

PRESERVATION RESTRICTION AGREEMENT

DRAFT

(UPDATED TO INCLUDE BOTH MAIN HOUSE AND CARRIAGE HOUSE  
FOLLOWING PLANNING COMMITTEE REQUEST)

between

Ted and Jenny Nelson

and the

CITY OF NEWBURYPORT, MASSACHUSETTS

BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION AGREEMENT is made this 21 day September 2016 by and between the Ted and Jenny Nelson, located at 190 High Street, Newburyport, Massachusetts. 01950 ("Grantor"), and the CITY OF NEWBURYPORT ("**Grantee**"), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, to be administered, managed and enforced by its agent, the NEWBURYPORT HISTORICAL COMMISSION, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950 ("**Commission**"),

WHEREAS, the Grantor is the owner of certain real property located at 190 High Street, Newburyport, Massachusetts, referred to as "**the Property**" and containing about 10,000 square feet, combining the main house and the carriage house, more or less, comprising the Property conveyed by \_\_\_\_\_, to \_\_\_\_\_ in a deed dated \_\_\_\_\_, recorded with the Southern Essex District Registry of Deeds, book \_\_\_\_\_, page \_\_\_\_\_, and more particularly described in Exhibit A incorporated herein by reference and attached hereto, said Property defined as a main house plus the carriage house, Newburyport, referred to hereinafter as "**the Buildings**", described as follows:

1803 Federalist House on 190 High Street

1803 Carriage House Barn at back of driveway as part of larger 190 High Street Property.

"The Buildings are visible from High Street, and are considered both architecturally and historically significant. The house and carriage house have been well-maintained and remain essentially intact architecturally, making them an especially important asset for our community. "Across Newburyport, many of these houses and accompanying carriage houses fell into disrepair during the past century, most of them succumbing to demolition – either by neglect or the wrecking ball." (Nana Stern Kennedy, Chair, Office of the Historic Commission, Newburyport, May 10, 2004)

The Main House, 190 High Street, is depicted as historically significant in the "Architectural Heritage of the Merrimack" by John Mead Howell, and the gardens surrounding the Carriage House are depicted in "Gardens of the New Republic, Fashioning the Landscapes of High Street, Newburyport, Massachusetts" by Lucina Brockway.

The Buildings are further depicted and described in Exhibit B incorporated herein and attached hereto by reference; and

WHEREAS, the cultural, historical and architectural significance of the Buildings emanate from their construction in 1803, and their location as a contributing property within the Newburyport Historic District, designated August 2, 1984 and listed on State and National Registers of Historic Places. The Buildings are important for its associations with the social and religious history of Newburyport, and to the public's enjoyment and appreciation of Newburyport's architectural and historical heritage; and

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

WHEREAS, the preservation values of the Buildings and the Property are documented in a series of photographs and documents (hereinafter, "Baseline Documentation") incorporated herein and attached hereto as by reference as Exhibit B, which Baseline Documentation the parties agree provides an accurate representation of the Buildings as of the date of this grant; and

WHEREAS, the Baseline Documentation (Exhibit B) shall consist of the following:

1. A set of six (4) exterior photographs of the Buildings taken on August 1, 2016;
  - a. Photo 1: Front and Right side view of main house
  - b. Photo 2: Front view of carriage house
  - c. Photo 3: Rear/aerial view of Main house and Carriage House from garden
  - d. Photo 4: Side views of carriage house
2. Newburyport Assessors' Parcel Map with Buildings Footprint; and

WHEREAS, the Buildings have been restored and has been maintained at a high level over the past 20 years by owners Ted and Jenny Nelson who have demonstrated a personal commitment to conservation principles; and

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

WHEREAS, on or about August 10, 2016 the Grantor's applied for a Special Permit pursuant to Section VI-C of the Zoning Ordinance and as a condition of said permit the Grantor has agreed to impose a restriction on the Buildings and Premises for the preservation and renovation of the aforementioned Buildings, under the terms and conditions set forth herein and in such other documents as the parties may execute (the "Restriction" or "Preservation Restriction"); and

