

PRESERVATION RESTRICTION AGREEMENT

between

The Historical Society of Old Newbury

and the

CITY OF NEWBURYPORT, MASSACHUSETTS

BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION AGREEMENT is made this _____ day of _____ 2022 by and between the Historical Society of Old Newbury, located at 98 High Street, Newburyport, Massachusetts, 01950 ("Grantor"), and the CITY OF NEWBURYPORT ("Grantee"), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, to be administered, managed and enforced by its agent, the NEWBURYPORT HISTORICAL COMMISSION, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950 ("**Commission**"),

WHEREAS, the Grantor is the owner of certain real property with improvements known as the Caleb Cushing House, thereon as described in the deed dated December 29, 1955, from Lawrence Cushing Goodhue, F. Abbot Goodhue, and John Cushing Fuess to the Historical Society of Old Newbury, recorded with the Essex South District Registry of Deeds, Book 4237, Page 118 (hereinafter the "Property") and which is located at 98 High Street, Newburyport, Massachusetts, 01950, and is also described in Exhibit A, attached hereto and incorporated herein by reference; and

WHEREAS, the Property includes, but is not limited to, the following: the Caleb Cushing House, a three-story, brick Federal-style building constructed in 1808 with a low hipped roof, four tall interior brick chimneys, symmetrically arranged facades, a center entryway flanked by partial sidelights and fanlight above, and a decorative wooden cornice (hereinafter the Building); a three-story clapboard barn; a one-and-a-half story clapboard privy and laundry shed. To the northwest of the Cushing House is a formal garden with a small gazebo and to the north and west of the barn is a nursery. The courtyard, laundry yard, and cart path are partially covered with river stones, creating a cobbled surface and iron, wood picket, wood lattice, and wood board fencing define the parcel boundary and delineate the yards, garden, and cart path.

WHEREAS, the Property is also shown on a plan titled "Plan of Land Located in Newburyport, Massachusetts", dated February 16, 2007, prepared by Professional Land Services, LC, and recorded with the Essex South District Registry of Deeds in Plan Book 409, Plan 99, a copy of which is attached hereto and incorporated herein as Exhibit B. The area of the aforesaid Plan labeled "Parcel A – Perkins Printing Building" is not included in the Property as defined herein, said Parcel A being subject to a prior Preservation Restriction Agreement between Grantor and Grantee recorded with the Essex South District Registry of Deeds in Book 29074, Page 458 on November 18, 2009; and

WHEREAS, the Property and Building are significant for their architecture, archaeology and/or associations, and were individually listed in the National Register of Historic Places on 11/07/1973, was

designated a National Historic Landmark on 11/07/1973, was listed as a contributing structure in the Newburyport National Register Historic District on 8/2/1984, and was included in the Fruit Street Local Historic District on 10/29/2007, and therefore qualifies for a preservation restriction under M.G.L., Chapter 184, section 31,32,and 33; 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 Exhibits A,B,C and D, which Baseline Documentation the parties agree provides an-accurate representation of the Building and Property as of the date of this grant; and

WHEREAS, the Baseline Documentation shall be

- 1) Legal Property Description (Exhibit A)
- 2) Recorded Plan (Exhibit B)
- 3) A set of 14 exterior photographs of the Building and Property taken between 2019 - 2022 (Exhibit C)
 - a. Photo 1; East and North (front) Elevations, Cushing House, September 2021
 - b. Photo 2: North Elevation, Cushing House, April 2021
 - c. Photo 3: North and West Elevations Cushing House, May 2021
 - d. Photo 4: West Elevation, Cushing House, May 2021
 - e. Photo 5: South elevation, Cushing House, January 2022
 - f. Photo 6: East Elevation, Cushing House, January 2022
 - g. Photo: 7 Main Entry Detail - North Elevation, Cushing House, June 2021
 - h. Photo8: Formal Garden and Summer House, Cushing House, June 2021
 - i. Photo 9: Cushing House Laundry Yard and Cobble Courtyard to Carriage Barn, September 2019
 - j. Photo 10: Cushing Cobble Courtyard and Front elevation Carriage Barn April 2020
 - k. Photo 11: North elevation Carriage Barn, Cushing House, May 2021
 - l. Photo 12: Rear Elevation, Carriage Barn, Cushing House, January 2022
 - m. Photo 13: South Elevation Carriage Barn, Cushing House, January 2022
 - n. Photo 14: Privy and Potting Shed, Cushing House, April 2019
- 4) Massachusetts Historical Commission Inventory Form B dated November 2005, prepared by Lisa Mausolf (Exhibit D)
- 5) Restriction Guidelines (Exhbit E)

