

PRESERVATION RESTRICTION AGREEMENT

between

THE CITY OF NEWBURYPORT

and the

Museum of Old Newbury

THIS PRESERVATION RESTRICTION AGREEMENT is made this day of _____, 2020 by and between THE CITY OF NEWBURYPORT, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950, ("Grantor"), and the Museum of Old Newbury ("Grantee"), an entity duly organized under the laws of the Commonwealth of Massachusetts and located at 98 High Street, Newburyport, Essex County, Massachusetts, 01950.

WHEREAS, the Grantor is the owner of certain real property located at 94 State Street, Newburyport, Massachusetts, 01950, referred to as "the Property" and containing about 34,000 square feet, more or less, comprising the Property conveyed by _____ to the City of Newburyport in a deed dated _____, recorded with the Southern Essex District Registry of Deeds, book XXXX, page XXX, and more particularly described in Exhibit A incorporated herein by reference and attached hereto, said Property improved by a building thereon known as the Newburyport Public Library referred to hereinafter as "the Building", described as follows:

The Building consists of three parts: the original 1771 Tracy Mansion, which was rehabilitated for library use in 1865; the 1880 Simpson Annex adjoining the Tracy mansion to the west, and; a newer addition built in 2001 named the Edward G. Molin Wing. The following description of exterior architectural features begins with the main east façade of the Tracy mansion and proceeds counterclockwise ending at the main library entry of the 2001 Molin Wing:

The Tracy Mansion is a three-story red brick Georgian structure approximately square in plan and covered by a stepped hip roof with slate tiles. It has a rough-hewn granite foundation with a curved water table stepping back to the brick masonry. The first and second floor windows are approximately equal in height and feature double-hung two-over-two wood sash. The third-floor windows are square in proportion matching the single sash size below and are hinged inward for operation. All windows have sandstone sills and lintels, wood frames and sash painted white, with lower exterior insect screens. Removable storm windows are installed at the interior sides of the windows. A projecting painted wood eave and cornice with simple modillion brackets terminate the elevation.

The east façade of the mansion has five window bays and the original central entry doorway with its wood portico and flanking double-Ionic wood columns. The entry consists of a pair of wood doors painted blue with six divided lites and set in a wood surround carved to imitate rusticated stonework with flanking Ionic pilasters. The portico has a deep entablature with dentil crown molding and copper roof, scupper boxes and rain leaders including cast bronze conductor heads mounted on the building façade. All woodwork is painted white. The portico landing has three sandstone steps with another threshold step at the doors. Black curved wrought iron handrails with knob finials flank the steps. Above the portico and second story window is the original marble sign "Public Library and Reading Room".

The north elevation of the Tracy Mansion is the same in its details as the east elevation but has four window bays at the second and third floors and five windows at the first floor. This elevation was altered by the 1881 Simpson Annex addition, which appended a projecting portico structure and rear addition at the west side of the Tracy Mansion. This portico differs from the original on the east side with slender wood double-Corinthian columns on wood pedestals. It also introduces the new proportions of the 1881 addition with its much taller windows corresponding to higher floor-to-floor heights – only two floors (with second floor mezzanine) versus three floors in the original Tracy Mansion. The portico structure is roofed in copper with copper scupper boxes and drain leaders connected to bronze conductor heads mounted on the building façade. There are steel guard rails at the stairs and landing. The remaining western portion of the north façade belongs to the red brick 1881 addition and consists of three bays, one being obscured behind a brick chimney that is appended to the west side of the portico. The foundation, window sills and lintels, as well as the cornice details are the same or similar to the original Tracy Mansion. There is a concrete areaway with grated cover at the basement window, which was added during the 2001 Molin Wing Addition.

The west elevation of the Simpson Annex has five bays, three of which are grouped in the center with two flanking. A slate hipped roof is centered on this elevation and joins to the Tracy Mansion ridge at matching height. The window and eave details are the same as on the north façade. Three concrete areaways with grated covers at basement windows and a bulkhead door are located adjacent to the foundation within a perimeter gravel mowing strip. Two brazed copper rain leaders are located at each end of the façade. This western elevation turns eastward to form a short southern elevation to the 1881 Annex which has three window bays and is flanked by two more areaways and a concrete ramp with handrails leading to the rear entry on the west elevation of the 2001 Molin Wing Addition, which is a short windowless offset of the main west elevation.

