

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

April 10, 2023

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

THAT the City Council of the City of Newburyport hereby approves a perpetual Preservation Restriction (PR) 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 and Thomas and Linda Kolterjahn, trustees of the KOLTERJAHN FAMILY NOMINEE TRUST OF 2002 for the property located at 64 Federal Street (Daniel Plumer House); and

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

Councillor Edward C. Cameron, Jr.

Historic New England

Mission Statement

We save and share New England's past to engage and inform present and future generations.

Our Vision

Historic New England will be a more public institution by becoming the national model for care of regional heritage buildings, landscapes, and collections and for the sharing of these resources to benefit diverse audiences.





Short House
Newbury, MA



Seddon Tavern
Newbury, MA



Thomas Emery House
272 High Street, Newburyport, MA



Daniel Plumer House

64 Federal Street (also 53 Temple Street)
Newburyport

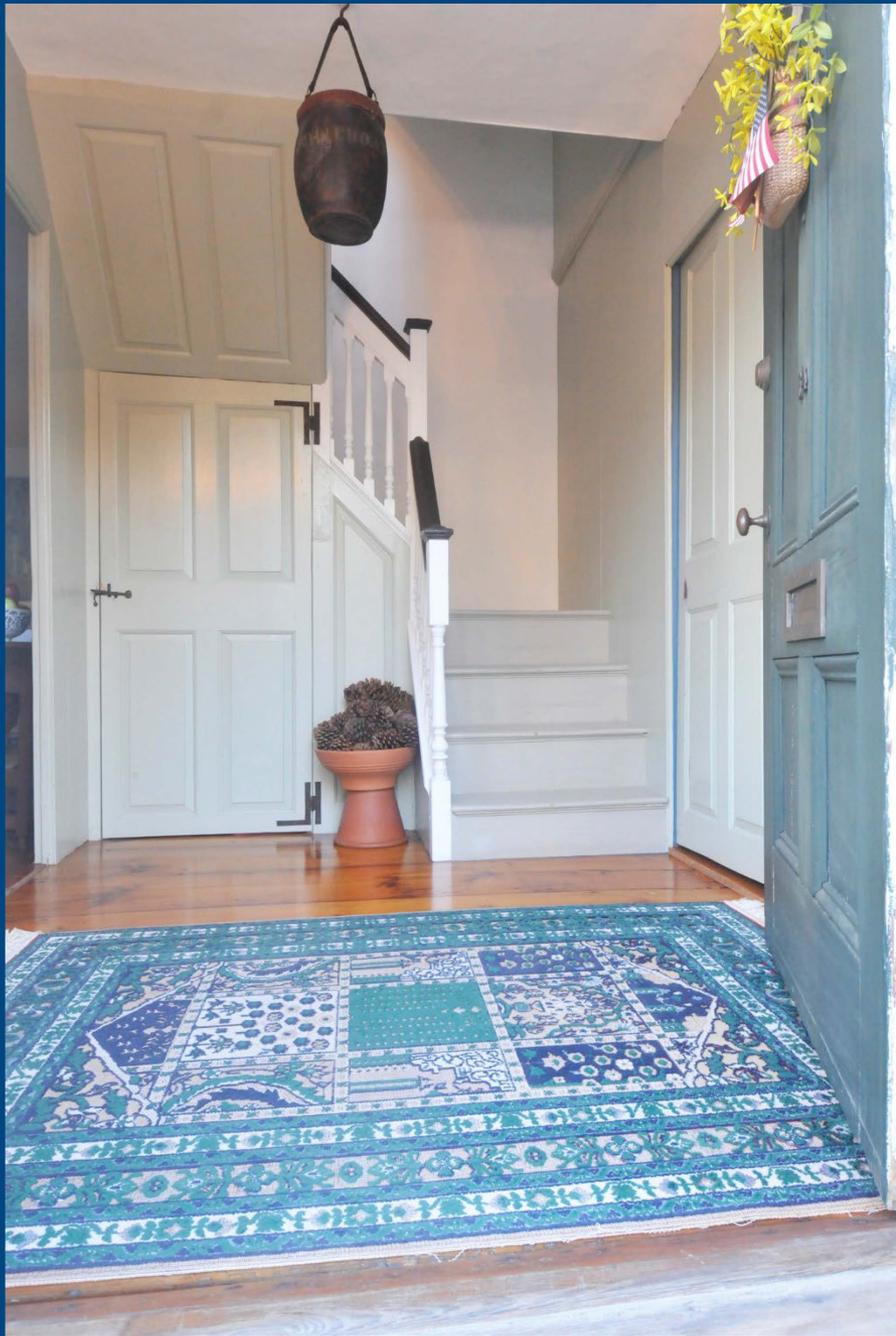


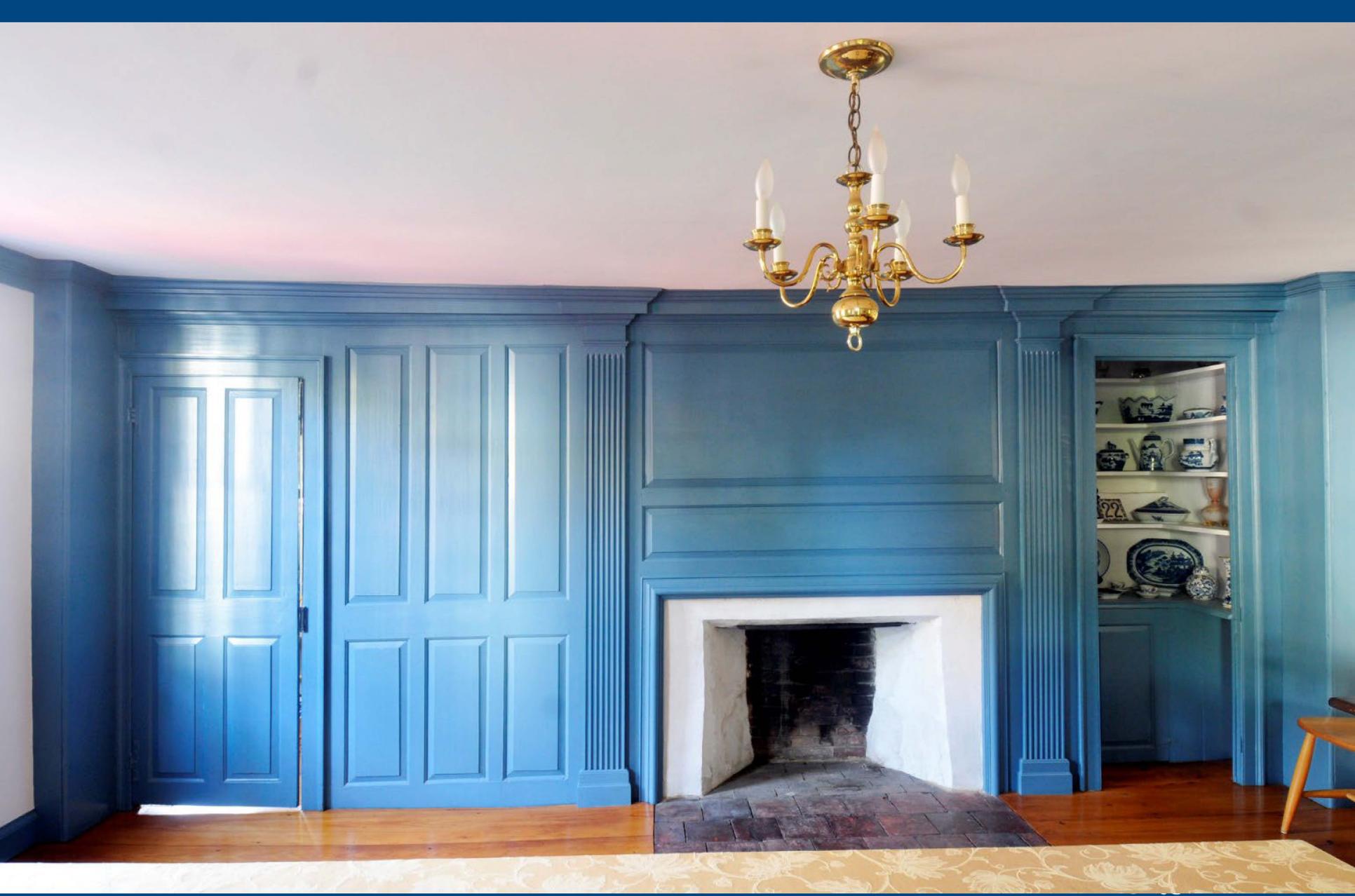




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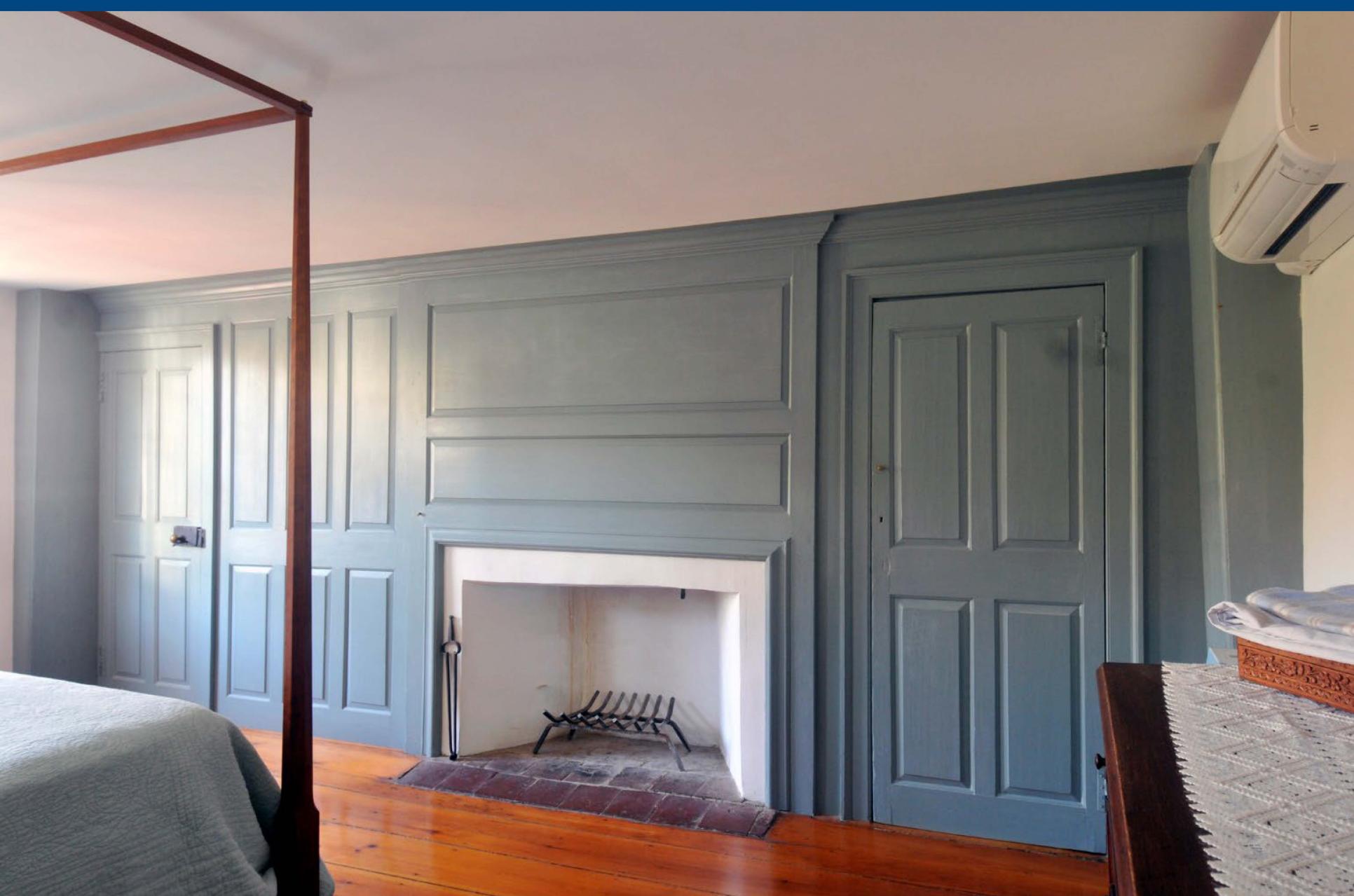






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CITY OF NEWBURYPORT
HISTORICAL COMMISSION
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400
WWW.CITYOFNEWBURYPORT.COM

27 March, 2023

To: Newburyport City Council

Re: Proposed Preservation Restriction on 64 Federal Street

Dear President Shand and Newburyport City Councilors:

The Newburyport Historical Commission (NHC) has been informed of the proposal to execute a preservation restriction on the structure or property at 64 Federal Street in Newburyport, and it is our understanding that the approval of the council is required in order for such a restriction to be made perpetual rather than having a set expiration date. The NHC has reviewed the proposal and has voted unanimously its full support it, and hopes that it will be received favorably by the council. This restriction is to be between the property owners and Historic New England, and therefore does not impose any burden, financial or otherwise, upon the City.

The structure is one of the best-preserved examples of a mid-18th century residence extant in the city. As such, it is an outstanding contributor to the architectural and cultural history of our City, harkening back to a period of prosperity enjoyed in Newburyport before the "Great Fire of 1811" and the War of 1812.

The owners have invested their own resources not only for the drafting of this legal document, but also a very considerable amount of time, effort and money, spent over many years, for the restoration and rehabilitation of the structure. The commission thanks and commends the owners for their devotion to preservation and stewardship of this tangible artifact of our past and the story it tells.

We hope the Council will agree with our assessment and vote to approve the preservation restriction.

Sincerely,

Glenn Richards, Chair
Newburyport Historical Commission
(via email)

PRESERVATION RESTRICTION AGREEMENT

SOCIETY FOR THE PRESERVATION OF NEW ENGLAND ANTIQUITIES

The Parties to this Preservation Restriction Agreement (this "Agreement") are 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 Thomas and Linda Kolterjahn, trustees of the **KOLTERJAHN FAMILY NOMINEE TRUST OF 2002 u/d/t dated May 13, 2002 and recorded with Essex South Registry of Deeds, Book 20544, Page 345** having an address at 64 Federal Street, Newburyport, Massachusetts, 01950-2802 (herein together with their heirs, successors, administrators and assigns called "Grantor").

RECITALS

Grantor is the owner in fee simple of certain property known as the Daniel Plumer House located at 64 Federal Street, Newburyport, Massachusetts, which includes certain premises consisting of approximately 3,050 square feet of land, being more particularly described in Exhibit A attached hereto and in that certain deed (the "Deed"), recorded with the Southern Essex Registry of Deeds (the "Registry") in Book 20544, Page 349 together with all improvements thereon (the "Premises"). The Premises are also shown in the photographs and diagrams attached as Exhibits B and C hereto. The building protected by this Agreement consists of the Daniel Plumer House (the "Plumer House") as labeled and more particularly shown in Exhibits B and C.

Grantee is a 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, 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.

The Daniel Plumer House is historically significant and worthy of preservation. The first recorded ownership of the house was by Daniel Plumer, a joiner. He and his family occupied the dwelling only briefly before selling it in 1777 to Edmund Swett, who is credited with the Plumer House's two major expansions. Swett built a ropewalk on the opposite side of Federal Street from the Plumer House. The ropewalk earned him a small fortune, which he enhanced through the purchase of several trading ships. Shortly after the Great Newbury Fire of 1811, Swett added the brick addition to the north elevation of the house presumably to house an office. When the War of 1812 ruined Edwin Swett, the property went to his creditors and thus began several decades of rapidly shifting multi-family occupation of the house, sometimes by tenants,

sometimes by owners and extended families. As a multi-family property, the Plumer house has also historically used 53 Temple Street as an alternative address to 64 Federal Street. The house was purchased by the current owners in 1973. In recognition of these qualities, and because of its architectural, historical, and cultural significance, the Daniel Plumer 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.

The Daniel Plumer House is comprised of a two-and-a-half-story, five-bay southeast facing main block (the "Main Block") that dates to the 1730s. Attached to the west half of the northwest elevation is a southwest facing three-bay two-story gambrel-roofed ell (the "Ell") with a separate entry that faces southwest onto Temple Street. A two-story, three-bay brick addition (the "Addition") to the original house was added to the east half of the northwest elevation at the end of the eighteenth century. Attached to the northwest elevations of the Addition and the Ell is a two story extension (the "Extension") which dates to the 1930s.

Massachusetts General Laws, Chapter 184, Sections 31-33, 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.

Grantor and Grantee 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. To that end, Grantor desires to grant to Grantee, and Grantee desires to accept, the Preservation Restrictions set forth in this Agreement, pursuant to Massachusetts General Laws, Chapter 184, Sections 31-33.

NOW, THEREFORE, in consideration of One Dollar (\$1.00), receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, release and convey to Grantee, its successors and assigns this Preservation Restriction Agreement in perpetuity, in and to the Premises, as follows.

1. RECITALS, DEFINITIONS AND EXHIBITS.

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

1.2 Definitions.

1.2.1 "Addition." "Addition" shall mean and include all construction attached to the Plumer House in any way, and any subsequent construction that attaches to any such addition, including, without limitation, a deck, porch, ramp, stair or landing.

1.2.2 "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).

1.2.3 "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 elevations of the Plumer House facing Federal Street shall be called the south facade, the rear elevations of the Plumer House shall be called the north elevations, and the other elevations of the Plumer House shall be called the east and west elevations, based upon such elevation's orientation relative to the south facade.

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

1.3 Exhibits.

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

1.3.2 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 6 exterior photographs taken by Andrew Barr on October 20 to October 22, 2021, and 47 interior photographs taken by Andrew Barr on October 20 to October 22, 2023, 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 Plumer House 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. EXTERIOR RESTRICTIONS. Grantor 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 Plumer House 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:

- 2.1 all facades and elevations (Exhibit B, negatives 56751-A through 56756-A);
- 2.2 the massing, profile and materials of the roofs; skylights, dormers or other roof additions being expressly forbidden (Exhibit B, negatives 56751-A through 56756-A);
- 2.3 the chimneys of the Main Block and Rear Ell in their entirety (Exhibit B, negatives 56751-A, 56753-A through 56756-A);
- 2.4 all foundations (Exhibit B, negatives 56751-A through 56756-A);

Site:

- 2.5 the granite step located at the Northeast Ell entrance (Exhibit B, negatives 56755-A through 56756-A).

