letter re: Sign at 43 Pine Hill Road
- COMM227_02_10_2020 Update and Request from Waste Stream Task Force
- APPL010_03_09_2020 Witches' Night Out - 10/23/2020
- APPL011_03_09_2020 Downtown Trick or Treat - 10/30/2020
- APPL012_03_09_2020 Invitation Nights - 12/4, 12/11, 12/18 2020
- COMM243_05_11_2020 Ltr from Jane Rascal re: NMMCD
- ODNC059_06_29_2020 Truck Routes
- APPT165_04_13_2020 Dr. Robin Blair 18 Market St Board of Health 4/30/2023
- COMM254_08_10_2020 Moseley Ave Ltr re: Sidewalk Safety and Roadway Speeding
- ORDR200_07_30_2020 List of Crosswalks Amended

Public Utilities

In Committee:

- APPT156_03_09_2020 John Tomasz 38 Storeybrooke Dr Water/Sewer Comm 3/31/2023
- APPT166_04_13_2020 Robert A. Cook 19 Everette Dr Water/Sewer Comm 3/1/2023
- APPT166_04_13_2020 Resume of Robert Cook, Water/Sewer Commission

Rules

In Committee:

- COMM220_01_27_2020 Proposed City Council Rule 9F
- ORDR170_02_24_2020 Amendment Council Rules 2020 (COTW)
- ORDR171_02_24_2020 Amendment to Rule 17B (COTW)

17. GOOD OF THE ORDER

18. ADJOURNMENT

Motion to Adjourn at 9:44 pm by Councillor Vogel, seconded by Councillor Khan. So voted.

TRANSFERS



CITY OF NEWBURYPORT FY 2021 TRANSFER/APPROPRIATION REQUEST

Department: Mayor's Office

Submitted by: Donna D. Holaday, Mayor

Date Submitted: 9/29/2020

Transfer From:

Account Name:	Multiple - See attached	Balance:	\$	-
Account Number:	Multiple - See attached	Category:	\$	-
Amount:	\$484,000.00	Trans I/O:	\$	-

Why Funds Are Available:

Funds are available for re-appropriation from closed out capital projects. Additionally, Section 6 of Chapter 53 of the Acts of 2020 authorized the expenditure of July 1, 2019 retained earnings in FY2021 until the July 1, 2020 amounts are certified by the Department of Revenue; there is \$964,040 remaining from the July 1, 2019 retained earnings for the Sewer Enterprise Fund.

Transfer To:

Account Name:	WWTF Resiliency/CCRT Project	Balance:	\$	-
Account Number:	New Account	Category:	\$	-
Amount:	\$484,000.00	Trans I/O:	\$	-

Why Funds Are Needed:

There is \$1,250,000 in available funding for the Wastewater Treatment Facility Resiliency and Clipper City Rail Trail Project. Based on a project budget of \$1,734,000, the remaining funding need is \$484,000. See explanatory memorandum from the Mayor's Office.

Donna D. Holaday, Mayor:

Donna D. Holaday

Date:

9/22/20

Ethan R. Manning, Auditor:

Ethan R. Manning

Date:

9/21/20

Sponsors: Charles F. Tontar, Councillor At-Large

City Council Approval:

Resilient Critical Infrastructure/Clipper City Rail Trail Project

Transfer Submitted September 29, 2020

Funding Sources:

Completed CIP - Sewer Enterprise Fund

Fund	Description	Amount
3408	SEWER MAIN REPLACEMENT	\$ 13,081.53
3412	VACUUM TRUCK	\$ 14,081.68
041	SEWER BOND PROCEEDS	\$ 4,628.81
4101	SEWER ODOR CONTROL	\$ 11,232.07
4102	HALE/GRAF FORCE MAIN	\$ 312,050.91
4105	GRAF ROAD SEWER PUMP STATION	\$ 61,782.83
4108	PUMP & VALVE REPLACEMENTS	\$ 1,105.75
4109	1 1/2 TON DIESEL TRUCK/PLOW	\$ 46.50
4114	BOBCAT LOADER	\$ 3,506.75
4115	CRANE TRUCK	\$ 4,448.49
4118	CONCRETE WALL & CEILING REHAB	\$ 4,650.00
Total Completed CIP - Sewer Enterprise Fund		<u>\$ 430,615.32</u>

Completed CIP - General Fund

Fund	Description	Amount
3805	2 MACK DT W/PLOWING EQUIP	\$ 7,177.28
3813	FRANCES DRIVE TREES	\$ 4,000.00
3814	COA VAN	\$ 1,285.00
3821	HS BOILER #2 INTERIOR BRKWORK	\$ 896.00
3902	GENERATOR	\$ 13,005.00
3909	3/4 GAS PICK-UP TRUCK W/PLOW	\$ 5,271.73
Total Completed CIP - General Fund		<u>\$ 31,635.01</u>

Sewer Enterprise Fund Retained Earnings \$ 21,749.67

Total Appropriation \$ 484,000.00



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY

60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4413 • (978) 465-4402 (FAX)
WWW.CITYOFNEWBURYPORT.COM

To: President and Members of the City Council
From: Mayor Donna D. Holaday
Date: September 22, 2020
Subject: \$1 Million MVP Action grant award, \$100K MassTrails grant award, CPA funds, and local match for Critical Infrastructure Protection of Waste Water Treatment Facility and Clipper City Rail Trail

The City of Newburyport has been awarded an FY21 grant award of \$1,000,000 from the Commonwealth of Massachusetts' Municipal Vulnerability Preparedness Grant Program for the construction of critical infrastructure protection at the Wastewater Treatment Facility (WWTF) that includes a segment of the Clipper City Rail Trail project. This is the largest MVP grant awarded in the state. The City has also received a \$100,000 grant award from the Commonwealth's MassTrails Grant program in support of this project. I am requesting the City Council accept these grants as well as authorize the contingently approved \$150,000 CPA funding for this project.

The entire cost of this project is \$1.73 million. After applying the grants and CPA funds, there is \$484,000 of additional funding needed. We have identified balances from several DPS and CIP capital funds for completed projects that can be applied to cover the remaining cost of this project. I am submitting a transfer request to appropriate these remaining funds as well as \$22,000 of sewer retained earnings in order to fully fund this project.

The project is the construction of a sloped stone revetment to stabilize and protect approximately 900 feet of Merrimack River shoreline adjacent to the WWTF, between Joppa Park and the American Yacht Club. Also to be constructed is an elevated berm behind the revetment topped with the missing riverfront section of the Clipper City Rail Trail. This project is a critical step towards making the WWTF resilient to storm surge and sea level rise in the coming decades and completes this section of the Rail Trail.

The Federal Emergency Management Agency (FEMA)'s current Base Flood Elevation of 12 feet for the WWTF is 2-3 feet above the existing grade. Significant storms in 2018 caused erosion and flooding across the old rail corridor and up to the WWTF. Sea level has risen nearly a foot in the past hundred years in this area and the shoreline stabilization constructed in the early 20th century is inadequate and has fallen into substantial disrepair. Vulnerability will only increase as sea level is projected to continue rising in the coming decades. The final elevation of the berm and revetment for this project will be 14.5 feet; 2.5 feet over the FEMA base flood elevation.

Newburyport's WWTF handles about 3.4 million gallons per day of wastewater for all the households, businesses, and institutions in the City, as well as, certain sections of the Town of Newbury. The plant

has been in operation at this riverfront location since it was built in 1964, and in recent years about \$37 million was invested in upgrading the facility. It has an expected useful life of approximately 50 years. Not adding protection to the WWTF on the shoreside could result in severe and potentially catastrophic consequences from future storm surges and flooding, including shutting down the treatment plant, raw sewage overflows into the streets and the river, and millions of dollars of lengthy repairs.

The project has evolved based on planning efforts over the past few years. Several regional studies identified the vulnerability and priority of protecting Newburyport's WWTF. In June 2019 the engineering consultant Dewberry produced a Climate Change Vulnerability Report for the plant. It identifies several short- and long-term protection strategies to make the WWTF more resilient, including the construction of a berm on the coastal side of the property. The City has been working with the engineering firms Stantec and GZA to further develop the berm and revetment project in coordination with Dewberry. Throughout this effort has been several public meetings. Plans have been developed, and the year-long permitting process with local, state, and federal regulatory authorities is wrapping up. Building the revetment and berm structure at a cost-effective and appropriate height with some room for future sea level rise will protect the WWTF and its critical services to the City for decades, and allow the community to plan for future protection strategies.

Time is of the essence for implementing this project and not only because the plant is highly vulnerable and susceptible to storm surge and flooding. The \$1,000,000 MVP grant award is for FY21 and the construction project must be completed by June 30, 2021 in order to receive full reimbursement. It is a tight timeframe but achievable since we have been working on design and permitting all along and it is nearly complete. To capitalize on this opportunity for \$1,000,000 of outside grant funds, I request that the City Council approve the acceptance of the grants and authorizes the expenditure of the CPA funds so we that can execute the grant contract with the state by mid-October. This would allow us to initiate a two-month public bidding process in order to be able to hire a contractor by the end of the calendar year. The awarded contractor will then be in a position to construct the project between January and June of 2021. Accepting the grants and allocating the CPA funds is our priority to secure grant funds and transition into construction.

