

CITY OF SALEM

MARCH 11, 2021

CITY COUNCIL REGULAR MEETING

A Regular Meeting of the City Council is being held remotely on Thursday, March 11, 2021 at 7:00 P.M. for the purpose of transacting any and all business. Notice of this meeting was posted on March 9, 2021 at 8:15 A.M. This meeting is being taped and is live on S.A.T.V.

All Councillors were present.

Council President Madore presided.

Councillor Flynn moved to dispense with the reading of the record of the previous meeting. It was so voted.

President Madore requested that everyone please rise to recite the Pledge of Allegiance.

PUBLIC TESTIMONY

1. Cheryl A. LaPointe, 34 Raymond Ave., Salem – Andrew Jackson Portrait
2. Lauren Liecau, Foundation Trust, Melrose – Grant Opportunities through Trust
3. Mike McKeown, 16 Everett St., Holliston – Forest River Pool Project work on Holiday
4. Jeff Cohen, 12 Hancock St., Salem – Andrew Jackson Portrait

#110 - REAPPOINTMENT OF BILL DOANE TO BEAUTIFICATION COMMITTEE

The Mayors re-appointment of Bill Doane of 26 Buena Vista Ave. to the Beautification Committee with term to expire March 22, 2024 was confirmed by a unanimous roll call vote of 11 yeas, 0 nays, and 0 absent.

#111 – APPOINTMENTS TO THE SALEM RECYCLING COMMITTEE

The Mayor's appointments of Dan Shapiro and Cameron Fullerton to the Salem Recycling Committee were received and filed (informational only City Council confirmation not required).

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING****#112 – APPROPRIATION OF \$124,121.00 TO BENTLEY ACADEMY FOR EQUIPMENT AND CURRICULUM NEEDS**

The following Order submitted by the Mayor was adopted under suspension of the rules by a unanimous roll call vote of 11 yeas, 0 nays and 0 absent.

ORDERED: That the sum of One Hundred Twenty-Four Thousand, One Hundred Twenty-One Dollars (\$124,121.00) is hereby appropriated and transferred from the “Capital Outlay Fund 2000” to the ST CIP Bentley Academy Innovation (20002125-5846CD) for urgent equipment and curriculum needs in accordance with the recommendation of Her Honor the Mayor.

#113 – APPROPRIATION OF \$53,396.00 FOR RETIREMENT STABILIZATION ACCOUNT – NEGOTIATED TWO DAY SICK LEAVE BUYBACK

The following Order submitted by the Mayor was adopted under suspension of the rules by a unanimous roll call vote of 11 yeas, 0 nays and 0 absent.

ORDERED: That the sum of Fifty-Three Thousand, Three Hundred Ninety-Six Dollars (\$53,396.00) is hereby appropriated in the “Retirement Stabilization Fund-Vacation/Sick Leave Buyback” account (83113-5146) to be expended for the negotiated two day sick leave buyback provision as needed in accordance with the recommendation of Her Honor the Mayor.

#114 – APPROPRIATION OF \$4,095.59 FOR RETIREMENT BUYBACK – KATHY WINN – PLANNING DEPARTMENT EMPLOYEE

The following Order submitted by the Mayor was adopted under suspension of the rules by a unanimous roll call vote of 11 yeas, 0 nays and 0 absent. Councillor Dibble requested that a City Seal be sent to Kathy for her decades of service to the City. It was so voted.

ORDERED: That the sum of Four Thousand Ninety-Five Dollars and Fifty-Nine Cents (\$4,095.59) be approved within the “Retirement Stabilization Fund-Vacation/Sick Leave Buyback” account (83113-5146) to be expended for the FY 2021 contractual buyback(s) listed below in accordance with the recommendation of Her Honor the Mayor.

<u>Name</u>	<u>Department</u>	<u>Amount</u>
Kathleen Winn	Planning Department	\$4,095.59
		<u>\$4,095.59</u>

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING****#115 – DONATION IN THE AMOUNT OF \$2,248.50 TO COUNCIL ON AGING**

The following Order submitted by the Mayor was adopted by a unanimous roll call vote of 10 yeas, 0 nays and 1 absent. Councillor Flynn recused himself for this matter and was recorded as absent.

ORDERED: The accept the donation from Friends of the Salem Council on Aging in the amount of Two Thousand, Two Hundred Forty-Eight Dollars and Fifty Cents (\$2,248.50). These funds will be deposited into the City's COA Department Donations Fund 24011-4830 in accordance with the recommendation of Her Honor the Mayor.