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

WHEREAS, upon the recommendation of the Community Preservation Committee and approved as Project # 4 by the City Council on September 9, 2020, the sum of fifty-nine thousand four hundred thirty dollars (\$59,430) from the Community Preservation Fund ("Funds") was appropriated for the purpose of funding a grant for the restoration of the Building; and

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");

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

WHEREAS, 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 Buildings and Property burdened by such restrictions, consistent with the provisions of the Act and to administer and enforce this preservation restriction;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby irrevocably grant and convey to the Grantee in gross in perpetuity this Restriction over the 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 Building and Property 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 preservation values of the Building and the Property

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 E 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.

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.

4.1. Grantor's Covenants: Covenant to Maintain. Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the Building in the same structural condition and state of repair to that existing following the 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").

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

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

- a. the Buildings shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property near the 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 alterations to the exteriors of the outbuildings (Barn, Privy/Laundry Shed, and Potting Shed) shall be made without prior approval of the Grantee, and moving the Building to another location shall be forbidden without prior approval of the Commission.

5. Conditional Rights Requiring Grantee Approval: Subject to Paragraph 4 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the 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.

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 E), which are attached to this Agreement and hereby incorporated by reference.

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

- a. the right to engage in all those acts and uses that:
 - (i) are permitted by governmental statute or regulation;
 - (ii) do not substantially impair the preservation values of the Building and Property; and
 - (iii) are not inconsistent with the Purpose of this Restriction;

- c. 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 Commission in accordance with the provisions of Paragraph 5;

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, provided that nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

8. Standards for Review: In exercising any authority created by this Restriction to inspect the Building and Property; 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 the 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 forty-five (45) 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, then 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 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 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" 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:
Historical Society of Old Newbury
98 High Street
Newburyport, MA 01950

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

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

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

15. Inspection: With the consent of Grantor, Grantee or its representatives shall be permitted at reasonable times to inspect the 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 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 Building 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 the preservation of buildings or sites of historical, significance, 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 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 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 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).

29. Existing Preservation Restriction Agreement; Subordination. Grantor, Grantee and Commission acknowledge that the Building and Property are subject to an existing Preservation Restriction Agreement with a term of ten (10) years between Grantor and the Commonwealth of Massachusetts by and through the Massachusetts Historical Commission and recorded with the Southern Essex District Registry of Deeds on March 22, 2017 in Book 35748, Page 113 (the "MHC Agreement"). Grantor agrees that in addition to complying with this Restriction, Grantor will continue to comply with the restrictions in the MHC Agreement. Grantor, Grantee and Commission agree that this Restriction shall be subordinate to the MHC Agreement for the duration of its term, and further agree that should any dispute arise between the Commission and the Massachusetts Historical Commission in the process of fulfilling the requirements of these restrictions, the Commission shall defer to the demands and requirements set out by the Massachusetts Historical Commission.

IN WITNESS WHEREOF, the Grantor sets its hand and seal this _____ day of _____ 2022

GRANTOR:
Historical Society of Old Newbury_

By: _____
Name: David Mack
Title: Co-President

COMMONWEALTH OF MASSACHUSETTS

Essex _____,ss.

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.

Notary Public
My Commission Expires _____

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

Historical Society of Old Newbury

By: _____

Name: Leslie Ferlazzo

Title: Treasurer

COMMONWEALTH OF MASSACHUSETTS

Essex _____,ss.

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.