The PCB remediation project is being finalized now, and we have instructed our contractor to open the area behind the plant for informal use by the end of this week. The corridor is ready for construction of the revetment, berm and trail. The City's Licensed Site Professionals (LSPs) have determined that the cleanup has resulted in no remaining significant risk.

I have also included with the transfer request details of the funding sources from available capital funds and retained earnings and ask that the Council work quickly but diligently to review this request and approve this transfer. We are providing the itemized construction and cost estimate from Stantec and GZA, as well as a locus map, photographs and plans, attached with this memo. There is also a project webpage that can be accessed through the Planning Department website that includes all current documents including the Dewberry report. My staff, including the WWTF Superintendent Chris Pratt and Project Manager Geordie Vining, are available to answer questions and provide any additional material. I will make them available for subcommittee meetings and any deliberations by the City Council.

Thank you for your consideration.

**END OF CONSENT AGENDA
BEGINNING OF REGULAR AGENDA**

**APPOINTMENTS
SECOND READING**

SECOND READING APPOINTMENTS

- APPT189_08_31_2020 Karen Sakaniwa 71 Middle St. Comm. on Disabilities 9/30/2023

In City Council August 31, 2020:

Motion to approve the Consent Agenda as Amended by Councillor Zeid, seconded by Councillor McCauley. So voted.

In City Council September 14, 2020:

Motion to table by Councillor Zeid, seconded by Councillor Vogel. So voted. Motion to take off the table by Councillor Eigerman, seconded by Councillor Khan. So voted. Motion to continue until 9/29/2020 meeting by Councillor Tontar, seconded by Councillor Khan. So voted



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY, MAYOR

60 PLEASANT STREET - P.O. BOX 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
978-465-4402 FAX

To: President and Members of the City Council
From: Donna D. Holaday, Mayor
Date: September 15, 2020
Subject: Appointment

Donna D. Holaday

I hereby appoint, subject to your approval, the following named individual as a member of Commission on Disabilities. This term will expire on September 30, 2023.

Karen Sakaniwa
71 Middle Street
Newburyport, MA 01950

COMMUNICATIONS



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY

60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4413 • (978) 465-4402 (FAX)
WWW.CITYOFNEWBURYPORT.COM

To: President and Members of the City Council
From: Mayor Donna D. Holaday
Date: September 22, 2020
Subject: FY21 Proposed Budget Revision – Vocational School Assessments

On September 9, 2020, the School Committee for Whittier Vocational Technical High School approved a \$995,574 reduction to its FY21 budget which, in turn, reduced all community assessments. These budget reductions were done in response to a reduction in Whittier's FY21 Chapter 70 funding, Net School Spending requirements and member community minimum contributions. For Newburyport, the FY21 assessment changes from \$661,018 to \$638,712 – a decrease of \$22,306.

We have also been informed that the number of students attending Essex North Shore Agricultural & Technical School for the 2020-2021 school year has increased from 4 to 5. As such, Newburyport's assessment for Essex Tech will change from approximately \$81,500 to \$99,500 – an increase of \$18,000.

As a result of these changes, I am making the following revision to the FY21 budget proposal which amends proposed General Fund spending from \$71,859,519 to \$71,855,213:

Account #	Description	FY21 Original	FY21 Revised	Change
01398002-53202	ESSEX NORTH SHORE TECH SCHOOL	\$81,500	\$99,500	\$18,000
01399002-53202	WHITTIER VO TECH SCHOOL	\$661,018	\$638,712	(\$22,306)
Total		\$742,518	\$738,212	(\$4,306)

These changes will be incorporated into the online version of the FY21 budget document.

Thank you for your consideration.

FY2021 Proposed Budget – Revised 9/22/2020

	FY2018 ACTUAL	FY2019 ACTUAL	FY2020 ACTUAL	FY2020 BUDGET	FY2021 PROPOSED	\$ CHANGE	% CHANGE
GENERAL FUND							
CITY SERVICES							
ANIMAL CONTROL	63,291	60,953	63,516	67,234	63,936	(3,298)	-4.9%
ASSESSORS DEPARTMENT	221,495	234,883	242,871	239,318	250,395	11,077	4.6%
AUDITOR'S DEPARTMENT	321,382	327,747	364,408	364,697	373,901	9,204	2.5%
BOARD OF REGISTRARS	49,008	38,833	59,239	49,333	51,883	2,550	5.2%
BUILDING DEPARTMENT	171,513	178,003	165,390	188,558	188,512	(46)	0.0%
CITY CLERK'S DEPARTMENT	252,419	263,732	281,393	277,680	291,781	14,101	5.1%
CITY COUNCIL	71,431	69,944	70,047	72,651	72,756	105	0.1%
COMMISSION ON DISABILITY	2,640	2,639	2,640	2,640	2,693	53	2.0%
CONSERVATION COMMISSION	1,800	1,800	1,800	1,800	1,800	0	0.0%
COUNCIL ON AGING	300,689	295,988	301,379	308,742	308,155	(587)	-0.2%
DEBT EXCLUSION	3,166,609	3,178,737	3,165,464	3,165,464	3,171,545	6,081	0.2%
EMERGENCY MANAGEMENT	26,381	30,430	37,379	29,100	19,000	(10,100)	-34.7%
FIRE DEPARTMENT	3,726,973	3,869,476	4,053,440	3,795,001	4,043,255	248,254	6.5%
GENERAL ADMINISTRATION	356,475	372,435	374,136	491,674	545,990	54,316	11.0%
HEALTH DEPARTMENT	211,349	232,618	223,481	254,154	254,704	550	0.2%
HISTORICAL COMMISSION	1,800	1,800	1,800	1,800	1,800	0	0.0%
HUMAN RESOURCES	268,657	308,109	315,016	326,125	290,388	(35,736)	-11.0%
INFO TECHNOLOGY DEPT	308,699	326,275	319,331	321,096	334,356	13,261	4.1%
INSURANCE GROUP	9,127,806	9,469,573	9,718,764	9,864,940	9,807,193	(57,748)	-0.6%
LEGAL DEPARTMENT	100,000	100,000	124,854	100,000	95,000	(5,000)	-5.0%
LIBRARY DEPARTMENT	1,341,994	1,373,596	1,383,300	1,416,032	1,430,665	14,633	1.0%
LICENSE COMMISSION	7,750	8,500	8,363	8,500	8,500	0	0.0%
MAYOR'S DEPARTMENT	287,094	287,086	305,824	316,377	336,669	20,292	6.4%
ORDINARY DEBT SERVICE	805,338	946,480	707,496	880,000	923,769	43,769	5.0%
PARKING CLERK DEPARTMENT	43,502	563,085	537,058	668,135	616,783	(51,352)	-7.7%
PARKS DEPARTMENT	206,367	254,491	344,377	371,814	339,969	(31,845)	-8.6%
PLANNING & DEVELOPMENT	309,965	316,877	409,017	389,874	438,930	49,056	12.6%
PLANNING BOARD	1,800	1,800	1,800	1,800	1,800	0	0.0%
POLICE DEPARTMENT	3,656,049	3,856,404	4,097,157	4,230,657	4,165,209	(65,448)	-1.5%
PUBLIC SERVICES DEPARTMENT	2,828,753	2,982,922	3,137,182	3,273,035	3,070,431	(202,604)	-6.2%
RETIREMENT BOARD	3,924,742	4,132,415	4,340,558	4,340,558	4,563,509	222,951	5.1%
SNOW & ICE	391,819	352,930	306,796	225,000	260,000	35,000	15.6%
SUSTAINABILITY	1,280,411	1,600,779	1,655,963	1,644,824	1,722,649	77,826	4.7%
TREASURER'S DEPARTMENT	286,649	296,790	310,340	310,014	400,575	90,561	29.2%
VETERANS' DEPARTMENT	262,433	234,446	248,408	288,279	286,331	(1,948)	-0.7%
YOUTH SERVICES	281,476	304,801	288,479	304,850	307,805	2,955	1.0%
ZONING BOARD	1,800	1,800	1,800	1,800	1,800	0	0.0%
CITY SERVICES Total	34,668,360	36,879,175	37,970,265	38,593,554	39,044,437	450,884	1.2%
EDUCATION							
ESSEX NORTH SHORE TECH SCHOOL	55,818	53,832	87,728	92,500	99,500	7,000	7.6%
SCHOOL DEPARTMENT	28,631,701	29,815,374	29,444,419	30,875,762	32,072,564	1,196,802	3.9%
WHITTIER VO TECH SCHOOL	568,149	622,252	697,312	697,312	638,712	(58,600)	-8.4%
EDUCATION Total	29,255,668	30,491,458	30,229,459	31,665,574	32,810,776	1,145,202	3.6%
GENERAL FUND Total	63,924,028	67,370,633	68,199,723	70,259,128	71,855,213	1,596,085	2.3%
ENTERPRISE FUNDS							
HARBORMASTER ENTERPRISE FUND Total	453,329	459,738	498,843	514,868	465,250	(49,618)	-9.6%
SEWER ENTERPRISE FUND Total	6,716,478	7,152,465	6,974,609	7,586,606	7,515,295	(71,311)	-0.9%
WATER ENTERPRISE FUND Total	4,868,205	5,193,516	4,909,947	5,371,089	5,421,087	49,998	0.9%
ENTERPRISE FUNDS Total	12,038,012	12,805,719	12,383,399	13,472,563	13,401,631	(70,932)	-0.5%
Grand Total	75,962,040	80,176,352	80,583,122	83,731,691	85,256,844	1,525,153	1.8%

ORDERS

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

THAT the City Council of the City of Newburyport approve the attached Preservation Restriction Agreement by and between the Society for the Preservation of New England Antiquities, D.B.A. Historic New England and Kemble Widmer, II Trustee of The Kemble Widmer II Revocable Trust.

