

PRESERVATION RESTRICTION AGREEMENT

between

THE TOWN OF BILLERICA

acting by and through the Billerica Historical Commission

and

THIS PRESERVATION AGREEMENT (this "Agreement") is made on this ____ day of _____, 201__, by and between _____ ("Grantor"), having an address of _____, MA _____, and the **Town of Billerica**, a municipality of the Commonwealth of Massachusetts, acting by and through the Billerica Historical Commission pursuant to G.L. c. 40, § 8D ("Grantee" or the "Town"), having an address of Billerica Town Hall, 365 Boston Road, Billerica, MA 01821.

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of certain real property, located at _____, Billerica, Middlesex County, Massachusetts, described in a deed recorded/filed with the Middlesex North District Registry of Deeds / Registry District of the Land Court (the "Registry") in Book _____, Page _____ or filed as Document No. _____ and noted on Certificate of Title No. _____ (hereinafter referred to as the "Property"), said Property including the building known as the "_____" (the "Building"), which Property and which Building are described more particularly in Exhibits A, B, and C, attached hereto and incorporated herein;

[briefly describe other buildings on the Property, if any]

WHEREAS, Grantee is a municipality and is interested in the preservation and conservation of sites, buildings, and objects of local, state and national significance in the Town of Billerica and is authorized to accept and hold preservation restrictions under the Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 (the "Act");

WHEREAS, the Billerica Historical Commission is a governmental body whose purposes include the preservation and protection of buildings, structures, vessels, real property, documents or artifacts that are listed or eligible for listing on the state register of historic places or have been determined by the Billerica Historical Commission to be significant in the history, archeology, architecture or culture of the Town;

WHEREAS, Grantee has designated the Billerica Historical Commission to administer, manage, and enforce preservation agreements;

[Describe the building and/or protected features, such as the type of building, uses, when built etc. See below for examples]

[Revise as needed] WHEREAS, the Building is a _____-story wood frame structure, designed by _____ and constructed in _____ for use as a _____ *[describe unique features]*;

[Revise as needed] WHEREAS, the original _____ century house and its subsequent additions have been determined to represent an architectural resource of considerable importance to the Town, being an important example of _____ century domestic construction exceptionally well preserved on the exterior;

[Revise as needed] WHEREAS, the Building stands as a significant example of _____ architecture, important in design and setting and possessing integrity of materials and workmanship;

[If applicable] WHEREAS, the Property is located within the _____ Historic District, and is a contributing building within the historic district;

[Revise as needed] WHEREAS, because of its architectural, historic and cultural significance, including its important local associations with the development of the Town of Billerica, the Building was listed in the State and National Registers of Historic Places on _____ as _____ *[is Building listed in the State and/or National Registers? If so, when was it registered, and what category is it listed under/what unique style/features does the Building represent?]*;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter “preservation values”) and significance of the Building, and have the common purpose of preserving the aforesaid preservation values and significance of the Building;

WHEREAS, the Building’s preservation values are documented in Exhibits A, B and C (hereinafter, collectively “Baseline Documentation”) attached hereto and incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Building as of the date of this Preservation Restriction Agreement;

WHEREAS, the Baseline Documentation includes the following:

1. Property Description and Description of the Building (Exhibit A),
2. Photographs as prepared in _____ by _____ (Exhibit B), and
3. Drawings of Building (Exhibit C) (*optional*)

WHEREAS, Grantor is going to undertake work to rehabilitate the Building, as set forth in Grantor’s Application to the Billerica Community Preservation Committee (“CPC”) for

Community Preservation Act funds (the “Work”), as set forth more particularly in the Grant Agreement between Grantor and Grantee (the “Grant Agreement”) and in Exhibit D;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter “preservation values”) and significance of the Property, and have the common purpose of preserving the aforesaid preservation values and significance of the Property and the Building;

WHEREAS, the grant of a preservation restriction on the Property by Grantor to Grantee will assist in the preservation and maintenance of the Building and its architectural, historic and cultural features for the benefit of the people of the Town of Billerica, County of Middlesex, Commonwealth of Massachusetts, and United States of America; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept a preservation restriction in gross and in perpetuity on the Property and the Building pursuant to the Act.