The 2001 Molin Wing exterior is red brick on a granite base unless indicated otherwise below. A slate roof pitches back from the perimeter (except over the main entrance where it is standing seam copper) for about a half-floor height and lands at a flat roof, some of which is used for mechanical equipment. On the west façade there are three stories and three stacking window bays. The first-floor windows are square non-venting windows; the second floor windows are tall double-hung sash, and; the third floor windows are again square but with double-hung sash. All windows have precast concrete sills and lintels to mimic the original structure. The eave is shallow and comprises a cornice with widely spaced modillion blocks and a continuous copper gutter with copper rain leaders at each end. Adjacent to the wall is a wood screen enclosure to conceal two concrete pad-mounted HVAC condensing units. There is an exterior door on the south end serving egress from an interior stair.

The south elevation of the 2001 Molin Addition is dominated by a bowed precast concrete projecting window bay with copper roof. There is a small patio with granite tile pavers and steel guard surrounding the bay and serving a side door centered in the bay. Four window bays at the second and third floors have the same profiles as the west elevation and a slightly projecting tower element on the southeast corner has a single bay (with paired double-hung sash) at the first floor with two bays at the second and third floors. The added height of the tower allows the third floor windows to be double-height, which echoes the 1881 window proportions. The cornice and gutter continue on the south façade with a lead-coated copper rain leader at the east end adjacent to the tower offset. There are deep concrete areaways

with gratings on each side of the service window courtyard that provide ventilation to the basement mechanical room.

The southeast tower, square in plan, returns to the east elevation of the 2001 Molin Addition, which can be considered the principal façade to the library as well as its public entrance. The tower on this side has the same window configuration as on the south façade and, then steps back slightly to a concave curved wall with five window bays. The windows at the first floor have paired double-hung sash in a precast concrete surround of spandrel panels, pilasters and lintels. “Newburyport Public Library” is cast in the lintel. Upper floors have the same configurations as the west and south façades.

Finally, the perimeter terminates at the main entrance recess, which abuts the south façade of the Tracy Mansion. The entrance elevation is composed of a precast elliptical arch with projecting vestibule, both clad with precast spandrel panels. The base of the wall is also composed of precast panels and all glazing at the entrance lobby and vestibule is aluminum storefront. Above the double-height lobby arch is an array of five fixed windows in a trabeated clerestory of lead-coated copper seated on a precast wall cap. The lead-coated copper steps outward to form an eave that joins the two matching painted modillion cornices on either side. Lead-coated copper rain leaders flank the façade. A granite paver forecourt at the vestibule with granite steps and steel guard rails provides the formal public entryway from the sidewalk. A ramp also serves the upper forecourt landing on the south side.

The Building is further depicted and described in Exhibit B incorporated herein and attached hereto by reference; and

WHEREAS, the cultural, historical and architectural significance of the Building emanates from its original construction in 1771 and subsequent repurposing as a library in 1865, and its location within the Newburyport Historic District, designated August 2, 1984 and listed on the State and National Registers of Historic Places. The Building is important for its associations with the social and cultural 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 Building and the Property, and have the common purpose of preserving the aforesaid preservation values and significance of the exterior of the Building and the Property; and

WHEREAS, the preservation values of the Building 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 Building as of the date of this grant; and

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

1. (Exhibit B-1) A set of fifteen (15) exterior photographs of the Building taken in July and August 2020;
 - a. Photo 1: Tracy Mansion - East façade.
 - b. Photo 2: Tracy Mansion - North façade.
 - c. Photo 3: 1881 Simpson Annex - North façade.

- d. Photo 4: 1881 Simpson Annex - West façade.
- e. Photo 5: 1881 Simpson Annex - South façade.
- f. Photo 6: 2001 Edward G. Molin Wing - West façade.
- g. Photo 7: 2001 Edward G. Molin Wing - South façade.
- h. Photo 8: 2001 Edward G. Molin Wing Tower – South façade.
- i. Photo 9: 2001 Edward G. Molin Wing Tower – East façade.
- j. Photo 10: 2001 Edward G. Molin Wing - East façade.
- k. Photo 11: 2001 Edward G. Molin Wing - East façade Entrance.
- l. Photo 12: Tracy Mansion East Portico.
- m. Photo 13: 1881 Simpson Annex North Portico.
- n. Photo 14: Granite and Cast Iron Fence.
- o. Photo 15: Fence Detail.