Councillor Jared J. Eigerman

PRESERVATION RESTRICTION AGREEMENT

**SOCIETY FOR
THE PRESERVATION OF NEW ENGLAND ANTIQUITIES**

The Parties to this Preservation Restriction Agreement (this "Agreement") is made as of the ____ day of _____, 2020 by and between the **SOCIETY FOR THE PRESERVATION OF NEW ENGLAND ANTIQUITIES, D.B.A. HISTORIC NEW ENGLAND**, a Massachusetts charitable corporation having an address at Harrison Gray Otis House, 141 Cambridge Street, Boston, Massachusetts 02114-2702, (hereafter "Grantee") and Kemble Widmer, II, Trustee of **THE KEMBLE WIDMER II REVOCABLE TRUST**, a New Hampshire revocable trust established pursuant to a revocable trust agreement dated September 15, 2005, by and between Kemble Widmer II as Grantor and as Trustee and having an address at P.O. Box 308, Cornish Flat, New Hampshire, 03746-0308 (herein together with his heirs, successors, administrators and assigns called "Grantor").

RECITALS

WHEREAS, Grantor is the owner in fee simple of certain property located at 272 High Street, Newburyport, Massachusetts, which includes certain premises consisting of approximately 11,843 square feet of land, more particularly described in that certain Warranty Deed (the "Deed"), recorded with the Essex South Registry of Deeds (the "Registry") in Book 24960, Page 588, and in Exhibit A attached hereto, and shown as Lot 1 on a plan entitled "272 High Street Subdivision" dated November 17, 1999, and prepared by Riverside Engineering Services, said plan being duly recorded with the Registry in Plan Book 339, Plan 74, a copy of which is attached hereto and incorporated herein as Exhibit A-1, together with all improvements thereon (the "Premises"), being subject to and having the benefit of any and all easements of record. The Premises are also shown in the photographs and diagrams attached as Exhibits B, C, and D hereto. The buildings protected by this Agreement consist of the Thomas Emery House (the "Emery House") and the Carriage Barn (the "Carriage Barn") as labeled and more particularly shown in Exhibits B, C, and D and the "Protected Features" defined below in Section 1.3.4.

WHEREAS, Grantee is a Massachusetts, non-profit charitable corporation created in 1910 and exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code. By its Articles of Organization and By-Laws, and in accordance with the applicable provisions of M.G.L. c. 184, §§ 31-33 as may be amended, replaced and/or restated (the "Act"), Grantee is authorized to create, impose, accept and enforce preservation restrictions to protect sites and structures historically significant for their architecture, archaeology or other associations.

WHEREAS, the Emery House is historically significant and worthy of preservation. The house is an important example of Federal Period architecture and building practice in Massachusetts. As a carpenter and house wright, Thomas Emery built the house to serve both as his home and his calling card. With a prime location on High Street, Newburyport's main thoroughfare, Emery's structure demonstrated to all passersby his skills as a craftsman. His workshop was located on the north side of the central staircase, where, in other circumstances he might have put another parlor. The north half of the house remained unfinished, even lacking a chimney, until after Thomas Emery's death in 1860. In 1886, the house was purchased from his descendant Rufus Emery by James Parton, who was dubbed "the father of modern biography" by historian Milton Embick Flower. He lived there until his death in 1891, at which point the house underwent some modernization when his widow Ellen Parton leased the property for five years to the Houston Cure Institute, a sanitarium for the treatment of narcotics addictions. The property was then returned to residential use and owned for several decades by former Newburyport mayor, Orrin Gurney, who was mayor for four consecutive one year terms from 1892 to 1895. Under the current owner, Grantor, the house has been restored to a more Federal appearance overall, with the removal of Victorian embellishments and the preservation of earlier details, including swipes of red and green paint on a plank wall in what was Emery's workshop.

WHEREAS, in recognition of these qualities, and because of its architectural and historical significance, the Thomas Emery House is a contributing property to the Newburyport Historic District listed in the National Register of Historic Places on August 2, 1984, and is listed in the State Register of Historic Places.

WHEREAS, the Emery House is comprised of a three story, five-bay, west-facing main block (the "Main Block"), a one-story Greek Revival portico (the "Portico") attached to the west façade of the Main Block, a one-story entry porch (the "Entry Porch") attached to the south elevation of the Main Block, a two-story rear ell (the "Rear Ell") attached to the east elevation of the Main Block, and a c. 1980, one-story enclosed sun porch (the "Sun Porch") attached to the east elevation of the Main Block and the north elevation of the Rear Ell. An 1820s Carriage Barn (the "Carriage Barn") is located several yards east of Emery House. The open space of the Premises consists primarily of lawn and gardens enclosed on the south and west side by a painted wood fence, providing a setting that complements the historic structures on the Premises, thereby endowing the Thomas Emery House and Carriage Barn with scenic, natural and aesthetic value and significance.

WHEREAS, the Act authorizes the creation and enforcement of preservation restrictions appropriate to the preservation of a site or structure for its historical significance and for its natural, scenic and open condition.

WHEREAS, Grantor and Grantee, each, recognize the historic, architectural, cultural, scenic and aesthetic value and significance of the Premises, and have the common purpose of conserving and preserving the aforesaid value and significance of the Premises, the Emery House, and the Carriage Barn.

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, the Preservation Restrictions set forth in this Agreement, pursuant to the Act.

NOW, THEREFORE, in consideration of One Dollar (\$1.00), the mutual promises, covenants and agreements contained herein this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby irrevocably grant, release and convey unto Grantee, its successors and assigns a Preservation Restriction Agreement in gross and in perpetuity, in and to the Premises, all as more fully set forth herein this Agreement as follows:

1. RECITALS, DEFINITIONS AND EXHIBITS.

1.1 Purpose. It is the purpose of this Agreement to assure that the features and characteristics that embody the architectural, historic and cultural significance of the Premises will be retained and maintained substantially in their current condition and to prevent any use or change in the Premises that will significantly impair or interfere with the preservation values of the Premises during the term of this Agreement.

1.2 Recitals. The parties acknowledge that the recitals set forth above are true and correct and are hereby made a part of this Agreement.

1.3 Definitions.

1.3.1 "Addition." "Addition" shall mean and include all construction attached to the Thomas Emery House or Carriage Barn in any way, and any subsequent construction that attaches to any such addition, including, without limitation, a deck, porch, ramp, stair or landing and/or any building appurtenances.

1.3.2 "Structure." "Structure" shall mean any combination of materials assembled at a fixed location to give support or shelter, including, without limitation, a building, deck, ramp, arbor, trellis, sign, paving, fencing, walls, game courts, swimming pools and poles (utility and otherwise).

1.3.3 "Facade(s) and Elevation(s)." "Facade(s) and elevation(s)" shall include, without limitation, all exterior doors, door frames, windows, window sash, window frames, transoms, sidelights, shutters, hardware, wall sheathing, clapboards, siding boards, porches, porticos, panels, cornices, balustrades, moldings and other decorative elements and all other elements, whether decorative or structural, which support any of the foregoing. For convenience of reference, the front elevation of the Thomas Emery House facing High Street shall be called the West facade, the rear elevations of the Thomas Emery House shall be called the East elevation, and the other elevations of the Thomas Emery House shall be

called the North and South elevations, based upon such elevation's orientation relative to the West facade.

- 1.3.4 "Protected Features."** "Protected Features" shall mean those historical, architectural and landscape features protected pursuant to Sections 2 and 3 4 of this Agreement.

1.4 Exhibits.

- 1.4.1 Plans.** Plans entitled "Floor Plan" and "Site Plan" are attached as Exhibit C and D respectively and incorporated herein by this reference.

- 1.4.2 Documentary Photographs.** In order to establish with more certainty the condition of the building and the character of the Protected Features as of the date hereof, attached hereto as Exhibit B and incorporated herein by this reference are copies of 10 exterior photographs taken by Andrew Barr on October 14 through October 16, 2019, and 54 interior photographs taken by Andrew Barr on October 14 through October 16, 2019, together with an affidavit specifying certain technical and locational information with respect to such photographs. It is stipulated between Grantor and Grantee that such copies accurately represent the external and internal condition of the Thomas Emery House, Carriage Barn, and the Premises and the character of the Protected Features on the date hereof and as of the date this Agreement is first recorded with the Registry.

- 2. LAND RESTRICTIONS.** Grantor covenants and agrees to maintain the Premises in accordance with the following restrictions in order to ensure that the designed landscape features of the Premises existing as of the date of this Agreement are preserved as documented in the photographs attached hereto as part of Exhibit B:

- 2.1** the wood fence that extends along the property boundary at High Street and Oakland Street (Exhibit B negatives 56687-A through 56691-A).