3. **INTERIOR RESTRICTIONS.** Grantor 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 Plumer House as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit B:

Main Block and Rear Ells:

- 3.1 at the Main Block and Rear Ells and Extension, 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 56761-A, 56762-A, 56766-A, 56768-A, 56772-A through 56775-A, 56777-A through 56781-A, 56784-A through 56789-A, 56791-A through 56803-A);
- 3.2 at the Main Block and Rear Ells, the space configuration and door locations of all rooms, closets, halls and stairhalls at all stories, including the attic chamber, excepting the remainder of the attic, the northeast chamber, north bathroom, west bathroom, kitchen, and cellar (Exhibit B, negatives 56757-A through 56757-A 56781-A, 56783-A through 56790-A, 56796-A, 56802-A, 56803-A);
- 3.3 at the Main Block and Rear Ells, all hardwood and softwood floors of all rooms, closets, halls and stairhalls at all stories, including the attic, excepting the north bathroom, west bathroom, kitchen, and cellar (Exhibit B, negatives 56757-A, 56759-A through 56763-A, 56765-A through 56790-A, 56796-A through 56803-A);

- 3.4 at the Main Block and Rear Ells, all plaster walls and ceilings of all rooms, closets, halls and stairhalls at all stories, including the attic chamber, excepting the remainder of the attic, the northeast chamber, north bathroom, west bathroom, kitchen, and cellar (Exhibit B, negatives 56757-A through 56763-A, 56765-A through 56781-A, 56783-A through 56790-A, 56802-A, 56803-A);
 - 3.5 at the Main Block and Rear Ells, all woodwork of all rooms, closets, halls and stairhalls at all stories, 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, including the attic chamber, excepting the remainder of the attic, the northeast chamber, north bathroom, west bathroom, kitchen, and cellar (Exhibit B, negatives 56757-A through 56781-A, 56783-A through 56790-A, 56802-A, 56803-A);
 - 3.6 at the Main Block and Rear Ells, all fireplaces and hearths in their entirety, including any attached iron or brass hardware, whether decorative or functional (Exhibit B, negatives 56760-A, 56764-A, 56765-A, 56772-A, 56773-A, 56778-A, 56780-A, 56783-A, 56788-A, 56802-A);
 - 3.7 at the Main Block and Rear Ells, all door and window hardware at all rooms, closets, halls and stairhalls at all stories, including the attic and including the rim lock and key in the southwest chamber, excluding the cellar (Exhibit B, negatives 56757-A through 56762-A, 56764-A through 56767-A, 56771-A through 56773-A, 56776-A, 56778-A through 56780-A, 56783-A through 56784-A, 56786-A through 56790-A, 56802-A, 56803-A)
 - 3.9 at the Main Block, the iron hook at the ceiling of the Main Block's south entrance, (Exhibit B, negative 56757-A);
 - 3.10 at the Main Block, the paneled fireplace surround at the southwest wall of the kitchen and the eighteenth century door and associated wrought iron hardware at the southeast wall of the kitchen (Exhibit B, negative 56764-A);
 - 3.11 at the Main Block, the built-in shelving at the southeast parlor closet (Exhibit B, negative 56760-A).
4. **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:
- 4.1 installation of three-tab black or charcoal asphalt shingle or wood shingle roof coverings on the roofs of the Plumer House;

- 4.2 installation of screens, storm windows, storm doors or window-mounted air-conditioning units;
- 4.3 installation of insulation at the attic floor or in the cellar, provided that no insulation shall be introduced in any way into any vertical wall cavities;
- 4.4 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, and protected lighting fixtures are not altered;
- 4.5 replacement of existing plumbing lines and plumbing fixtures;
- 4.6 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;
- 4.7 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;
- 4.8 replacement of broken window glass;
- 4.9 interior wallpapering, provided such papering shall not dislodge, damage or destroy protected woodwork, paint, plaster, floor or hardware as identified in sections 3.4 and 3.5 above; and
- 4.11 removal of the protected built-in shelving at the southeast parlor closet, provided it is labelled and stored in a safe, dry location on site.
- 4.10 installation of a chair lift between the first and second stories at the east entry stair, subject to review of structural soundness and attachment methods.

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

- 5.1 **Additions.** No additions to the Plumer House shall be erected hereafter without prior written approval of Grantee.
- 5.2 **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.
- 5.3 **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 Main Block, Northeast Ell or Northwest Ell is prohibited.

- 5.4 Topographical Changes and Landscaping.** In order to protect the historic setting and Protected Features of the Plumer House, 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, and no trees, hedges, shrubs, or other vegetation greater than twenty-five feet in height, shall be removed from the Premises or otherwise destroyed, provided that this Subsection shall not be deemed to prohibit improvements and activities approved under Subsection 5.1 or 5.2, if any, or permitted under Subsection 5.6. The provisions of this Subsection 5.4 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 5.11.
- 5.5 Demolition.** Grantor shall not permit or allow to occur, either through positive action or neglect, demolition of the Plumer House.
- 5.6 Relocation.** No portion of the Plumer House shall be moved from its present location unless such moving is required by a taking through eminent domain.
- 5.7 Signs.** No signs, billboards or other advertising displays shall be placed on, painted onto or affixed to the Plumer House 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, or from affixing temporary signs to any storm door, provided such signs are in accordance with local law.
- 5.8 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 Plumer House and surrounding landscape. Without limiting the generality of the foregoing, the Premises may be used for a two-family residence, which may include a portion of the Premises for a home professional office for a member of the family in residence, 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.

5.9 Maintenance.

5.9.1 General. Grantor covenants at all times to maintain the Plumer House 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.

5.9.2 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 Plumer House. 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.

5.10 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 Plumer House or any protected element thereof, shall be undertaken without the prior written approval of Grantee.

5.11 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.

6. **INSURANCE.**

- 6.1 **Property.** Grantor, at its expense, shall keep the Plumer House and the Landscape Features insured for the full replacement value against loss from all perils commonly covered 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.
- 6.2 **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 Plumer House 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 6.2 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 6.2:

Liability. Grantor, at its expense, shall carry and maintain at all times commercial general liability coverage identifying the Plumer House 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 Plumer House 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 Plumer House 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 6.2 shall name Grantee as an additional insured.]

- 6.3 **Other Requirements.** Every policy required pursuant to this Section 6 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.

6.4 Changes in Practice. Grantee reserves the right to change the coverage requirements provided under this Section 6 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.

7. CASUALTY DAMAGE.

7.1 Notice. In the event that the Plumer House or any portion thereof is damaged or destroyed, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, and such notification shall identify what, if any, emergency protective work has already been completed.

7.2 Restoration. 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 12 of this Agreement for Grantee's approval to restore the Plumer House 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 Plumer House in accordance with such proposal as Grantee has approved.

7.3 Substantial Casualty. Notwithstanding any other provision of this Agreement to the contrary, in the event of substantial casualty damage to the Plumer House, Grantor may request the approval of Grantee not to restore the Plumer House 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 Plumer House pursuant to this Agreement. In the event of such approval not to restore, before any remaining portion of the Plumer House 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.

7.4 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).

8. 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.

9. **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.
10. **INDEMNIFICATION.** Grantor shall indemnify, defend with counsel acceptable to Grantee, and hold Grantee harmless from and against any claims, liability, costs, attorneys' fees, judgments or expenses to Grantee or any officer, employee, agent or independent contractor of Grantee resulting from actions or claims of any nature by third parties arising in connection with or out of this Agreement, including without limitation claims related to the presence of oil or hazardous substances.
11. **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.
12. **WRITTEN APPROVAL.**
 - 12.1 **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

12. 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.

12.2 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 4. 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 12.1.

12.3 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 12.3 shall not apply to any proposed activity that is prohibited by the terms of this Agreement.

12.4 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.

13. DISPUTE RESOLUTION.

13.1 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 13 shall not, however, limit the provisions of Section 14, 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 14.2 hereof.

13.2 Appointment and Procedure. In the arbitration of any dispute involving Sections 2, 3, 4, 5, 7, 8 or 16.1 hereof, all arbiters shall have a bachelor's or graduate degree in architecture, art history or historic preservation and at least ten 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 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 13.2, if Grantor shall fail to name a qualified arbiter in the time allotted, there will be only one arbiter, appointed by Grantee.

13.3 Communications. The provisions of this Subsection 13.3 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 13.1, 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.

14. **ENFORCEMENT.**

- 14.1 **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.
- 14.2 **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.
- 14.3 **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 14.3, 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 14.3, 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.

- 14.4 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.
- 14.5 Mortgage Protection.** Any lien which may arise pursuant to this Section 14 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.
- 14.6 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 12.2, for an activity described under Section 4 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.

14.7 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.

15. 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.

16. TRANSFERS.

- 16.1 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 Plumer House 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."
- 16.2 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.
- 16.3 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.
- 16.4 Restrictions Run with the Land.** Notwithstanding anything to the contrary contained in Section 15 above, the burden of this Agreement and the rights and obligations created or imposed by this Agreement shall be in effect in perpetuity. Grantor agrees that this Agreement shall constitute a binding servitude and 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.

- 16.5 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.
- 17. 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 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.
- 18. SUBORDINATION OF PRIOR INTERESTS.**
- 18.1 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 as listed in Exhibit A-1 attached hereto. In order to ensure that the conservation purposes associated with this Agreement are enforced in perpetuity and to bind all holders of those instruments, if any, listed in Exhibit A-1 hereof to the terms of this Agreement notwithstanding any inconsistent provision of any such instrument, or should any such holder exercise any right it may possess pursuant to such instrument to take possession of, control or foreclose on the Premises, attached hereto and made a part hereof is subordination of such interest, if any, to this Agreement, pursuant to I.R.C. Section 170(h) (5) and Treas. Reg. Section 1.170A-14 (1986).
- 18.2 Homestead.** Each of the individuals who constitute Grantor hereby subordinates all of his or her rights of homestead and of any and all of his or her 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 Thomas and Linda Kolterjahn and the Kolterjahn Family Nominee Trust.

19. **MISCELLANEOUS.** The following provisions in this Section 19 shall govern the effectiveness, interpretation and duration of this Agreement:

19.1 **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.

19.2 **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.

19.3 **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.

19.4 **Amendment.** For purposes of furthering the preservation of the Plumer House 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.

19.5 **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.

- 19.6 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.
- 19.7 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.
- 19.8 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.
- 19.9 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.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this _____ day of _____, 2023.

WITNESS

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

Vin Cipolla, President and CEO

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this ___ day of _____, 2023, before me, the undersigned notary public, personally appeared Vin Cipolla, 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:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this _____ day of _____, 2023.

WITNESS

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

George F. Fiske, Jr., Treasurer

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

On this ___ day of _____, 2023, before me, the undersigned notary public, personally appeared George F. Fiske, Jr., 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:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this _____ day of _____, 2023.

WITNESS

GRANTOR

Thomas Kolterjahn as Trustee of the
Kolterjahn Family Nominee Trust of 2002

COMMONWEALTH OF MASSACHUSETTS

County of Essex, ss.

On this ___ day of _____, 2023, before me, the undersigned notary public, personally appeared Thomas Kolterjahn, 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:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this _____ day of _____, 2023.

WITNESS

GRANTOR

Linda Kolterjahn as Trustee of the
Kolterjahn Family Nominee Trust of 2002

COMMONWEALTH OF MASSACHUSETTS

County of Essex, ss.

On this ___ day of _____, 2023, before me, the undersigned notary public, personally appeared Linda Kolterjahn, 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

**Daniel Plumer House
64 Federal Street
Newburyport, Massachusetts**

The undersigned Mayor of the City of Newburyport, Massachusetts hereby certifies that the foregoing Preservation Restrictions on the premises, with all improvements there, more particularly described in that certain deed recorded with the Southern Essex Registry of Deeds in Book 20544, Page 349, known as the Daniel Plumer House, so called, located at 64 Federal Street, Newburyport, Massachusetts and owned by Thomas and Linda Kolterjahn as Trustees of the Kolterjahn Family Nominee Trust of 2002 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.

Sean Reardon, Mayor

COMMONWEALTH OF MASSACHUSETTS

County of Essex, ss.

On this ___ day of _____, 2023, before me, the undersigned notary public, personally appeared Sean Reardon, Mayor, 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 Mayor of the City of Newburyport.

Notary Public

My commission expires:

APPROVAL OF PRESERVATION RESTRICTIONS

Pursuant to General Laws, Chapter 184, Section 32

**Daniel Plumer House
64 Federal Street
Newburyport, Massachusetts**

The undersigned Clerk of the City of Newburyport, Massachusetts, hereby certifies that the foregoing Preservation Restrictions granted by Thomas and Linda Kolterjahn as Trustees of the Kolterjahn Family Nominee Trust of 2002 to the Society for the Preservation of New England Antiquities D.B.A. Historic New England on the Daniel Plumer House located at 64 Federal Street, Newburyport, Massachusetts, consisting of approximately 0.067 acres of land, with all improvements thereon, more particularly described in that certain deed recorded with the Southern Essex Registry of Deeds in Book 20544, Page 349, 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 _____, _____, 2023, 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 _____, 2023, 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 he 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

**DANIEL PLUMER HOUSE
64 FEDERAL STREET
NEWBURYPORT, MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission, hereby certifies that the foregoing preservation restrictions on the Daniel Plumer House located at 64 Federal 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 _____, 2023, 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:

EXHIBIT A

DESCRIPTIONS OF PREMISES

A certain tract or parcel of land, with any improvements thereon situate in the City of Newburyport, Essex County, Commonwealth of Massachusetts, more particularly bounded and described as follows:

Commencing at the Easterly comer thereof on Federal Street by land now or formerly of Hatch; thence running

- | | |
|---------------|---|
| SOUTHWESTERLY | by said Federal Street, 42 feet, 9 inches to Temple Street; thence |
| NORTHWESTERLY | by said Temple Street, 47 feet, 4 inches to an angle; thence continuing |
| NORTHWESTERLY | by said Temple Street, 34 feet, 11 inches to a division fence |
| NORTHEASTERLY | by land now or formerly of Mary E. Stickney; thence |
| SOUTHEASTERLY | by said division fence and the last mentioned land, 32 feet to land now or formerly of Hatch aforesaid; thence |
| NORTHEASTERLY | by said land of Hatch 28 feet, 2 inches to a comer; thence |
| SOUTHEASTERLY | by said land of Hatch 9 feet, 3 inches to a comer; and Thence again by said land of Hatch, 42 feet, 7 inches, to Federal Street and the point of beginning. |

Containing three thousand fifty (3,050) square feet of land more or less. Meaning and intending to describe the same premises conveyed to The Kolterjahn Family Nominee Trust of 2002 by deed of Thomas W. Kolterjahn and Linda S. Kolterjahn, dated April 8, 2003 and recorded in the Essex South District Registry of Deeds at Book 20544, Page 349.

EXHIBIT A-1
MORTGAGES

Premises is subject to a certain Mortgage dated June 4, 2014 and recorded at the Essex South Registry of Deeds, on June 9, 2014 at Book 33328, page 381. The holder of this Mortgage, Newburyport Institution for Savings, has subordinated its interest to this agreement through a subordination and assent agreement, dated November 30, 2022, which is attached as Exhibit E.

EXHIBIT B

PHOTOGRAPHER'S AFFIDAVIT

Andrew Barr, being first duly sworn, states on oath as follows:

1. This affidavit is attached to a set of fifty-three (53) photographs printed from original 4x5 negatives developed from the film exposed by me on October 20, 21, and 22, 2021. Each photograph bears a letter-number symbol in the lower left hand corner on the reverse side, Historic New England negative numbers 56751-A to 56803-A.
2. Each such exposure was made with a Walker Titan XL 4 x 5 technical camera with no filter, using Ilford HP5 400 film at normal exposure and shutter speed settings.
3. Each such negative was developed by William Harting of Plymouth, MA in a normal manner without manipulation. No negative was created by more than one exposure and each such negative was delivered to Historic New England for permanent safekeeping.
4. Manufacturers' specifications and recommendations were followed with respect to all photographic materials used, with respect to film exposure, negative developing, photograph printing, and with respect to the care and maintenance of all such materials and final products.

FURTHER AFFIANT SAYETH NOT.

2-11-22
Date

Andrew Barr
Andrew Barr

On this 11 day of Feb., 2022, before me, the undersigned notary public, personally appeared Andrew Barr, proved to me through satisfactory evidence of identification, which were a drivers license, 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.

Cheryl A. Brownell
Notary Public

My commission expires: 12/15/2028



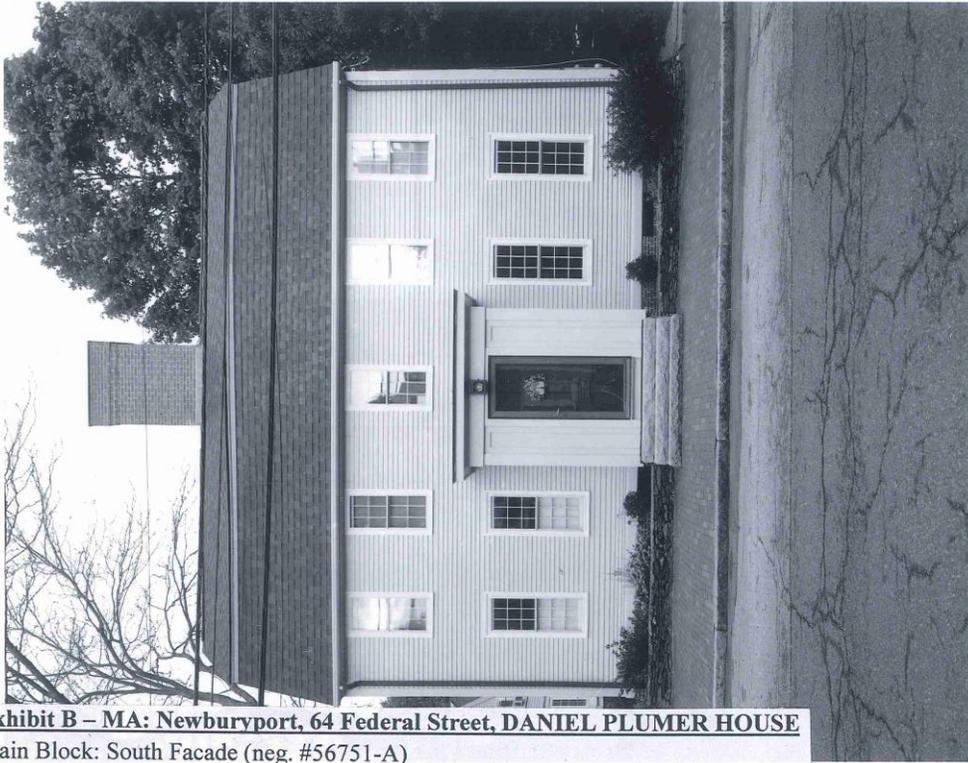


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: South Facade (neg. #56751-A)

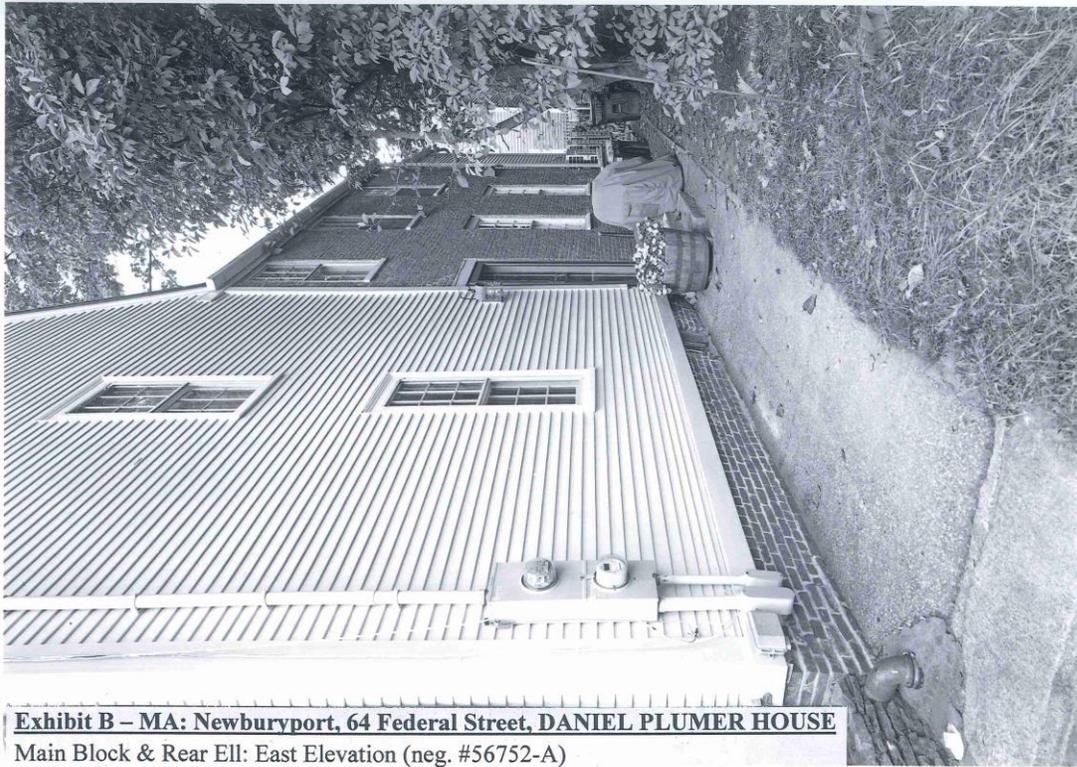


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block & Rear Ell: East Elevation (neg. #56752-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: East Elevation (neg. #56753-A)