NOW, THEREFORE, in consideration of _____ Thousand and 00/100 (\$_____,000.00) Dollars, which funds are to be used for the rehabilitation, restoration, and preservation of the Building and the performance of the Work, as specified more particularly in the Grant Agreement, the receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Grantee a restriction in gross and in perpetuity over the Property and the Building described in Exhibits A, B, and C, all as set forth more particularly herein.

PURPOSE

1.1 Purpose. It is the purpose of this Agreement to ensure that the features and characteristics that embody the architectural, historic and cultural significance of the exterior of the Building will be forever retained and maintained substantially in their current condition and to prevent any use or change in the Property that will significantly impair or interfere with the Building’s preservation values (the “Purpose”).

1.2 Improvements. Grantor agrees to make the improvements to the Building as set forth in the Scope of Work.

GRANTOR’S COVENANTS

[this Restriction protects exterior features only – if interior and/or other features are involved, this Restriction needs to be revised]

2.1 Covenant to Maintain. Grantor agrees at all times to maintain the exterior of the Building in as good structural condition and sound state of repair as that existing on the date of this Agreement and/or the completion of the Work and otherwise in the condition required by this Preservation Restriction Agreement, and shall comply with all federal, state and local laws, codes and by-laws applicable to the Property and/or the Building. Grantor’s obligation to maintain shall require replacement, repair, reconstruction and where necessary replacement in

kind by Grantor whenever necessary to preserve the Building in a good, sound and attractive condition and state of repair and also require that the Property's landscaping be maintained in good and neat appearance. Subject to the casualty provisions of Sections 6 and 7, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction of the Building whenever necessary in accordance with The Secretary of Interior's Standards for the Treatment of Historical Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (36 CFR 67), as these may be amended from time to time (hereinafter the "Secretary's Standards"). For the purpose of identifying categories of Major Maintenance requiring review and approval by Grantee and Minor Maintenance that does not require such review, copies of maintenance guidelines are attached hereto and incorporated herein by reference as Exhibit E and hereinafter referred to as the "Restriction Guidelines."

2.2. Prohibited Activities.

[Use if applicable and revise as needed] The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this Section:

- (a) The Building shall not be moved, demolished, removed or razed except as described in Sections 6 and 7;
- (b) No barrier shall be constructed, erected or allowed to grow on the Property which would impair the visibility from the street of the Property or the Building without the prior approval of Grantee;
- (c) The dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property; and
- (d) 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.
- (e) The Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit; [and]
- (f) No other buildings or structures, including camping accommodations, mobile homes or cell towers, shall be erected or placed on the Property hereafter except for temporary structures required for maintenance or rehabilitation of the Property, such as construction trailers.
- (g) *is there anything else you wish to prohibit?*

GRANTOR'S CONDITIONAL RIGHTS

3.1 Conditional Rights Requiring Approval by Grantee. Without prior express written approval of the Grantee, which approval shall not be unreasonably withheld but which may be subject to such reasonable conditions as Grantee in its discretion may determine, Grantor shall not make any changes to the exterior of the Building, including additions to and the alteration, partial removal, construction, remodeling, or other physical or structural change to the façades of the Building, and any change in design, material or color thereof. Activities by Grantor to maintain the exterior of the Building, which are intended to be performed in accordance with Section 2.1, and which are minor in nature, shall not require Grantee's prior approval. For the purposes of this Section, the interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines which are attached to this Agreement and

incorporated by reference. For purposes of this Agreement, the exterior of the Building shall be defined as all surfaces (including but not limited to walls, roofs, foundations, windows including sash and enframements, doors, gutters, downspouts, and associated hardware and visible details) which are in contact with the exterior of the Building. Subject to this restriction are any activities, including construction or alteration or any internal structural features that act as support for external surfaces, construction or alteration of which may alter the exterior appearance of the Building or threaten the structural stability or integrity of the exterior of the Building.