- 3. EXTERIOR RESTRICTIONS.** Grantor covenants and agrees that, without the prior written approval of Grantee, no activity shall be undertaken which Grantee determines will alter or adversely affect the appearance, materials, workmanship or structural stability of the following exterior portions of the Thomas Emery House and Carriage Barn or following site features as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit B:

- 3.1** all facades and elevations (Exhibit B negatives 56687-A through 56696-A);
- 3.2** the massing, profile and materials of the roofs; skylights, dormers or other roof additions being expressly forbidden (Exhibit B negatives 56687-A through 56696-A);

- 3.3 the chimneys at the Main Block in their entirety (Exhibit B negatives 56688-A through 56694-A);
- 3.4 all foundations (Exhibit B negatives 56687-A through 56696-A);
- 3.5 the granite steps located at the portico on the West facade and South elevation entry of the Premises (Exhibit B negatives 56687-A through 56690-A).

- 4. **INTERIOR RESTRICTIONS.** Grantor covenants and agrees that, without the prior written approval of Grantee, no activity shall be undertaken which Grantee determines will alter or adversely affect the appearance, materials, workmanship or structural stability of the following interior portions of the Thomas Emery House and Carriage Barn as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit B, including, without limitation, as follows:

Thomas Emery House and Carriage Barn:

- 4.1 all structural members and framing, including but not limited to, interior beams, posts, girts, plates, studs, sheathing boards, rafters, purlins, masonry walls and masonry piers (Exhibit B negatives 56701-A, 56702-A, 56707-A, 56710-A, 56712-A, 56718-A, 56719-A, 56723-A, 56728-A, 56730-A, 56732-A through 56750-A);

Main Block and Rear Ell:

- 4.2 at the Main Block and Rear Ell, the space configuration and door locations of all rooms, closets, halls and stairhalls at all stories, excepting the cellar, and at the Main Block, all baths, north chamber, and third story northeast and northwest rooms, and at the Rear Ell, the east kitchen, the north entry mudroom, and the second story east chamber, closet, and bath, and at the Sun Porch (Exhibit B negatives 56697-A through negatives 56707-A, 56711-A through 56731-A);
- 4.3 all fireplaces and hearths in their entirety, including any attached iron or brass hardware, whether decorative or functional (Exhibit B negatives 56700-A, 56704-A, 56707-A, 56717-A, 56721-A, and 56727-A);

Main Block:

- 4.4 at the Main Block, all softwood floors of the south parlor, south chamber, and third story south room, and all closets, halls and stairhalls at all stories, including the attic, excepting the cellar, north parlor, all baths, north chamber, and third story northeast and northwest rooms (Exhibit B negatives 56697-A through 56703-A, 56711-A through 56720-A, 56722-A through 56731-A, 56739-A through 56741-A);

- 4.5 at the Main Block, all plaster walls of all rooms, closets, halls and stairhalls at all stories, excepting the cellar, north parlor, all baths, north chamber, and third story northeast and northwest rooms (Exhibit B negatives 56697-A through 56703-A, 56711-A through 56720-A, 56722-A through 56731-A);
- 4.6 all woodwork of all rooms, closets, halls and stairhalls at all stories, including the attic, including but not limited to cornices, mantelpieces, paneling, wainscoting, baseboards, door stops, stairs, railings, balusters, newels, doors, door casings, windows, window sash, window casing, pocket shutters and other decorative elements and any paint thereon, excepting the cellar, all baths, north chamber, third story northeast and northwest rooms, and the Sun Porch's west doors (Exhibit B negatives 56697-A through 56706-A, 56711-A through 56720-A, 56722-A through 56731-A);
- 4.7 all door hardware at all rooms, closets, halls and stairhalls at all stories, including the attic, excepting the cellar, first story hall bath, second story north bath, and the Sun Porch's west doors (Exhibit B negatives 56697-A, 56699-A through 56701-A, 56703-A through 56707-A, 56711-A through 56714-A, 56717-A through 56719-A, 56721-A, 56725-A through 56727-A, 56729-A through 56731-A);
- 4.8 the built-in shelving at the northeast closet of the south parlor and the northeast closet of the south chamber (Exhibit B negatives 56703-A and 56720-A);
- 4.9 the plank wall and the red and green paint thereon at the southwest corner of the north parlor (Exhibit B negatives 56705-A and 56706-A);
- 4.10 the original exterior shingles visible at the top of the Main Block attic stair (Exhibit B negative 56738-A);

Rear Ell:

- 4.11 at the Rear Ell, the original sliding shutter located at the interior of the first story east window (Exhibit B negative 56709-A);
- 4.12 the fireplace surround and adjacent cupboard at the west wall of the east chamber (Exhibit B negative 56721-A);
- 4.13 the fireplace surround, wainscoting, door and window surrounds, and plaster walls, at the west and south walls of the first story east kitchen (Exhibit B negatives 56707-A and 56710-A);

Carriage Barn:

- 4.14 at the Carriage Barn, the hay feed shoot at the north wall (Exhibit B negative 56746-A); and
- 4.13 the stair between the first and second stories at the west wall and its vertical board wall and railing (Exhibit B negatives 56744-A, 56748-A, 56749-A).

5. **REVERSIBLE ALTERATIONS.** Grantee shall approve the activities identified below, except as noted below, provided that Grantee first determines that the proposed activity will not alter or adversely affect any Protected Features:

- 5.1 installation of three-tab black or charcoal asphalt shingle or wood shingle roof coverings on the roofs of the Thomas Emery House and Carriage Barn;
- 5.2 installation of screens, storm windows, and storm doors;
- 5.3 installation of insulation at the attic floor or in the cellar of the Thomas Emery House and Carriage Barn, provided that no insulation shall be introduced in any way into any vertical wall cavities of the House;
- 5.4 electrical re-wiring, provided that no electrical fixtures are in any manner imbedded in or attached to protected woodwork and structural members and other framing are not cut or otherwise altered;
- 5.5 replacement of existing plumbing lines and plumbing fixtures;
- 5.6 interior and exterior painting or paint removal, provided that the material(s) and method(s) to be used to remove paint shall not damage the underlying substrate;
- 5.7 painting of, or paint removal from, softwood floors, provided that the material(s) and method(s) to be used shall allow hand-planed surfaces to remain visible and undamaged, and such that sanding, grit blasting or other abrasive methods shall not be used;
- 5.8 replacement of broken window glass;
- 5.9 interior wallpapering, provided such papering shall not dislodge, damage or destroy protected woodwork, paint, plaster, floor or hardware as identified in section 4 above; and
- 5.10 installation of a chair lift between the first and second stories, and between the second and third stories, at the main stair, subject to review of structural soundness and attachment methods.

6. **USE, MAINTENANCE AND OTHER ACTIVITIES.**

6.1 **Prohibitions and Covenants.** The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this paragraph:

6.1.1 **Additions.** No additions to the Thomas Emery House and Carriage Barn shall be erected hereafter without prior written approval of Grantee.

6.1.2 **Additional Structures.** No structure not on the Premises as of the date of this Agreement shall be erected or placed on the Premises hereafter without prior written approval of Grantee.

6.1.3 **Communication and Energy Source Structures.** Notwithstanding any provision in this Agreement to the contrary, freestanding or attached towers, exterior antennas, wind turbines, solar panels, or similar communications or energy-producing structures shall not be installed or affixed on the Premises without the prior written approval of Grantee; and installing or affixing towers and wind turbines on the Thomas Emery House or Carriage Barn is prohibited.

6.1.4 **Topographical Changes and Landscaping.** In order to protect the historic setting and Protected Features of the Emery House and Carriage Barn no alterations may be made to the topography of the Premises that either raise or lower grade levels by more than one (1) foot. No soil, loam, rock or mineral resource or natural deposit shall be excavated, dredged or removed from the Premises, no soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever shall be placed, filled, stored or dumped thereon, provided that this Subsection shall not be deemed to prohibit improvements and activities approved under Subsection 6.1 or 6.2, if any, or permitted under Subsection 6.6. The provisions of this Subsection 6.4 shall not be deemed to restrict activities necessary and desirable (i) to preserve or protect the Premises, (ii) to maintain existing trees, lawn, garden or utilities associated with the Premises, (iii) for the planting of trees, shrubs, flowers, herbs or grasses or (iv) related to an approved Archaeology Plan or restoration after archeological activity as provided for in Subsection 6.11.

6.1.5 **Demolition.** Grantor shall not permit or allow to occur, either through positive action or neglect, demolition of the Emery House or Carriage Barn.

6.1.6 **Relocation.** No portion of the Emery House or Carriage Barn shall be moved from its present location unless such moving is required by a taking through eminent domain.

6.1.7 **Signs.** No signs, billboards or other advertising displays shall be placed on, painted onto or affixed to the Emery House or Carriage Barn or the Premises except that, subject to Grantee's prior written approval, Grantor may erect a sign or marker which is appropriate to identifying the historical significance and associations of the Premises. This paragraph shall not prevent Grantor from placing temporary, free-standing signs on the lawn provided such signs are in accordance with local law.