- 2. (Exhibit B-2) List of Character Defining Features;
- 3. (Exhibit B-3) Newburyport Assessors' Parcel Map with Building Footprint; and
- 4. (Exhibit B-4) Massachusetts Historical Commission Inventory Form B.

WHEREAS, the Grantor has appropriated Community Preservation Act Funds to be expended for the preservation and renovation of the aforementioned Building, under the terms and conditions set forth herein and in such other documents as may be executed in relation to the award of said Funds, and Grantor agrees to accept such Funds to be used exclusively for such purposes and under such terms and conditions ("Restriction" or "Preservation Restriction");

WHEREAS, the Grantor in further consideration of the receipt of such Funds and to ensure the preservation of the aforementioned Building agrees and desires, to impose certain restrictions, obligations and duties upon itself, its successors and assigns, so as to maintain, protect and preserve the architectural and historical integrity of the Building;

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

WHEREAS, the Grantee is a charitable corporation the purposes of which include the preservation of historically significant buildings and sites, is duly organized under the laws of the Commonwealth of Massachusetts, and is authorized to accept, administer and enforce this preservation restriction under the provisions of the Act;

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 Property and exterior of the Building to be administered, managed and enforced by the Grantee.

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

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

- a. any alteration to the appearance, materials, workmanship, condition or structural stability of the Building unless (i) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the Building and the Property, or (ii) the Grantee has previously determined that it will not impair such characteristics after reviewing plans and specifications' submitted by Grantor in accordance with the requirements of paragraph 7, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency promptly reported to Grantee in accordance with 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. any other act or use that maybe harmful to the historic preservation of the Building or the Property.

3. Restriction as to Expenditure of Funds: Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Grantee may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall expend such Community Preservation Funds to rehabilitate and restore the Building.

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 Grantee may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the Building in the same structural condition and state of repair to that existing following the substantial completion of restoration work to be completed as a result of the expenditure of Community Preservation Funds. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the exterior of the Building. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with the policies and procedures of the Grantee 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 Building shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property near the Building;
- c. no above-ground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded;

- d. no additions and/or outbuildings may be attached to the Building without prior approval of the Grantee; and
- e. moving the Building to another location shall be forbidden without prior approval of the Grantee.

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 Grantee may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the Building without prior express written approval of the Grantee. Without said approval Grantor shall not make any changes to the Building, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, and any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the Building. Grantor shall similarly not make any alterations to the surrounding Property that would obscure the current view of the Building, including but not limited to the installation of permanent signage or trees or very large shrubs without approval of the Grantee.

Activities by Grantor to maintain the Building 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 Grantee. 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 Grantee without further approval by the Grantee:

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

7. Review of Grantor's Requests for Approval: Grantor shall submit to the Grantee for the Grantee'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 Grantee a timetable for the proposed activity sufficient to permit the Grantee to monitor such activity. Within forty-five (45) days of the Grantee's receipt of any plan or written request for approval hereunder, the Grantee 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 Grantee shall provide Grantor with written suggestions for modification or a written explanation for the Grantee disapproval. Any failure by the Grantee 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 Grantee 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 Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the Grantee shall apply the Secretary's Standards.

9. Casualty Damage or Destruction: In the event that Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Grantee 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 Building and Property and to protect public safety, shall be undertaken by Grantor without the Grantee's prior written approval of the work. Within one hundred twenty (120) days of the date of damage or destruction, if required by the Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Grantee, 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 Building and/or reconstruction of damaged or destroyed portions of the Building; and
- c. a report of such restoration/reconstruction work necessary to return the Building to the condition existing at the date hereof or the condition subsequently approved by the Grantee.

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 Grantee agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and the Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Grantee agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction and Grantor may, with prior written consent of the Grantee, alter, demolish, remove or raze the Building, and/or construct new improvements on the Property, Grantor and Grantee may agree to seek 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 Grantee are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts arbitration statute then in effect, and all other applicable laws, rules, regulations, and ordinances. Arbitrator shall have experience in historic preservation matters.