3.2 Review of the Grantor's Request for Approval. Should Grantor wish to exercise the conditional rights set out or referred to in Section 3.1, Grantor shall submit to Grantee, for Grantee's approval, 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 Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within sixty (60) days of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within sixty (60) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted.

3.3 Conditional Rights Requiring the Approval of the Massachusetts Historical Commission. The conduct of archeological activities on the Property, including without limitation, survey, excavation and artifact retrieval, may occur only following the submission of an archeological field investigation prepared by Grantor and approved in writing by the State Archeologist of the Massachusetts Historical Commission (G.L. Ch.9, Section 27C, 950 CMR 70.00).

STANDARDS FOR REVIEW

4. Secretary's Standards. Grantee shall apply Secretary's Standards whenever (a) exercising any authority created by this Agreement to inspect the Building; (b) reviewing any construction, alteration, repair or maintenance; (c) reviewing casualty damage or (d) reconstructing or approving reconstruction of the Building following casualty damage.

GRANTOR'S RESERVED RIGHTS

5. Grantor's Rights Not Requiring Further Approval by Grantee. Subject to the provisions of Sections 2.1, 2.2, and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Agreement and by Grantee without further approval by Grantee:

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

- (b) Pursuant to the provisions of Section 2.1, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this subsection the right to maintain and repair shall mean the use by 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 Building. The right to maintain and repair as used in this subsection shall not include the right to make changes in appearance, materials, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of Sections 3.1 and 3.2; and
- (c) The right to make changes of any kind to the interior of the Building, provided such changes do not alter materially the appearance of the exterior of the Building in contravention of this Preservation Restriction Agreement

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

6. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has been completed. No repairs or reconstruction of any type other than temporary emergency work to prevent further damage to the Building and to protect public safety shall be undertaken by Grantor without Grantee's prior written approval of the work. Within thirty (30) days of the date of damage or destruction, Grantor at Grantor's expense shall submit to Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantee, which report shall include the following: (a) an assessment of the nature and extent of the damage; (b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and (c) a report of such restoration and/or reconstruction work necessary to return the Building to the condition existing at the date thereof.

7. Review After Casualty Damage or Destruction. If, after reviewing the report provided in Section 6 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Section 8, Grantor and Grantee agree that the Purpose of this Agreement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties to at least the total of the casualty insurance proceeds available to the Grantor.

If, after reviewing the report and assessing the availability of the insurance proceeds after satisfaction of any mortgagee's/lender's claims under Section 8, Grantor and Grantee agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of this Agreement would not be served by such restoration/ reconstruction, Grantor may with prior written consent of Grantee, alter, demolish, remove or raze the Building and/or construct new improvements on the Property. In such event, Grantor and Grantee may agree to extinguish

this Agreement in accordance with the laws of the Commonwealth of Massachusetts and Section 21 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Section 8, Grantor and Grantee are unable to agree that the Purpose of this Agreement 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, and regulations.

8. Insurance. Grantor shall keep the Building insured by an insurance company rated "A1" 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 Grantee, within ten (10) business days of Grantee's written request therefore, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this Section shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

INDEMNIFICATION; TAXES

9. Indemnification. Grantor hereby agrees to indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors, employees and independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person on or about the Property; physical damage to the Property or 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 damage occurring on or about the Property, unless such injury or damage is caused by Grantee or agent, employee or contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this Section, 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, provided, however, that nothing contained herein shall jeopardize the priority of any recorded first priority mortgage given in connection with a promissory note secured by the Property.