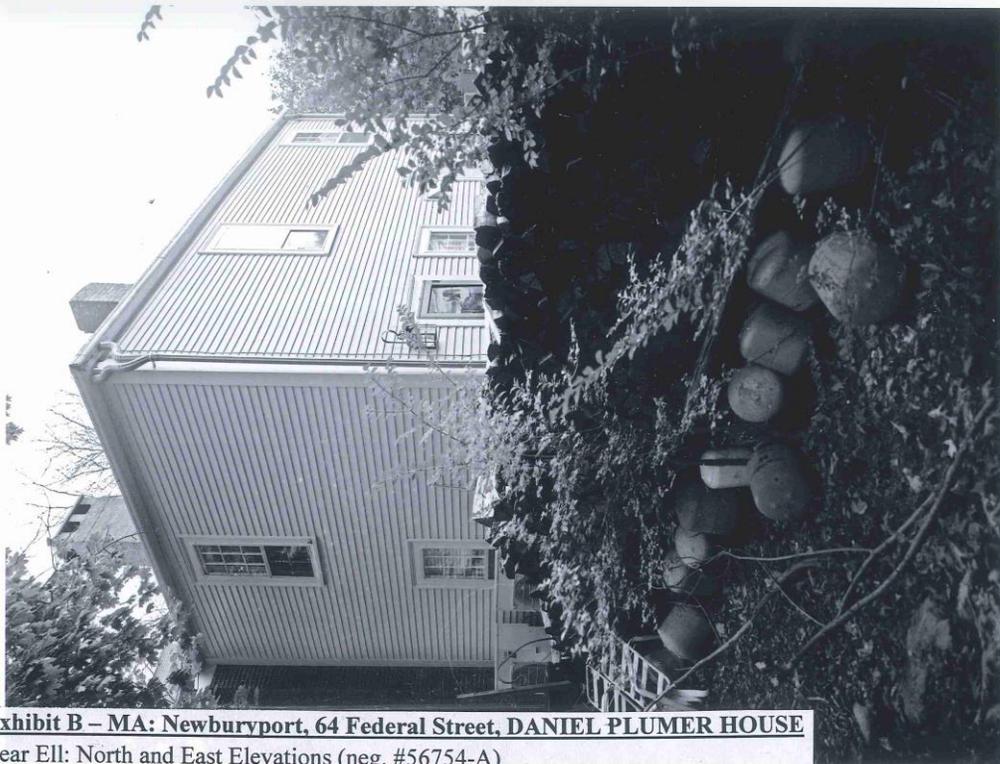


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: North and East Elevations (neg. #56754-A)

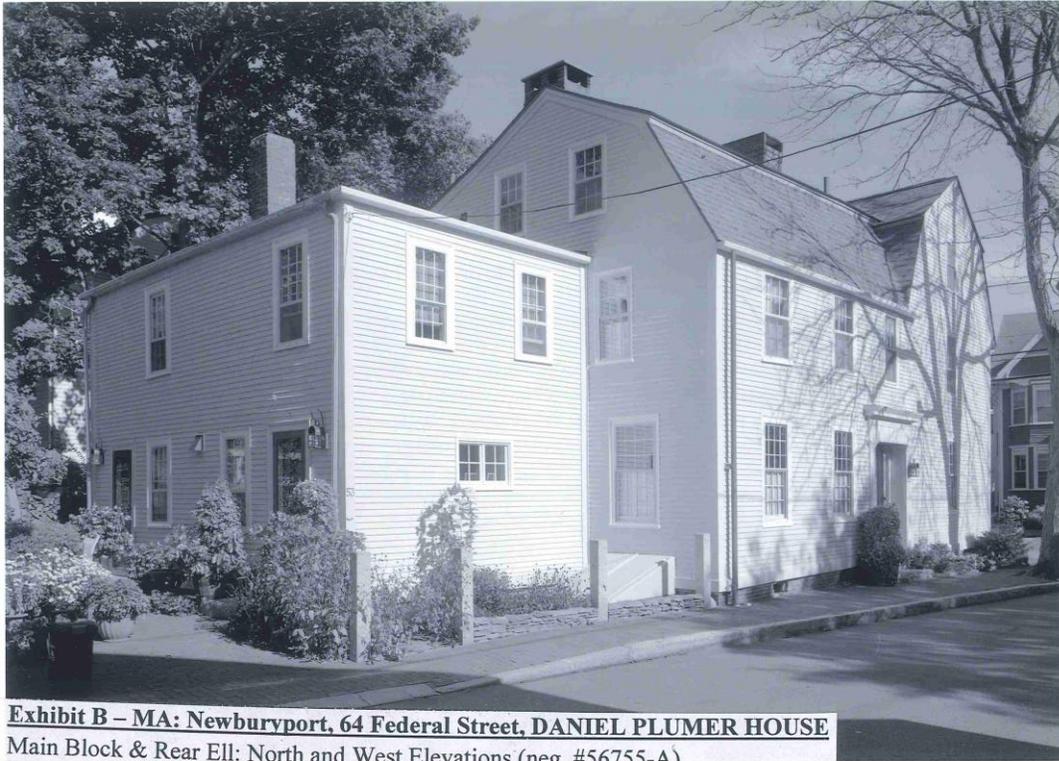


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block & Rear Ell: North and West Elevations (neg. #56755-A)

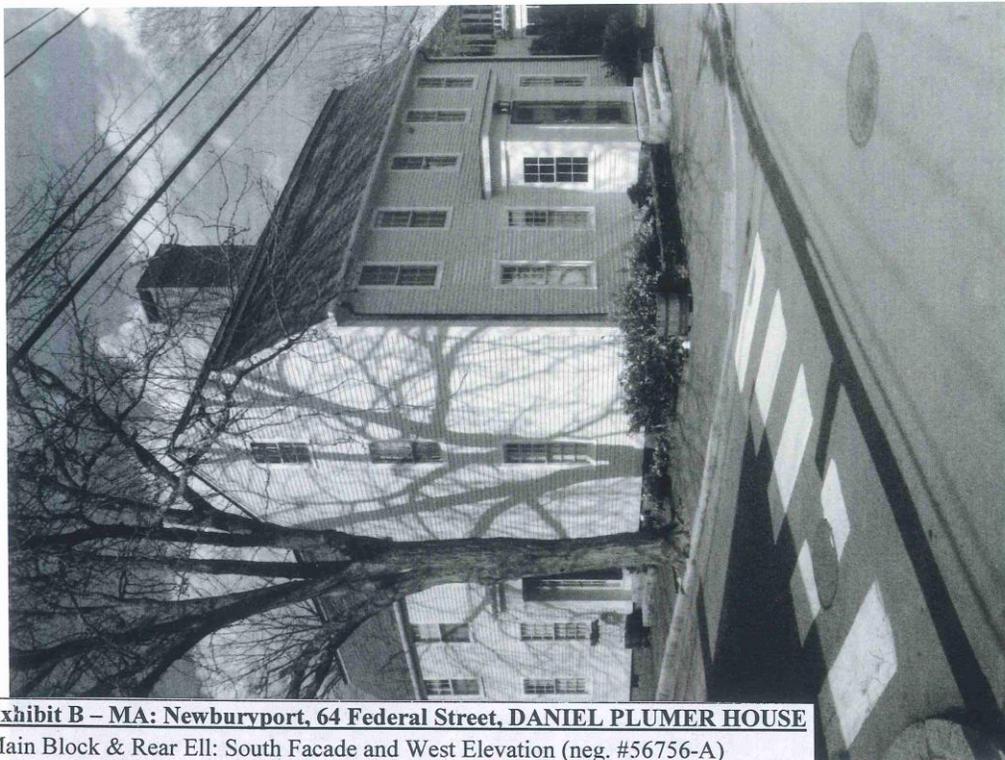


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block & Rear Ell: South Facade and West Elevation (neg. #56756-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: South Entry Hall – Looking Northwest (neg. #56757-A)

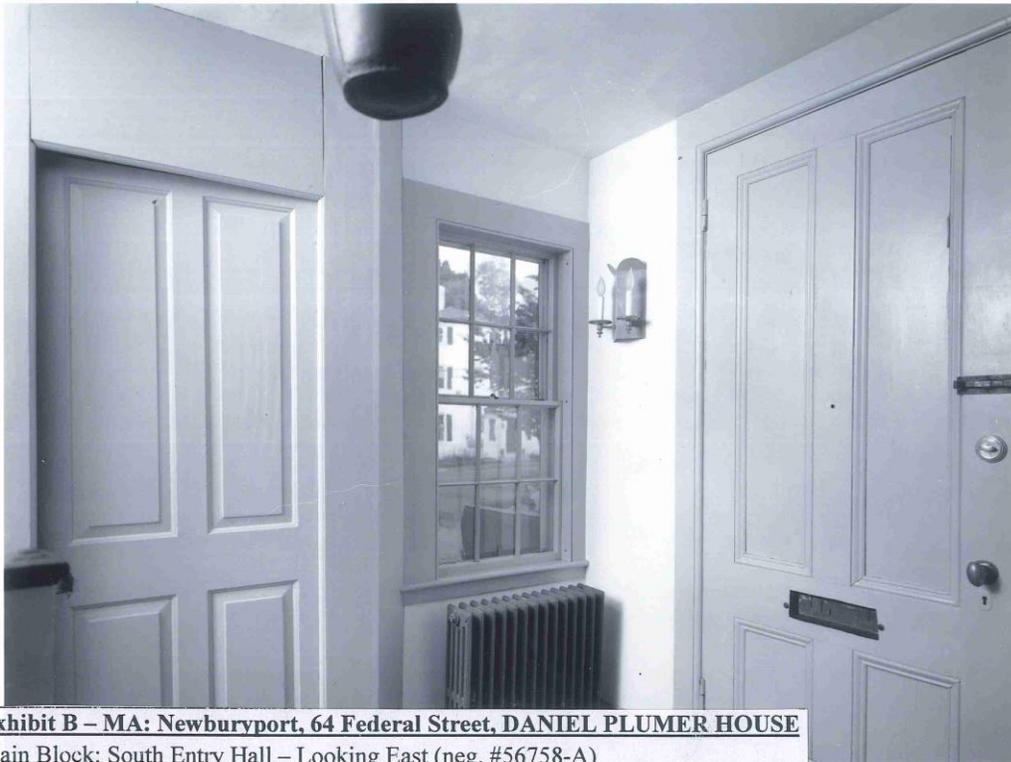


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: South Entry Hall – Looking East (neg. #56758-A)

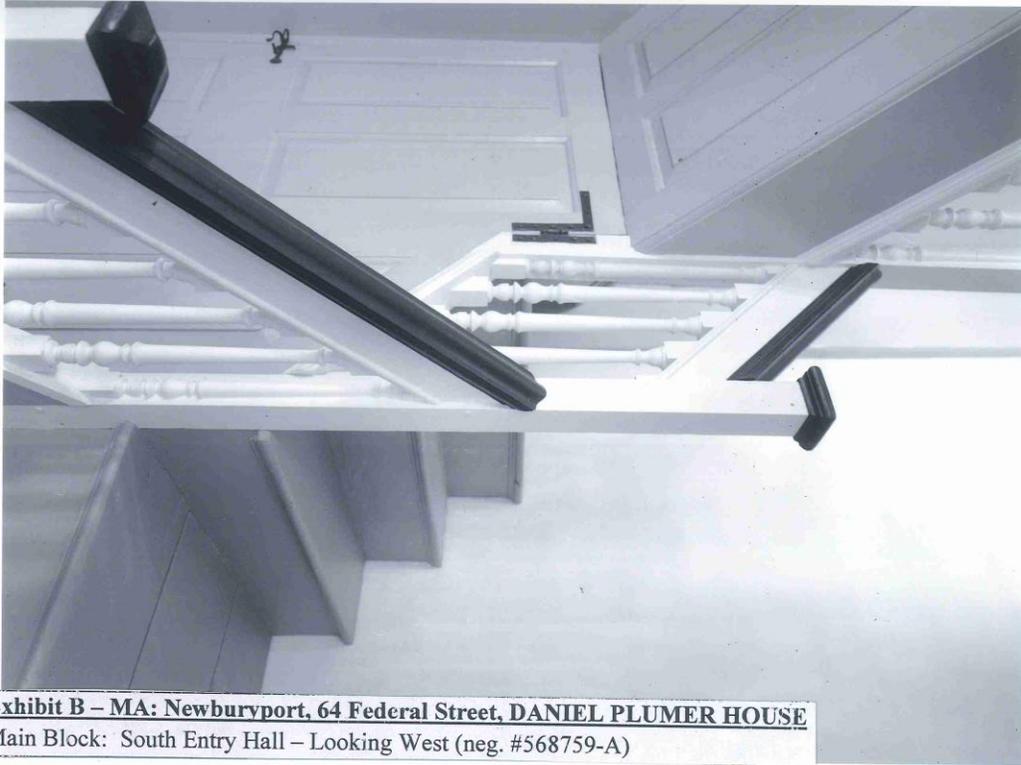


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: South Entry Hall – Looking West (neg. #568759-A)

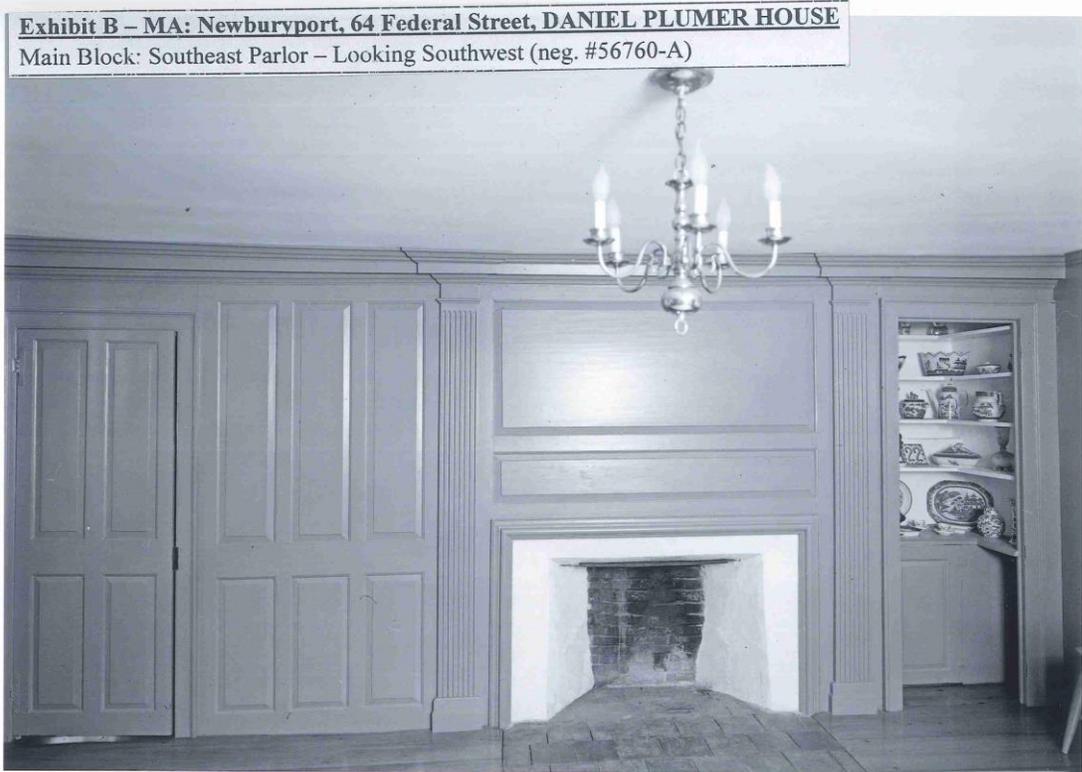


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southeast Parlor – Looking Southwest (neg. #56760-A)

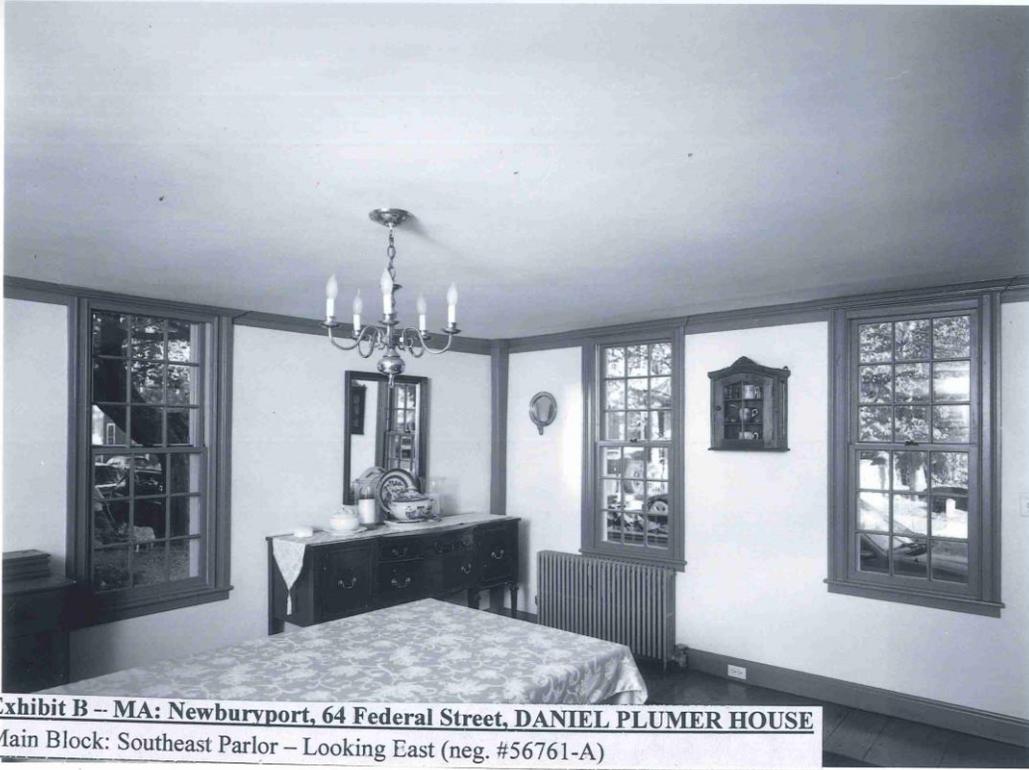


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southeast Parlor – Looking East (neg. #56761-A)

Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southeast Parlor – Looking North (neg. #56762-A)