Notary Public
My Commission Expires _____

ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION

Glenn Richards

Chair, Newburyport Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as duly authorized Chair of the Newburyport Historical Commission.

Notary Public

My Commission Expires _____

ACCEPTANCE AND APPROVAL BY THE CITY OF NEWBURYPORT

I, the undersigned City Clerk of the City of Newburyport, Massachusetts, hereby certify that at a meeting duly held on____, 2022, 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.

Richard B. Jones, City Clerk
CITY OF NEWBURYPORT

On this—day of _____, 2022, 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) (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 _____

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

Sean Reardon, Mayor
CITY OF NEWBURYPORT

COMMONWEALTH OF MASSACHUSETTS

Essex _____,ss.

On this ___ day of _____ 2022, before me, the undersigned notary public, personally appeared, Sean Reardon, proved to me through satisfactory evidence of identification was (a current driver's license) (a current U.S. passport) (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 he signed it voluntarily for its stated purposes as Mayor of the City of Newburyport.

Notary Public
My Commission Expires _____

APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION

COMMONWEALTH OF MASSACHUSETTS

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

MASSACHUSETTS HISTORICAL COMMISSION

By _____

Brona Simon
Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____ 2022, before me, the undersigned notary public, personally appeared, Brona Simon, Executive Director and Clerk, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

Notary Public

My Commission Expires _____

EXHIBIT A
Legal Property Description

Essex South Registry of Deeds, Book 4237, Page 118

The land with the buildings thereon situate in Newburyport aforesaid, bounded and described as follows, viz:

Beginning at the Easterly corner thereof on Fruit Street, by land formerly of Brown, now of Hale, thence running SOUTHWESTERLY by the Northwest line of Fruit Street, 108.15 feet to the beginning of the curve at the corner of Fruit Street and High Street; thence on a curve to the right about 19 feet, 8 inches to the Northeasterly line of High Street (the chord connecting the ends of said curve being 18.15 feet); thence NORTHWESTERLY by the Northeasterly line of High Street, 116.6 feet to land formerly of Moseley, now of Lawton, thence NORTHEASTERLY by the last mentioned land 141 feet to the Easterly corner of said Lawton land; thence NORTHWESTERLY by land of Lawton, 4 feet, 9 inches to land now or formerly of Connors; thence NORTHEASTERLY by the last mentioned land 26.35 feet to land formerly of Parsons, thence SOUTHEASTERLY by the last mentioned land 53.15 feet to land of said Hale; thence SOUTHWESTERLY by the last mentioned land 57.9 feet to a corner; thence SOUTHEASTERLY by the last mentioned land 70.55 feet to Fruit Street and the point of beginning.

Containing 17,586 feet.