11. Insurance: Grantor shall keep the Building insured by an insurance company rated "A-I" 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 building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Grantee, within ten (10) business days of the Grantee's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

12. Indemnification: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend, at its own cost and expense, Grantee, its boards, commissions, appointees, agents, directors, employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Building; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the Building; unless such injury, death, or damage is caused by Grantee or its boards, 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: Newburyport Public Library
94 State Street
Newburyport, Massachusetts 01950

Grantee: Museum of Old Newbury
98 High Street
Newburyport, Massachusetts 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 Building 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 Grantee exercising its right to enforce the terms and conditions of the

Restriction by seeking appropriate legal and equitable relief, including, but not limited to, restoration of the Building, repayment of the Funds, and such other legal and equitable remedies as may be available to the Grantee 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 Grantee, reverse any actions or activities which violated this restriction and altered the Building.

Nothing in this Restriction shall impose upon the Grantee any duty to maintain or require that the Building be maintained in any particular state or condition, notwithstanding the Grantee acceptance hereof. Enforcement of the terms of this Preservation Restriction shall be at the discretion of the Grantee. Any election by the Grantee 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 Grantee does not assume any liability or obligation relating to the condition of the Building or the Property, including compliance with hazardous materials or other environmental laws and regulations.

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 Grantee and all parties claiming by, through or under the Grantee and shall bind the Grantor and all parties claiming by, through or under the Grantor. The rights hereby granted to the Grantee constitute the perpetual right of the Grantee 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. Recording and Effective Date: Grantor shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction which shall become effective upon its being duly executed by the Grantor and the Grantee, its being approved by the Massachusetts Historical Commission, and its being recorded with the Southern Essex County District Registry of Deeds.

22. 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 Building resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such extinguishment is in the public interest. In the event of a sale of the Property, net proceeds of sale shall be paid to Grantor.

23. 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, City of Newburyport 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.

24. 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 building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

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

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

26. 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.

27. 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 _____, 2020.
By:

GRANTOR: CITY OF NEWBURYPORT, MASSACHUSETTS

CONVEYANCE 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 _____, 2020, the City Council voted to convey and approve the foregoing Preservation Restriction Agreement for the preservation of the historic resource 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 restriction has been conveyed and approved by the City of Newburyport

CITY OF NEWBURYPORT

Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, 2020, 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 _____, 2020, 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:

ACCEPTANCE BY THE GRANTEE

I, the undersigned representative of the Grantee, hereby certify that at a meeting duly held on _____, 2020, the trustees voted to accept the foregoing Preservation Restriction Agreement for the preservation of the Newburyport Public Library and being in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