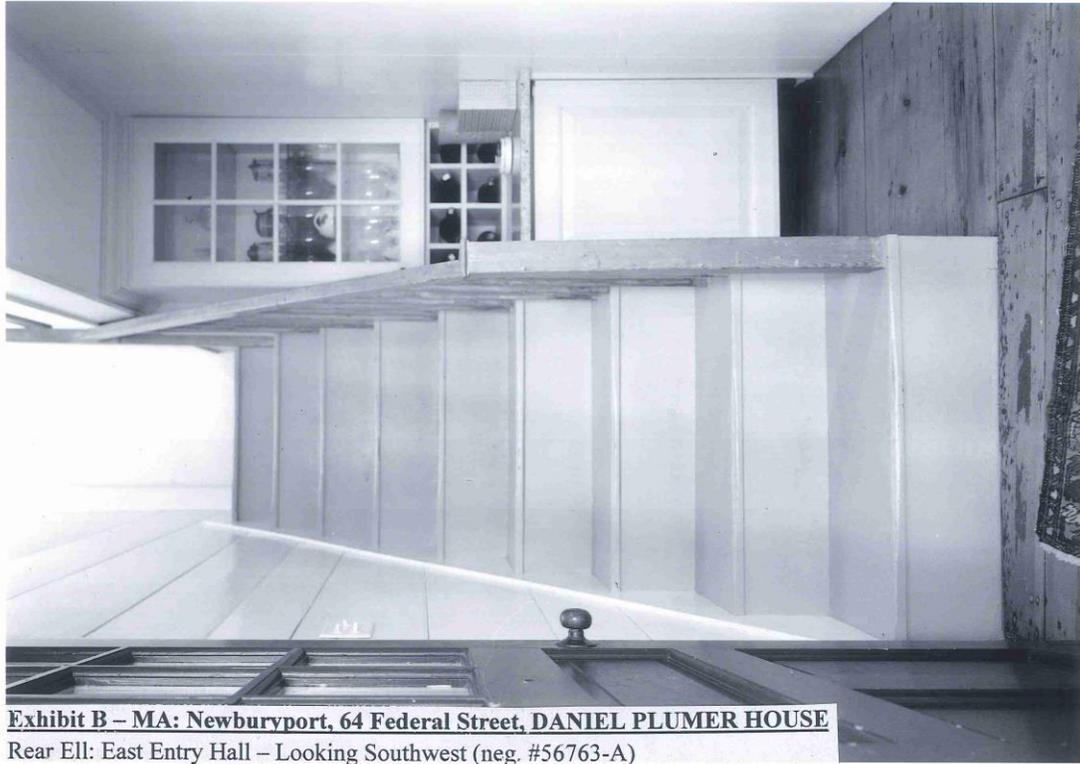


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: East Entry Hall – Looking Southwest (neg. #56763-A)

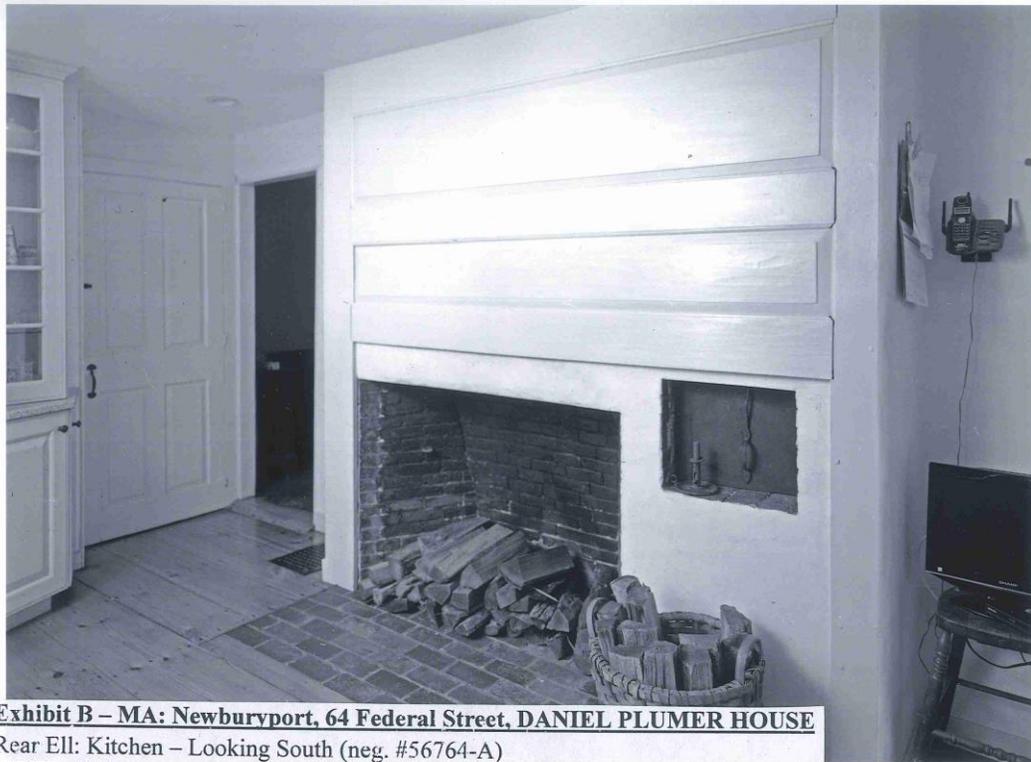


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Kitchen – Looking South (neg. #56764-A)

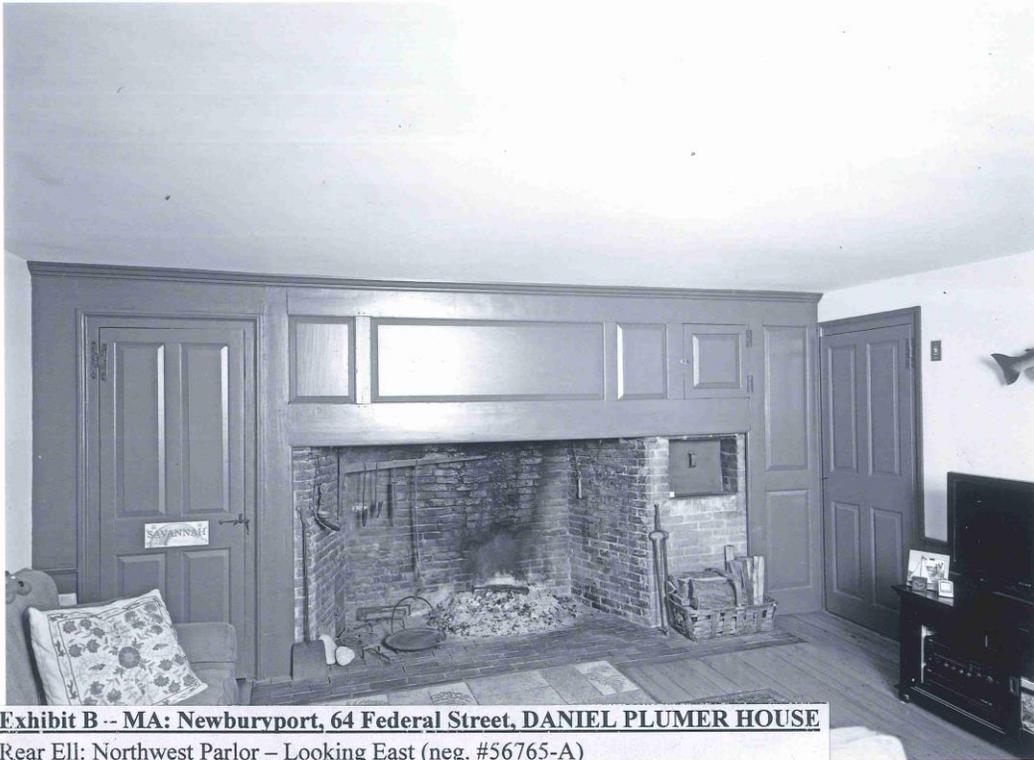


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Northwest Parlor – Looking East (neg. #56765-A)

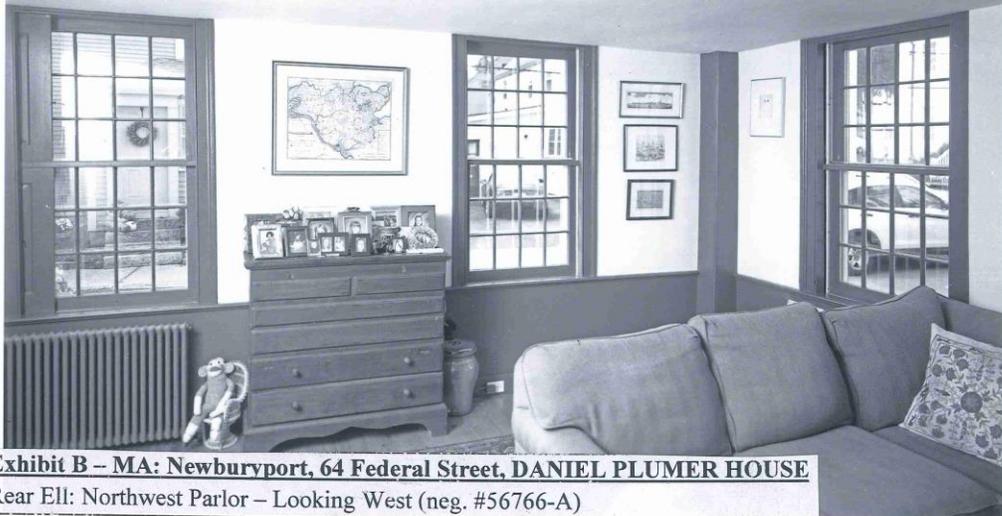


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Northwest Parlor – Looking West (neg. #56766-A)

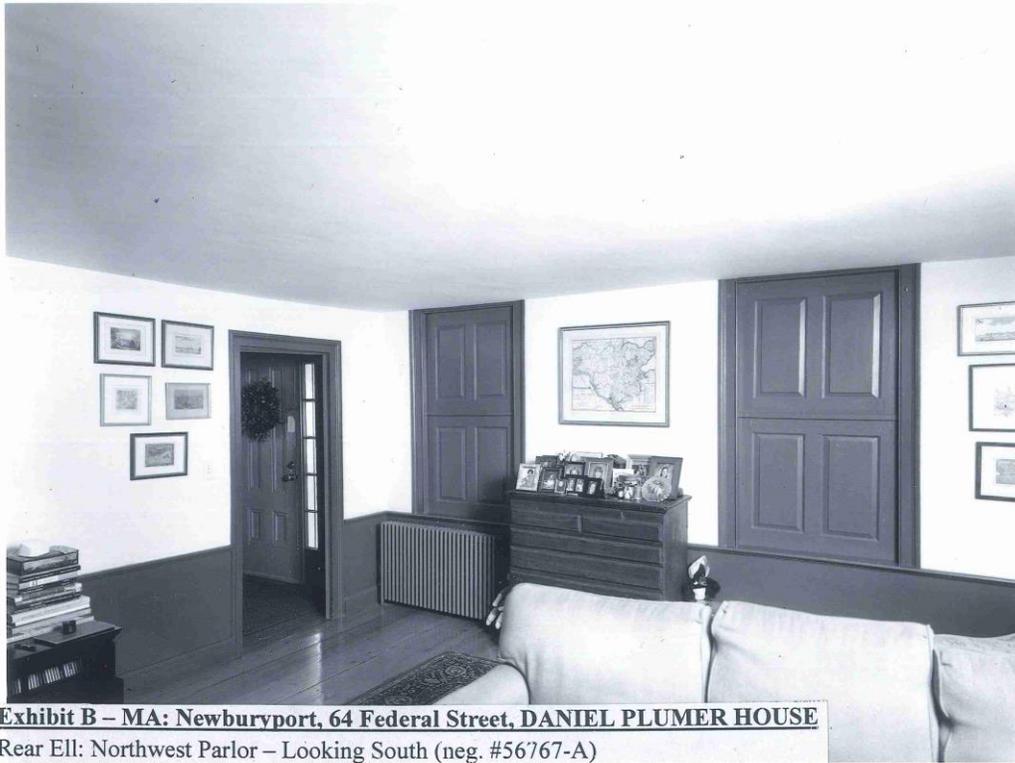


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Northwest Parlor – Looking South (neg. #56767-A)

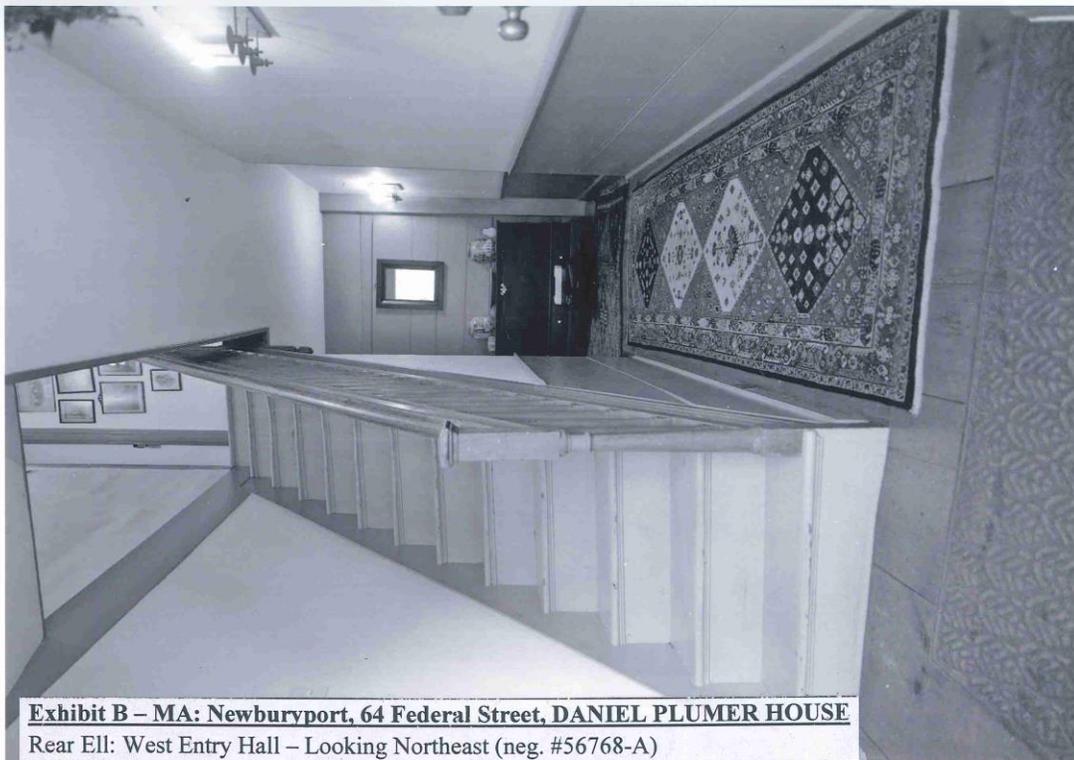


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: West Entry Hall – Looking Northeast (neg. #56768-A)

Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: West Entry Hall – Looking East (neg. #56769-A)

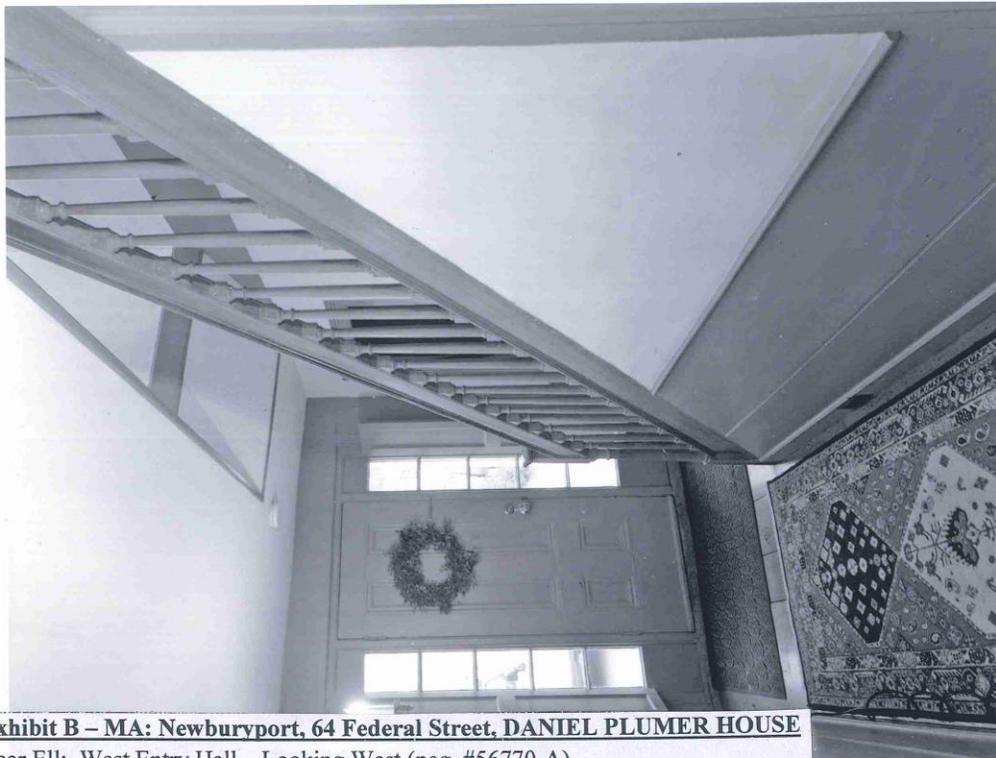
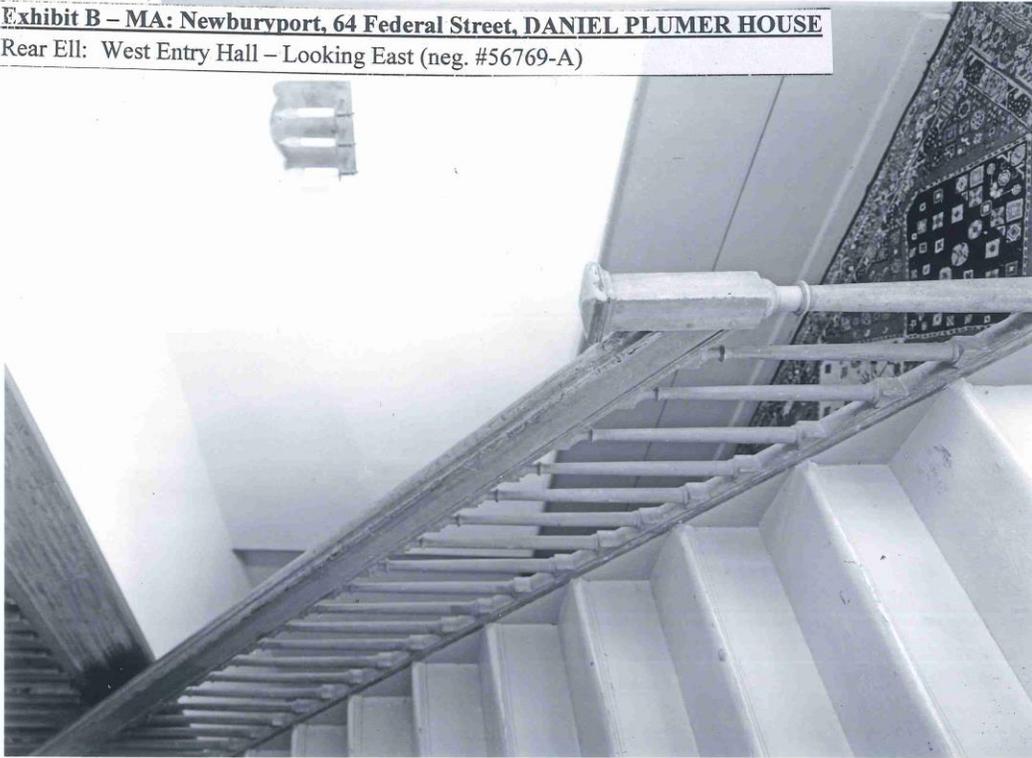


