

PRESERVATION RESTRICTION AGREEMENT

between

Daniel J. Lynch

and the

CITY OF NEWBURYPORT, MASSACHUSETTS

BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION AGREEMENT is made this \_\_\_ day of \_\_\_\_\_ 2020 by and between Daniel J. Lynch, and Judith S. Lynch, of 342 Merrimac 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 it agent, the NEWBURYPORT HISTORICAL COMMISSION, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950 ("Commission"),

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Daniel J. Lynch

WHEREAS, the Grantor is the owner of certain real property located at 342 Merrimac Street, Newburyport, Massachusetts, referred to as "the Property" and containing about 13,090 square feet, more or less, comprising the Property conveyed by Diane M. Jodoin F/K/A Diane M. Drinan, to Daniel J. Lynch in a deed dated November 3, 2005, recorded with the Southern Essex District Registry of Deeds, book 25045, page 487, and by a deed of Briar R. Forsythe-Fandetti to Daniel J. Lynch and Judith S. Lynch dated December 27, 2016 recorded with said Registry book 35650 page 573 and more particularly described in Exhibit A incorporated herein by reference and attached hereto, said Property improved by a building thereon known as the Jacob Whitmore House, referred to hereinafter as "the Building", described as follows:

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A two-story, side-gable example of a Federal-style house. As is typical of many Federal houses, the front elevation is five bays wide and symmetrically arrayed with a center entrance. A heavy brick chimney is centered on the roof ridge. It is believed that this house was updated in the mid-19th century, resulting in ornamental details which reflect the later Greek Revival style. The main building block rests on a stone foundation, and the two-story ell rests on a brick foundation. The walls are clad in wood clapboard siding, some of which have been replaced. The building's corners are articulated with broad pilasters with recessed panels and denticulated capitals. The roof is clad in asphalt shingles (likely wood shingles originally). The roof has a slightly-projecting molded box cornice. The front entrance has what appears to be a replacement wood six-panel door flanked by partial sidelights and pilasters with recessed panels. The entrance lintel is unadorned, possibly due to the addition of the bay on the second story which is supported by columns that rest on modern stone and concrete piers. According to the 1980 version of the Form B, this bay was added in the early-20th century.

Fenestration on the front and side elevations includes wood 6/1 double-hung windows on the first story and wood 6/6 double-hung windows on the second and third story. The house likely originally had wood 6/6 windows throughout. The windows are set in frames that reflect the recessed panel detail of the corner pilasters. The rear elevation has a complicated mix of ells/addition. An 1880 "bird's eye view suggests that the two-story rear ell may date to at least the mid-19th century, with the other rear additions dating to the 20th century. The rear shed dormer was added in 1980.

The property includes a 1½-story outbuilding that rests on brick piers and is clad in painted wood shingles. The origins of this building are unknown. The Newburyport National Register District nomination calls it a shed and gives it a date of ca. 1845, but it is not shown on the 1851 Plan of Newburyport. It may be a remnant of the taller outbuilding with smokestack seen in the 1880 “bird’s-eye view”.

**Deleted:** [Insert Building description with architectural features]

The Building is further depicted and described in the Exhibits incorporated herein and attached hereto by reference; and

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WHEREAS, the cultural, historical and architectural significance of the Building emanates from its construction in 1785, and its location as a contributing property within the Newburyport Historic District, designated August 2, 1984 and listed on the Newburyport National Register District. The Building is important for its associations with the shipbuilding history of Newburyport, and to the public’s enjoyment and appreciation of Newburyport’s architectural and historical heritage; and

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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 Exhibit A, Exhibit B, C and D which Baseline Documentation the parties agree provides an accurate representation of the Building as of the date of this grant; and

