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**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 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

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 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,

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 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. Arbitrator shall have experience in historic preservation matters.

11. Insurance: Grantor shall keep the Building insured by an insurance company rated "A" or better by Best's 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 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 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.

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 Restriction or the status of Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural and historic values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the Southern Essex District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

27. Release: This Preservation Restriction is intended to be a restriction in gross in perpetuity and may only be released, in whole or in part, by the Grantee pursuant to the procedures for release established by the Act and otherwise by law, including approvals following public hearings by the City of 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.

IN WITNESS WHEREOF, the Grantor sets its hand and seal this 30 day of January, 2020.  
By:

**GRANTOR:**

The Proprietors of the Salem Athenaeum

Stanley Usovicz  
Stanley Usovicz  
President

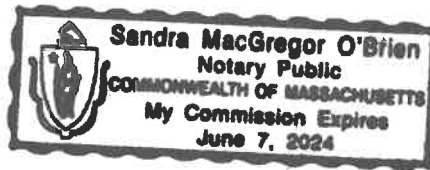
William Lundregan  
William Lundregan  
Treasurer

COMMONWEALTH OF MASSACHUSETTS

Essex,ss.

On this 30<sup>th</sup> day of January, 2020, before me, the undersigned notary public, personally appeared Stanley Usovicz, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.

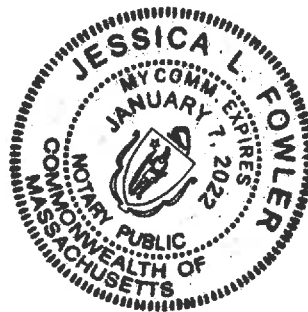
Sandra MacGregor O'Brien  
Notary Public  
My Commission Expires:



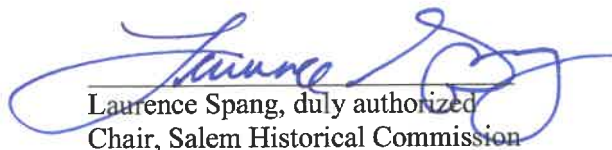
Essex,ss.

On this 29<sup>th</sup> day of Jan, 2020, before me, the undersigned notary public, personally appeared William Lundregan, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.

Jessica L. Fowler  
Notary Public  
My Commission Expires: 1/7/2022



ACCEPTANCE BY THE SALEM HISTORICAL COMMISSION

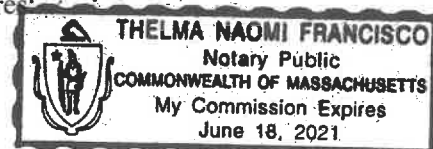
  
Laurence Spang, duly authorized  
Chair, Salem Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex,ss.

On this 4th day of March, 2021 before me, the undersigned notary public, personally appeared Lawrence Spang, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as duly authorized Chair of the Salem Historical Commission.


  
Notary Public  
My Commission Expires:



ACCEPTANCE AND APPROVAL BY THE CITY OF SALEM

I, the undersigned City Clerk of the City of Salem, Massachusetts, hereby certify that at a meeting duly held on March 11, 2021, the City Council voted to approve and accept the foregoing Preservation Restriction Agreement for the preservation of the historic resources of said City and being in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

By its Clerk

  
Ilene Simons  
City Clerk


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

  
Kimberley Driscoll  
Mayor

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.


On this 12<sup>th</sup> day of March, 2021, before me, the undersigned notary public, personally appeared Ilene Simons, proved to me through satisfactory evidence of identification, which my personal knowledge of the identity of the principal, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as Clerk of the City of Salem.

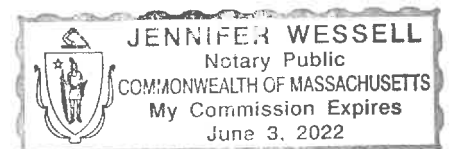
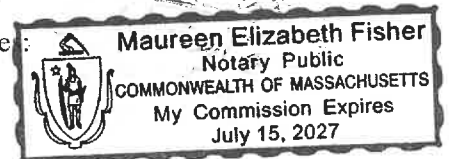
  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 15 day of March, 2021, before me, the undersigned notary public, personally appeared, Kimberley Driscoll, proved to me through satisfactory evidence of identification, which was my personal knowledge of the identity of the principal, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes as Mayor of the City of Salem.