#116 – MEMORIAL DEDICATED TO 1ST LT. CATHERINE LARKIN

The following Order submitted by the Mayor was adopted by a unanimous roll call vote of 11 yeas, 0 nays and 0 absent.

ORDERED: The Friends of the United States Cadet Nurse Corps WWII are hereby authorized to erect a memorial to 1st Lt. Catherine Marie Larkin RN, U.S. Army Nurse Corp., to properly honor and memorialize the only woman from Salem to die on duty during WWII. The memorial, a permanent granite marker and bronze plaque, may be installed at the intersection of Memorial Drive and Larkin Lane on property of the Bentley School, subject to approval by the Salem School Committee

#117 – PRESENTATION FROM SIFI NETWORK ON STATUS UPDATE OF PROJECT

The following Order introduced by Councillor Turiel was adopted.

ORDERED: That Representative of SiFi Network update the City Council on their fiber internet construction project and that the matter be received & filed and refer to Government Services co-posted with the Committee of the Whole for follow-up and questions.

The power point presentation included information on who they are, what they do, how the project will be done, how long they will be in your area, how and when notifications will be sent to residents, what will it look like when they are done. (power point presentation on file at City Clerk's office)

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING****#118 – RAISE THE IRISH FLAG ON MARCH 16, 17 AND 18TH AT RILEY PLAZA**

The following Order introduced by Councillor Flynn was adopted by a unanimous roll call vote.

ORDERED: That the Park, Recreation and Community Service Director raise the Irish Flag at Riley Plaza on March 16, 17 & 18.

#119 – (#643 of 2019) – PORTRAIT OF ANDREW JACKSON IN COUNCIL CHAMBERS

Councillor Hapworth offered the following report for the Committee on Government Services co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation.

The Committee on Government Services co-posted with the Committee of the Whole to whom was referred the matter of A Portrait of a Representative of the Naumkeag People be hung in the Council Chambers and that the Portrait of President Jackson to be moved to the Anteroom has considered said matter and would recommend that the matter stay in Committee.

#120 – (#258 of 2019) – PORTRAITS IN THE CITY COUNCIL CHAMBERS

Councillor Hapworth offered the following report for the Committee on Government Services co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation.

The Committee on Government Services co-posted with the Committee of the Whole to whom was referred the matter of Portraits in the City Council Chambers has considered said matter and would recommend that the matter stay in Committee.

#121 – (#94) - MEET WITH SALEM POLICE DEPARTMENT REGARDING RECENT CRIMES

Councillor Riccardi offered the following report for the Committee on Public Health, Safety and Environment co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation.

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

The Committee on Public Health, Safety and Environment co-posted with the Committee of the Whole to whom was referred the matter to meet with Salem Police Department to discuss recent crimes in the city the has considered said matter and would recommend that the Police Chief's Presentation be received and filed and that a letter of thanks be sent to the Police Department for the great job they are doing.

#122 – (#76) – DRAFT ZONING ORDINANCE – URBAN AGRICULTURE

Councillor Riccardi offered the following report for the Committee on Public Health, Safety and Environment co-posted with the Committee of the Whole. It was voted to accept the report and adopt the recommendation.

The Committee on Public Health, Safety and Environment co-posted with the Committee of the Whole to whom was referred the matter of a Draft Ordinance relative to Urban Agriculture has considered said matter and would recommend that a member of the PHSE meet with the Urban Agriculture Committee, the City Solicitor, the Zoning Enforcement Officer to discuss comments on the Urban Agriculture Ordinance and that the matter stay in Committee.

#123 – CEDAR ROAD BE REMOVED FROM THE STREET ACCEPTANCE LIST

The following Order from the City Solicitor relative to the street acceptance of Cedar Road was adopted.

ORDERED: The matter of the Cedar Road street acceptance is hereby referred to the Salem City Council Committee on Ordinances, Licenses and Legal Affairs to hold a public hearing to remove Cedar Road from the list of public streets as the City Council Order adopted June 27, 1996 accepting Cedar Road as a public street was not adopted in accordance with City Ordinance and Massachusetts General Laws.

#124 – PRESERVATION RESTRICTION AGREEMENT FOR THE SALEM ATHENAEUM

The Preservation Restriction Agreement for the Salem Athenaeum, submitted by Jane Guy, Assistant Community Development Director, was adopted by a unanimous roll call vote of 11 yeas, 0 nays and 0 absent.