GRANTEE
Museum of Old Newbury

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

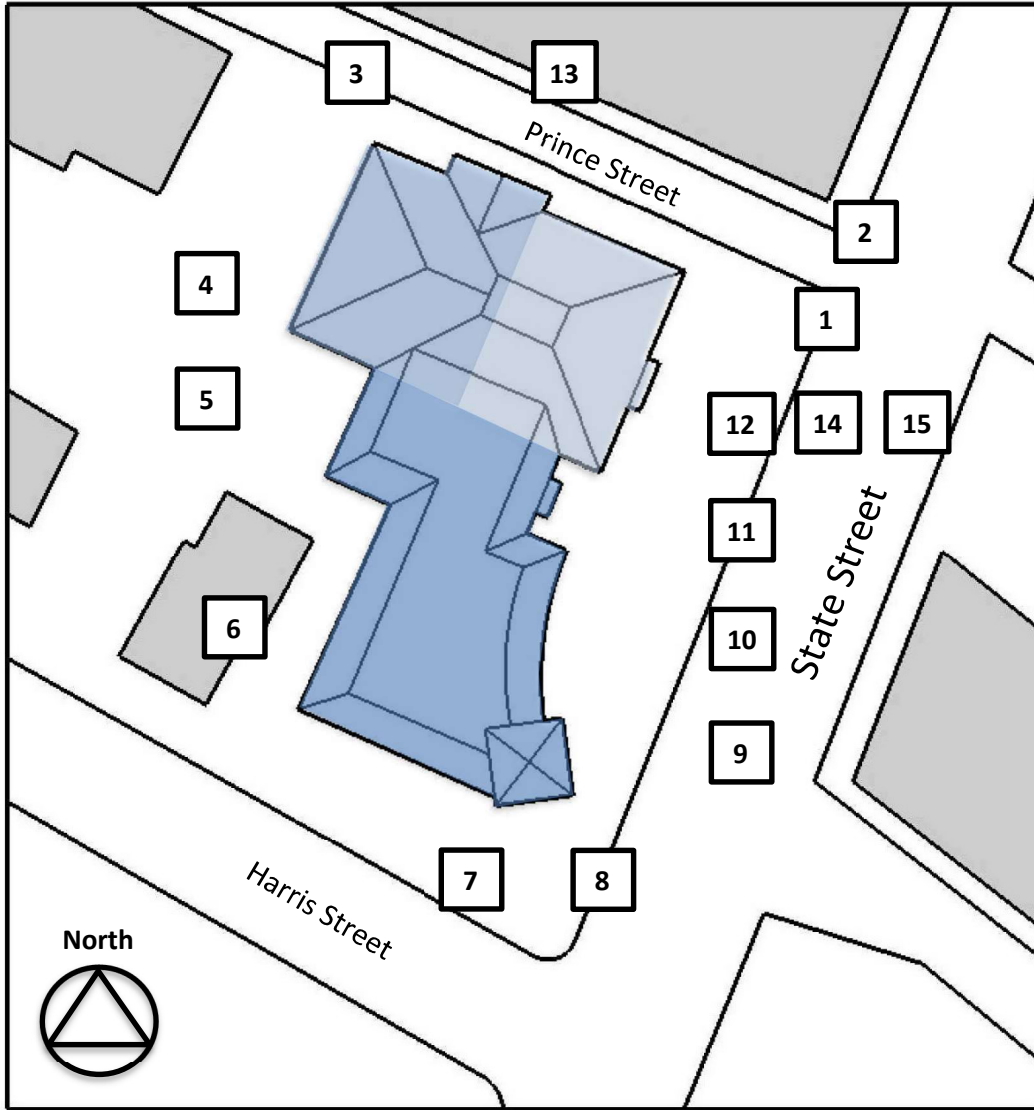
On this ____ day of _____, 2020, before me, the undersigned notary public, personally appeared Susan C. S. Edwards, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), 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 Grantee.

Notary Public
My Commission Expires:

EXHIBIT A

Legal Property Description

EXHIBIT B-1: BASELINE DOCUMENTATION KEY PLAN AND PHOTOGRAPHS






-  Tracy Mansion
-  1881 Simpson Annex
-  2001 Edward G. Molin Wing



Photo No. 1: Tracy Mansion – East Façade (July 2020)



Photo No. 2: Tracy Mansion – North Façade (July 2020)



Photo No. 3: Simpson Annex – North Façade (August 2020)



Photo No. 4: Simpson Annex – West Façade (August 2020)



Photo No. 5: Simpson Annex – South Façade on left side (August 2020)



Photo No. 6: Molin Wing – West Façade (August 2020)



Photo No. 7: Molin Wing – South Façade (August 2020)



Photos Nos. 8 & 9: Molin Wing Tower – South & East Façades (August 2020)



Photo No. 10: Molin Wing – East Façade (August 2020)



Photo No. 11: Molin Wing – East Façade Entrance (August 2020)



Photo No. 12: Tracy Mansion Portico (August 2020)



Photo No. 13: Simpson Annex Portico (August 2020)



Photo No. 14: Tracy Mansion Fence – East Façade (August 2020)



Photo No. 15: Tracy Mansion Fence – Detail (August 2020)

EXHIBIT B-2: BASELINE DOCUMENTATION – CHARACTER DEFINING FEATURES

The bulleted items that follow should be retained to preserve the historic integrity of the Newburyport Library. Each of the three components (Tracy Mansion, Simpson Annex, Molin Wing) has its own list:

Tracy Mansion

- Five (front) by four (side) window bay proportions.
- Granite foundation and red brick walls.
- Wood cornice and modillion brackets.
- Two-over-two double-hung sash at first and second floors; two-lite hinged sash at third floor.
- Sandstone sills and lintels at all windows.
- Portico with Ionic columns and wood panel rustication.
- Marble sign over east portico.
- Slate roof with mid-slope stepped wood cornice.