WHEREAS, said Special Permit was allowed by the City of Newburyport Planning Board on \_\_\_\_\_ and recorded with the Essex South District Registry of Deeds on \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_ attached hereto as Exhibit B incorporated herein and attached hereto; and

WHEREAS, the Grantors, in further consideration of the receipt of such Special Permit and to ensure the preservation of the aforementioned Buildings, agrees and desires to impose certain restrictions, obligations and duties upon themselves, their successors and assigns, so as to maintain, protect and preserve the architectural and historical integrity of the Buildings' exterior; and

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

WHEREAS, the Commission is authorized to accept preservation restrictions in the name of the City of Newburyport and the Commission is a governmental body duly organized under the laws of the Commonwealth of Massachusetts, including the General Laws, Chapter 40C, authorized and directed by the Grantee to manage the Property and Buildings burdened by such restrictions, consistent with the provisions of the Act and to administer and enforce this preservation restriction;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby irrevocably grant and convey to the Grantee in gross in perpetuity this Restriction over the exterior of the Buildings to be administered, managed and enforced by the Commission.

1. Purpose: It is the Purpose of this Restriction to assure that, the architectural, historic, and cultural features of the exterior of the Buildings will be retained and maintained forever substantially in their current condition or in a restored condition approved by the Commission for preservation purposes and to prevent any use or change of the Property or the exterior of the Buildings that will significantly impair or interfere with the Buildings's preservation values or alter views of the exterior of the Buildings.

2. Preservation Restriction: The Grantor grants the Grantee the right to forbid or limit:

- a. Any alteration to the appearance, materials, workmanship, condition or structural stability of the street facing front, left and right sides of the Main House and the front facade of the Carriage House unless (i) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the Buildings and the Property, or (ii) the Grantee has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by Grantor in accordance with the requirements of paragraph 7, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency promptly reported to Grantee in accordance with the requirements of paragraph 9. For the purposes of this Agreement, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines, which are attached hereto as Exhibit C and hereby incorporated by reference.
- b. The Grantor shall have the right to make the following specific non-historic modifications to the Main House at the point in time in which necessary repair and maintenance is required:
  - a. Replace the existing wooden underfoot decking material on the front ride deck with an artificial material that matches existing color and shape as closely as is possible. This deck has been a constant maintenance problem and safety hazard because of the severe weather and heat it must endure, and the decking is in a continuous state of decay and won't hold paint. A modern, artificial material is the only way to create a sustainable, cost-effective solution for this large deck that is unused by residents because of its street facing nature
  - b. The side white clapboards above the rear porch covering on the upper right side of the building undergoes severe weather exposure, and is a safety challenge (owing to height and location) to paint on the yearly basis that is required. Owing to its height (2<sup>nd</sup> and 3<sup>rd</sup> floors) and the fact that it is on the rear of the right side of the house (50+ feet back from street), it is only marginally visible from the street. At some point, we would like to cover only this upper, right, rear section of the house with vinyl siding to end the weather damage and the challenges of continually having to maintain the paint. This difference will not be noticeable from the street.

- c. The creation of a paved parking area to the right front of the Main House, next to the deck, as required for granting a 6C special permit by the ZBA.
- d. The paving of the driveway facing the Carriage House to the left of the house at some point in the future.
- c. Any other act or use that may be harmful to the historic preservation of the Buildings or the Property.

4.1. Grantor's Covenants: Covenant to Maintain. Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the Buildings in the same structural condition and state of repair to that existing with the exceptions granted in item 2b under Preservation Restrictions. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the exterior of the Buildings. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Buildings whenever necessary in accordance with the policies and procedures of the Commission and in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

Grantor's covenant herein shall be limited to funds reasonably available therefore. Should the parties disagree as to the need of maintenance or the availability of funds the matter may be submitted by either party for arbitration pursuant to the Massachusetts arbitration statute then in effect.