10. Taxes; Insurance. Grantor shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property. 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 perils commonly insured under standard fire and extended coverage policies. Said insurance shall be in form and amount sufficient to fully restore or repair the protected features of damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Town, within ten (10) business days of the Town's written request therefor, certificates of such

insurance coverage, provided, however, that whenever the Premises are encumbered with a mortgage or deed of trust, nothing contained in this Section shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

ADMINISTRATION AND ENFORCEMENT

11. Written Notice. Any notice Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by overnight courier, facsimile transmission, registered or certified mail with return receipt requested or hand delivered; if to Grantor, at _____, and if to Grantee, at Billerica Town Hall, 365 Boston Road, Billerica, MA 0182, Attention: Billerica Historical Commission. Each party may change its address set forth herein by a notice to such effect to the other party given pursuant hereto.

12. 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 evidences the status of this Agreement to the extent of Grantee's knowledge thereof.

13. Inspection. With the consent of Grantor, representatives of Grantee shall be permitted at all reasonable times to inspect the Property, including the interior of the Building. Grantor covenants not to unreasonably withhold consent in determining dates and times for such inspections.

14. Grantee's Remedies. The rights hereby granted shall include the right to enforce this Agreement by appropriate legal proceedings and to institute suit(s) to enjoin any violation of the terms of this Agreement by ex parte, temporary, preliminary and/or permanent injunction, including without limitation prohibitory and/or mandatory injunctive relief and to require the restoration of the Property and/or the Building to the condition and appearance required under this Agreement (it being agreed that Grantee may have no adequate remedy at law), which rights shall be in addition to, and not in substitution of, all other legal and other equitable remedies available to Grantee to enforce Grantor's obligation hereunder. Except in the case of an emergency, Grantee agrees that no such enforcement actions will be taken unless (a) Grantee has sent written notice to Grantor, specifying Grantor's failure to comply with the terms of this Preservation Restriction Agreement, and (b) Grantor fails to cure the same within thirty (30) days from the date of the Grantee's notice, or, if such cure cannot reasonably be completed within said thirty (30) days, Grantor has commenced to cure said default within said thirty (30) day period and is pursuing said cure diligently to completion.

In the event Grantor is found to have violated any of Grantor's obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Preservation Restriction Agreement, including all reasonable court costs, and attorneys', architectural, engineering and expert witness fees, together with interest thereon at the prime lending rate.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting the use of any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

By its acceptance, Grantee does not undertake any liability or obligation relating to the condition of the Property or the Building, including with respect to compliance with hazardous materials or other environmental laws and regulations. Nothing herein shall impose upon the Grantee any affirmative obligation or liability relating to the condition of the Property or the Building.

15. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property or the Building 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.

16. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for the Grantee to explain the terms of this Agreement to potential new owners prior to sale closing.

17. Liens. Any lien on the Property created pursuant to any Section of this Agreement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien, provided, however, that no lien created pursuant to this Agreement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

BINDING EFFECT; ASSIGNMENT

18. Runs with the Land. Except as provided in Sections 7 and 21, the rights and obligations created or imposed by this Agreement shall be in effect in perpetuity, and shall be deemed as a binding servitude upon the Property. Grantor agrees that this Agreement shall also be considered an "other restriction held by a governmental body," as that term is used in G.L. c. 184, §26, and thus not subject to the limitations on the enforceability of restrictions in G.L. c. 184, §§26-30, and, in any event, shall bind and run with the Property for a period of ninety-nine (99) years. To the extent this Agreement is deemed subject to said statutes, this Agreement may, during said term of years, be renewed for successive twenty (20) year periods by filing a notice of the continued enforceability of said Agreement prior to thirty (30) years from the date of imposition of the Agreement, and thereafter by filing a notice of continuation prior to the end of each such twenty (20) year renewal period, as allowed by law pursuant to G.L. c. 184, §§ 26-30. The Grantor hereby appoints the Town as Grantor's agent to execute and record such notices and agrees that Grantor shall execute and record such a notice upon request.