  
Notary Public  
My Commission Expires: 6/3/2022



APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION

COMMONWEALTH OF MASSACHUSETTS

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

MASSACHUSETTS HISTORICAL COMMISSION

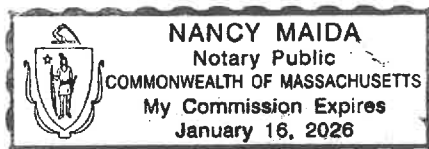


Brona Simon  
Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 5<sup>th</sup> day of April, 2021, before me, the undersigned notary public, personally appeared Brona Simon proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.



  
Notary Public  
My Commission Expires: 1/16/24

# EXHIBIT A

## Legal Property Description

Book 1821 p 371-373

Mass. New Church Union to Props. of Salem Athenaeum

...Beginning at the Northeast corner by land now or formerly of Curwin on Essex Street and running South bounded Easterly on said land now or formerly of Curwin one hundred twenty-four (124) feet four (4) inches to land now or late of Betsey B. Mugford. Then turning and running West bounded Southerly by other land now or formerly of said [372] Mugford sixty six (66) feet to Bott's Court so called thence running Northerly on said Court twenty two (22) feet ten (10) inches to land now or late of Daniel Potter thence turning and running Easterly on said land now or late of Potter seventeen (17) feet six (6) inches, thence turning and running Northerly on said land now or late of Potter to an angle in the fence thirty one (31) feet thence turning and running North Westerly on said angle on a crooked line as the fence stood at the line of said Deed twenty one (21) feet three (3) inches to the South east corner of the dwelling house now or late of said Potter, thence running Northerly by said dwelling house fifty one (51) feet three (3) inches to said Essex Street, thence running Easterly on said Essex Street about fifty nine (59) feet six (6) inches to the bound begun at. Being the same premises conveyed to the said The Massachusetts New Church Union by deed dated June 8, 1905, and recorded with Essex South District Deeds, Book 1782 page 444 and subject to any restrictions therein referred to if still in force. ...

Book 1826 p 330

C. S. Rea et al. trts. [trustees] to Salem Athenaeum

...hereby grant, bargain, sell, and convey unto the said corporation all the interest of said Mary S. Curwen in the following described real estate, namely, a certain parcel of land with all buildings thereon in said Salem, bounded beginning on Essex Street at land, formerly of Thomas Holmes, now of Cousins, and running southwesterly by by [sic] Cousin's [sic] land one hundred and fifty seven feet, thence running easterly by the same land eleven feet nine inches, thence running southwesterly by land of West fourteen feet two inches, thence running westerly by land of Lee sixty seven feet one inch, thence running northerly by land of Mugford heirs, now or late, and land of the grantee, one hundred and sixty two feet two inches, thence running easterly by Essex Street fifty three feet eleven inches to the point begun at. To have and to hold the granted premises with all the privileges and appurtenances thereto belonging to the said Proprietors of the Salem Athenaeum and its successors...

Book 1826 p 331

E.W. Curwen Gdn. to Salem Athenaeum

...do hereby grant, bargain, sell, and convey unto the said corporation all the interest of said minor in the following described real estate, said interest being five undivided forty eighth parts thereof, namely, a certain parcel of land with all the buildings thereon in said Salem, bounded, beginning on Essex Street at land, formerly of Thomas Holmes, now of Cousins, and running southwesterly by Cousin's [sic] land one hundred and fifty seven feet, thence running easterly by the same land eleven feet nine inches, thence running southwesterly by land of West fourteen feet two inches, thence running westerly by land of Lee sixty seven feet one inch, thence running northerly by land of Mugford heirs, now or late, and land of the grantee, one hundred and sixty two feet and two inches, thence running easterly by Essex Street fifty three feet eleven inches to the point begun at.

Book 1826 p 332

C. F. Curwen at al. to Salem Athenaeum

...do hereby give, grant, bargain, sell and convey unto the said Proprietors of the Salem Athenaeum a certain parcel of land with all the buildings thereon in said Salem bounded beginning at a point on Essex Street by land formerly of Holmes, now or late of Cousins, thence running southwesterly by said Cousin's [sic] land one hundred and fifty seven feet, thence running easterly by the same land eleven feet nine inches, thence running southwesterly by land formerly of Holmes, now of West, fourteen feet two inches,