4.2. Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:

- a. the Buildings shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property near the Buildings;
- c. no above-ground utility transmission lines, except those reasonably necessary for the existing Buildings, may be created on the Property, subject to utility easements already recorded;
- d. no additions to the street-facing front, left or right sides of the Buildings and/or outBuildings may be attached to the Buildings without prior approval of the Grantor; and
- e. moving the Buildings to another location shall be forbidden without prior approval of the Commission.

5. Conditional Rights Requiring Grantee Approval: Subject to Paragraph 4 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the Buildings without prior express written approval of the Commission with the exceptions granted in item 2b under Preservation Restrictions. Without said approval Grantor shall not make any changes to the street-facing front, left or right sides of the Main House or the front façade of the Carriage House, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, and any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the Buildings. Grantor shall similarly not make any alterations to the surrounding Property that would

obscure the current view of the Buildings, such as the installation of permanent signage or trees or very large shrubs without approval of the Commission.

Activities by Grantor to maintain the Buildings and the Property which are intended to be performed in accordance with the provisions of paragraph 4.1, and which are of a minor nature, shall not require the prior approval of the Commission. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines (Exhibit C), which are attached to this Agreement and hereby incorporated by reference.

6. Grantor's Reserved Rights Not Requiring Further Approval by the Grantee: Subject to the provisions of paragraphs 2 and 4.2, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by the Commission without further approval by the Commission:

- a. the right to engage in all those acts and uses that:
  - (i) are permitted by governmental statute or regulation;
  - (ii) do not substantially impair the preservation values of the Buildings and Property; and
  - (iii) are not inconsistent with the Purpose of this Restriction;
- b. pursuant to the provisions of Paragraph 4.1, the right to maintain and repair the Buildings strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the Buildings. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the Commission in accordance with the provisions of Paragraph 5;
- c. the rights for modifications at some undetermined point in the future granted in item 2b under Preservation Restrictions

7. Review of Grantor's Requests for Approval: Grantor shall submit to the Commission for the Commission's approval of those conditional rights set out at Paragraphs 2 and 5 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to the Commission a timetable for the proposed activity sufficient to permit the Commission to monitor such activity. Within forty-five (45) days of the Commission's receipt of any plan or written request for approval hereunder, the Commission shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Commission shall provide Grantor with written suggestions for modification or a written explanation for the Commission's disapproval. Any failure by the Commission to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Commission of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

8. Standards for Review: In exercising any authority created by this Restriction to inspect the Buildings; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to

reconstruct or approve reconstruction of the Buildings following casualty damage, the Commission shall apply the Secretary's Standards.

9. Casualty Damage or Destruction: In the event that Buildings or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Buildings and Property and to protect public safety, shall be undertaken by Grantor without the Commission's prior written approval of the work. Within one hundred twenty (120) days of the date of damage or destruction, if required by the Commission, Grantor at its expense shall submit to the Commission a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Commission, which report shall include the following:

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

10. Review After Casualty Damage or Destruction: If, after reviewing the report provided in Paragraph 9 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and the Commission shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Buildings in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

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

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts arbitration statute then in effect, and all other applicable laws, rules, regulations, and ordinances. Arbitrator shall have experience in historic preservation matters.

11. Insurance: Grantor shall keep the Buildings insured by an insurance company rated "A-1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and Buildings ordinance coverage, in form and amount sufficient to replace fully the damaged Buildings

without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Commission, within ten (10) business days of the Commission's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

12. Indemnification: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend, at its own cost and expense, Grantee, its boards, commissions, appointees, agents, directors, employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Buildings; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the Buildings; unless such injury, death, or damage is caused by Grantee or its boards, commissions, appointees, agents, directors, employees, or independent contractors. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

13. Written Notice: Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing;

Grantor: Ted and Jenny Nelson  
190 High Street  
Newburyport, MA 01950

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

Each party may change its address set forth herein by a notice to such effect to the other party.