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: West Entry Hall – Looking West (neg. #56770-A)

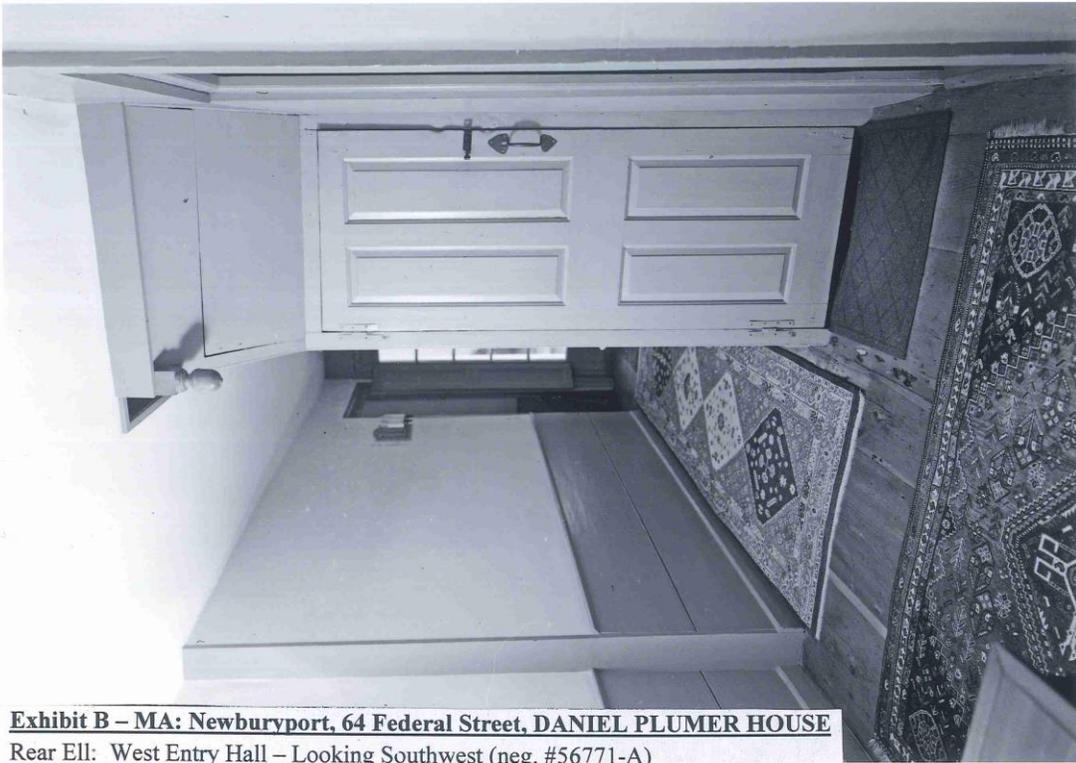


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: West Entry Hall – Looking Southwest (neg. #56771-A)

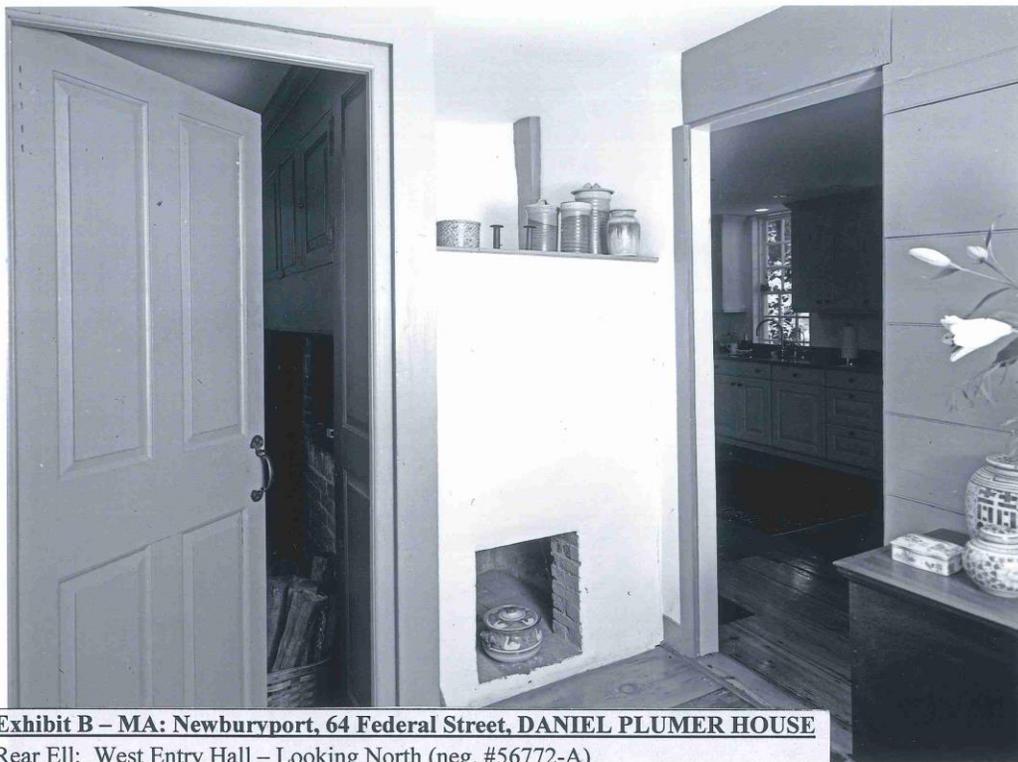


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: West Entry Hall – Looking North (neg. #56772-A)

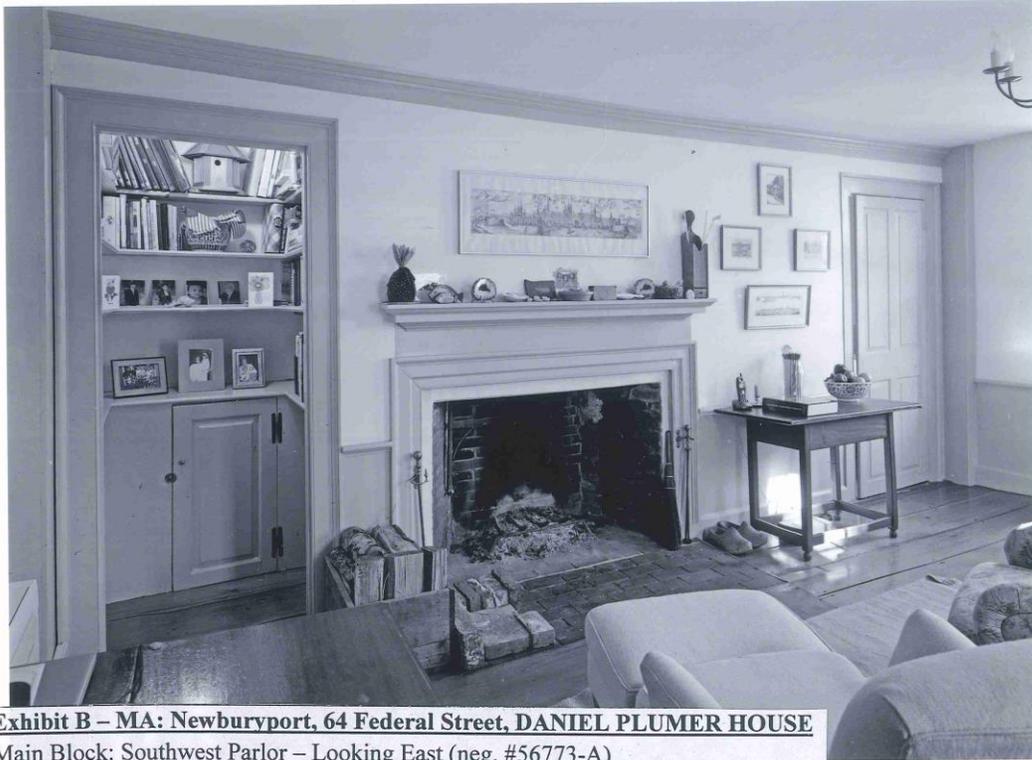


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southwest Parlor – Looking East (neg. #56773-A)

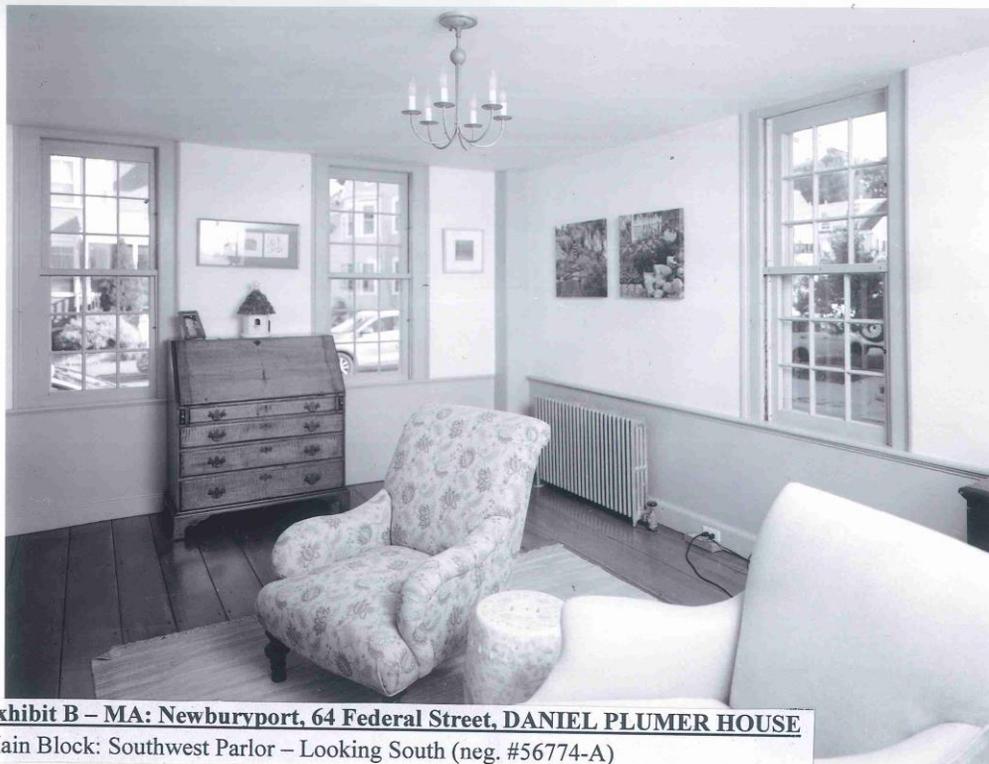


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southwest Parlor – Looking South (neg. #56774-A)

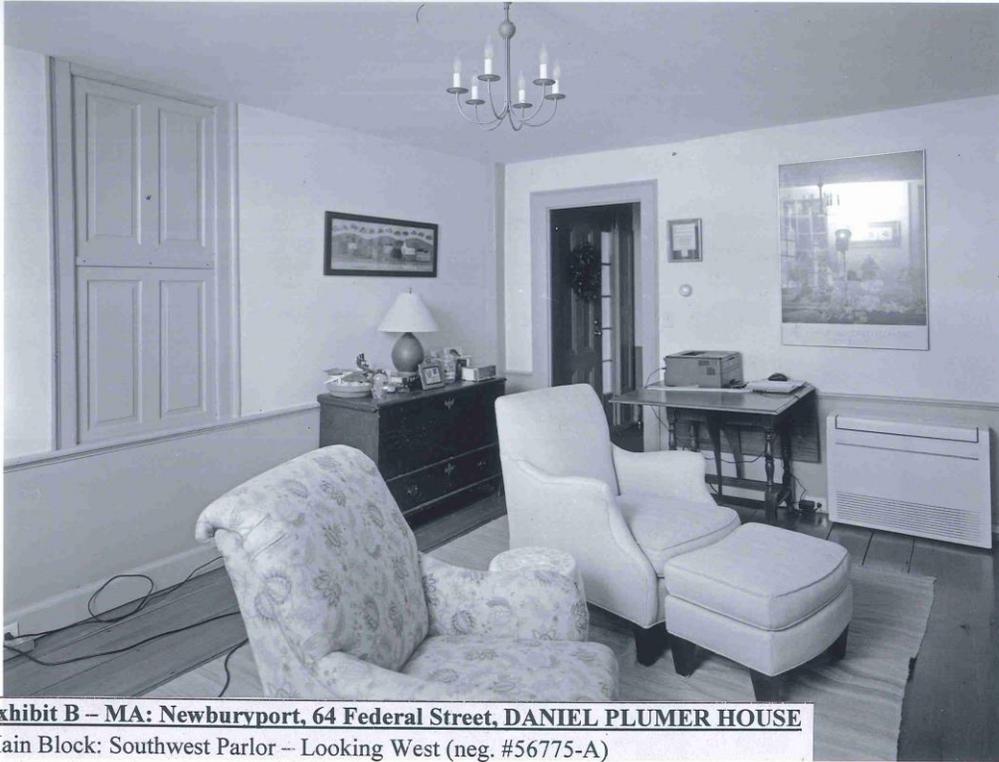


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southwest Parlor – Looking West (neg. #56775-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: South Stairhall – Looking North (neg. #56776-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: South Stairhall – Looking West (neg. #56777-A)

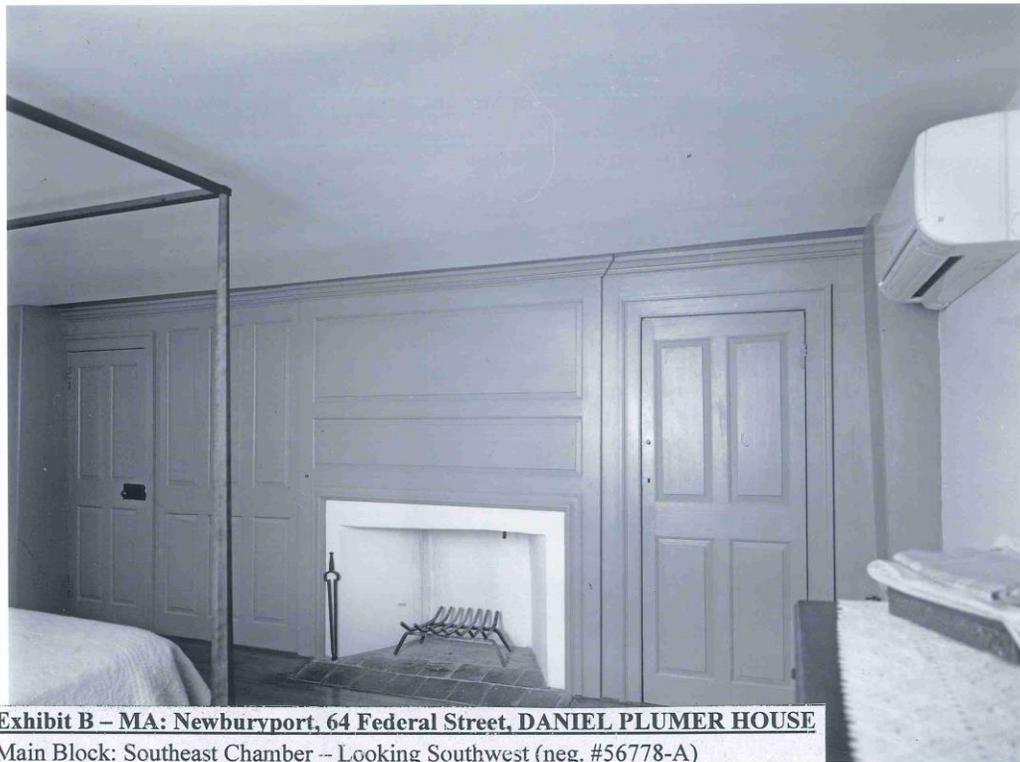


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southeast Chamber -- Looking Southwest (neg. #56778-A)

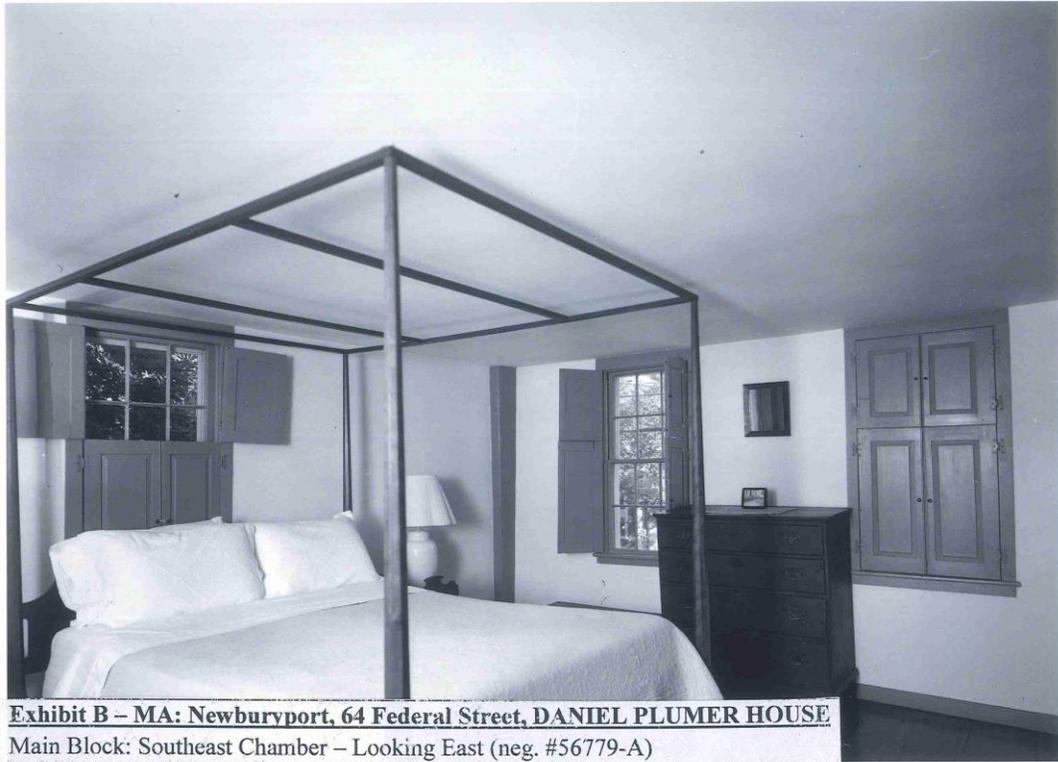


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southeast Chamber – Looking East (neg. #56779-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southeast Chamber – Looking North (neg. #56780-A)