This Agreement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor or Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title or interest herein granted to Grantee 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 successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership

interest in the Property by reason of bona fide transfer. The restrictions, stipulations and covenants contained in this Agreement 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 hereof, including by way of example but not limitation, a lease of all or a portion of the Property.

19. Assignment. Grantee may, at its discretion without prior notice to Grantor, convey, assign or transfer this Agreement to a unit of federal, state or local government or to a similar local, state or national organization that qualifies under the Act, as amended, 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 this Agreement was granted will continue to be carried out.

20. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Agreement in the land records of the Registry. Grantor and Grantee intend that the restrictions arising under this Agreement take effect on the day and year this instrument is executed by Grantor and Grantee.

EXTINGUISHMENT

21.1. Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in conditions affecting the Property may make impossible the continued ownership or use of the Property for the Purpose of this Agreement and necessitate extinguishment of this Preservation Restriction Agreement. Such a change in conditions may include, but is not limited to, partial or total destruction of the Building resulting from casualty. An extinguishment must meet all the requirements of the Act for extinguishment, including a public hearing to determine that such extinguishment is in the public interest, and approval by Grantee (or the then holder of this Agreement, if it has been assigned pursuant to Section 19), and the Massachusetts Historical Commission, if this Agreement has been approved by the Massachusetts Historical Commission.

21.2 Proceeds. Grantor and Grantee agree that this Agreement gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Agreement, determined at the time of the gift, bears to the value of the unrestricted Property at that time. Such proportionate value of the Grantee's property right shall remain constant. Grantor shall pay Grantee its share of any proceeds from the sale or conveyance of the Property.

21.3 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 the Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the Property that is subject to the taking and all incidental and direct damages from the taking. All expenses reasonably incurred by Grantor and the Grantee in connection with such taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to the parties in accordance with the provisions of 21.3.

INTERPRETATION

22. Interpretation. The following provisions shall govern the effectiveness, interpretation and duration of this Preservation Restriction Agreement:

- (a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this Agreement and this instrument shall be interpreted broadly to affect its Purpose and the transfer of rights and the restrictions on use herein contained.
- (b) This instrument is executed in two counterparts, one of which is to be retained by the Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart retained by the Grantee shall in all cases govern. Except as provided in the preceding sentence, each counterpart shall constitute the agreement 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 Agreement 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 is enforceable by reason of statute, common law or private agreement 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 government entity to accommodate the purpose of both this Agreement and such ordinance or regulation.

AMENDMENT

23. Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Preservation Restriction Agreement, provided that no amendment shall be made that will adversely affect the qualifications of this Agreement or the status of Grantee under the Act, or any applicable laws, including any other laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purposes of this Agreement; 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, historic, natural habitat, and open space values protected by this Agreement. Any such amendment shall comply with the provisions of the Act and shall be recorded in the land records/files of the Registry. Nothing in this Section shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

24. Additional Changes. Grantor agrees to make such changes to this Agreement as are reasonably necessary to obtain the approval of the Massachusetts Historical Commission under Section 32 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts.

25. Mortgage Subordination. At the time of the conveyance of this Agreement, the Property is subject to a Mortgage recorded/filed with the Registry in Book _____, Page _____ or Document No. _____ (hereinafter "the Mortgage") and held by _____ (hereinafter, "Mortgagee"). The Mortgagee joins in the execution of this Agreement to evidence its agreement to subordinate the Mortgage to this Agreement under the following conditions and stipulations:

