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PRESERVATION RESTRICTION AGREEMENT

between

HAMILTON HALL

and the

CITY OF SALEM, MASSACHUSETTS



BY AND THROUGH THE SALEM HISTORICAL COMMISSION

THIS PRESERVATION RESTRICTION AGREEMENT is made this 5th day of January 2017 by and between HAMILTON HALL, INC. located at 9 Chestnut Street/7 Cambridge 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 120 Washington Street, Salem, Massachusetts, 01950 ("Commission"),

WHEREAS, the Grantor is the owner of certain real property (hereinafter referred to as "the Property") with improvements thereon known as Hamilton Hall (hereinafter referred to as "the Building"), located at 9 Chestnut Street/7 Cambridge Street, Salem, Massachusetts, as described in Exhibit A, attached hereto and incorporated herein by this reference, and in a confirmatory deed recorded May 8, 1987 at the Essex South Registry of Deeds in Book 8948, Page 269, being the same premises conveyed to the Proprietors of the South Buildings in Salem, Inc., by deed of Pickering Dodge and Rebecca Dodge dated March 1, 1820 and recorded with the Essex South Registry of Deeds, Book 223, Page 217. The confirmatory deed contains a specific description and title reference in confirmation of the deed from The Proprietors of the South Buildings in Salem, Inc., dated as of December 30, 1986 and recorded with the Essex South Registry of Deeds on December 31, 1986 at Book 8726, Page 591.

WHEREAS, the Building is described as follows, and also depicted in a set of twelve (12) photographic images taken in August 2016, referenced by number in the following text, with copies of said images attached hereto and incorporated herein by reference as Exhibit C:"

Hamilton Hall is one of America's outstanding examples of Federal style architecture. Designed and built by Samuel McIntire, the namesake of Salem's McIntire Historic District, the Hall was designated a National Historic Landmark in 1970.

Constructed in 1805-7, the two and one-half story red brick building is located at the southeast corner of Chestnut and Cambridge Streets. Due to its corner lot location, the building is designed with two primary and two secondary facades. The primary facades of Chestnut Street (north) and Cambridge Street (west) feature brick walls laid in a Flemish bond pattern, while the brick of the building's secondary east and south elevations are laid in a seven-course American or Common bond pattern. The primary facades also feature a four-row brick belt course between the first and second stories that terminate in brick quoins on the secondary elevations. The brick of the north and west facades has been sand-blasted. The building is set on a granite foundation and is capped by a gable roof pierced by four tall interior brick chimneys symmetrically arranged near each end wall.

The Cambridge Street (west) façade serves as the building's primary entrance. (Photo 1) This elevation features a closed gable pediment and a symmetrically-arranged five bay fenestration pattern. A center entrance on the first story is sheltered by a Greek Revival style portico added in 1845. (Photo 2) The entrance consists of a pair of double wood doors, each with three panels, the

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The Cambridge Street (west) façade serves as the building's primary entrance. (Photo 1) This elevation features a closed gable pediment and a symmetrically-arranged five bay fenestration pattern. A center entrance on the first story is sheltered by a Greek Revival style portico added in 1845. (Photo 2) The entrance consists of a pair of double wood doors, each with three panels, the

upper of which is glazed. The doors are set within a simple wood surround. The portico features a flat roof supported by Doric columns resting on the second step of a granite stoop. A smaller granite step provides access to the entrance. Windows on this elevation consist of six-over-six double hung wood sash flanked by louvered blinds. First story windows are set in plank frames with no lintels. Second story openings are capped by splayed window lintels with keystones, while third story windows have splayed lintels without keystones. The third story lintels extend to the deeply projecting boxed cornice base of the gable pediment. A divided semi-elliptical lunette is centered in the pediment, flanked above by two S-curve iron tie rods. (Photo 3)

The Chestnut Street (north) façade consists of five main bays. (Photo 4) The first story is divided into a sixth bay with an off-center entrance located in the third bay from the building's northwest corner. The entrance contains a modern six-panel door and is accessed by three granite steps. First story windows on this façade feature eight-over-eight double hung wood windows set in plank frames with no lintels. Four iron tie rods are located above the belt course. The second story is punctuated by a series of Palladian windows set into shallow arched reveals. (Photo 5) Above each window is a rectangular wood panel featuring a McIntire carving. The center panel depicts an eagle with shield, while remaining panels are adorned by carvings of drapery swags. (Photo 6)

Both the east and south elevations have asymmetrical fenestration patterns. All window openings on these two elevations feature six-over-six double hung wood sash set within plain plank frames without lintels. In contrast to the west elevation with its boxed pediment, the east elevation features an open gable with corbels along the roofline. (Photo 7) The south elevation has a wood ramp along its first story and a modern metal fire escape that extends from the first story to the second story. (Photos 9 & 10)