6.1.8 **Use.** Grantor shall not permit any use to be carried on, in or around the Premises that is unlawful, constitutes a nuisance, or which is determined by Grantee to be inconsistent with the intent of this Agreement or to adversely affect the historic significance of the Emery House or Carriage Barn and surrounding landscape. Without limiting the generality of the foregoing, the Premises may be used for a single-family residence, which may include a portion of the Premises for a home professional office for a member of the family in residence, and may also include a guest or rental residential unit at the Carriage Barn provided that such use is permitted by local zoning ordinances. With respect to matters not covered by this Agreement, Grantee shall have the right to operate and use the Premises in such manner as it determines, provided that such operation and use is not inconsistent with the intent of this Agreement.

6.2 **Maintenance.**

6.2.1 **General.** Grantor covenants at all times to maintain the Emery House or Carriage Barn and the Premises in good and sound state of repair in order to prevent the deterioration or destruction through alteration or neglect of Protected Features.

6.2.2 **Cost of Maintenance.** Grantor shall assume the total cost of continued maintenance, repairs and administration of the Premises in order to preserve the protected architectural and historic features, materials, appearance and workmanship of the Emery House or Carriage Barn. Grantor covenants that it shall indemnify and hold Grantee harmless from and against any such costs. The foregoing shall not prohibit the Grantor from seeking financial assistance for the foregoing purposes from any sources available to it.

6.3 **Compliance with Law.** Nothing contained herein shall be interpreted to authorize or permit the Grantor to violate any law, ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any law, ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee in writing of such conflict and shall cooperate with Grantee and local authorities to accommodate the purposes of both this Agreement and such law, ordinance or regulation. No construction and no other

alteration or change of use or occupancy which would create such conflict, or cause such conflicting law, ordinance or regulation to be applicable to the Thomas Emery House or Carriage Barn or any protected element thereof, shall be undertaken without the prior written approval of Grantee.

- 6.4 **ARCHAEOLOGY.** The conduct of archaeological activities, including without limitation archaeological surveys, excavation for the purpose of archaeology and artifact retrieval may occur only in accordance with an archaeological field investigation plan (the "Archaeology Plan") prepared by or on behalf of the Grantor and approved in advance of such activity in writing by the State Archaeologist of the Massachusetts Historical Commission (or, if Massachusetts General Laws ceases to require approval by the Massachusetts Historical Commission for the perpetual enforceability of historic preservation restrictions, then by the official recognized by Grantee from time to time as having responsibilities for preservation of archaeological resources in the Commonwealth of Massachusetts). Plans for restoration of the site of archaeological activity shall be submitted to Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by Grantee.

7. **INSURANCE.**

- 7.1 **Property.** Grantor, at its sole cost and expense, shall keep the Emery House and Carriage Barn insured for the full replacement value against loss from perils commonly insured under the broadest standard home insurance policy form in use from time to time, including without limitation fire, lightning, wind storm, hail, explosion, damage by vehicles, smoke, vandalism, malicious mischief, weight of ice, snow, or sleet, freezing of plumbing, HVAC or sprinkler systems, and sudden and accidental damage from artificial electrical current explosion, fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Emery House and Carriage Barn without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Premises 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.
- 7.2 **Liability.** Grantor, at its expense, shall carry and maintain at all times general liability insurance with coverage against claims for personal injury, death, and property damage, identifying the Thomas Emery House and Carriage Barn as covered premises, and for not less than one million dollars (\$1,000,000) per person per occurrence, such sum to be increased from time to time to reflect increases in the cost of living from the date of this Agreement. Every policy

required pursuant to this Subsection 7.2 shall name Grantee as an additional insured.

[Notwithstanding anything in this Agreement to the contrary, in the event members of the public, as distinct from specific invitees, are allowed access to the Premises, the following provisions shall apply in lieu of the foregoing provision of this section 7.2:

***Liability.** Grantor, at its expense, shall carry and maintain at all times commercial general liability coverage identifying the Thomas Emery House and Carriage Barn as covered premises, and with a general aggregate limit of not less than one million dollars (\$1,000,000) per person per year, such sum to be increased from time to time to reflect increases in the cost of living from the date of this Agreement. In the event that the use of the Thomas Emery House and Carriage Barn changes such that it is no longer open to the public, Grantor, at its expense, shall subsequently carry and maintain at all times general liability insurance, with coverage against claims for personal injury, death, and property damage, identifying the Thomas Emery House and Carriage Barn as covered premises, and for not less than one million dollars (\$1,000,000) per person per occurrence, such sum to be increased from time to time to reflect increases in the cost of living from the date of this Agreement. Every policy required pursuant to this Subsection 7.2 shall name Grantee as an additional insured.]*

7.3 Other Requirements. Every policy required pursuant to this Section 7 shall be issued by an insurance company rated "A" or better by A.M. Best Company or equivalent rating by a comparable rating service, and shall provide for the sending of any and all notices of cancellation by the insurer to Grantee at least twenty (20) days prior to any cancellation taking effect. Grantor shall promptly provide copies of all insurance policies required by this Section and all supplements or endorsements thereto to Grantee.

7.4 Changes in Practice. Grantee reserves the right to change the coverage requirements provided under this Section 7 from time to time to reflect changes in the best practices for property and liability coverages for historic houses in New England provided Grantee first gives Grantor thirty (30) days advance notice of any such change.

8. CASUALTY DAMAGE.

8.1 Notice. In the event that the Thomas Emery House or Carriage Barn or any portion thereof is damaged or destroyed, Grantor shall notify Grantee in writing within seven (7) days of the damage or destruction, and such notification shall identify what, if any, emergency protective work has already been completed.

8.2 Restoration. No repairs or reconstruction of any type other than temporary emergency work to prevent further damage to the Emery House, Carriage Barn,

and the Protected Features and that necessary to protect public safety shall be undertaken by Grantor without Grantee's prior written approval of the restorative work. Except as set forth in this Section, in the event of any casualty damage (as hereinafter defined), (a) Grantor shall submit to Grantee a proposal in accordance with Section 14 of this Agreement for Grantee's approval to restore the Emery House or Carriage Barn using similar materials, workmanship and design and in a manner which shall protect those Protected Features which have not been totally destroyed, and (b) Grantor shall then restore the Emery House or Carriage Barn in accordance with such proposal as Grantee has approved.

8.3 Substantial Casualty. Notwithstanding any other provision of this Agreement to the contrary, in the event of substantial casualty damage to the Emery House or Carriage Barn, Grantor may request the approval of Grantee not to restore the Thomas Emery House or Carriage Barn pursuant to this Agreement. If Grantee determines that the extent or nature of such casualty damage would prevent restoration in a manner which would protect the remaining Protected Features, then Grantee may grant such approval and Grantor may elect not to restore the Emery House or Carriage Barn pursuant to this Agreement. In the event of such approval not to restore, before any remaining portion of the Emery House or Carriage Barn is relocated or otherwise altered, Grantor shall allow Grantee to enter onto and into the Premises for the purpose of choosing and removing for posterity any such Protected Features, or portions thereof, together with the materials in which such features are set, that Grantee desires to salvage.

8.4 Damage Defined. For the purposes of this Agreement casualty damage shall be defined as such sudden damage or loss which would qualify for a loss deduction pursuant to Section 165(c)(3) of the Internal Revenue Code (construed without regard to the legal status, trade, or business of the Grantor or any applicable dollar limitations).

9. CONDEMNATION. If the Premises, or any substantial portion thereof, shall be made the subject of a procedure threatening a taking through eminent domain, or if Grantor shall receive notice from a governmental authority of the intent to institute such proceeding, Grantee shall immediately be given notice thereof by Grantor. Grantee shall have the right to enter its name as an additional party in eminent domain proceedings, pursuant to Massachusetts General Laws, Chapter 79, Section 5A, but shall not have the right to any monetary award which would diminish the award to be made to Grantor resulting from such taking. In the event of such taking, Grantee shall have the right to enter onto and into the Premises (or portion thereof subject to such taking) for the purpose of choosing and removing for posterity any Protected Features, or portions thereof, together with the materials in which such features are set, that Grantee desires to salvage, prior to the effective date of such taking.