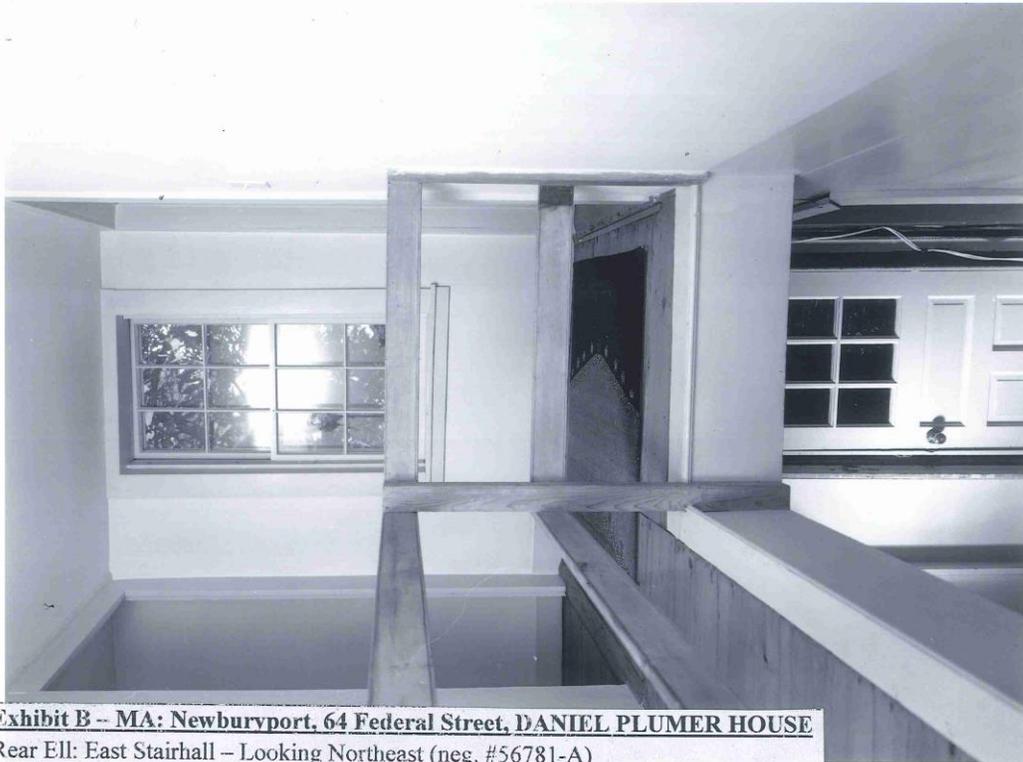


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: East Stairhall -- Looking Northeast (neg. #56781-A)

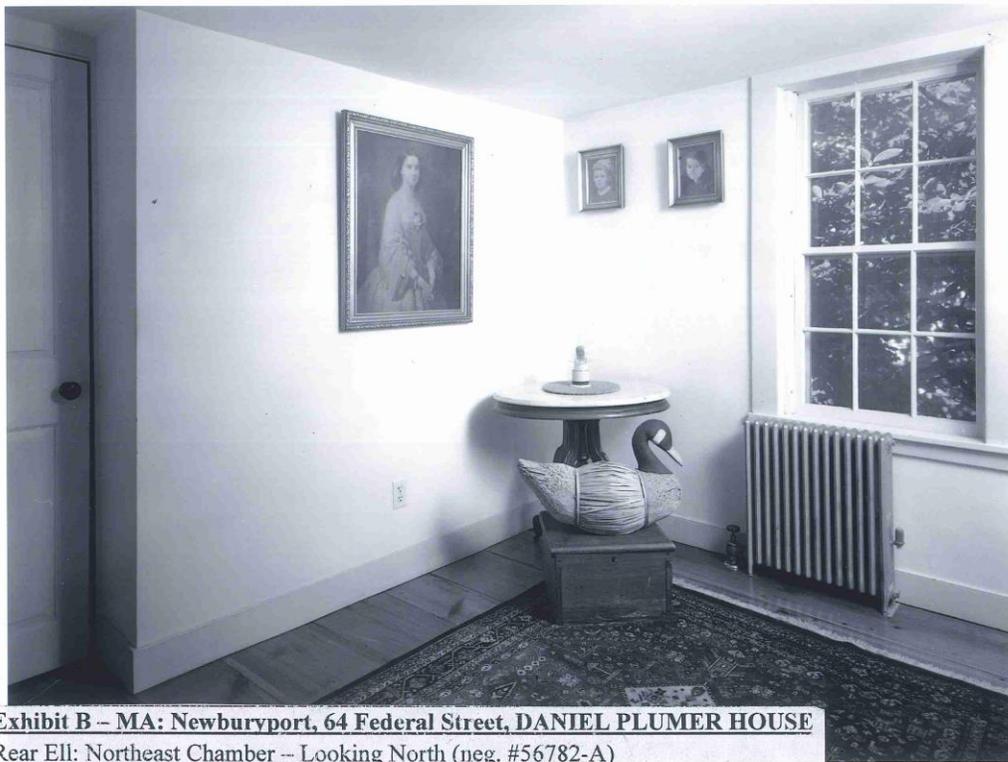


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Northeast Chamber -- Looking North (neg. #56782-A)

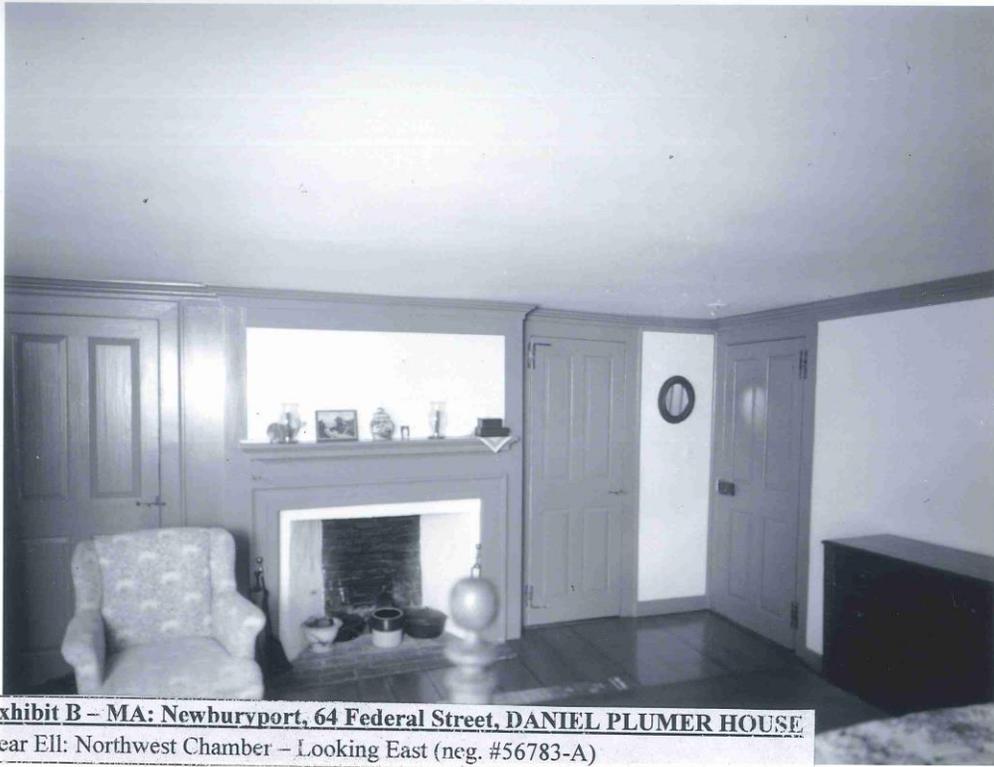


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Northwest Chamber – Looking East (neg. #56783-A)

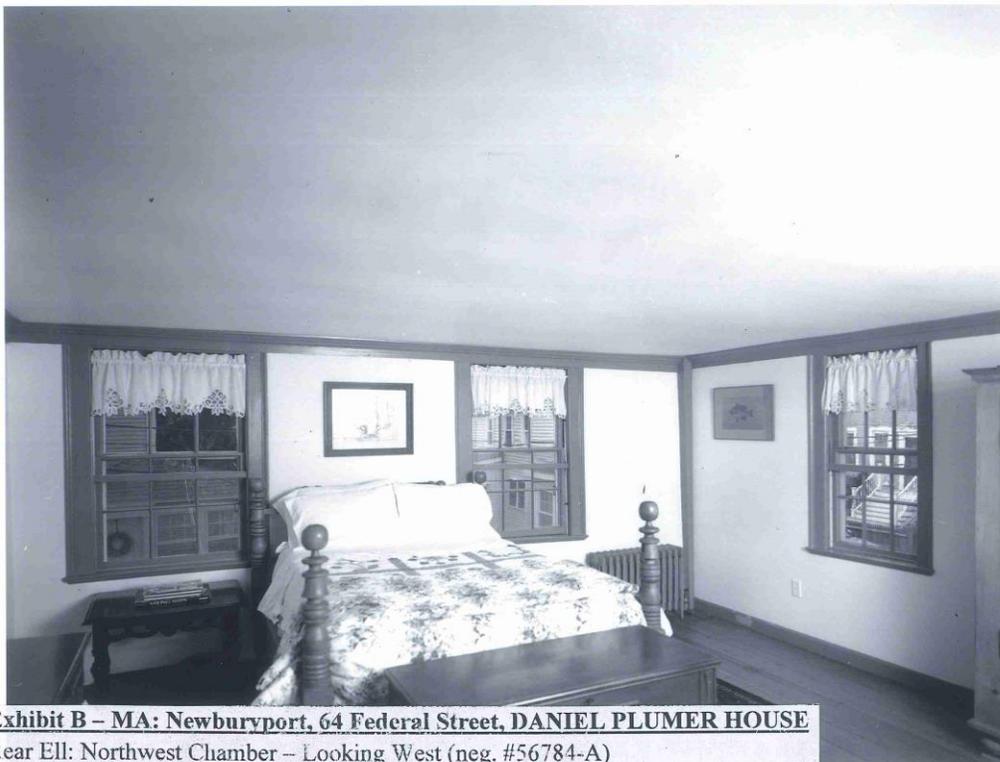


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Northwest Chamber – Looking West (neg. #56784-A)

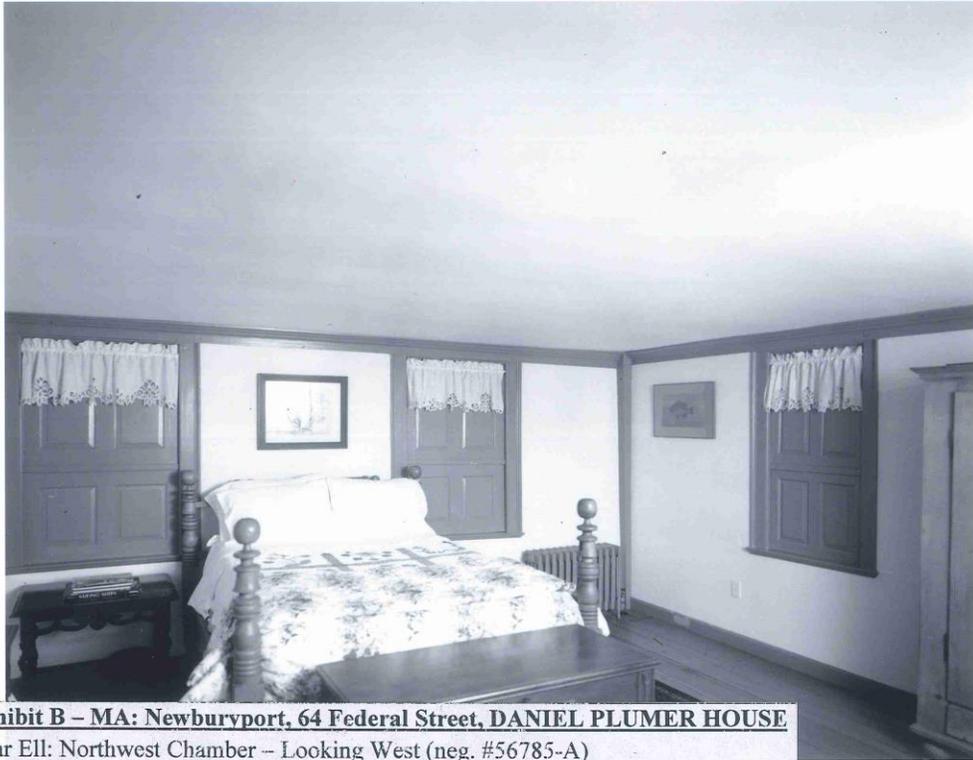


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Northwest Chamber -- Looking West (neg. #56785-A)

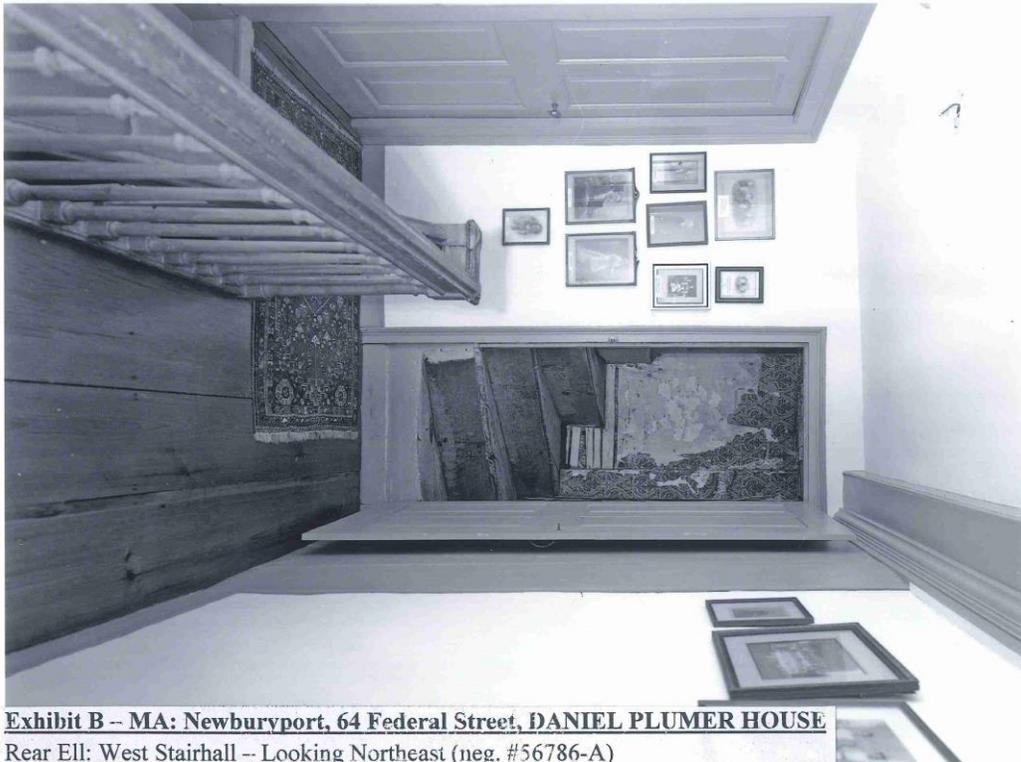


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: West Stairhall -- Looking Northeast (neg. #56786-A)

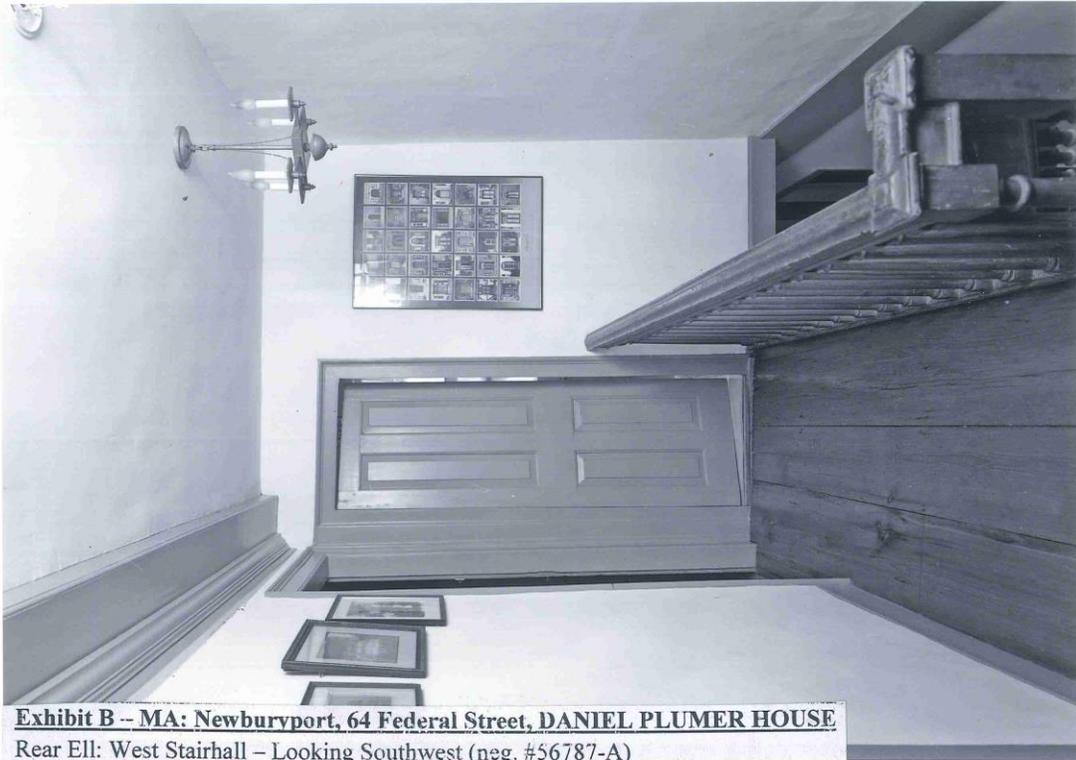


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: West Stairhall -- Looking Southwest (neg. #56787-A)

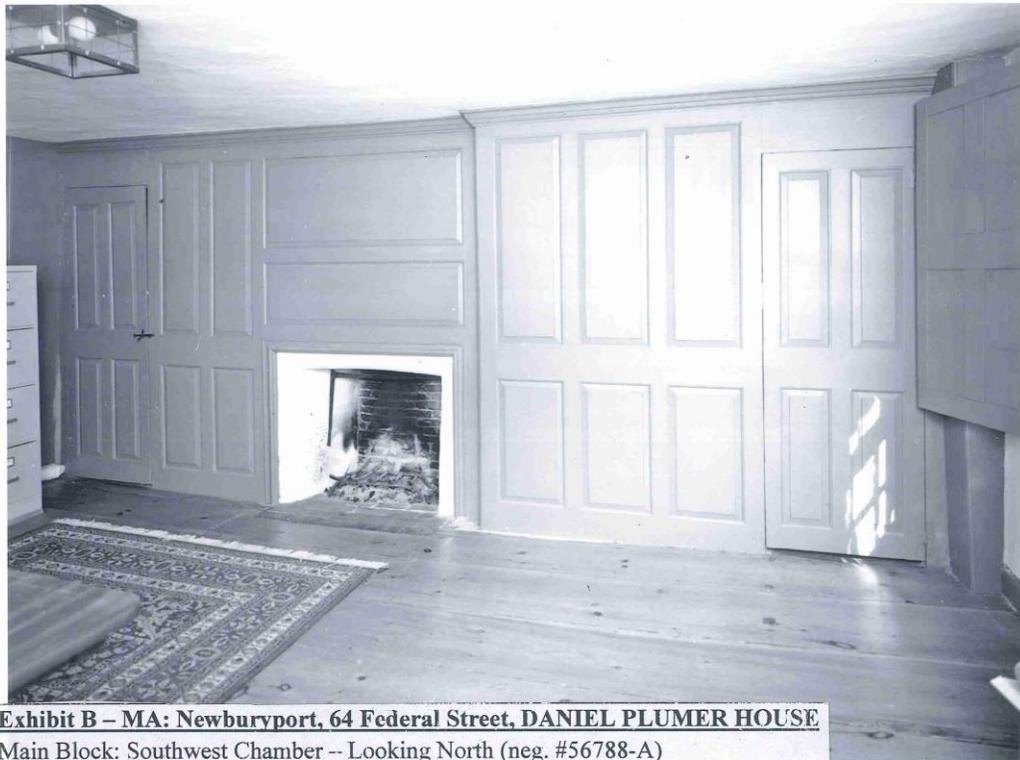


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southwest Chamber -- Looking North (neg. #56788-A)