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

1. A set of fourteen (14) exterior photographs of the Building taken in July, 2020:
  - a. Photo 1: South (front) Elevation,
  - b. Photo 2: Main Entry Detail, Sidelights, Panels, and Pilasters--South Elevation
  - c. Photo 3: South Façade
  - d. Photo 4: Fascia, Crown, Soffit, Frieze and Upper Corner Pilaster Detail-- South Elevation
  - e. \_\_\_\_\_
  - f. Photo 5: Fascia, Crown, Soffit, Frieze and Casing Detail-- South Elevation
  - g. Photo 6: Fascia, Crown, Soffit, Frieze and Chimney Detail—South Elevation
  - h. Photo 7: West Façade – Corner Pilaster, Window Trim, Rake Detail
  - i. Photo 8: West Façade – Pilaster, Windows and Trim, Siding
  - j. Photo 9: West Façade – Pilaster, Windows and Trim, Siding, Rake and Return Detail
  - k. Photo 10: Windows Trim, Siding and Rake Details—West Elevation
  - l. Photo 11: East Façade
  - m. Photo 12: East Façade Entry Door with Transom Window, Pilasters, Frieze, and Cornice Detail
  - n. Photo 13: Corner Pilaster, Rake, Fascia and Return Detail—East and North Elevations
  - o. Photo 14: North (rear) Façade

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**Deleted:** Main Entry Detail – North Elevation

WHEREAS, in addition to the above-reference Photographic Documentation of Exhibit B, the Baseline Documentation shall also consist of the following:

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Legal Property Description Attached hereto as Exhibit A

[Massachusetts Historic Commission Inventory Form B completed in October 2017 attached hereto as Exhibit C](#)  
[Newburyport Assessor's Parcel Map and Building Footprint attached as Exhibit D; and](#)

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

WHEREAS, [as a condition of the Special Permit issued by the City of Newburyport Planning Board on July 1, 2020 and recorded in the South Essex Registry of Deed Page 38916 Page 462 \("Special Permit"\) and which includes the restoration of the Building and permits the construction of an additional building at the rear of the Property facing Merrimac Street the Grantee has approved the proposed changes to the Building and the Property which proposed changes are documented in the set of plans and drawings \("Grantor's Plans"\) referenced in the Special Permit said referenced plans and drawings are all incorporated into this Restriction by this reference. Representation of selected Grantor's Plans drawings of the exterior of the building, as well as Special Condition "2" of the Special Permit regarding the Conditions required by the Newburyport Historical Commission are attached hereto and incorporated herein by this reference as Exhibit E;](#)

WHEREAS, the Grantor in further consideration of the receipt of [said permit](#), and to ensure the preservation of the aforementioned Building [in accordance with the Restoration Plans attached as Exhibit E](#), 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");

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; [and](#)

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](#) 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 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

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Deleted: upon the recommendation of the Community Preservation Committee and approved as Project #9 by the City Council on June 9, 2014, the sum of two hundred thousand dollars (\$200,000) from the Community Preservation Fund ("Funds") was appropriated for the purpose of funding a grant for the restoration of the Building; and

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Deleted: WHEREAS, the Grantor and the Grantee have reached an Agreement whereby the Grantee shall provide the Funds so appropriated to the Grantor 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 the parties may execute, and the Grantor agrees to accept such Funds to be used exclusively for such purposes and under such terms and conditions ("Restriction" or "Preservation Restriction");¶

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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 F, and hereby incorporated by reference.

- b. any other act or use that may be harmful to the historic preservation of the Building or the Property.

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3. Grantor's Covenants: Covenant to Maintain. Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the Building in the same structural condition and state of repair 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 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"). It is desirable, although not a requirement of this Agreement, that the current synthetic exterior sheathing of the Building be removed at a future date, and the extant underlying wood cladding, trim and decorative features be restored and/or replaced with historically appropriate wood materials.

Deleted: 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 Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall expend such Community Preservation Funds to rehabilitate and restore the Building.¶

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

- a. the Building shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property 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 Grantor; and
- e. moving the Building to another location shall be forbidden without prior approval of the Commission.

Deleted: 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.¶

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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, and except as set forth in the Special Permit and Grantor's

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

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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 Commission. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines (Exhibit F), which are attached to this Agreement and hereby incorporated by reference.