EXHIBIT B
Recorded Property Plan

**Plan of Land recorded with the Essex South
District Registry of Deeds, Plan Book 409, Plan 99**

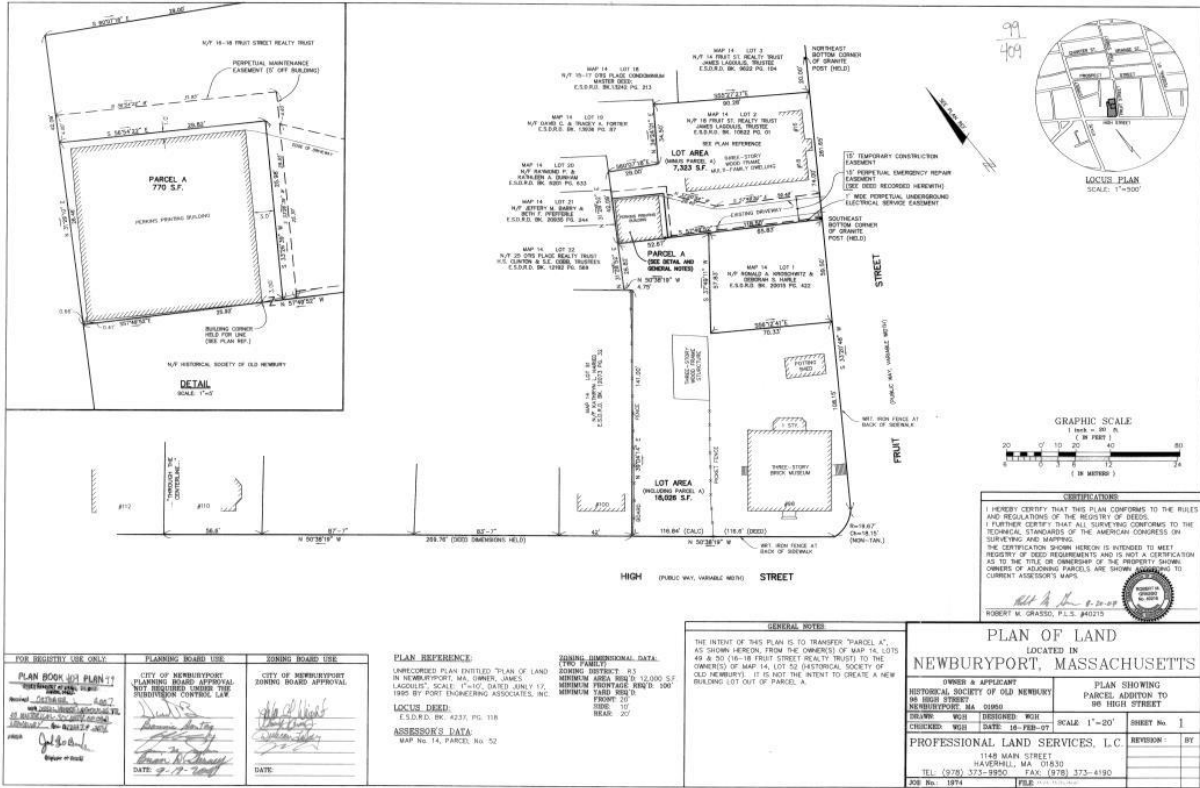


EXHIBIT C
Baseline Documentation

- a. Photo 1; East and North (front) Elevations, Cushing House, September 2021



- b. Photo 2: North Elevation, Cushing House, April 2021



c. Photo 3: North and West Elevations Cushing House 2021



d. Photo 4: West Elevation, Cushing House, May 2021



e. Photo 5: South Elevation, Cushing House, January 2022



f. Photo 6: East Elevation, Cushing House, January 2022



g. Photo: 7 Main Entry Detail - North Elevation, Cushing House, June 2021



h. Photo8: Formal Garden and Summer House, Cushing House, June,2021



i. Photo 9: Cushing House Laundry Yard and Cobble Courtyard to Carriage Barn, September 2019



j. Photo 10: Cushing Cobble Courtyard and Front elevation Carriage Barn, April 2019



k. Photo 11: North elevation Carriage Barn, Cushing House, May 2021



1. Photo 12: Rear Elevation, Carriage Barn, Cushing House, January 2022



m. Photo 13: South Elevation Carriage Barn, Cushing House, January 2022



n. Photo 14: Privy and Potting Shed, Cushing House, April 2019



FORM B – BUILDING

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

Assessor's Number USGS Quad Area(s) Form Number

14/52 Newburyport A L.S 23

Town Newburyport

Place (neighborhood or village)

Address 98 High Street

Historic Name Cushing House

Uses: Present Museum

Original Residential

Date of Construction 1808

Source deeds, Hist. Soc. of Old Newbury

Style/Form Federal

Architect/Builder unknown

Exterior Material:

Foundation Granite

Wall/Trim Brick

Roof Asphalt shingles

Outbuildings/Secondary Structures
carriage house, privy, garden seat

Major Alterations (with dates)
1818 – rear ell; ca.1860 – roof monitor

Condition Good

Moved no yes Date

Acreage less than 1/2 acre .41

Setting Main local thoroughfare lined by historic homes
including many examples of the Federal period



Sketch Map

Draw a map showing the building's location in relation to the
near
buil
or n
Circ