1881 Simpson Annex

- Five (rear) by three (side) window bay proportions.
- Granite foundation and red brick walls.
- Wood cornice and modillion brackets.
- Two-over-two double-hung sash at first and second floors.
- Sandstone sills and lintels at all windows.
- Portico with Corinthian columns.
- Slate roof.
- Copper gutter and rain leaders.

2001 Molin Wing

- Granite foundation and red brick walls.
- Two-over-one double-hung sash all floors except fixed windows at rear first floor.
- Precast concrete sills lintels at all windows.
- Precast concrete wall panel surrounds at first floor south elevation projecting bay.
- Precast concrete wall panel surrounds at first floor east elevation with “Newburyport Public Library” cast-in signage.
- Precast concrete arched clerestory above projecting entrance vestibule at east elevation.
- Clerestory with lead-coated copper cladding above arched clerestory window.
- Slate perimeter roofing with standing seam copper roofing above entrance clerestory.

Tracy Mansion Front Lawn

- Granite and cast iron railings at perimeter of lawn.

EXHIBIT B-3: BASELINE DOCUMENTATION – ASSESSOR’S PARCEL MAP

EXHIBIT B-4: BASELINE DOCUMENTATION – MHC FORM B

FORM B - BUILDING

NRDIS 8/2/84

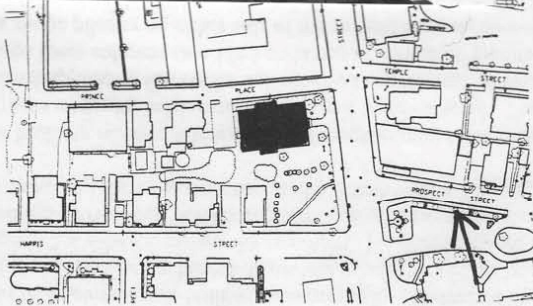
Assessor's number
1-6

USGS Quad
Newburyport

Area(s)
L,U

Form Number
365

Massachusetts Historical Commission
Massachusetts Archives Building
220 Morrissey Boulevard
Boston, Massachusetts 02125



Town Newburyport

Place (neighborhood or village)

Address 94 State Street

Historic Name Nathaniel Tracy House/City Library
(Newburyport Public Library)

Uses: Present Library

Original Residence

Date of Construction 1771

Source Currier, History of Newburyport

Style/Form Georgian (modified)

Architect/Builder original - unknown; 1864 - Arthur
Gilman; 1882 addition - Rufus Sargent

Exterior Material:

Foundation Granite

Wall/Trim Brick

Roof Slate

Outbuildings/Secondary Structures

none

Major Alterations (with dates) 1864-5 - renovated for use
as library; 1870 - reading room; 1882 - Simpson Annex
constructed, mastic removed, new brick face

Condition good

Moved no yes Date

Acreage 15860 SF

Setting adjacent to the central business district and in
close proximity to Georgian and Federal houses

Recorded by Lisa Mausolf

Organization Newburyport Historical Commission

Date (month/year) May 1999

Follow Massachusetts Historical Commission Survey Manual instructions for completing this form.

BUILDING FORM (94 State Street)

ARCHITECTURAL DESCRIPTION

Describe architectural features. Evaluate the characteristics of the building in terms of other buildings within the community.

This three-story, brick building was originally constructed in 1771 as a private dwelling. It was renovated for use as a public library in 1865 and achieved its present appearance in the late 19th century. Characteristics of the Georgian style include the original 5 x 4-bay massing, the symmetry, the double-hipped roof, the bold modillion cornice and the attenuated third story openings. Projecting belt courses are located between the stories. The original center entrance displayed an entablatured surround and the windows contained 6/6 sash with a 3 x 2-light unit in the attic.

The building rests on a foundation of rough granite blocks with smooth top margins and a curved water table. The building displays a smooth brick exterior, laid in a common bond. The present brick veneer dates to the 1880s when the mastic coating applied in the 1860s was removed and the rear addition was completed. The entrance porch which now consists of paired Ionic columns (a c.1865 addition) is fronted by granite steps with a wrought iron curved railing. Echoing the columns is a single pilaster on either side of the rusticated wood door surround. The entrance has been fitted with double glass and wood doors; each leaf has a 2 x 3-light over a molded panel. The first and second floor windows contain 2/2 wooden sash with molded surrounds and exterior storm windows. The windows are capped by rectangular sandstone lintels with chamfered lower edges and plain stone sills. Between the center windows on the second and third floors there is a marble panel with flared corners and raised letters reading "Public Library and Reading Room". The third floor windows contain smaller 2/2 sash.