14. Evidence of Compliance: Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidence the status of this Restriction to the extent of Grantee's knowledge thereof.

15. Inspection: With the consent of Grantor, Grantee or its representatives shall be permitted at reasonable times to inspect the Buildings and the Property on an annual basis. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

16. Grantee's Remedies: The Grantor, for itself, its assigns and successors, expressly acknowledges that a violation of this Preservation Restriction Agreement, including a failure to expend such Funds for their intended purposes, may result in the Commission exercising its right to enforce the terms and conditions of the Restriction by seeking appropriate legal and equitable relief, including, but not limited to, restoration of the Buildings, repayment of the Funds, and such other legal and equitable remedies as may be available to the Commission to effectuate the purposes of this Restriction and to enforce the Grantor's obligations hereunder.

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

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

17. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Buildings or Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

18. Notice of Proposed Sale: Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Restriction to potential new Grantors prior to sale closing.

19. Runs with the Land: Except as provided in Paragraphs 9 and 10, the restrictions, obligations and duties set forth in this Restriction shall run with the Property and shall inure to the benefit of the Commission and all parties claiming by, through or under the Commission and shall bind the Grantor and all parties claiming by, through or under the Grantor. The rights hereby granted to the Commission constitute the perpetual right of the Commission to enforce this Preservation Restriction Agreement. The Grantor hereby covenants for itself to stand seized and hold title to the Property subject to the terms of this Restriction. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor", "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, Grantor of the Property shall have no obligation pursuant to this instrument where such Grantor shall cease to have any Grantorship interest in the Property by reason of a bona fide transfer. The restrictions, stipulations and covenants contained in this Restriction shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property.

20. Assignment: Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government or to a similar local, state, or national charitable corporation or trust that qualifies under the Act, and whose purposes, inter alia, are to promote preservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which



the Restriction was granted will continue to be carried out. Grantor shall give prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.

21. Alternate Designee: Grantee may, at its discretion, remove and replace the Commission as its designee to administer, manage, and enforce this Restriction, provided that any new designee is qualified as such under the Act and other applicable law.

22. Recording and Effective Date: Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction which shall become effective upon its being duly executed by the Grantor, the City of Newburyport, and the Newburyport Historical Commission, its being approved by the Massachusetts Historical Commission, and its being recorded with the Southern Essex County District Registry of Deeds.

23. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Property may make impossible the continued Grantorship or use of the Property for the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such a change in conditions may include, but is not limited to, partial or total destruction of the Buildings resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such extinguishment is in the public interest. In the event of a sale of the Property, net proceeds of sale shall be paid to Grantor.

24. Condemnation: If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to Grantor.

25. Interpretation: The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction:

- a. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Property shall not apply in the construction or interpretation of this Restriction and this instrument shall be interpreted broadly to affect its Purpose and the transfer of rights and the restrictions on use contained herein.
- b. This instrument may be executed in two counterparts, one of which is to be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided in the preceding sentence, each counterpart shall constitute the entire Restriction of the parties.
- c. This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private Restriction either in existence now or at any time subsequent hereto.

- d. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to Buildings materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been incorporated herein automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event any provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted from this Preservation Restriction as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

26. Amendment: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Restriction or the status of Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private increment to any person or entity; and shall not adversely impact the overall architectural and historic values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the Southern Essex County District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

27. Release: This Preservation Restriction is intended to be a restriction in gross in perpetuity and may only be released, in whole or in part, by the Grantee pursuant to the procedures for release established by the Act and otherwise by law, including approvals following public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such a release is in the public interest.

28. Archaeological Activities: The conduct of archaeological activities on the Property, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (M.G.L. C. 9, Sec. 27C, 950 C.M.R. 70.00).

IN WITNESS WHEREOF, the Grantor sets its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2016.  
By:

**GRANTOR:**

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION**

\_\_\_\_\_  
Sarah White, duly authorized  
Chair, Newburyport Historical Commission

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, SS.