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

PRESERVATION RESTRICTION AGREEMENT
between
THE PROPRIETORS OF THE SALEM ATHENAEUM
D/B/A THE SALEM ATHENAEUM
and the
CITY OF SALEM, MASSACHUSETTS
BY AND THROUGH THE SALEM HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION AGREEMENT is made this 27th day of January, 2020 by and between THE PROPRIETORS OF THE SALEM ATHENAEUM, D/B/A THE SALEM ATHENAEUM, located at 337 Essex Street, Salem, Massachusetts ("Grantor") and the CITY OF SALEM ("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 SALEM HISTORICAL COMMISSION, located at 98 Washington Street, Salem, Massachusetts, 01970 ("Commission"),

WHEREAS, the Grantor is the owner of certain real property (hereinafter referred to as "**the Property**") with improvements thereon known as The Salem Athenaeum (hereinafter referred to as "**the Building**"), located at 337 Essex Street, Salem, Massachusetts, more particularly described in a series of deeds: dated April 13, 1906 from The Massachusetts New Church Union, a corporation organized under the laws of the Commonwealth of Massachusetts, to the Proprietors of the Salem Athenaeum and recorded in Essex South Registry of Deeds in Book 1821, Page 371; dated June 16, 1902 from Charles S. Rea and Charles F. Curwen, Trustees under the will of Mary S. Curwen, late of Salem to the Proprietors of the Salem Athenaeum and recorded in the Essex South Registry of Deeds in Book 1826, Page 330; dated June 11, 1906 from Ernest W. Curwen of Salem, guardian of Richard Brown Curwen, to the Proprietors of the Salem Athenaeum and recorded in the Essex South Registry of Deeds in Book 1826, Page 331; and dated June 8, 1906 from Charles F. Curwen, Betsey H. Curwen, James H. Curwen and Ernest W. Curwen of Salem to the Proprietors of the Salem Athenaeum and recorded in the Essex South Registry of Deeds in Book 1826, Page 332. A copy of the description of the Property is attached hereto and incorporated herein by this reference as Exhibit A.

WHEREAS, the Building is described as follows, and also depicted in a set of four (4) photographic images taken in September, 2019, referenced by number in the following text, with copies of said images attached hereto and incorporated herein by reference as Exhibit C:

Designed by Salem-native William Gibbons Rantoul (1867-1949), one of the region's most talented early 20th-century architects, the Building was modeled after "Homewood," the circa 1801 Baltimore, Maryland home of Charles Carroll, now a landmark on the Homewood campus of Johns Hopkins University.

The Building is a rectangular 5x5 bay building oriented north towards Essex Street. The single story Building rises from a brick foundation and is capped by a copper hipped roof. The Building is constructed of brick laid in a Flemish bond pattern with marble, wood and stucco trim.

Windows are primarily 6/6 double-hung wood sash with small, six-light, fixed wood windows in the basement. The Building is set back from the street within a lawn dotted by mature rhododendrons.

Essentially Palladian in its symmetry, massing, tripartite composition, and symmetrical fenestration, the Building's façade (north) is dominated by a stylized, Corinthian-order four columned, temple-front pavilion at its center, appropriate to its function as a center of learning. The main entrance faces north with granite steps leading to a seamed granite slab with iron

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

balustrade. The entrance features solid wooden double doors over a fluted marble threshold. Flanking the doors are narrow, double-hung-sash windows, and above the lintel is a fan light with decorative lead muntins forming a Palladian-style entryway. On either side of the front doors are fluted pilasters topped with a projecting lintel. The pavilion is supported by four unfluted Corinthian columns in wood, which are capped with an egg-and-dart motif band. The columns support a wooden denticulated pediment that features carved garland and wheat decorative elements and a shield-shaped window with an urn leaded pattern. At the junction of the pavilion and the main block of the Building are two engaged, partially-fluted, Tuscan order columns with square marble bases that correspond to a marble string course that runs around the entire structure between the first story and basement. On either side of the pavilion are two large double-hung windows with marble sills and lintels with a faux keystone pattern. Each window is framed by louvered shutters. Above each window is an ornamental notched marble panel, while below are fixed, six-light, wood windows with marble sills and splayed lintels.

The east and west facades of the Building each feature five large, double-hung sash windows with marble sills and lintels. Ornamental notched marble panels appear above the three windows closest to the front end of the Building on both the east and west. Below each of the five windows are six-light basement windows with marble sills and splayed lintels. The west facade also features a below-grade entrance to the basement level. The steps are granite and the supporting walls are brick capped with granite and an iron balustrade.