- a. The Mortgagee and its assignees shall have a prior claim to all insurance proceeds as a result of any casualty, hazard or accident occurring to or about the Property and all proceeds of condemnation proceedings, and shall be entitled to same in preference to the proceeds until the Mortgage is satisfied in full and discharged, notwithstanding that the Mortgage is subordinate in priority to this Agreement.
- b. If the Mortgagee receives an assignment of the leases, rents, and profits of the Property as security or additional security for the loan secured by the Mortgage, then the Mortgagee shall have a prior claim to the leases, rents, and profits of the Property and shall be entitled to receive same in preference to the Town until the Mortgagee's debt is paid off or otherwise satisfied, notwithstanding that the Mortgage is subordinate in priority to the Agreement.
- c. The Mortgagee or purchaser in foreclosure shall have no obligation, debt, or liability under this Agreement until the Mortgagee or a purchaser in foreclosure under it obtains ownership of the Property. In the event of foreclosure or deed in lieu of foreclosure, this Agreement shall not be extinguished.
- d. Nothing contained in this Section or in this Agreement shall be construed to give any Mortgagee the right to violate the terms of this Agreement or to extinguish this Agreement by taking title to the Property by foreclosure or otherwise.

25. Recitals. The recitals to this Agreement are incorporated herein and made a part hereof.

IN WITNESS WHEREOF, Grantor has set its hand under seal on the day and year first set forth below.

GRANTOR:

By: _____
Name:
Title:

By: _____
Name:
Title:

MORTGAGEE:

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____, 201__, before me, the undersigned Notary Public, personally appeared _____, who proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose as _____ of _____.

(Official Signature and Seal of Notary)
My term expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On this _____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared _____, _____ of _____, as aforesaid, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of _____ [mortgagee].

(Official Signature and Seal of Notary)

My term expires:

649400/BILL/0190

ACCEPTANCE OF PRESERVATION RESTRICTION

Acceptance of this Agreement by the Town of Billerica , acting by and through its Billerica Historical Commission pursuant to the authority granted to said Commission under G.L. c.40, § 8D, is acknowledged this _____ day of _____, 201__.

TOWN OF BILLERICA,
Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 201__, before me, the undersigned Notary Public, personally appeared _____, member of the Billerica Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Billerica.

(Official Signature and Seal of Notary)
My term expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared _____, member of the Billerica Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Billerica.

(Official Signature and Seal of Notary)
My term expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared _____, member of the Billerica Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Town of Billerica.

(Official Signature and Seal of Notary)
My term expires:

514795.2/PEMB/0001

APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION
COMMONWEALTH OF MASSACHUSETTS

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that the foregoing Agreement to the Town of Billerica, acting by and through the Billerica Historical Commission (Grantee), has been approved by the Massachusetts Historical Commission in the public interest pursuant to G.L. Chapter 184, Section 32.

MASSACHUSETTS HISTORICAL COMMISSION

By: _____
Brona Simon, Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this _____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared Brona Simon, Executive Director and Clerk of the Massachusetts Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose on behalf of the Massachusetts Historical Commission.

(Official Signature and Seal of Notary)
My commission expires:

EXHIBIT A

Description of the Property

Insert legal description of property

Description of the Building

EXAMPLE of details to be provided: The Days Lumberyard Building is a two-story wood frame structure, constructed in the early 1900's. As originally constructed, the Building consisted of two (2) structures, which were joined into a single structure in 2006, with the construction of the so-called "Link," which connected the two structures into one (1) large, continuous "U"-shaped structure that is now the Building. The south wing of the Building is approximately twenty feet (20') wide; the Link is nearly thirty feet (30') wide; and the north wing is forty feet (40') wide. The foundation is reinforced concrete slab on grade, except under the Link addition, which has an eight-foot (8') deep basement. The Building is clad with cedar shingles. The Building has a single-ply synthetic rubber roofing membrane with an almost flat/shed shape. There is an exterior elevated walkway along the south and the west elevations of the courtyard portion of the "U". To meet accessibility code requirements, there is a new exterior lift, also clad with cedar shingles. The building elevations are characterized by a complex variety of single and multiple window bays and entry configurations on both floors, which are full depicted in the series of photographs that comprise Exhibit B.