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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 Building and Property; and
  - (iii) are not inconsistent with the Purpose of this Restriction;
  - (iv) without further approval, are in conformance with Grantor's Plans attached hereto as Exhibit E.
- b. pursuant to the provisions of Paragraph 3, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the Building. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the Commission in accordance with the provisions of Paragraph 5;

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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 Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the Commission shall apply the Secretary's Standards.

9. Casualty Damage or Destruction: In the event that Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of 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 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 Building and/or reconstruction of damaged or destroyed portions of the Building; and
- c. a report of such restoration/reconstruction work necessary to return the Building to the condition existing at the date hereof or the condition subsequently approved by the Commission.

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

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

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

11. Insurance: Grantor shall keep the Building insured by an insurance company rated "A-1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire 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 Commission, within ten (10) business days of the Commission's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

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

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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 Building, 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 Building.

Nothing in this Restriction shall impose upon the Commission any duty to maintain or require that the Building be maintained in any particular state or condition, notwithstanding the Commission's acceptance hereof. Enforcement of the terms of this Preservation Restriction shall be at the discretion of the Commission. Any election by the Commission as to the manner and timing of 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 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 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 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.

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 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.

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 \_\_\_\_\_, 2020,  
By:

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**GRANTOR:**

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

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

On this \_\_\_\_ day of \_\_\_\_\_, 2020, 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.

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

**ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION**

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

Deleted: Linda Smiley

COMMONWEALTH OF MASSACHUSETTS

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

On this \_\_\_\_ day of \_\_\_\_\_, 2020, 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.

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\_\_\_\_\_

Notary Public  
My Commission Expires:

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**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 \_\_\_\_\_, 2020, 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.

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

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\_\_\_\_\_  
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.

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Notary Public  
My Commission Expires:

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**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: \_\_\_\_\_  
Print Name: Brona Simon  
Executive Director and Clerk

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared, Brona Simon, Executive Director and Clerk, proved to me through satisfactory evidence of identification, which 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.

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

List of Exhibits / Attachments

Exhibit A: Legal Property Description

Exhibit B: Baseline Photographic Documentation

Exhibit C: Form B

Exhibit D: Newburyport Assessor's Parcel Map

Exhibit E: Grantor's Approved Plans

Exhibit F: Restriction Guidelines

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Exhibit A: Legal Description

The land in Newburyport as shown on a Plan entitled "Condominium Site Plan, 342 Merrimac St., Newburyport, MA for Barbara and John Schopfer, Scale 1"=20' May , 1989, prepared by Riverside Engineering Services, Inc., 205 Groveland St., Haverhill, MA,". Said land is further bounded and described as follows:

PARCEL ONE

Commencing at the Southerly corner thereof Merrimac Street by land now or formerly of J. Albert Rand; thence running North 30 degrees 45' West by said Street sixty and 23/100 feet to land now or formerly of George Menut; thence North 63 degrees 15' East by land now or formerly of said Menut one hundred fifty-one and 52/100 feet to other land now or formerly of said Menut; thence South 22 degrees 30' East by the last mentioned land seventy-two feet to a corner; thence South 70 degrees West by land now or formerly as said J. Albert Rand to the point of beginning.

PARCEL TWO

Land in said Newburyport shown on the above described plan. Beginning Northerly by Lot 11 as shown on said Plan 82.58 feet; thence Easterly by Merrimac Court 94.25 feet; thence Southerly 30.01 feet by land formerly of Rand, now of Currier; thence Westerly 70.37 feet by land of the grantee.

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Exhibit B: Baseline Documentation



1. South Facade

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2. Front Entry, Sidelights, Panels, and Pilasters