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as duly authorized Chair of the Newburyport Historical Commission.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE AND APPROVAL BY THE CITY OF NEWBURYPORT**

I, the undersigned City Clerk of the City of Newburyport, Massachusetts, hereby certify that at a meeting duly held on \_\_\_\_\_, 2014, the City Council voted to approve and accept the foregoing Preservation Restriction Agreement for the preservation of the historic resources of said City and being in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

CITY OF NEWBURYPORT

By its Clerk

\_\_\_\_\_

Richard B. Jones

The undersigned hereby certifies that the foregoing preservation restrictions have been approved and accepted by the City of Newburyport

CITY OF NEWBURYPORT

\_\_\_\_\_

Donna D. Holaday, Mayor

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared Richard B. Jones, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as Clerk of the City of Newburyport.

\_\_\_\_\_  
Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared, Donna D. Holaday, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes as Mayor of the City of Newburyport.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION**

**COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Massachusetts General Law, chapter 184, section 32.

MASSACHUSETTS HISTORICAL COMMISSION

By: \_\_\_\_\_  
Brona Simon  
Executive Director and Clerk

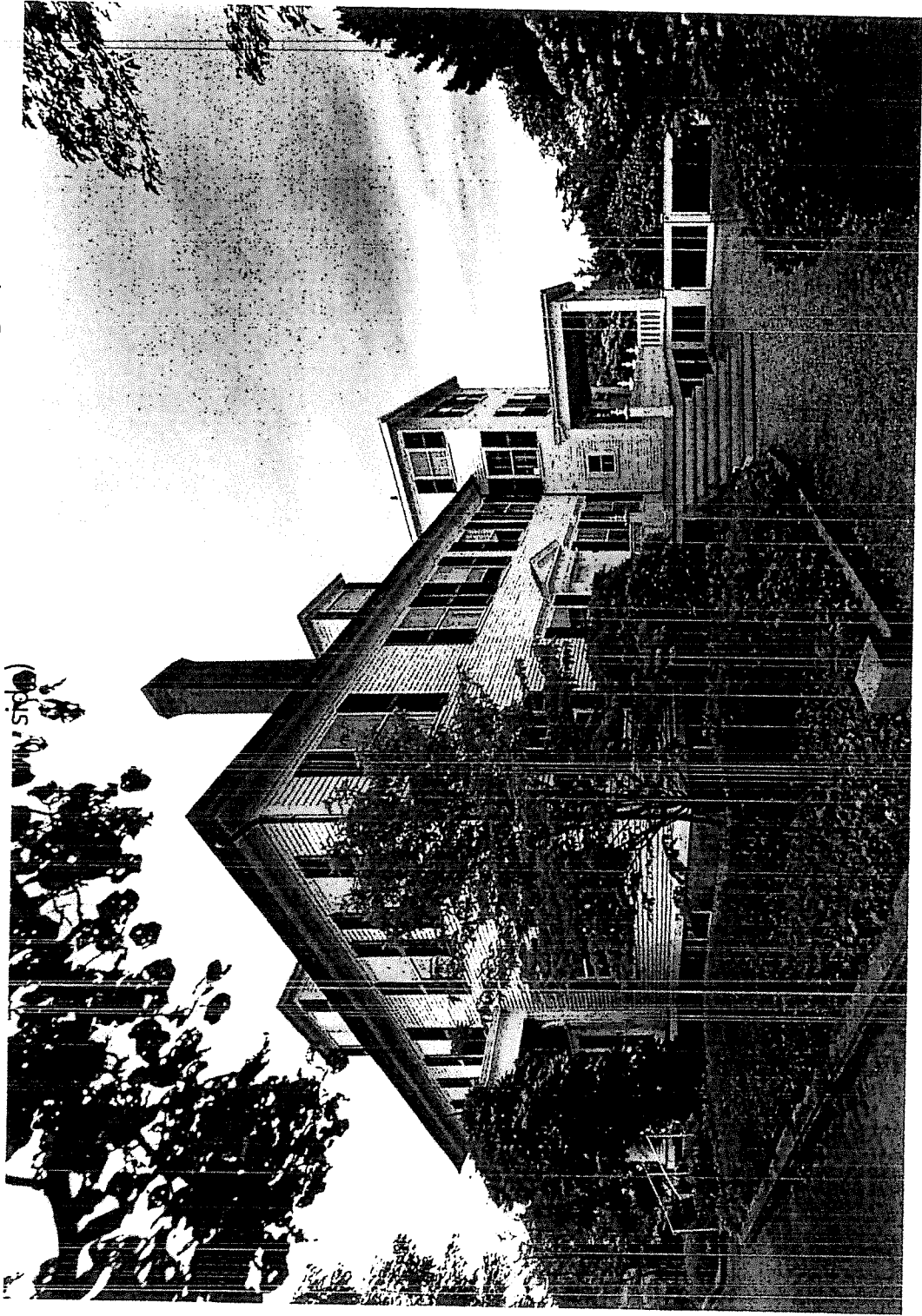
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