On the south façade is a central Tuscan order four-columned portico, recalling the front entrance, that serves as the garden entrance. Double half-glass, wooden doors lead from the interior reading room to the wooden porch with a wooden balustrade and wooden steps that lead down to a brick garden path. The exterior wall under the pediment has a stucco finish. This portico structure is entirely wooden with lattice inserts for ventilation in the base. The wooden decking, railing, and steps have each been replaced several times since 1907.

The Building's main hipped roof and both pavilion roofs are trimmed in a denticulated cornice and clad in standing-seam copper. Eight unusual barrel-roof dormers pierce the roofline and are finished in flat copper. The dormers each feature a double-hung sash window with Gothic Revival tracery. A large central skylight is surrounded by a flat rubber roof that was originally tar and paper. Two centrally placed brick chimneys protrude from the flat roof.

WHEREAS, due to their historical and architectural significance, the Building and the Property were listed in the National Register of Historic Places as a contributing resource to the Chestnut Street Historic District on August 28, 1973, are included in the McIntire Historic District established by the City of Salem on March 3, 1981, and as a result of the foregoing are included in the State Register of Historic Places; and

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 exterior of the Building and the Property; and

WHEREAS, in 1998, the Salem Athenaeum received a Massachusetts Preservation Projects Fund (MPPF) grant to assist in the full replacement of the original sheet copper roof and reconstruction of the wooden and copper gutters surrounding the Building. The rubber roof was replaced in 2019. Another MPPF grant-funded project was undertaken in 2016/2017 to restore the original wooden windows, a wooden door, and install storm windows on the basement windows. These projects were instrumental in maintaining climate control for the preservation of significant holdings of historical book collections as well as interior custom finishes in the Building; and

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

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

WHEREAS, the Baseline Documentation (Exhibits A, B and C) shall consist of the following:

Exhibit A. Legal Property Description

Exhibit B. Assessors' Parcel Map

Exhibit C. Four (4) Baseline Photographs Dated September, 2019; and

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

WHEREAS, upon the recommendation of the Community Preservation Committee and approved as Project by the City Council, the sum of Thirty-five Thousand, Two Hundred and Two Dollars (\$35,202) from the Community Preservation Fund ("Funds") was appropriated for the purpose of funding a grant for the restoration of the windows 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 is important to the public for the enjoyment and appreciation of its architectural and historical heritage and serves the public interest in a manner consistent with the purposes of Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 ("Act"); and

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

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby irrevocably grant and convey to the Grantee in gross in perpetuity this Restriction over the 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 will be retained and maintained forever substantially in its current condition or in a restored condition approved by the Commission for preservation purposes and to prevent any use or change of the Property or the exterior of the Building that will significantly impair or interfere with the Building's preservation values or alter views of the exterior of the Building.

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

- a. any alteration to the appearance, materials, workmanship, condition or structural stability of the exterior of the Building unless (i) clearly of a 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

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

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 D and hereby incorporated by reference.

- b. any other act or use that may be harmful to the historic preservation of the exterior 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 substantial completion of restoration work to be completed as a result of the expenditure of Community Preservation Funds. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the exterior of the Building. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with the policies and procedures of the Commission and in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

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

- a. the Building shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property near the Building;
- c. no above-ground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded;
- d. no additions and/or outbuildings may be attached to the Building without prior approval of the Grantor; and
- e. 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 exterior of the Building without prior express written approval of the Commission. Without said approval Grantor shall not make any changes to the exterior of 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,

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

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 D), 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;
- b. pursuant to the provisions of Paragraph 4.1, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the Building. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the 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 sixty (60) 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 sixty (60) 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 from undertaking any of the activities prohibited hereunder.

8. Standards for Review: In exercising any authority created by this Restriction to inspect the Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the Commission shall apply the Secretary's Standards.

9. Casualty Damage or Destruction: In the event that Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of the damage or destruction, such notification including

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

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 sixty (60) days of the date of damage or destruction, if required by the Commission, Grantor at its expense shall submit to the Commission a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Commission, which report shall include the following:

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

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

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

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

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:	The Proprietors of the Salem Athenaeum d/b/a The Salem Athenaeum 337 Essex Street Salem, MA 01970
Grantee:	Salem Historical Commission c/o City of Salem Department of Planning & Community Development 98 Washington Street Salem, MA 01970

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

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

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, include 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 Salem, and the Salem Historical Commission, its being approved by the Massachusetts Historical Commission, and its being recorded with the Southern Essex District Registry of Deeds.