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3. South Façade

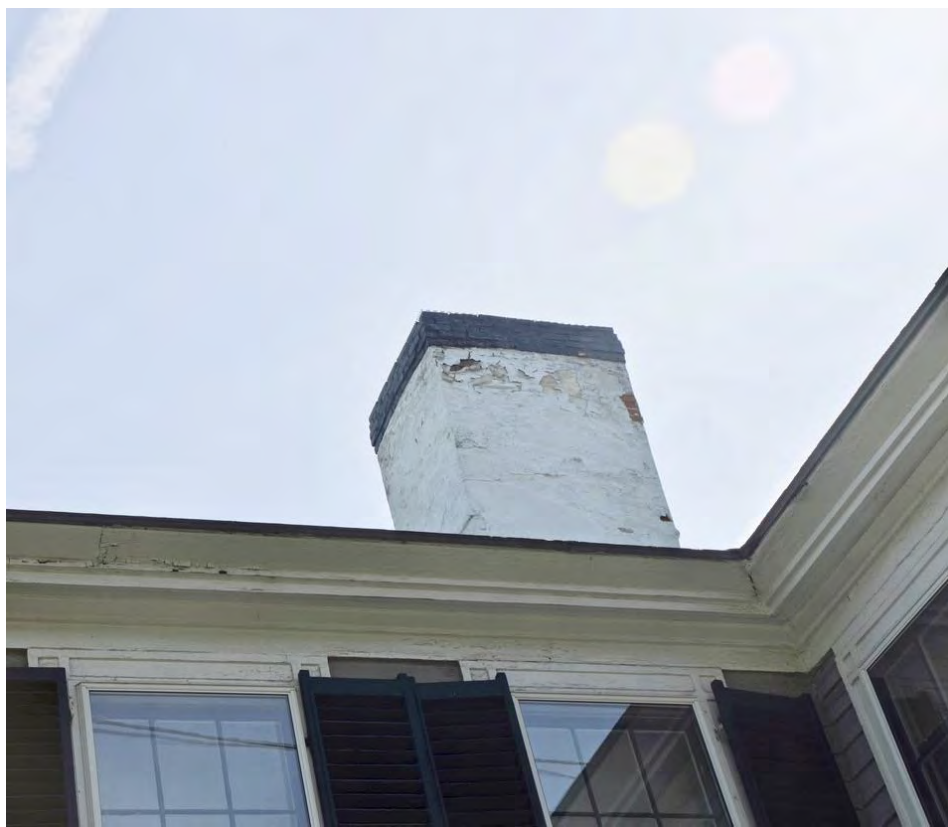
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4.Fascia, Crown, Soffit, Frieze and Upper Corner Pilaster Detail



5.Fascia, Crown, Soffit, Frieze and Casing Detail



6.Fascia, Crown, Soffit, Frieze and Chimney Detail

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7. West Façade – Corner Pilaster, Window Trim, Rake Detail



8. West Façade – Pilaster, Windows and Trim, Siding (Typ.)





9. West Façade – Pilaster, Windows and Trim, Siding, Rake and Return Detail



10. Windows Trim, Siding and Rake Details



11. East Façade



12. East Entry Door with Transom Window, Pilasters, Frieze, and Cornice Detail.

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13. Corner Pilaster, Rake, Fascia and Return Detail



14. North Façade

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Exhibit C-Draft Massachusetts Form B

**FORM B – BUILDING**

**DRAFT**

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

Assessor's Number USGS Quad Area(s) Form Number  
65-10-173 Newburyport NWB.1 NWB.272

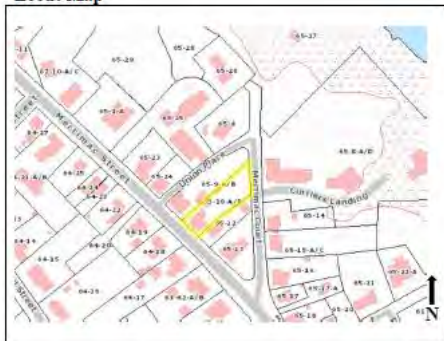
Town/City: NEWBURYPORT  
Place: (neighborhood or village): Merrimack Shipbuilding District

**Photograph**



Address: 342 Merrimac Street  
Historic Name: Whitmore, Jacob House  
Uses: Present: Residential  
Original: Residential  
Date of Construction: ca. 1785  
Source: Deed research  
Style/Form: Federal  
Architect/Builder: Unknown  
Exterior Material:  
Foundation: Stone, brick  
Wall/Trim: Wood clapboard/ wood  
Roof: Asphalt shingles

**Locus Map**



Outbuildings/Secondary Structures:  
1½-story outbuilding, possibly 19<sup>th</sup> c. (see Photo 3)

Major Alterations (with dates):  
Rear elevation shed dormer (1980)  
Extension of rear ell, exterior stairs and deck (dates unknown)

Condition: Good

Moved: no  yes  Date:

Acreage: 13,090 sq. ft.