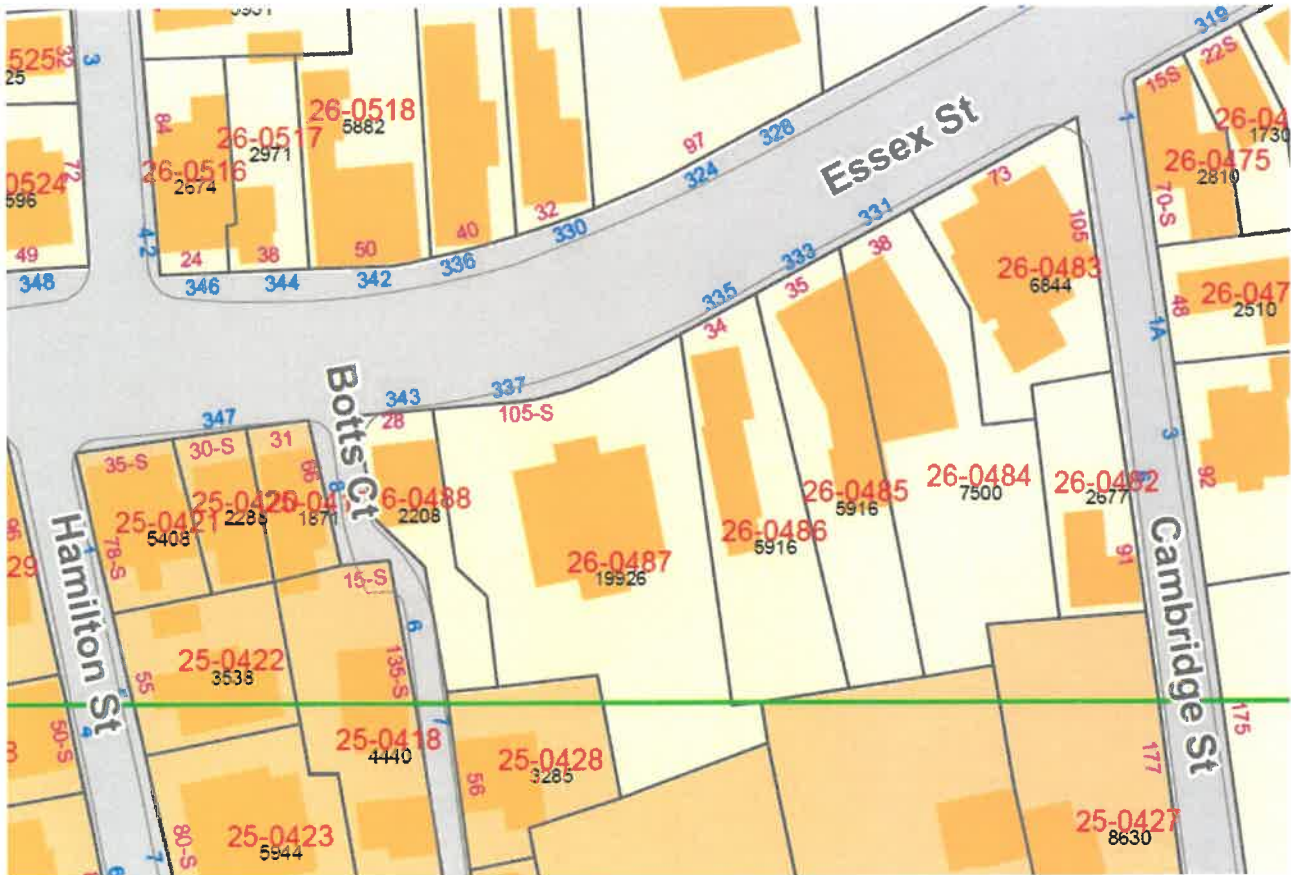
thence running westerly by land of Lee sixty seven feet one inch, thence running northerly by land formerly of Botts, now or late of Brown, and land of the grantee one hundred and sixty two feet two inches, thence running easterly by Essex Street fifty three feet eleven inches to the point begun at; being the same conveyed to Jonathan Holman by deed of John Holman dated Jan. 18, 1833, recorded with Essex So. Dist. Deeds B. 276 L. 255, said Jonathan Holman devised the same in trust for Mary S. Curwen by his will allowed in Essex Probate Court 1st Tuesday of October 1855...

Source: Southern Essex District Registry of Deeds (transcribed from deeds).



# EXHIBIT B

## Salem Assessors' Parcel Map 26-0487



# EXHIBIT C

## Baseline Photographs



Photo 1 – Front façade (North elevation)





Photo 2 – Rear façade (South elevation)



Photo 3 – East elevation



Photo 4 – West elevation



# EXHIBIT D

## RESTRICTION GUIDELINES

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

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

### PAINT

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

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

### WINDOWS AND DOORS

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

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

### EXTERIOR

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

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

### LANDSCAPE/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; ground disturbance affecting archaeological resources.

### HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

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

Changes classified as major alterations are not necessarily unacceptable. Under the preservation restriction such changes must be reviewed by the COMMISSION and their impact on the historic integrity of the property assessed.

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

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