The building is set directly on the Cambridge Street sidewalk, while a narrow landscaped strip separates the building from the Chestnut Street sidewalk. The Chestnut Street side is fronted by a cast iron picket fence with attenuated decorative posts and a row of shaped evergreen hedges between the building and the fence. (Photos 11 & 12)

WHEREAS, due to its cultural, historical and architectural significance, the Building and the Property were certified as a Massachusetts Historic Landmark on June 22, 1970 and listed as a National Historic Landmark on December 30, 1970. The Building is also a contributing resource to the Chestnut Street Historic District, listed in the National Register of Historic Places on August 28, 1973; and the building and Property are located within the McIntire Local Historic District established by the City of Salem on March 3, 1981. The Building and Property are subject to a perpetual preservation restriction agreement held by the Massachusetts Historical Commission, recorded on February 24, 1988; 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, the preservation values of the Building is documented in a series of photographs and documents (hereinafter, "Baseline Documentation") incorporated herein and attached hereto as by reference as Exhibit A-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-C) shall consist of the following:

1. Exhibit A. Legal Property Description.
2. Exhibit B. Assessors' Parcel Map.

3. Exhibit C. Baseline Photographs Dated August 2016.

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 Twenty Thousand Dollars (\$20,000.00) (window restoration and project sign) from the Community Preservation Fund ("Funds") was appropriated for the purpose of funding a grant for the restoration of the Building; and

WHEREAS, the Grantor and the Grantee have reached an Agreement whereby the Grantee shall provide the Funds so appropriated to the Grantor to be expended for the preservation and renovation of the aforementioned Building, under the terms and conditions set forth herein and in such other documents as the parties may execute, and the Grantor agrees to accept such Funds to be used exclusively for such purposes and under such terms and conditions ("Restriction" or "Preservation Restriction");

WHEREAS, the Grantor in further consideration of the receipt of such Funds and to ensure the preservation of the aforementioned Building agrees and desires, to impose certain restrictions, obligations and duties upon itself, its successors and assigns, so as to maintain, protect and preserve the architectural and historical integrity of the Building;

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

Activities by Grantor to maintain the Building and the Property which are intended to be performed in accordance with the provisions of paragraph 4.1, and which are of a minor nature, shall not require the prior approval of the Commission. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines (Exhibit 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 and subject to a Certificate of Non-applicability from the Salem Historical Commission. 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 and 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 extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts and paragraph 23 hereof.

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

11. Insurance: Grantor shall keep the Building insured by an insurance company rated "A-1" or better by Best's 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: Hamilton Hall
 9 Chestnut Street
 Salem, MA 01970

Grantee: Salem Historical Commission
 c/o City of Salem
 Department of Planning & Community Development
 120 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, are to promote preservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out. Grantor shall give prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.

21. Alternate Designee: Grantee may, at its discretion, remove and replace the Commission as its designee to administer, manage, and enforce this Restriction, provided that any new designee is qualified as such under the Act and other applicable law.

22. Recording and Effective Date: Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction which shall become effective upon its being duly executed by the Grantor, the City of Salem, and the Salem Historical Commission, its being approved by the Massachusetts Historical Commission, and its being recorded with the Southern Essex County District Registry of Deeds.

23. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Property may make impossible the continued Grantorship or use of the Property for the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such a change in conditions may include, but is not limited to, partial or total destruction of the Building resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including public hearings by the City of 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 increment to any person or entity; and shall not adversely impact the overall architectural and historic values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the Southern Essex County District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

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

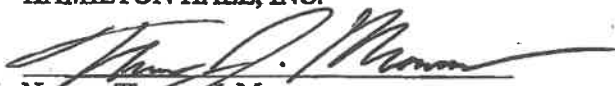
29. Subordination: Grantor and Grantee acknowledge that as of the date of this Agreement, the Property and the Building are subject to a perpetual Preservation Restriction Agreement held on the Property and the Building by the Commonwealth of Massachusetts by and through the Historical Commission and recorded with the Essex South Registry of Deeds on February 24, 1988 in Book 9405, Page 281 (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, as it may be amended from time to time. 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 27th day of January, 2017.

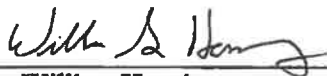
By:

GRANTOR:

HAMILTON HALL, INC.



Name: Thomas J. Monroe
Title: President



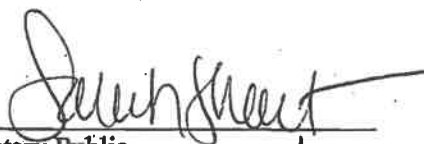
Name: William Henning
Title: Treasurer

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 27th day of January, 2017, before me, the undersigned notary public, personally appeared Thomas J. Monroe, 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 he signed it voluntarily for its stated purposes.