Setting: This house is located on the east side of Merrimac Street near the banks of the Merrimack River. The house is set close to the street within a triangle formed by Merrimac Street, Merrimac Court and Union Place. This section of the street is densely built with 18<sup>th</sup> and 19<sup>th</sup> century houses, all set close to the street. This rectangular parcel extends from Merrimac Street to Merrimac Court. A short driveway is located along the north side of the house and a wood picket fence runs along the sidewalk.

Recorded by: Eric Dray, Preservation Consultant  
Organization:  
Date (month / year): October, 2017

**INVENTORY FORM B CONTINUATION SHEET**  
MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

BREWSTER

342 MERRIMAC STREET

Area(s) Form No.

NWB.1 NWB.272

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

*Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.*

**ARCHITECTURAL DESCRIPTION:**

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

This is a two-story, side-gable example of a Federal-style house. As is typical of many Federal houses, the front elevation is five bays wide and symmetrically arrayed with a center entrance. A heavy brick chimney is centered on the roof ridge. It is believed that this house was updated in the mid-19<sup>th</sup> century, resulting in ornamental details which reflect the later Greek Revival style. The main building block rests on a stone foundation, and the two-story ell rests on a brick foundation. The walls are clad in wood clapboard siding, some of which have been replaced. The building's corners are articulated with broad pilasters with recessed panels and denticulated capitals. The roof is clad in asphalt shingles (likely wood shingles originally). The roof has a slightly-projecting molded box cornice. The front entrance has what appears to be a replacement wood six-panel door flanked by partial sidelights and pilasters with recessed panels. The entrance lintel is unadorned, possibly due to the addition of the bay on the second story which is supported by columns that rest on modern stone and concrete piers. According to the 1980 version of this Form B, this bay was added in the early-20<sup>th</sup> century.

Fenestration on the front and side elevations includes wood 6/1 double-hung windows on the first story and wood 6/6 double-hung windows on the second and third story. The house likely originally had wood 6/6 windows throughout. The windows are set in frames that reflect the recessed panel detail of the corner pilasters. The rear elevation has a complicated mix of ells/addition (see Photo 3). An 1880 "bird's eye view" (see attached) suggests that the two-story rear ell may date to at least the mid-19<sup>th</sup> century, with the other rear additions dating to the 20<sup>th</sup> century. The rear shed dormer was added in 1980.

The property includes a 1½-story outbuilding that rests on brick piers and is clad in painted wood shingles. The origins of this building are unknown. The Newburyport National Register District nomination calls it a shed and gives it a date of ca. 1845, but it is not shown on the 1851 Plan of Newburyport (see attached). It may be a remnant of the taller outbuilding with smokestack seen in the 1880 "bird's-eye view" (see attached).

**HISTORICAL NARRATIVE**

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

*(This Historical Narrative is adapted and expanded from the 1980 version of this Form B and Area Form NWB.1)*

This house is located within the Merrimack Shipbuilding District Area Form (NWB.1). This area was part of the Town of Newbury until 1851. In that year, Newburyport was incorporated and the district north of Oakland Street was annexed to Newburyport. During the second half of the 19<sup>th</sup> century, most of the shipyards in active operation were located within the Merrimack Shipbuilding District. Residential development during the late-18<sup>th</sup> and 19<sup>th</sup> centuries along Merrimac Street and the streets running from Merrimac Street toward High Street were closely associated with the shipyards. Shipbuilding remained a prosperous industry until the late-19<sup>th</sup> century.