Recorded by Lisa Mausolf

Organization City of Newburyport

Date (month / year) Nov. 2005

RECEIVED

MAY 11 2007

MASS. HIST. COMM

BUILDING FORM (98 High Street)

ARCHITECTURAL DESCRIPTION

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

Located at the northwest corner of High and Fruit Streets, the Cushing House is a fine example of brick Federal-period domestic architecture. The brickwork is laid in a Flemish bond and the house is set on a granite foundation. It is capped by a low, hipped roof with four tall, interior brick chimneys and a c.1860 wood-shingled monitor rising from the center of the roof. The decorative wooden cornice which wraps around the entire house includes a beaded molding, incised blocks and a rope molding with drilled holes.

The house is oriented with its principal elevation centered on the five-bay south elevation facing High Street although both the east and west elevations are also five bays wide with central entrances. Fronted by granite steps with wrought iron handrail, the High Street entrance consists of a louvered outer door capped by a semi-circular fanlight and flanked by partial sidelights and paneled pilasters. The door surround is decorated by diamonds, incised lines, rosettes and rondels. The archway over the door is echoed by a later latticed arch. Both the east and west entrances are fronted by a flight of wooden stairs and display simpler surrounds consisting of a louvered outer door capped by a semicircular divided fanlight. The predominant window is a double-hung 6/6 sash with molded surround and blinds. The window above the main entrance is capped by a semi-circular louvered fan. The foreshortened third story windows contain 3/3 sash. The rear elevation is just three bays wide with a 1818 polygonal projection occupying the central bay on the first floor. A four-panel door faces Fruit Street.

To the northwest of the house there is a two-story, clapboarded carriage house capped by a hip roof. The carriage house was moved westward and turned 90 degrees ca. 1865. The narrow (south) end facing High Street and the west elevation are punctuated by double-hung 6/6 windows. There is a set of double doors with diagonal boards set into an arched surround on the north end and another set on the north end of the east elevation. Other openings on these elevations include several 6/6 windows, loft doors set above the arched doors and a four-panel door on the east side toward the main house. A single-story privy is located behind the house, near the Fruit Street fence. It is sheathed in a combination of board-and-batten and vertical board sidings and rests on a granite and brick foundation. Fenestration on the south elevation includes a four-panel door, multi-light door and a ca. 1950 bowed window.

A ca. 1890 iron fence runs along the sidewalk in front of the house on both High and Fruit Streets. Brick paths lead from the entrances and to the privy and carriage house. The area in front of the carriage house and behind the Cushing House is paved with smooth river stones. A lattice panel extends from the carriage house to the privy. The remainder of the property line is enclosed by closed board fence. A picket fence with a gated archway runs from the carriage house to High Street, separating the house yard and garden. Originally the area consisted of a formal garden near High Street with fruit trees and a vegetable garden to the rear. A restoration of the garden was begun in 1998 and takes the design and plant materials back to the period between 1867 and 1905. Other garden elements include a garden seat set into a wooden pointed arch.

Recommended for listing in the National Register of Historic Places. *If checked, you must attach a completed National Register Criteria Statement form. Already listed in NR District (8/2/1984) and NHL (11/7/1973)*

INVENTORY FORM CONTINUATION SHEETTown
NEWBURYPORTProperty Address
98 HIGH STREETMASSACHUSETTS HISTORICAL COMMISSION
MASSACHUSETTS ARCHIVES BUILDING
220 MORRISSEY BOULEVARD
BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

23

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.

The land on which the Cushing House now stands was owned by Richard Pike and sold to Jonathan Moulton on October 6, 1803. In 1808 Elizabeth Moulton, Jonathan's widow, sold the land to William N. Hunt (Essex County Deeds Book 185, Page 238). Construction of the house began shortly thereafter although Hunt, a sea captain, died before its completion.

In 1818 Sarah Hunt, William Hunt's widow, sold one-half of the land and one-half of the brick house to John N. Cushing (Book 216, Page 268). Mrs. Hunt and her four children continued to occupy the east half of the house until 1822 when it too was sold to John Cushing (Book 231, Page 294). The land where the present garden is located was added to the property between 1819 and 1837.