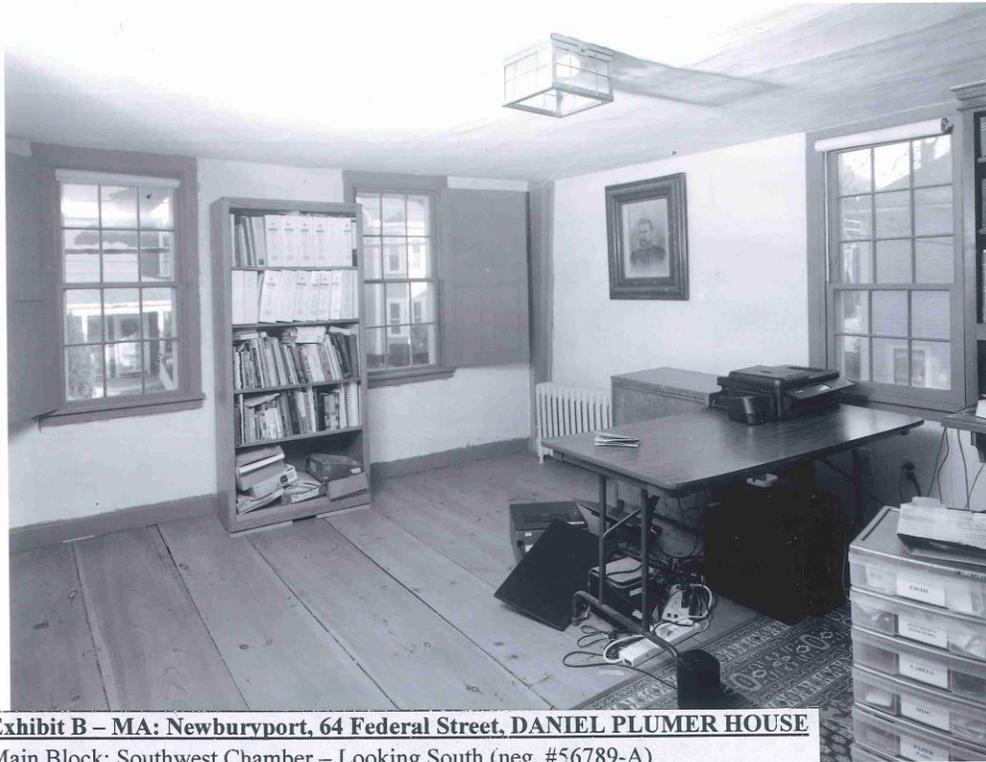


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southwest Chamber – Looking South (neg. #56789-A)

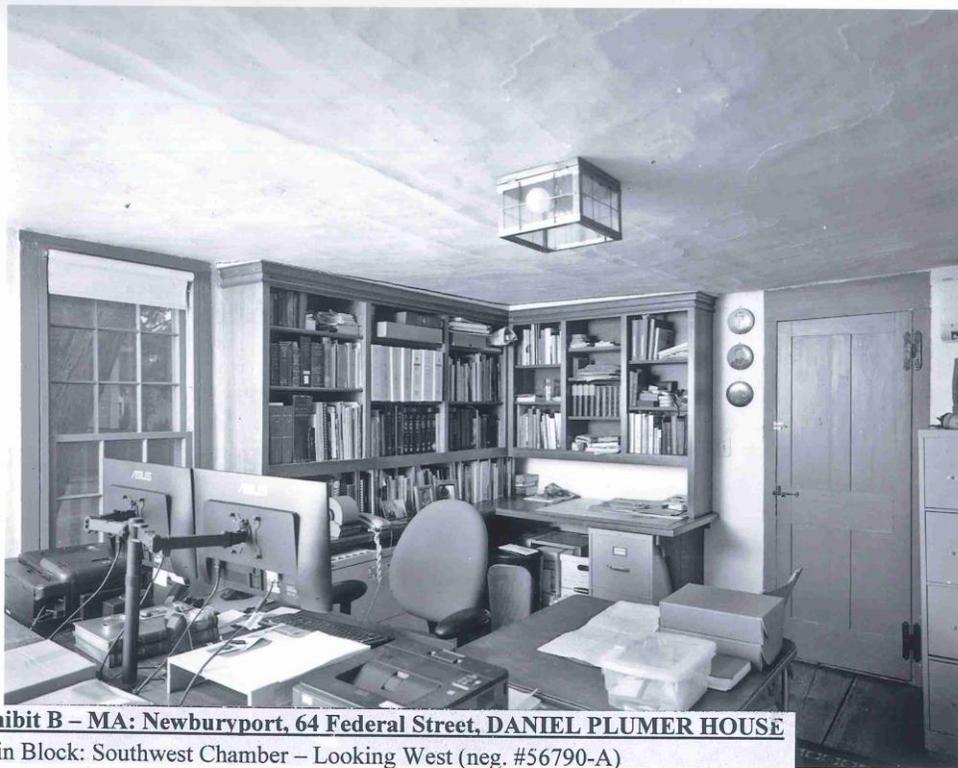


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Southwest Chamber – Looking West (neg. #56790-A)

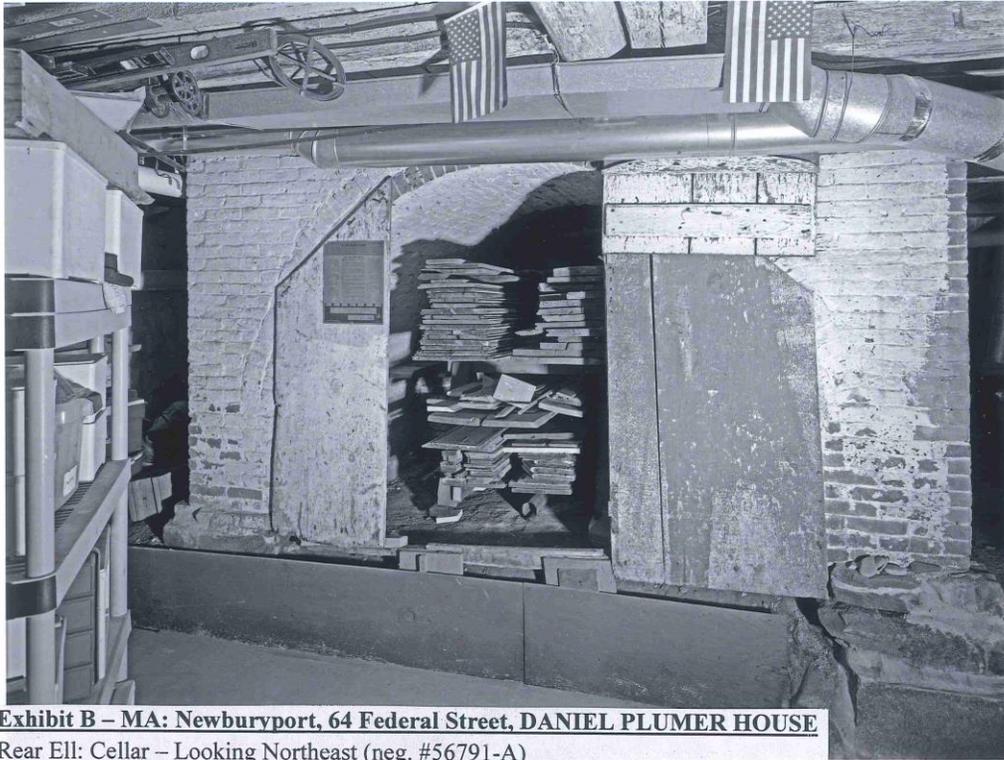


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Cellar – Looking Northeast (neg. #56791-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Cellar – Looking West (neg. #56792-A)

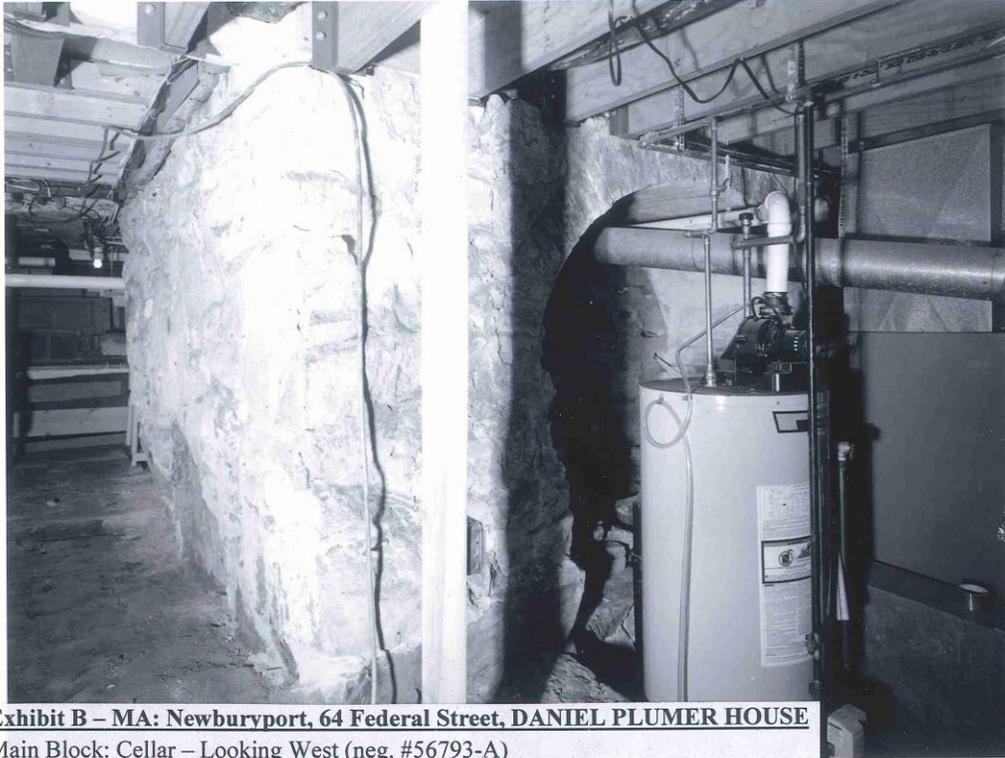


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Cellar – Looking West (neg. #56793-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Cellar – Looking South (neg. #56794-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Cellar – Looking East (neg. #56795-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: South Stairhall Attic Stair – Looking Northwest (neg. #56796-A)

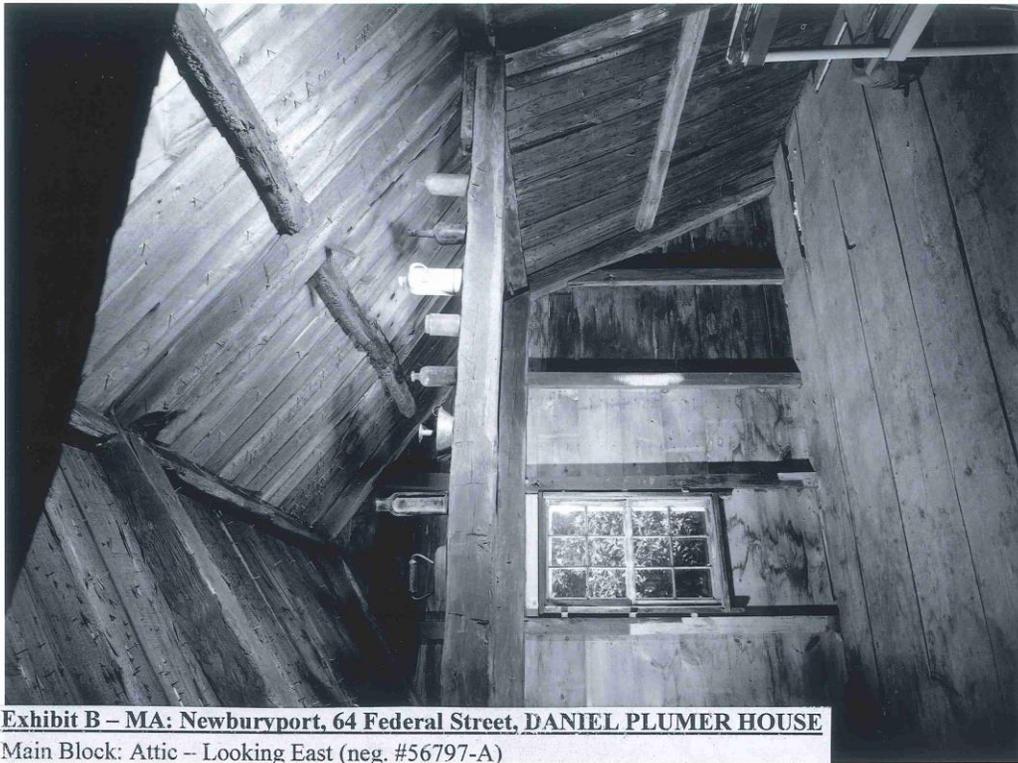


Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Attic – Looking East (neg. #56797-A)



Exhibit B – MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Attic – Looking West (neg. #56798-A)

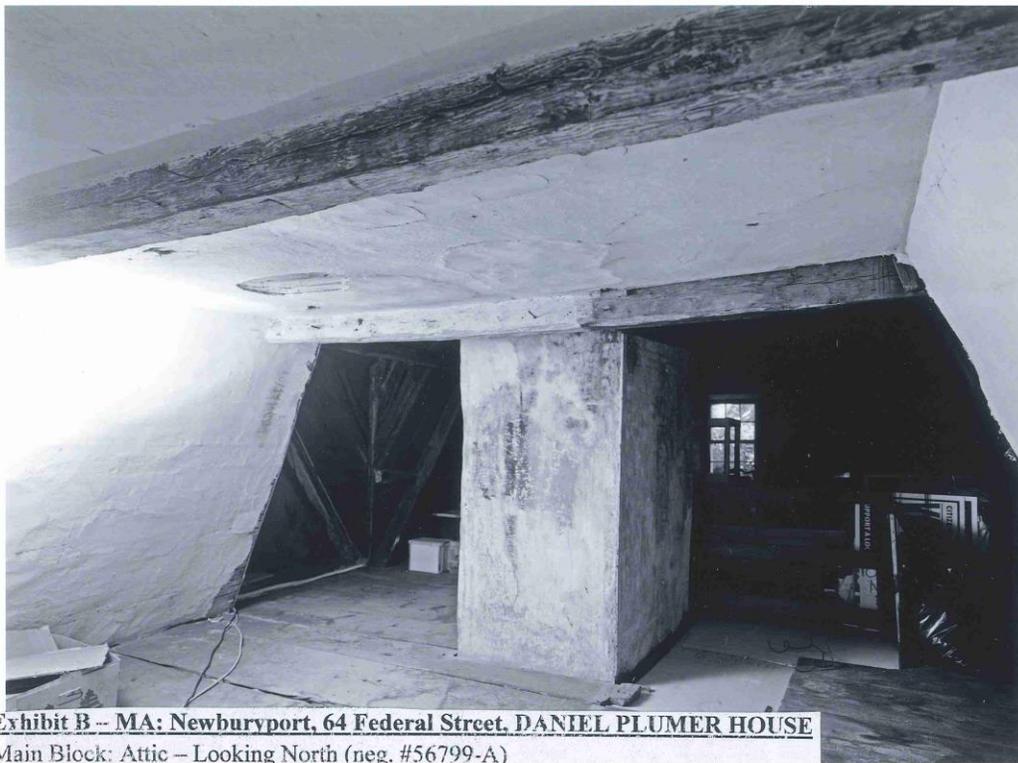


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Main Block: Attic -- Looking North (neg. #56799-A)

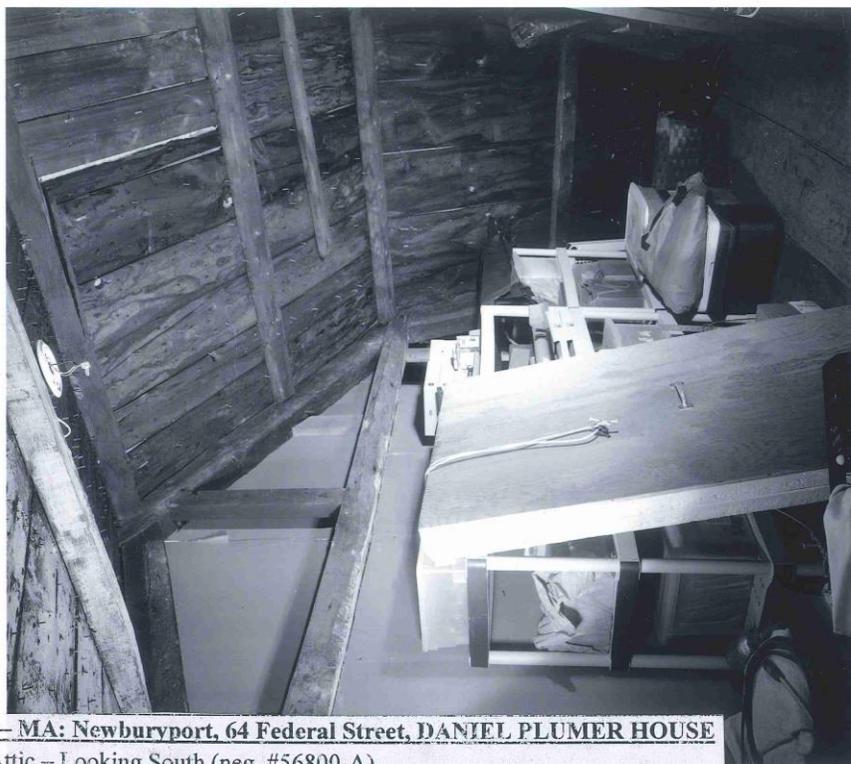


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Attic -- Looking South (neg. #56800-A)

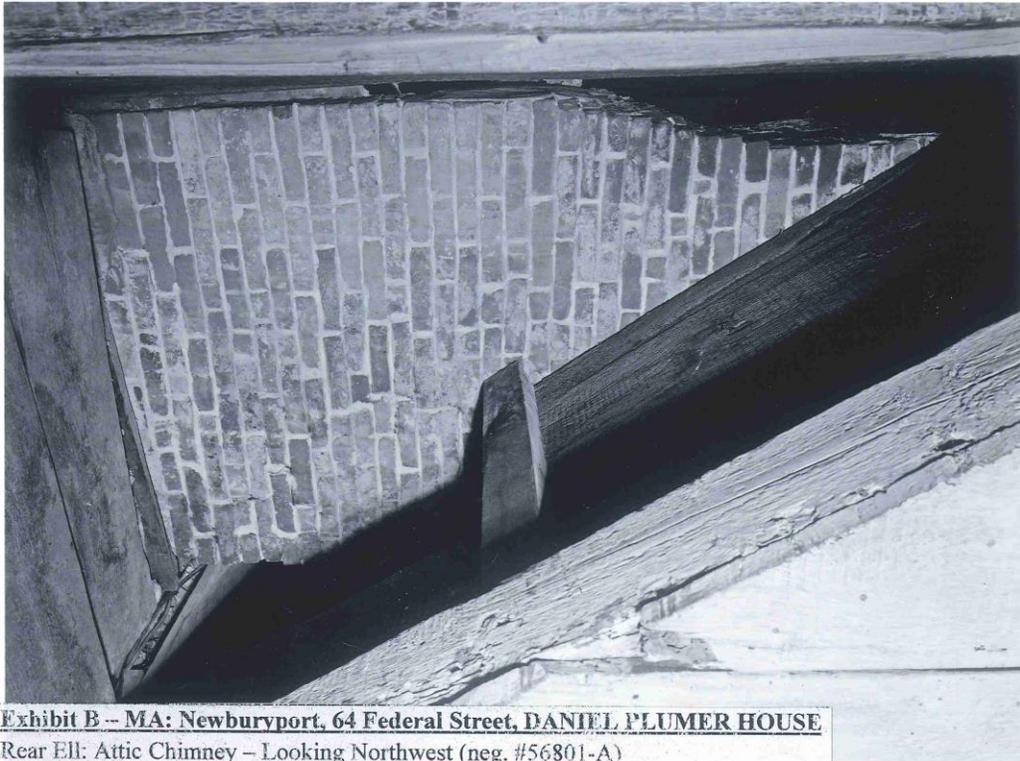


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Attic Chimney – Looking Northwest (neg. #56801-A)