Projecting near the center of the north and south elevations is a shallow, 2 1/2-story gable with returns. The additions are just two bays wide with longer 2/2 windows on the upper level and a semi-circular lunette in the attic. On the north side the gable is fronted by a secondary entrance porch supported by paired fluted Corinthian columns resting on paneled bases. The columns are spanned by arched members and display a wide frieze and dentil course. Each leaf of the large double-doored entrance has three raised panels. The entrance is capped by a rectangular transom and the original granite steps have been topped by a thick stone that serves as a base for the ramp. An exterior brick chimney rises to the rear of the gable. To the west of the gabled projections the building is punctuated by two stories of elongated 2/2 windows with the same lintel treatment and cornice. A large iron fire escape is mounted on the south elevation.

The building is setback from State Street by a small front lawn. Along the street there is a granite wall about 1 1/2 feet high. The wall curves at the front walk and is topped by iron pickets. A number of bushes and flowering trees dot the property. The area to the south of the library was the site of the former YMCA which burned in 1987.

Inside, the Directors' Room still retains its original Federal-style detailing, including the delicate dentilwork, egg-and-dart moldings, the mantelpiece carving and arched window recesses with keystones and scrolls. The first floor reading room also retains considerable decorative detailing. The reading room was installed in 1870 and the Simpson Annex including the vaulted upstairs reading room dates to 1880.

HISTORICAL NARRATIVE

Describe the history of the building. Explain its associations with local (or state) history. Include uses of the building and the role(s) the owners/occupants played within the community.

This Georgian-style residence was constructed in 1771 by Capt. Patrick Tracy, who built the house for his son, Nathaniel Tracy. The present building stands on the site of a house erected by Greenleaf and later occupied by Rev. John Lowell, pastor of the First Congregational Church of Newburyport. The former house was moved to Temple Street by Patrick Tracy and is marked with a plaque. The Tracy estate originally extended to Green Street and included gardens, fruit orchards, barns stables and other outbuildings.

Recommended for listing in the National Register of Historic Places. *If checked, you must attached a completed National Register Criteria Statement form.*

INVENTORY FORM CONTINUATION SHEET

Town
Newburyport

Property Address
94 State Street
Area(s) Form No.

Massachusetts Historical Commission
Massachusetts Archives Building
220 Morrissey Boulevard
Boston, Massachusetts 02125

L,U	365
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HISTORICAL NARRATIVE (continued):

Wealthy merchant and ardent patriot Nathaniel Tracy was one of the major financiers of the Revolution. He owned a fleet of 110 ships including many that were commissioned as privateers during the War. Tracy served as a representative to the Massachusetts State Constitutional Convention in 1779, served as a town selectman in 1780 and 1782 and was one of the founders of the St. John's Masonic Lodge. Nathaniel Tracy married the daughter of Colonel Jeremiah Lee, one of Marblehead's most prominent citizens.

After the Tracy fortune was devastated by the Revolutionary War, the property subsequently passed to Jonathan Jackson, Tracy's brother-in-law and business partner in the importing firm of Jackson, Tracy and Tracy. Jackson served as a member of the Committee of Safety, Correspondence and Inspection in 1775-7 and was elected to the General Court in 1776 & 1777. He served as a delegate to the Continental Congress in Philadelphia in 1782. He also served in the Massachusetts Senate in 1789 and as a Census Commissioner in 1790. During Jackson's residence, among the famous who were entertained in the house were John Hancock and George Washington.

Between 1791 and 1796 the Tracy house was occupied by the eccentric Lord Timothy Dexter. Soon thereafter, the house was purchased by merchant James Prince who served as an early selectman and collector of the port. Due to financial difficulties Prince was forced to rent the house in 1807. The tenant, James Coburn, opened the house to travelers as the Sun Hotel and continued to operate his business here until 1810. By 1824 James Prince was again living in the Tracy House and during his tenure the General Marquis de Lafayette was escorted to the house by parade where he dined with invited guests before spending the night.