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

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 approvals following public hearings by the City of Salem 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

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

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 amend or 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 Salem 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. Subordination: Grantor and Grantee acknowledge that as of the date of this Agreement, the Property and the Building are subject to a perpetual Preservation Restriction Agreement held on the Property and the Building by the Commonwealth of Massachusetts by and through the Massachusetts Historical Commission and recorded with the Essex South Registry of Deeds on July 9, 1998 in Book 14942, Page 546 (hereinafter the "MHC Agreement"). Grantor agrees that in addition to complying with the restrictions contained in this Agreement, Grantor will continue to comply with the restrictions contained in the MHC Agreement. Grantor and Grantee agree that this Agreement shall be subservient to the MHC Agreement, and further agree that should any dispute arise between Grantee and the Massachusetts Historical Commission in the process of fulfilling the requirements of these restrictions, the Grantee shall defer to the demands and requirements set out by the Massachusetts Historical Commission.

#125 – DISCUSS GRANT OPPORTUNITIES THROUGH THE FOUNDATION TRUST

A request from Lauren Liecau, Foundation Trust Manager, to meet with the City Council to discuss grant opportunities offered through the foundation was referred to the Committee on Community & Economic Development Co-posted with Comm. of the Whole.

#126 – REQUEST FROM COLANTONIO PROJECT MANAGER OF THE FOREST RIVER PARK POOL PROJECT TO WORK ON PATRIOT'S DAY

A request from Michael McKeown, Colantonio Project Manager, of the Forest River Park Pool Project, requesting permission to work Patriot's Day, Monday, April 19, 2021 from 8:00 A.M. to 5:00 P.M. to perform interior renovations and interior construction activities. (Per City Ordinance Ch. 22, Sec 2 (5)(c)) was granted.

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING****#127 – LICENSE APPLICATIONS – PUBLIC GUIDES**

The Following License Applications were granted.

PUBLIC GUIDES: Kristin Harris 181 Federal St., Salem
Michael Vitka 384 Essex St., Salem
William Page 9 Pickering Way, Salem
Charlotte Michaels 10 Summer St., Salem
Thomas Vallor 40 Boardman St., Salem
Christine Remus 13 Merrimac St., Amesbury

#128 - #129 – LICENSE APPLICATIONS

The Following License Applications were referred to the Committee on Ordinances, Licenses and Legal Affairs.

SECOND HAND VALUABLES: Timeless Life Treasures 68 Wharf St., Salem

TAG DAY: Salem Youth Football & Cheering Aug. 28 & Oct 16, 2021

#130 - #133 – CLAIMS

The Following Claims were referred to the Committee on Ordinances, Licenses and Legal Affairs.

Dona Bacco 65 Britannia Cir., Salem
Michael Ryan 129 Fort Ave., Salem
Maria Swiacke 205 Highland Ave., Salem
Pamela Ahmed 2 Lillian Rd., Salem

(#95) – ORDINANCE AMENDING TRAFFIC – BOARDMAN STREET – HANDICAP PARKING

The following Ordinance amending traffic was taken up. It was adopted for second and final passage by a unanimous roll call vote of 11 yeas, 0 nays and 0 absent.

In the year Two Thousand and Twenty One

An Ordinance to amend an Ordinance relative to Traffic Ch. 42, Sec. 50B, "Handicapped Zones, Limited Time"

Be it ordained by the City Council of the City of Salem, as follows:

CITY OF SALEM**MARCH 11, 2021****CITY COUNCIL REGULAR MEETING**

Section I. Amending Chapter 42, Section 50B – “Handicapped Zones, Limited Time” is hereby amended by adding the following:

Boardman Street – One Handicapped Parking Space to be added in front of #27 Boardman Street, for the distance of twenty (20) feet.

Section II. This Ordinance shall take effect as provided by City Charter.

(#101A) – ORDINANCE AMENDING AN ORDINANCE RELATIVE TO PUBLIC GUIDES – CH. 40, SEC. 30 – PROHIBITIONS

The following Ordinance amending an ordinance was taken up. It was adopted for second and final passage by a unanimous roll call vote of 11 yeas, 0 nays and 0 absent.

In the year two thousand and twenty one

An Ordinance to amend an Ordinance relative to public guides

Be it ordained by the City Council of the City of Salem, as follows:

Section I. Chapter 40, Sec. 40-30. – Prohibitions is hereby amended by deleting subparagraph 8 in its entirety and replacing it with the following:

“(8) Utilize a voice amplification device on Brown Street, Howard Street, Brown Street Court, Kimball Court, Higginson Square or in the alley between 93 and 99 Washington Street,”

Section II. This Ordinance shall take effect as provided by City Charter.

On the motion of Councillor Sargent the meeting adjourned at 8:25 P.M.

ATTEST:

ILENE SIMONS
CITY CLERK