10. **TAXES.** Grantor shall pay on or before the due date all general taxes, special taxes, special assessments, water charges, sewer service charges and other charges which may become a lien on the Premises.
11. **INDEMNIFICATION.** Grantor shall indemnify, defend with counsel acceptable to Grantee, and hold Grantee and/or its agents, contractors, officers, employees, boards and others acting by and through Grantee harmless from and against any claims, liability, costs, damages, losses, expenditures, attorneys' fees, judgments or expenses to Grantee its agents, contractors, officers, employees, boards and others acting by and through Grantee arising out of or in connection with, not in limitation: injury to or death of any person on or about the Premises; arising out of or in connection with this Agreement; physical damage to the Premises; the presence or release in, on, or about the Premises, at any time, of any hazardous, toxic, polluting or contaminating material or substance; or other injury or damage occurring on or about the Premises. If 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 Premises with the same effect and priority as a mechanic's lien, provided, however, that nothing contained herein shall jeopardize the priority of any recorded first priority mortgage given in connection with a promissory note secured by the Premises.
12. **INSPECTION.** Grantee may inspect the Premises at least annually to ensure that the Grantor is in compliance with the preservation restrictions hereby imposed. In addition, Grantee may inspect the Premises more frequently during periods of repair, renovation or reconstruction as Grantee deems appropriate for the nature of the work being conducted. Grantor agrees to grant Grantee free access to all areas of the Premises. Such inspections shall be made at reasonable hours and only after prior notice to the Grantor. This right of inspection shall be assignable by Grantee to any governmental body or qualified non-profit entity whose purposes include preservation of structures or sites of historic or aesthetic significance. The failure of Grantee to exercise this right of inspection for any period of time, however, shall under no circumstances be construed as a waiver of such right.
13. **WRITTEN APPROVAL.**
 - 13.1 **Approval.** Whenever Grantor desires to undertake any activity which, by the terms of this Agreement, is not to be undertaken without Grantee's approval, Grantor shall first deliver to Grantee a written request for approval, describing the specific activity proposed (including, but not limited to, the nature, scope, schedule, budget and, if applicable, materials, design and location thereof, and by whom the activity will be performed) in sufficient detail as determined by Grantee to enable it to evaluate the proposed activity and the potential effect thereof upon the features and interests protected by this Agreement (a "Request for Approval"). Grantor shall supplement the written Request for Approval with any and all supplementary documentation, including, but not limited to, architectural drawings, site plans, photos or digital images, as Grantee determines are

necessary to fully describe the proposed activity for the purposes of this Section 13. In exercising its discretion, Grantee shall apply standards that it establishes from time to time of general applicability to similar historic properties on which it holds preservation restrictions. Approval by Grantee for any such activity shall be in recordable form, executed and acknowledged by any one or more of the President, Treasurer, Director or such officer or officers who may succeed to their responsibilities under other titles.

13.2 Waiver; Other Approval. Grantee may, in its sole discretion, waive the submittal of a Request for Approval or the issuance of a recordable approval, or both, for any activity described in Section 5. Notwithstanding any other provision of this Agreement to the contrary, Grantee may, in its sole discretion, grant written approval for any other activity by Grantor which is restricted by any provision of this Agreement in addition to those activities which are not to be undertaken without approval by Grantee, but only in accordance with the procedures set forth in Subsection 13.1.

13.3 Timing. Grantee shall grant or deny its approval for such proposed activity not later than sixty (60) days after the later of the date (i) Grantee has received a Request for Approval or (ii) Grantee either inspects the Premises, as mutually and reasonably agreed upon by Grantee and Grantor, for the purpose of evaluating such proposal or delivers to a Grantor a written waiver of such inspection. If Grantee does not give the Grantor a written request for such inspection within sixty (60) days after Grantee has received a Request for Approval, Grantee shall be deemed to have waived such inspection for such proposal. The provisions of this Subsection 13.3 shall not apply to any proposed activity that is prohibited by the terms of this Agreement.

13.4 Conditions. Grantee may approve or deny all or any portion of the activity set forth in a Request for Approval, or grant its approval subject to conditions, or any combination thereof. Such conditions may include the expiration of such approval to activity conducted within a certain period of time or prior to conveyance of the Premises. If an activity is conditionally approved, such activity shall not be undertaken except in compliance with such condition(s) and the failure to conform to such condition(s) shall be a breach of this Agreement. Approval as to any activity shall under no circumstances be construed to waive the requirement for approval for any other activity or for a duplication of the same activity at a later time or affecting any other portion of the Premises.

14. DISPUTE RESOLUTION.

14.1 Submittal. Grantor agrees that if any dispute shall arise between it and Grantee concerning the terms or conditions of this Agreement or their application in any instance, Grantor and Grantee shall, submit such dispute for resolution by arbitration in Boston, Massachusetts, by the American Arbitration Association, its

successor, or other arbitral forum as mutually agreed by Grantor and Grantee (the "Arbitration Association"), and such arbitration shall be submitted, commenced, held and determined in accordance with the Commercial rules and regulations of the Arbitration Association, as hereby modified. The provisions of this Section 14 shall not, however, limit the provisions of Section 15, and if Grantor shall submit any such dispute to arbitration as aforesaid and Grantee shall elect to seek injunctive relief or otherwise litigate the subject matter of such dispute, Grantee shall give notice of such election to the Arbitration Association. In such circumstances, the arbitration shall be recessed or adjourned if the outcome of the action brought by Grantee may render the arbitration moot. Once arbitrated, the decision of arbitration shall be binding and enforceable in any court of competent jurisdiction, subject to Subsection 15.2 hereof.

14.2 Appointment and Procedure. In the arbitration of any dispute involving Sections 2, 3, 4, 5, 7, 8, 9 or 17.1 hereof, all arbiters shall have a bachelor's or graduate degree in architecture, art history or historic preservation and at least ten (10) years' experience in the field of preservation of historically significant structures or artifacts. Each party shall nominate a qualified arbiter by notice to the Arbitration Association and the other party within thirty (30) days of the initial demand for arbitration, describing such qualifications. All challenges to a proposed arbiter's qualifications shall be submitted to the Arbitration Association within ten (10) days thereafter and all such challenges shall be decided by the Arbitration Association. The two (2) arbiters appointed by the parties shall name a third neutral arbiter within ten (10) days after such challenge period expires. Within thirty (30) days of the appointment of the third arbiter, the panel of arbiters shall take evidence and argument and close the hearing, and they shall decide the matter and issue their decision within thirty (30) days after close of the hearing. Without limiting the generality of this Section, the fees and expenses of arbitration charged by the Arbitration Association shall be borne equally between Grantee and Grantor unless the arbiters determine that some other division shall under the circumstances be more equitable and such determination of the arbiters shall be conclusive and binding upon the parties. Notwithstanding anything to the contrary in this Subsection 14.2, if Grantor shall fail to name a qualified arbiter in the time allotted, there will be only one arbiter, appointed by Grantee.

14.3 Communications. The provisions of this Subsection 14.3 shall not limit the generality of any other provision of this Agreement. If Grantee elects to give Grantor written notice that Grantor has failed to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed (a "Violation Letter"), Grantor may respond in writing within thirty (30) days of the giving of such notice, disputing the existence of such failure and demanding arbitration thereof (an "Objection Letter"). Grantee may record notice of such Violation Letter with the Registry. Notwithstanding the provisions of Subsection 14.1, Grantor may not thereafter demand arbitration of the subject matter of the Violation Letter unless Grantor's Objection Letter

includes such demand for arbitration. If Grantor does not timely deliver an Objection Letter to Grantee, Grantor shall conclusively be deemed to agree with the contents of the Violation Letter and to waive all right thereafter to dispute the existence of such failure. If an arbitration finds that the failure that is the subject of a Violation Letter does not exist, the arbitrators may require Grantee to record with the Registry a rescission or extinguishment of any notice of such Violation Letter recorded with the Registry. Whether or not Grantor delivers an Objection Letter to Grantee, if the activity that gave rise to the Violation Letter remains in progress, Grantor shall immediately cease such activity.

15. **ENFORCEMENT.**

- 15.1 **General.** If Grantor shall fail to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed, Grantor acknowledges that such a failure will cause Grantee irreparable harm, and Grantee shall have the right to enforce this Agreement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (Grantor agreeing that Grantee has no adequate remedy at law if Grantor shall fail to perform or observe any restriction, agreement or condition contained in this Agreement). The foregoing shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee.
- 15.2 **Venue and Jurisdiction.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Grantor hereby irrevocably consents and agrees that any legal action, suit or proceeding arising out of or in any way in connection with this Agreement may be instituted or brought in a court of appropriate jurisdiction in the Commonwealth of Massachusetts, or in the courts of any other jurisdiction wherein Grantee's business office(s) may be located, as Grantee may elect. By execution and delivery of this Agreement, Grantor irrevocably accepts and submits to the non-exclusive jurisdiction of any such court and to service of any summons, complaint and/or legal process by registered or certified United States mail, postage prepaid, to Grantor at the Premises, such method of service to constitute, in every respect, sufficient and effective service of process in any legal action or proceeding. The parties shall not seek a trial by jury in any lawsuit, proceeding, counterclaim or any litigation procedure based upon or arising out of this Agreement or the dealings or the relationship between Grantee and Grantor, or any person claiming by, through or under Grantor.
- 15.3 **Self Help.** If Grantor shall fail to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed, other than an obligation to pay money, and shall not cure such default within seven (7) days after notice from Grantee specifying the failure, Grantee may, at its option, without waiving any other remedy or any claim for damages for breach of

this Agreement, at any time thereafter apply for and obtain in its own name or in Grantor's name such permits and approvals as may be necessary to cure such failure, enter upon the Premises, and cure such failure for the account of Grantor, and any amount paid or any contractual liability incurred by Grantee in so doing shall be deemed paid or incurred for the account of Grantor, Grantor agreeing to reimburse Grantee promptly therefor and save Grantee harmless therefrom. Grantee may cure any such failure as aforesaid prior to the expiration of said waiting period, but after notice to Grantor, if the curing of such failure prior to the expiration of said waiting period is reasonably necessary to protect the Premises or any Protected Features. Without limiting the generality of this Subsection 15.3, Grantor's obligation to reimburse Grantee as aforesaid shall be entitled to the status of a contract pursuant to Massachusetts General Laws, Chapter 254, as amended from time to time (sometimes known as the Mechanics' Lien Law) and in order to cause this Agreement to constitute a Notice of Contract or such other notice as is necessary to afford Grantee the right to file a claim pursuant thereto, notice is hereby given that by virtue of this Agreement between Grantor and Grantee, as contractor for the purposes of this Subsection 15.3, Grantee may furnish labor and material or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building, structure, or other improvement on the Premises as set forth in this Section.