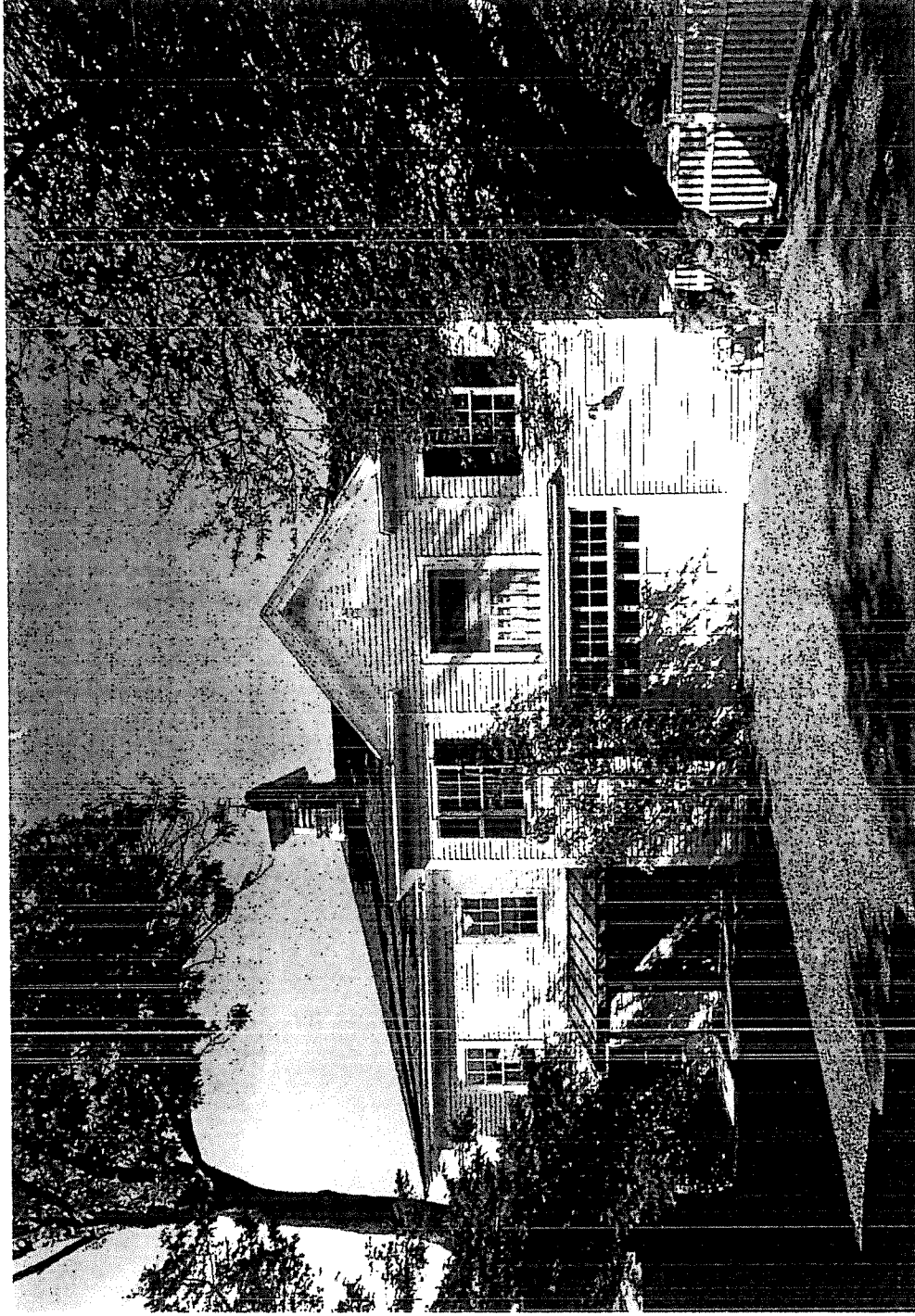
On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned notary public, personally appeared, Brona Simon, Executive Director and Clerk, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