According to the 1980 Form B, George Burroughs, a tanner, who invested heavily in land in this area, sold this parcel of land to Jacob Whitmore in 1785. Jacob Whitmore built this house shortly thereafter. The house is located in the heart of what was then Newbury's shipbuilding district and Whitmore was likely employed in the shipyards. Whitmore sold this house to Caleb Brown in 1826. Brown was a blacksmith who invested in several nearby homes during that period.

Later this house was sold to John Currier, Jr. who established a shipyard on a large tract of land he owned east of his house. He launched almost one hundred ships between the years of 1831 and 1884. His shipyard included two launching ways, a saw mill, two-story workshop with a mold loft, and a blacksmith shop. Mr. Currier had a reputation as a builder of some of the finest sailing vessels. The *Boston Traveler*, on August 8, 1860, stated, "Among shipbuilders, John Currier, Jr., of Newburyport stands

*Continuation sheet 1*



**INVENTORY FORM B CONTINUATION SHEET**  
MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

BREWSTER

342 MERRIMAC STREET

Area(s) Form No.

NWB.1	NWB.272
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conspicuous. His reputation both at home and in Europe as a capable shipbuilder and as an honest man is without rival." Two of Mr. Currier's notable vessels included the 1,847 ton *John Currier*, which was built in 1882 and was the largest sailing ship built on the Merrimack, and the 1,575 ton *Mary L. Cushing*, which was built in 1883 and was the last square-rigged sailing vessel to be built in Massachusetts. Currier retired in 1884 and passed away in 1887. His son, author and historian John J. Currier, worked for many years in the counting room of the Currier shipyard. Prior to 1872 this house was sold to John Merrill, a ship carpenter. The house remained in the Merrill family until 1913 when Mary S. Merrill sold the property to Mary C. Sawyer.

The house and outbuilding are listed as contributing resources in the Newburyport National Register District, established in 1984.

**BIBLIOGRAPHY and/or REFERENCES**

1851 Plan of Newburyport, Mass. H. McIntire  
1880 Bird's eye view, E. H. Bigelow  
Cheney, Robert, *History of Merrimack River Shipbuilding*, Newburyport 1964  
[www.clipperheritagetrail.com/tour\\_alongwatersedge.php#09](http://www.clipperheritagetrail.com/tour_alongwatersedge.php#09)



Photo 2. View looking east.

Continuation sheet 2

**INVENTORY FORM B CONTINUATION SHEET**  
MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

BREWSTER

342 MERRIMAC STREET

Area(s) Form No.

NWB.1	NWB.272
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Photo 3. View of rear elevation and outbuilding, looking west.



Detail of 1851 Plan of Newburyport.



1880 "Bird's eye view".

*Continuation sheet 3*

Exhibit D: Newburyport Assessor's Parcel Map

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- As shown on the Plans, all the existing historic windows - that is, windows identified as dating to sometime from 1840 to 1950, shall be repaired and/or restored. Newer windows (identified as "Broscos" replacement windows by the applicant) shall be replaced by new, historically appropriate replacement windows with wood sash and muntins and true divided lights.
- As shown on the Plans, the historic door and window (by the proposed new kitchen area) on the East elevation shall not be altered, but repaired or restored as needed.
- As shown on the Plans, the historic window lights surrounding the front entrance door shall be preserved. The door may be replaced with a historically-appropriate door pending review and approval of the commission of the specific design and reason for replacement. The entablature above the door shall be restored to a historically-appropriate design as shown in the plans.
- As shown on the Plans, the chimney will not be removed or altered.
- The shutters on the front of the house may be removed or may remain in place, at the discretion of the Applicant.

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Exhibit F: Restriction Guidelines

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ATTACHMENT TO PRESERVATION RESTRICTION AGREEMENT  
BETWEEN THE CITY OF NEWBURYPORT AND DANIEL J. LYNCH

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The purpose of the Restriction Guidelines is to clarify paragraph three of the terms of the preservation restriction, which deals with alterations to the premises. Under this section permission from the Commission is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require Commission review.

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

PAINT

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

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including ornamental ironwork, stone, decorative or significant woodwork.

WINDOWS AND DOORS

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

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

EXTERIOR

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

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; 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.

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

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

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

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