For 138 years, three generations of the Cushing family occupied the home. Among the illustrious family of merchants and diplomats was Caleb Cushing (1800-1879), son of John N. and Lydia Dow Cushing. A lawyer by training, Caleb Cushing served in the U.S. House of Representatives (1835-1843), as Envoy to China (1843-1845), First Mayor of Newburyport (1851-1852), Associate Justice of Supreme Judicial Court of Massachusetts (1852-1853), Attorney General in the administration of Franklin Pierce and Minister to Spain (1874-1877). His specific accomplishments include negotiating the 1844 Treaty of Wanghia which secured diplomatic and trade privileges for the United States, opening five major ports, establishing consular offices and paving the way for American interests in the Far East.

In the mid 19th century the house was still used as a duplex. The west side was occupied by John Cushing, Jr., his wife and children while Elizabeth Cushing (widow of John Cushing, Sr.) lived in the east half. After Elizabeth's death, the house was used as a single-family residence by the family of John, Jr. (d. 1906). His children included Lawrence and Margaret. Margaret Cushing returned to the house in 1906 and continued to occupy it until her death in 1955.

The Cushing House was presented to the Historical Society of Old Newbury on June 1, 1958 by the heirs of Miss Margaret Woodbridge Cushing. The Society was formed on September 5, 1877. The Cushing House is maintained as a house museum and also is a repository for the Society collections.

BIBLIOGRAPHY and/or REFERENCES

- Currier, J.J. *History of Newburyport, 1764-1905*, vols. I and II, reprint, Newburyport, 1977.
 Essex County Registry of Deeds, Salem, Mass.
 Historic American Buildings Survey, drawings, photographs, 1936+.
 Howells, J.M. *The Architectural Heritage of the Merrimack*. New York: 1941.
 Newburyport City Directories, various dates.
 Photographic collection, Newburyport Archival Center at the Newburyport Public Library.
 U.S. Census, Newburyport, 1840-1930.

Maps

- 1851 Plan of Newburyport, Mass. H. McIntire.
 1872 Map of the City of Newburyport, Mass. D.G. Beers and Co.
 1884 Map of Newburyport
 Sanborn Insurance Maps

INVENTORY FORM CONTINUATION SHEET

Town
NEWBURYPORT

Property Address
98 HIGH STREET

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

Area(s) Form No.

	23
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INVENTORY FORM CONTINUATION SHEET

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Area(s) Form No.

	23
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INVENTORY FORM CONTINUATION SHEET

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MASSACHUSETTS ARCHIVES BUILDING
220 MORRISSEY BOULEVARD
BOSTON, MASSACHUSETTS 02126

Area(s) Form No.

	23
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EXHIBIT E

RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify Paragraph Three of the Terms of the Preservation Restriction Agreement, which deals with alterations to the Premises. Under this Paragraph, prior permission from the Massachusetts Historical Commission is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require the Commission's prior 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 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, wallpaper, ornamental woodwork, stone, decorative or significant original 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 as well as any level of stained glass window conservation/restoration. 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 Premises 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 buildings or Premises; altering of Premises; altering or removing significant landscape features such as gardens, vistas, walks, plantings; ground disturbance affecting archaeological resources.

WALLS/PARTITIONS

Minor - Making fully reversible changes (i.e., sealing off doors in situ, leaving doors and door openings fully exposed) to the spatial arrangement of a non-significant portion of the building.

Major - Creating new openings in walls or permanently sealing off existing openings; adding permanent partitions which obscure significant original room arrangement; demolishing existing walls; removing or altering stylistic features; altering primary staircases.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major appearance changes (i.e., dropped ceilings, disfigured walls or floors, exposed wiring, ducts, and piping); the removal of substantial quantities of original plaster or other 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 Commission and their impact on the historic integrity of the Premises assessed.

It is the responsibility of the owner of the Premises (Grantor) 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 Premises, not to preclude future change. Commission staff will attempt to work with Grantors to develop mutually satisfactory solutions, which are in the best interests of the Premises.