The first floor of the Building was originally a lumberyard storage and office space. The second floor served as artists' spaces, which Frank Days, Sr., the owner of the property, rented out for \$50.00 per year. The first artist to move into one of the second floor studios was Ross Moffett, in 1914. Other artists who lived and worked in the second floor studios, or taught classes there, included some of the most revered and prominent figures in the history of Billerica arts: Charles Hawthorne, Edwin Dickinson, Henry Hensche, Lillian Orlowsky, Philip Malicoat, Myron Stout and Hans Hofmann. The Building captures, in many ways, the best of what Billerica embodies – a community with a legacy of nurturing the artists among us. The Fine Arts Work Center bought the Days Lumberyard site in 1972, and has continued to foster this legacy in the Building. The studios are still used as living and working space for artists, and the design of the contemplated renovation project gives paramount importance to the studios' preservation. The renovation project preserves the second floor artists' studios and the shingled exterior appearance of the Building. The renovation plan also includes the addition of an archival library and a meeting room. This renovation project represents the final phase of the Fine Arts Work Center's multi-year, multi-building project, dating from 2004.

The Property as a whole is the site of two primary structures (the Building and the Barn), a parking lot that accommodates twenty (20) vehicles, a small courtyard area in front of the Link, and a garbage/recycling staging area next to the Barn. The Barn is a three (3) story structure clad in cedar shingles with an exterior stairwell on the west elevation and second and third floor

decks. The Barn is a historic, gable-roofed building with a central cupola, and is depicted in the series of photographs that comprise Exhibit B, but is not subject to the terms of this Preservation Restriction Agreement. There is a newly installed sidewalk traversing the north elevation of the Building from Pearl Street to the lift. Eight (8) planting beds have been installed between the sidewalk and the parking lot. A wood walkway connects the parking lot with the Building in front of the Link.

EXHIBIT B

Photographs of the Building

Please see the attached.

List of photographs:

For examples of details to be included:

1. South wing – north elevation
2. South wing – north elevation
3. South wing – north elevation
4. West wing – east elevation
5. North wing – south elevation
6. North wing – east elevation
7. North wing – north elevation
8. North wing – north elevation
9. North wing – north elevation
10. West wing – west elevation
11. South wing – south elevation
12. South wing – south elevation
13. South wing – south elevation
14. South wing – east elevation
15. Barn – south elevation
16. Barn – east elevation
17. Barn – north elevation
18. Barn – west elevation

EXHIBIT C

Architect's Drawings of the Building

Please see the attached.

EXHIBIT D

Scope of Work

Please see the attached.

EXHIBIT E

Restriction Guidelines

The purpose of these Preservation Guidelines is to clarify the terms of this Historic Preservation Restriction that deal with maintenance and alteration to the Building. Under Section 3, prior permission from the Grantee is required for any Minor Maintenance that is reasonably expected to materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance and for any Major Maintenance. Minor Maintenance that is part of ordinary maintenance and repair and does not materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance does not require Grantee review and approval.

In an effort to explain what constitutes Minor Maintenance and Major Maintenance, the following list is provided. The list is by no means comprehensive. It is a sampling of common structural alterations.

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, and 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. 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 clapboard, 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 chimney 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.

LANDSCAPING/OUTBUILDINGS

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

Major: Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, walls, fences, and ground disturbances 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 Maintenance are not necessarily unacceptable. Under the Historic Preservation Restriction, such changes must be reviewed by the Grantee in order to assess their impact on the historic integrity of the Property, Building, and other structures.

It is the responsibility of the Grantor to notify Grantee in writing when any Minor Maintenance that is reasonably expected to materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance or any Major Maintenance is contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of this Historic Preservation Restriction is to enable the Commission to review proposed alterations and assess their impact on the integrity of the Property, the Building, and other structures, not to preclude future change. The Commission will attempt to work with the Grantor to develop mutually satisfactory solutions which are in the best interests of the Property.