- 15.4 Costs and Expenses.** Grantor shall indemnify and hold harmless Grantee, and shall pay to Grantee on demand, all costs and expenses, including but without limitation attorneys' disbursements and fees, incurred by Grantee in connection with enforcement of this Agreement. If Grantor is required pursuant to this Agreement to pay a sum of money to Grantee, the obligation to pay such sum constitutes a lien upon the Premises for the amount of such sum until it is paid, and if Grantor shall fail to pay all or any portion of such sum within thirty (30) days of Grantee's written demand therefor, Grantor shall also pay to Grantee interest on the unpaid amount an annual rate equal to the lesser of five percent (5%) or the judgment interest rate then in effect under the laws of the Commonwealth of Massachusetts.
- 15.5 Mortgage Protection.** Any lien which may arise pursuant to this Section 15 shall be subject and subordinate to a first mortgage of record held by a bank, saving and loan association, trust company, credit union, insurance company, pension fund or other institutional lender to the extent of the principal amount secured by such mortgage and disbursed as of the date such notice of lien is recorded.
- 15.6 No Waiver.** Failure of Grantee to complain of any act or omission on the part of Grantor, no matter how long the same may continue, shall not be deemed to be a waiver by Grantee of any of its rights hereunder. No waiver by Grantee at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. No waiver

by Grantee at any time of the requirements for submittal of a Request for Approval or issuance of a recordable approval, pursuant to Subsection 13.2, for an activity described under Section 5 shall be deemed a waiver of such requirements as to such activity at any other time or as to any other activity. No payment by Grantor or acceptance by Grantee of a lesser amount than shall be due from Grantor to Grantee shall be deemed to be anything but payment on account, and the acceptance by Grantee of a check for a lesser amount with an endorsement or statement thereon or upon a letter accompanying such check that such lesser amount is payment in full shall not be deemed an accord and satisfaction, and Grantee may accept such check without prejudice to recover the balance due or pursue any other remedy. Any and all rights and remedies which Grantee may have under this Agreement or by operation of law, either at law or in equity, upon any breach shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by Grantee or not, shall be deemed to be in exclusion of other, any two or more or all of such rights and remedies being exercisable at the same time.

15.7 Estoppel Certificate. Grantee agrees to deliver to Grantor and/or to any holder of a mortgage on the Premises identified by Grantor a statement to Grantee's knowledge whether Grantor is in compliance with this Agreement, not later than thirty (30) days after the later of the date (i) Grantee has received a written request for such statement from Grantor, or (ii) Grantee either inspects the Premises, as mutually and reasonably agreed upon by Grantee and Grantor, for the purpose of responding to such request or delivers to a Grantor a written waiver of such inspection. If Grantee does not give the Grantor a written request for such inspection within fifteen (15) days after Grantee has received such request from Grantor, Grantee shall be deemed to have waived such inspection for such request.

16. EXTINGUISHMENT. Grantor and Grantee acknowledge the possibility that circumstances may arise in the future to render the purpose of this Agreement impossible to accomplish. In addition, both parties recognize that the possibility of condemnation and casualty always exists. In the event such circumstances do in fact arise, the parties agree that those provisions of this Agreement which are rendered impossible of performance by such circumstances, condemnation or casualty, may be extinguished by judicial proceedings in a court of competent jurisdiction and in compliance with the applicable requirements of Massachusetts General Laws chapter 184, section 32, as it may be amended from time to time, including approvals by the City of Newburyport and the Massachusetts Historical Commission following public hearings to determine that such extinguishment is in the public interest. All other provisions of this Agreement shall remain in full force and effect unless and until this Agreement is terminated or extinguished in compliance with said requirements.

17. **TRANSFERS.**

- 17.1 **Subdivision and Leasing.** The Premises shall not be subdivided for conveyance or lease, provided that this Section shall not be deemed to prohibit the leasing of the Thomas Emery House or Carriage Barn for uses permitted by this Agreement. For the purposes of this Agreement, the definition of "to subdivide" shall include to cause any portion of the land less than the entirety thereof to be divided, conveyed or made conveyable as a distinct parcel apart from the remainder of the land, including, to submit a plan which shows the land as other than one unitary lot for the preliminary or final approval or endorsement of any governmental authority for such a division, or to cause any such plan (whether or not approved or endorsed by a governmental authority) to be filed or recorded with any land records office or registry. Any lease or occupancy agreement of the Premises or any portion thereof shall be in writing and shall include the following notice in capitalized letters: "This Lease is subject to a Preservation Restriction Agreement granted to the Society for the Preservation of New England Antiquities D. B.A. Historic New England, a copy of which is attached hereto, which substantially restricts construction, alteration and other modifications to protected features inside and outside the Premises subject to this Lease. Notwithstanding any other provision of this Lease, no such activity shall be undertaken without prior review of such restrictions and strict compliance therewith. Any failure to comply with such restrictions may, at Landlord's sole discretion, be deemed a default under this Lease."
- 17.2 **Insertion in Subsequent Instruments.** Grantor shall insert a reference to this Agreement, such reference to include Registry book and page number of this Agreement, into 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 Premises. Concurrently, with its entering into any such deed or other legal instrument, Grantor shall give written notice to Grantee of same. Failure by Grantor to comply with the requirements of this Subsection 16.2 shall not affect the validity, enforceability or priority of this Agreement or any lien arising hereunder.
- 17.3 **Written Acceptance.** Before taking legal possession of the Premises or any portion thereof, each new Grantor of the Premises shall indicate its acceptance of these preservation restrictions contained herein by a letter to Grantee. Such acceptance shall include a promise to maintain at all times and in good condition, the significant historical, architectural, scenic and environmental characteristics of the Premises covered by these restrictions. Failure by any new Grantor to so indicate, and failure by Grantee to demand such indication, shall not affect the validity, enforceability or priority of this Agreement or any lien arising hereunder.
- 17.4 **Restrictions Run with the Land.** Notwithstanding anything to the contrary contained in Section 15 above, the burden of this Agreement shall constitute a binding servitude, shall run with the land in perpetuity and thus not subject to the

limitations on the enforceability of restrictions in G.L. c. 184, §§31-33, and, in any event, shall bind and run with the Property for a period of no less than ninety-nine (99) years from the recording hereof.

17.5 Assignment. All of the rights and restrictions enforceable by Grantee pursuant to this Agreement shall be assignable by Grantee for preservation purposes only and without consideration, to any governmental body or any entity described in Section 170(b)(1)(A) of the Internal Revenue Code of 1986 as amended whose purposes include preservation of structures or sites of historic or architectural significance in perpetuity. Any such non-governmental entity must also be qualified to hold preservation restrictions under Massachusetts General Law, Chapter 184, Section 32.

18. NOTICES. Every notice, request, demand, consent, waiver or other communication which either party hereto may be required to give to the other party pursuant to this Agreement, shall be in writing and shall be given either by postage prepaid registered or certified U.S. mail with return receipt requested or by a national overnight delivery service with acknowledgment of receipt required--if to Grantor, then to Grantor at the Premises, and if to Grantee, then to the Historic New England Preservation Easement Program, Historic New England, 185 Lyman Street, Waltham, Massachusetts 02452-5645. Each party may change its address set forth herein by written notice to such effect to the other party. Such notice, etc., shall be deemed given as of the sooner of the date of signed receipt or the date when delivery was first attempted.

19. SUBORDINATION OF PRIOR INTERESTS.

19.1 Prior Liens. Grantor represents and warrants to Grantee that the Premises are subject to no mortgages, liens, leases, restrictions, easements or encumbrances prior in right to this Agreement other than those as set forth more particularly in Exhibit E attached hereto.

19.2 Homestead. Each of the individuals who constitute Grantor hereby subordinates all of his rights of homestead and of any and all of his beneficiaries, affirms under the penalties of perjury that there is no person entitled to claim the benefit of homestead rights in the Premises other than Kemble Widmer and Elizabeth Widmer.

20. MISCELLANEOUS. The following provisions in this Section 20 shall govern the effectiveness, interpretation and duration of this Agreement:

20.1 Counterparts. This Agreement, with all exhibits hereto, is executed in three (3) identical counterparts. After execution hereof, one (1) such counterpart shall be held by each of Grantor and Grantee, and one (1) such counterpart shall be recorded immediately at the Registry.