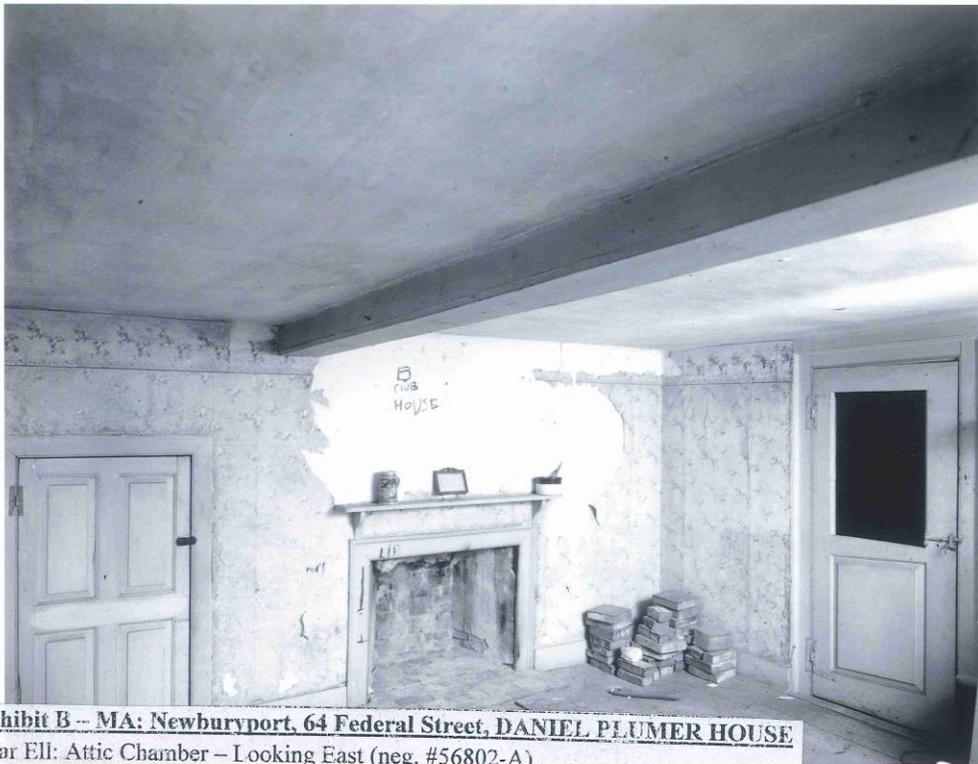


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Attic Chamber – Looking East (neg. #56802-A)

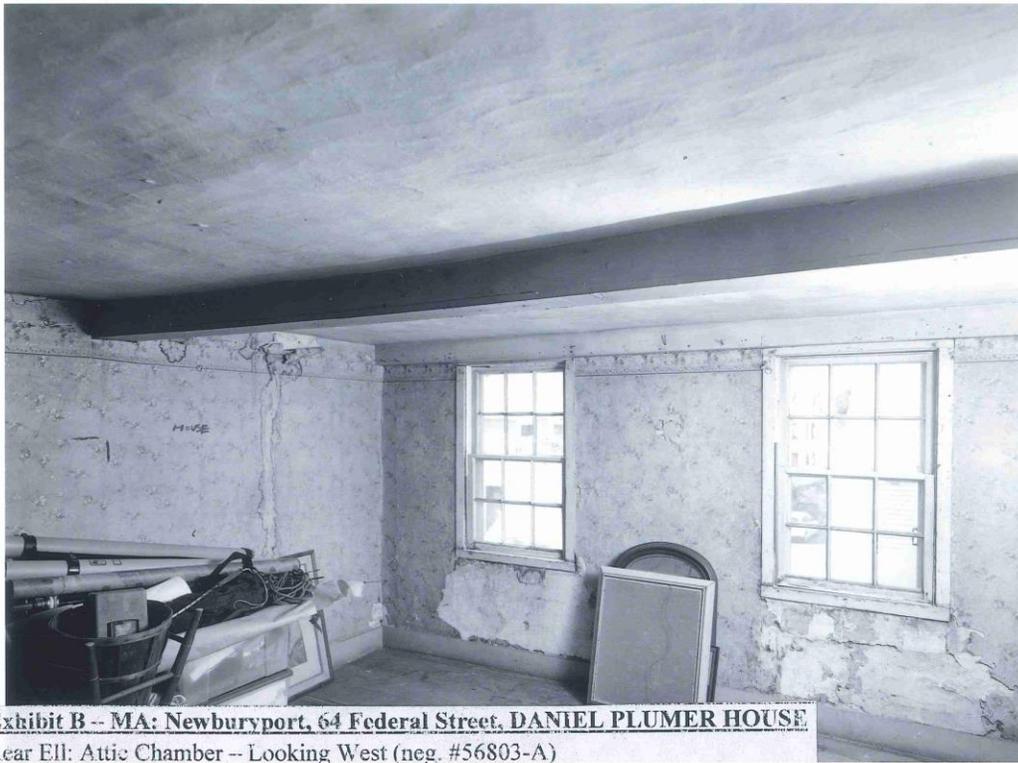


Exhibit B -- MA: Newburyport, 64 Federal Street, DANIEL PLUMER HOUSE
Rear Ell: Attic Chamber -- Looking West (neg. #56803-A)

EXHIBIT C
FIRST STORY PLAN



Daniel Plumer House
64 Federal Street
Newburyport, MA

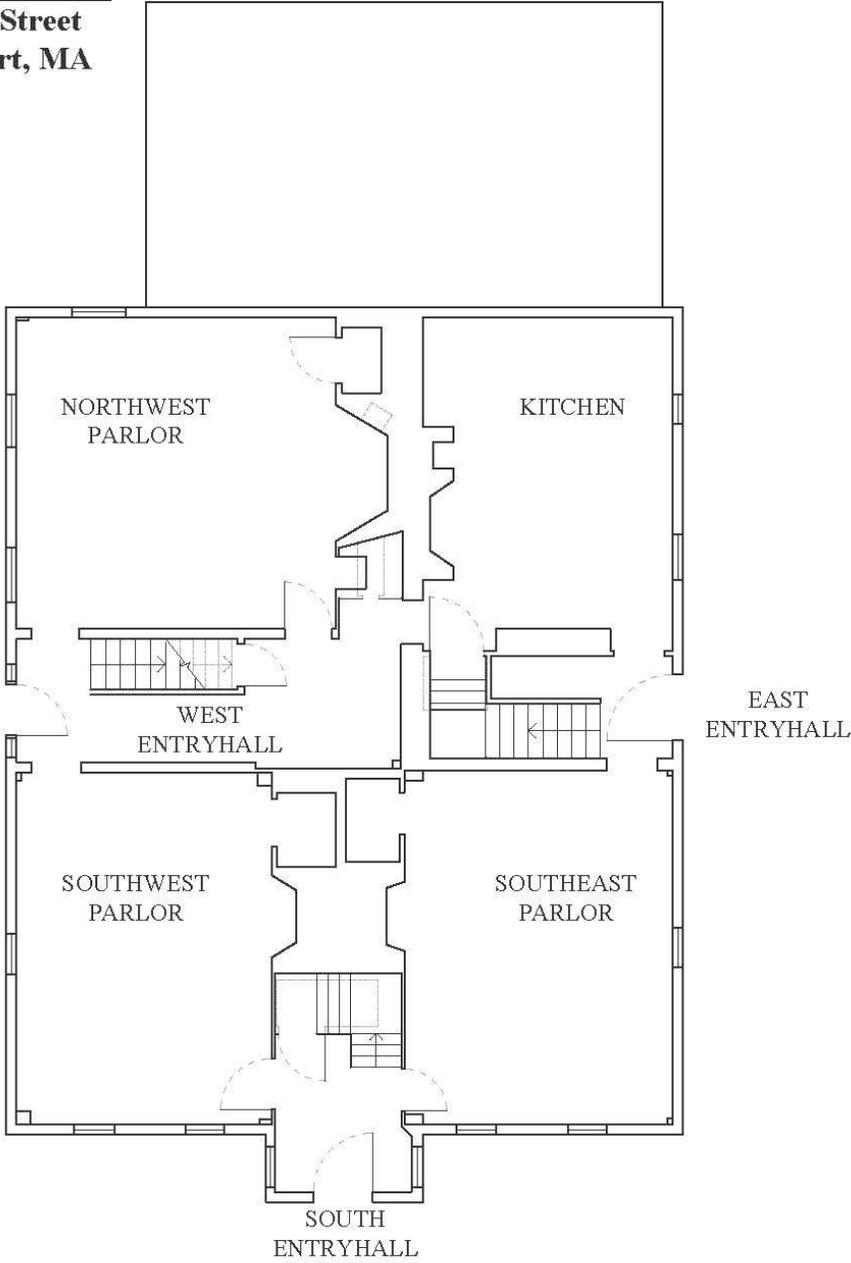


EXHIBIT C
SECOND STORY PLAN



Daniel Plumer House
64 Federal Street
Newburyport, MA

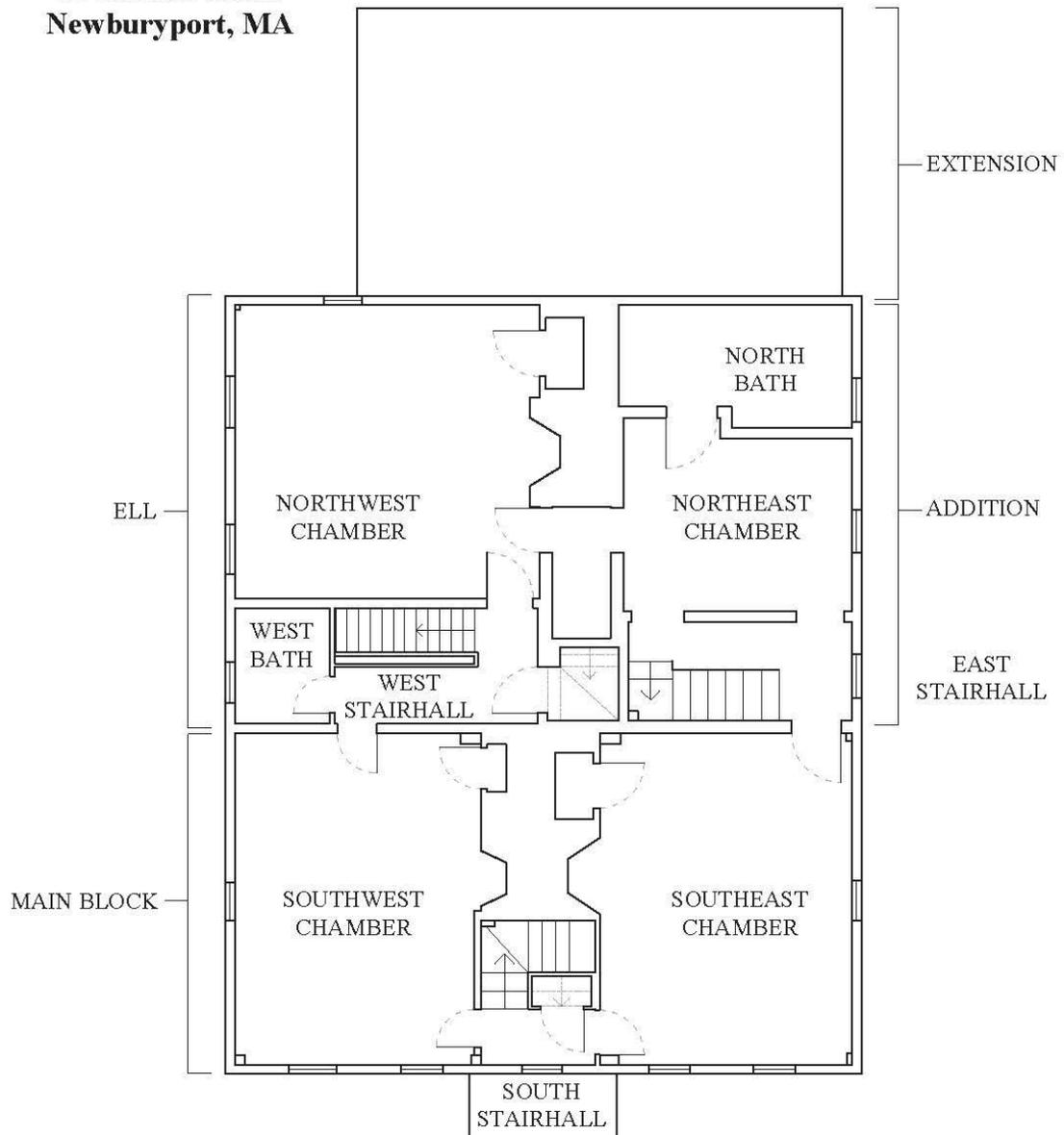


EXHIBIT C
ATTIC PLAN



Daniel Plumer House
64 Federal Street
Newburyport, MA

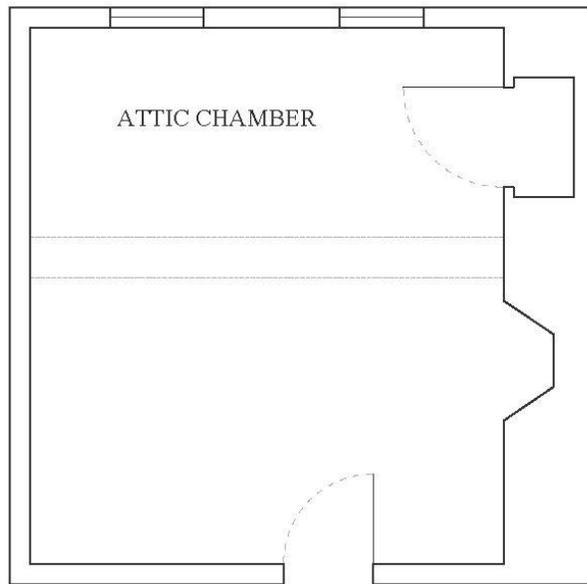
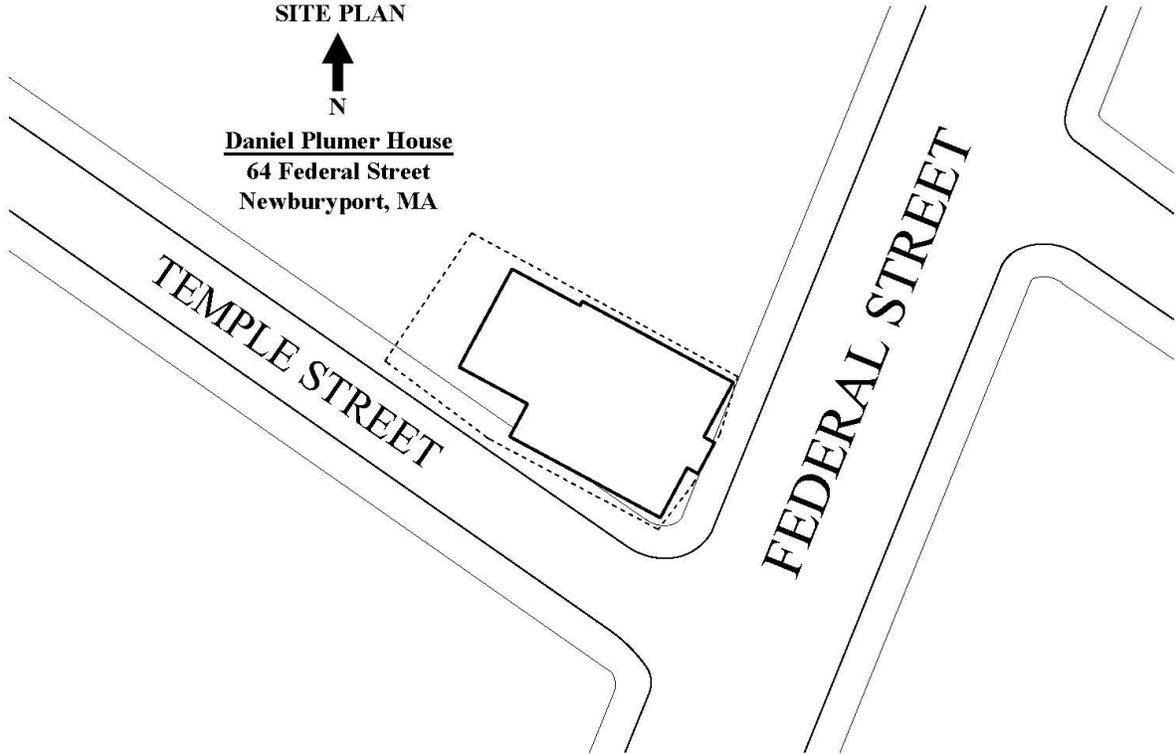


EXHIBIT D
SITE PLAN



Daniel Plumer House
64 Federal Street
Newburyport, MA



SUBORDINATION AND ASSENT

The undersigned ("Holder") is holder of that certain Mortgage [and Security Agreement] to Institution for Savings in Newburyport and Its Vicinity ("Mortgagee") of the premises known as and numbered 64 Federal Street, Newburyport MA 01950, Essex County, Massachusetts (the "Mortgaged Premises"), from Thomas W. Kolterjahn and Linda S. Kolterjahn, Trustees of The Kolterjahn Family Nominee Trust of 2022 ("Mortgagor") dated June 4, 2014, recorded with the Essex South Registry of Deeds in Book 33328 Page 381, together with any and all amendments and modifications thereto. Further reference is made to that certain Preservation Restriction Agreement from Mortgagor to the Society for the Preservation of New England Antiquities, d/b/a Historic New England, to be recorded with said Registry of Deeds, to which the Mortgaged Premises are subject (the "Preservation Restriction Agreement").

Holder hereby assents to the execution and delivery of the Preservation Restriction Agreement and agrees that the Mortgage and the lien thereof is and shall be subject and subordinate to the Preservation Restriction Agreement and all provisions thereof to the same extent, and as fully, as if the Preservation Restriction Agreement had been executed and recorded prior to the execution and recording of the Mortgage.

EXECUTED under seal as of November 30, 2022.

Institution for Savings in Newburyport
And Its Vicinity

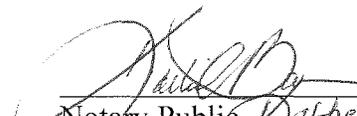
By: 

Lawrence R. Hunter:
Senior Vice President
hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

County of Essex, ss.

On this 30th day of November 2022, before me, the undersigned notary public, personally appeared Lawrence R. Hunter proved to me through satisfactory evidence of identification, which were MA Driver's License, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated purpose as Senior Vice President of Institution for Savings in Newburyport and Its Vicinity a state-chartered bank.



Notary Public Katherine E. Bauer
My commission expires: 6-14-24