House at 190 High Street, Street View  
(showing entrances to both units, one in front, one on right)



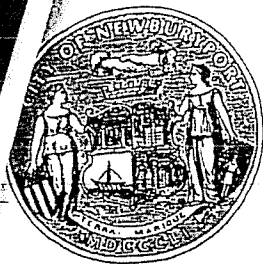
Carriage House, Front  
(viewed from driveway to left of 190 High Street house)





Arial view, with garden property, house and carriage house (upper right)





## CITY OF NEWBURYPORT

OFFICE OF THE  
HISTORICAL  
COMMISSION

MARY ANNE CLANCY  
MAYOR

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May 10, 2004

Mr. Edward Ramsdell, Chairman  
Zoning Board of Appeals  
City of Newburyport  
Newburyport, MA 01950

Re: 190 High Street – Carriage House

Dear Members of the Zoning Board of Appeals:

On behalf of the Newburyport Historical Commission, I wish to offer our unanimous support for the application of Mr. Ted Nelson regarding the historic carriage house located on his property at 190 High Street.


Mr. Nelson met with the NHC in March to review his reuse plans for the carriage house. The building is visible from High Street, and is considered both architecturally and historically significant. The carriage house has been well-maintained and remains essentially intact architecturally, making it an especially important asset for our community. Across Newburyport, many of these beautiful carriage houses fell into disrepair during the past century, most of them succumbing to demolition – either by neglect or the wrecking ball.

The Commission discussed the proposed plans for the carriage house with Mr. Nelson, and believes that the applicant's renovation plans are appropriate for the building's new use. By permitting a new and low-impact use for the building, the future presence of the carriage house within Newburyport's architectural fabric would be assured. Mr. Nelson intends to make minor modifications which the NHC did not feel would compromise the historic structure, and expressed interest in working further with the Commission on the details, should the ZBA application be approved.

On behalf of the Newburyport Historical Commission, I urge you to support Mr. Nelson's application.

Sincerely,

NEWBURYPORT HISTORICAL COMMISSION

  
Nana Stern Kennedy, Chair

# MORTGAGE INSPECTION PLAN

LOCATED IN: NEWBURYPORT, MA.  
BUYER: NELSON  
SCALE: 1"=60'  
DATE: JULY 19, 2001

DEED BK. 12951 PG. 253  
PLAN NO. DEED COMPILATION, ASSESSOR  
BK. \_\_\_\_\_ PG. \_\_\_\_\_  
INV. NO. 774

- PROPERTY LINES SHOWN ARE  
COMPILED FROM DEED INFORMATION,  
AND ARE APPROXIMATE.