- 20.2 **Strict Construction.** Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this Agreement, and this Agreement shall be interpreted broadly to effect its purposes, and the restrictions herein contained.
- 20.3 **Grantor.** This Agreement shall extend to and be binding upon the Grantor, and all persons hereafter claiming under or through the party executing this Agreement as "Grantor" and all successors in title to the Premises, and the word "Grantor" when used herein shall include all such persons, whether or not such persons have signed this Agreement or have an interest in the Premises at the time of execution of this Agreement or thereafter. A person who ceases to hold title to the Premises after having been a Grantor shall cease to have any liability hereunder to Grantee except that such person shall remain jointly and severally liable with the successors as Grantor for any monetary liability hereunder to Grantee that accrued during the time of such person's ownership.
- 20.4 **Amendment.** For purposes of furthering the preservation of the Thomas Emery House and Carriage Barn and of furthering the other purposes of this Agreement, and of meeting changing conditions, Grantor and Grantee are free to amend jointly the terms of this Agreement in writing in accordance with the requirements of Massachusetts General Laws, Chapter 184, Sections 31-33, and such amendment shall become effective upon recording at the Registry.
- 20.5 **Validity of Agreement.** This Agreement is made pursuant to Massachusetts General Laws, Chapter 184, Sections 31-33, but the invalidity of such statutes or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms, it being the intent of the parties to agree and to bind themselves, their heirs, successors, administrators and assigns in perpetuity to each clause of this Agreement whether it be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto. This Agreement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain enforcement of this Agreement or any part thereof. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement or any ancillary or supplementary agreement relating to the subject matter herein.
- 20.6 **Captions.** The captions used as headings for the various Sections and Subsections of this Agreement are used only as matter of convenience for reference, and are not to be considered a part of this Agreement or used in determining the intent of the parties to this Agreement.
- 20.7 **No Warranty.** The approval by Grantee of any action by Grantor, including without limitation, the approval of the design of any alteration or construction, shall not constitute a warranty, representation or acknowledgment that any action

taken in conformity with such approval shall comply with any law, regulation, order, ordinance, code or by-law or shall be suitable for any particular purpose, and Grantor shall be solely responsible for its own actions.

- 20.8 Time.** Where a specific number of days are stated for an activity to occur, time is of the essence. If any act required under this Agreement becomes due on a Saturday, Sunday or legal holiday in the Commonwealth of Massachusetts, then such act shall be due on the immediate following business day.
- 20.9 Grantee's Use of Information.** During inspection of the Property and at other times reasonably agreed upon by the Grantor, including preparation of the baseline documentation, Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, and architectural character and features of the Property and may use such images and materials to promote the easement program and otherwise in support of its educational and charitable purposes, including reproduction in magazines, newsletters, or other publicly available publications.
- 20.10 Notice from Government Authorities.** Except as expressly indicated in this Agreement otherwise, Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first written above.

WITNESS

SOCIETY FOR THE PRESERVATION
OF NEW ENGLAND ANTIQUITIES
D.B.A. HISTORIC NEW ENGLAND

Carl R. Nold, President and CEO

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

On this ___ day of _____, 2020, before me, the undersigned notary public, personally appeared Carl R. Nold, President and CEO, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as President and CEO of Historic New England, a corporation.

Notary Public

My commission expires:

WITNESS

SOCIETY FOR THE PRESERVATION
OF NEW ENGLAND ANTIQUITIES
D.B.A. HISTORIC NEW ENGLAND

Randy J. Parker, Treasurer

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

On this ___ day of _____, 2020, before me, the undersigned notary public, personally appeared Randy J. Parker, Treasurer, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Treasurer of Historic New England, a corporation.

Notary Public

My commission expires:

WITNESS

GRANTOR

Kemble Widmer II, Trustee
The Kemble Widmer II Revocable Trust

COMMONWEALTH OF MASSACHUSETTS

County of Essex, ss.

On this ___ day of _____, 2020, before me, the undersigned notary public, personally appeared Kemble Widmer II, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

APPROVAL OF PRESERVATION RESTRICTIONS

Pursuant to General Laws, Chapter 184, Section 32

**Thomas Emery House
272 High Street
Newburyport, Massachusetts**

The undersigned Mayor of the City of Newburyport, Massachusetts hereby certify that the foregoing Preservation Restrictions on the premises, with all improvements there, shown as Lot 1 on a plan entitled "272 High Street Subdivision" dated November 17, 1999, and prepared by Riverside Engineering Services, said plan being duly recorded with Essex South Registry of Deeds in Plan Book 339, Plan 74, and being more particularly described in that certain Deed, recorded with the Registry in Book 24960, Page 588, known as the Thomas Emery House, so called, located at 272 High Street, Newburyport, Massachusetts and owned by the Kemble Widmer II Revocable Trust of Newburyport, Massachusetts have been approved pursuant to Massachusetts General Laws, Chapter 184, Section 32.

In approving these restrictions, the City of Newburyport assumes no responsibility, nor accepts any liability for enforcement.

Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

County of Essex ss.

On this ___ day of _____, 2020, before me, the undersigned notary public, personally appeared Donna D. Holaday, Mayor, to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Mayor of the City of Newburyport.

Notary Public

My commission expires:

APPROVAL OF PRESERVATION RESTRICTIONS

Pursuant to General Laws, Chapter 184, Section 32

Thomas Emery House, 272 High Street, Newburyport, Massachusetts

The undersigned Clerk of the City of Newburyport, Massachusetts, hereby certifies that the foregoing Preservation Restrictions granted by the Kemble Widmer II Revocable Trust to the Society for the Preservation of New England Antiquities D.B.A. Historic New England on the Thomas Emery House located at 272 High Street, Newburyport, Massachusetts, consisting of approximately 0.27 acres of land, with all improvements thereon, shown as Lot 1 on a plan entitled "272 High Street Subdivision" dated November 17, 1999, and prepared by Riverside Engineering Services, said plan being duly recorded with Essex South Registry of Deeds in Plan Book 339, Plan 74, and being more particularly described in that certain Deed recorded with the Registry in Book 24960, Page 588, have been approved by the City Council of the City of Newburyport by a vote of ____ in favor and ____ opposed at its regularly scheduled meeting that was held on _____, _____, 2020, pursuant to Massachusetts General Laws, Chapter 184, Section 32.

In approving these restrictions, the City of Newburyport assumes no responsibility, nor any liability for enforcement.

Richard Burke Jones
City Clerk
City of Newburyport

COMMONWEALTH OF MASSACHUSETTS

County of Essex, ss.

On this _____ day of _____, 2020, before me, the undersigned notary public, personally appeared Richard Burke Jones, City Clerk, City of Newburyport, proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as City Clerk of the City of Newburyport.

Notary Public

My commission expires:

APPROVAL OF PRESERVATION RESTRICTIONS

Pursuant to General Laws, Chapter 184, Section 32

**THOMAS EMERY HOUSE
272 HIGH STREET
NEWBURYPORT, MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission, hereby certifies that the foregoing preservation restrictions on the premises, with all improvements there, shown as Lot 1 on a plan entitled "272 High Street Subdivision" dated November 17, 1999, and prepared by Riverside Engineering Services, said plan being duly recorded with Essex South Registry of Deeds in Plan Book 339, Plan 74, and being more particularly described in that certain Deed, recorded with the Registry in Book 24960, Page 588, known as the Thomas Emery House, located at 272 High Street, Newburyport, Massachusetts, have been approved pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Brona Simon, Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

On this ___ day of _____, 2020, before me, the undersigned notary public, personally appeared Brona Simon, Executive Director and Clerk, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Executive Director and Clerk for the Massachusetts Historical Commission.

Notary Public

My commission expires:



HISTORIC NEW ENGLAND

Defining the past. Shaping the future.

Lyman Estate, The Vale
185 Lyman Street
Waltham, MA 02452-5645
617-994-6640
www.HistoricNewEngland.org

Mr. Richard Burke Jones
City Clerk's Office
60 Pleasant Street
Newburyport, MA 01950

Re: Thomas Emery House, 272 High Street, Newburyport, Massachusetts

Dear Mr. Jones:

I am writing on behalf of Historic New England to request the city of Newburyport's approval of the enclosed preservation restrictions for the Thomas Emery House located at 272 High Street in Newburyport and owned by Kemble Widmer. As provided for under MGL Chapter 184, Section 32, with City Council and Commonwealth approval (the Massachusetts Historical Commission has reviewed this document and is prepared to formally approve it) this private preservation effort will be rendered perpetual, making future re-recording of the legal documents unnecessary.

Under Historic New England's restrictions, the significant exterior and interior architectural features of the Emery House will be protected against alteration, neglect and demolition. In approving this restriction, the Town of Newburyport assumes no responsibility, nor accepts any liability for enforcement.

It is Historic New England's hope to appear before the City Council at the currently scheduled September 29 meeting. We would like to present the background of this restriction and answer any questions the Council may have prior to a vote on approval of the restrictions. This restriction has been approved by the Massachusetts Historical Commission under its authority contained in the same statute, Chapter 184, Section 32, pending your approval. A copy of the Preservation Restriction Agreement is attached for your consideration, along with a DRAFT of the Approval we are seeking from you.

Please do not hesitate to contact me with any questions at dpeacock@historicnewengland.org or (617) 994-6643 and thank you for your consideration.

Sincerely,

Dylan Peacock
Senior Preservation Services Manager

encl. – Preservation Restriction Agreement & City Approval Form