In 1863 the Tracy House was purchased for use as a public library at a cost of \$6,000, raised primarily through public subscription. Alterations to the building were completed in 1865, according to the designs of noted Boston architect, Arthur Gilman, who was a native of Newburyport. Albert Currier, former mayor of the City, served as the construction superintendent. The cost of the alterations was approximately \$10,000 and neither Gilman or Currier charged any fees. The building was deeded to the city in September 1865 and opened to the public January 1, 1866. As part of the renovations, the brick dwelling was covered with mastic, the windows were altered to contain 2/2 sash, and the original recessed entrance with pilasters and dentils had been replaced by the present entrance porch supported by Ionic columns. An iron fence was erected around the property.

In 1870 William C. Todd established a free reading room in connection with the Public Library. Todd had served as the principal of the Female High School of Newburyport. Todd recognized the free reading room, containing the leading newspapers and magazines of the day, as necessary as free schools and free libraries. In 1881, Michael H. Simpson of Boston and others contributed \$22,000 for the construction of a reading room. The Simpson Annex was completed and dedicated on April 28, 1882. The mastic covering on the exterior of the building was removed at this time and a new veneer of pressed brick was applied. The tall brick chimneys were also removed at this time. The plans for the addition were drawn by Rufus Sargent of Newburyport and the contractor was Albert Currier. The 48 x 28' reading room is 14 feet high and provided shelves for 25,000 additional volumes. The room was finished in quartered oak.

INVENTORY FORM CONTINUATION SHEET

Town
NewburyportProperty Address
94 State Street
Area(s) Form No.

Massachusetts Historical Commission
 Massachusetts Archives Building
 220 Morrissey Boulevard
 Boston, Massachusetts 02125

L,U	365
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HISTORICAL NARRATIVE (continued):

The Newburyport Public Library is one of the oldest public libraries in the state, following the examples of Wayland and New Bedford, Peabody, Boston, Concord, Southborough, Gloucester and other places. In 1851 the Massachusetts legislature passed a law enabling cities and towns to appropriate money for public libraries. Newburyport's first library of a public nature had been opened in May 1851 in a room over the Merchants' National Bank at the corner of State and Charter Streets. It was known as the Merrimack Library Association. In October 1851 the library moved to the corner of State and Pleasant Streets where it remained until 1854. In 1854 Josiah Little gave the City \$5,000 to establish a permanent library to be under the control of the Mayor and Aldermen. On September 5, 1855 the library was opened in a room on the first floor of the northwesterly side of City Hall.

The library will be embarking upon a long-awaited addition and rehabilitation project in the fall of 1999. The architects for the project are Finegold Alexander + Associates.

BIBLIOGRAPHY and/or REFERENCES

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 Newburyport City Directories, various dates.
 Stirgwort, Mary Jane. "Historical Buildings Survey and Inventory, Newburyport, Massachusetts: Narrative History", Prepared for the Massachusetts Historical Commission, 1980.
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EXHIBIT C

RESTRICTION GUIDELINES

ATTACHMENT TO PRESERVATION RESTRICTION AGREEMENT BETWEEN GRANTEE AND THE CITY OF NEWBURYPORT

The purpose of the Restriction Guidelines is to clarify Paragraph five (5) of the terms of the Preservation Restriction, which deals with alterations to the Property. Under this section permission from the Grantee is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require review by the Grantee.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the Grantee, the following list has been developed. This list is by no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by the property owner.

PAINT

Minor - Exterior or interior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, ornamental woodwork, stone, masonry, decorative or significant original stucco or plaster.

WINDOWS AND DOORS

Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change, but with notification it is commonly acceptable.

EXTERIOR

Minor - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

LANDSCAPE/OUTBUILDINGS

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing Building or Property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, walls, fences;

ground disturbance affecting archaeological resources.

HEATING / AIR CONDITIONING / ELECTRICAL / PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major exterior appearance changes (e.g. exterior ducts, piping, ventilators, HVAC units); the removal of substantial quantities of original materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the Preservation Restriction such changes must be reviewed by the Grantee and their impact on the historic integrity of the premise assessed.

It is the responsibility of the property owner to notify the Grantee in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications. The intent of the Preservation Restriction is to enable the Grantee to review proposed alterations and assess their impact on the integrity of the structure, not to preclude future change. The Grantee will attempt to work with property owner to develop mutually satisfactory solutions that are in the best interests of the Property.