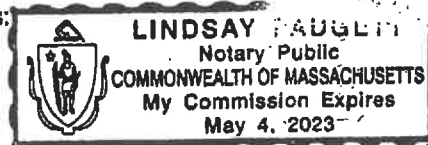



Notary Public
My Commission Expires: 1/13/2023

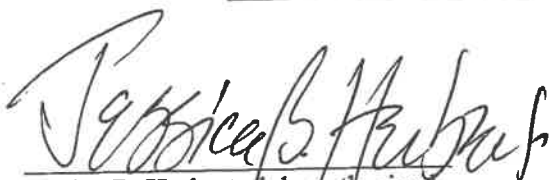
Essex, ss.

On this 1 day of February, 2017, before me, the undersigned notary public, personally appeared William Henning, 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 he signed it voluntarily for its stated purposes.


Notary Public
My Commission Expires:



ACCEPTANCE BY THE SALEM HISTORICAL COMMISSION

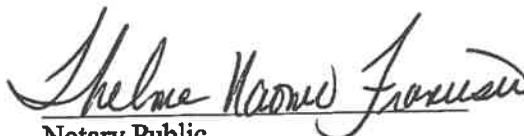


Jessica B. Herbert, duly authorized
Chair, Salem Historical Commission

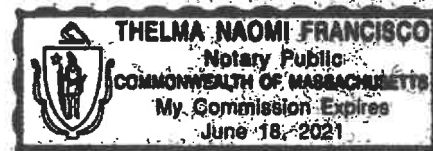
COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 5th day of January, ^{2017 NF} ~~2016~~ before me, the undersigned notary public, personally appeared Jessica B. Herbert, proved to me through satisfactory evidence MA Driver's License 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 May 28, 2015, 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

Cheryl A. LaPointe
Cheryl LaPointe
City Clerk

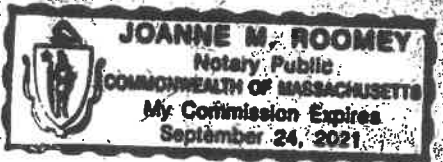
The undersigned hereby certifies that the foregoing preservation restrictions have been approved and accepted by the City of Salem

Kim Driscoll
Kimberley Driscoll
Mayor

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 13th day of January 2017, before me, the undersigned notary public, personally appeared Cheryl LaPointe, 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 Clerk of the City of Salem.



Joanne M. Rooney
Notary Public
My Commission Expires: 9/24/21

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 17th day of January 2017, 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.



Elizabeth Rennard
Notary Public
My Commission Expires: 4.6.18

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

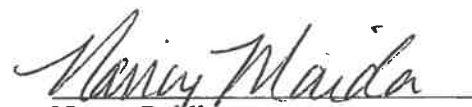


Brona Simon
Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 14th day of February, 2017, 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:

January 25, 2019

EXHIBIT A

LEGAL PROPERTY DESCRIPTION

Land and building in Salem at 9 Chestnut Street at the corner of Chestnut and Cambridge Street with the Building thereon known as Hamilton Hall, bounded and described as follows:

Beginning at the northwest corner of Hamilton Hall (so called) on Chestnut Street,

thence running easterly and bounding northerly by said street eighty-two feet;

thence running south three degrees west and bounding easterly by land formerly of Jonathan Neall to the corner of said Hamilton Hall;

thence running southerly on a line with said Hamilton Hall and bounding easterly by land also formerly of Jonathan Neall, fifty-three feet;

thence running westerly and bounding southerly by land also formerly of said Neall five feet six inches;

thence running southerly and bounding easterly by land also formerly of said Neall eight feet six inches more or less;

thence running easterly, bounding northerly by land also formerly of said Neall five feet nine inches;

thence running southerly and bounding easterly by land formerly of Woodbury, five feet;

thence running westerly and bounding southerly by land formerly of David Neall eighty-six feet to Cambridge Street;

thence running northerly and bounding westerly by Cambridge street eighty-seven feet four inches more or less to the bound first mentioned on Chestnut Street aforesaid;

with the privileges and appurtenances thereto belonging.

The Grantor's deed is recorded at the Essex South Registry of Deeds in Book 8948, Page 269 and being the same premises conveyed to the Proprietors of the South Buildings in Salem, Inc., by deed of Pickering Dodge and Rebecca Dodge dated March 1, 1820 and recorded with the Essex South Registry of Deeds, Book 223, Page 217.

The deed contains a specific description and title reference and is in confirmation of the deed from The Proprietors of the South Buildings in Salem, Inc., dated as of December 30, 1986 and recorded with the Essex South Registry of Deeds on December 31, 1986 at Book 8726, Page 591.

EXHIBIT B

SALEM ASSESSORS' PARCEL MAP

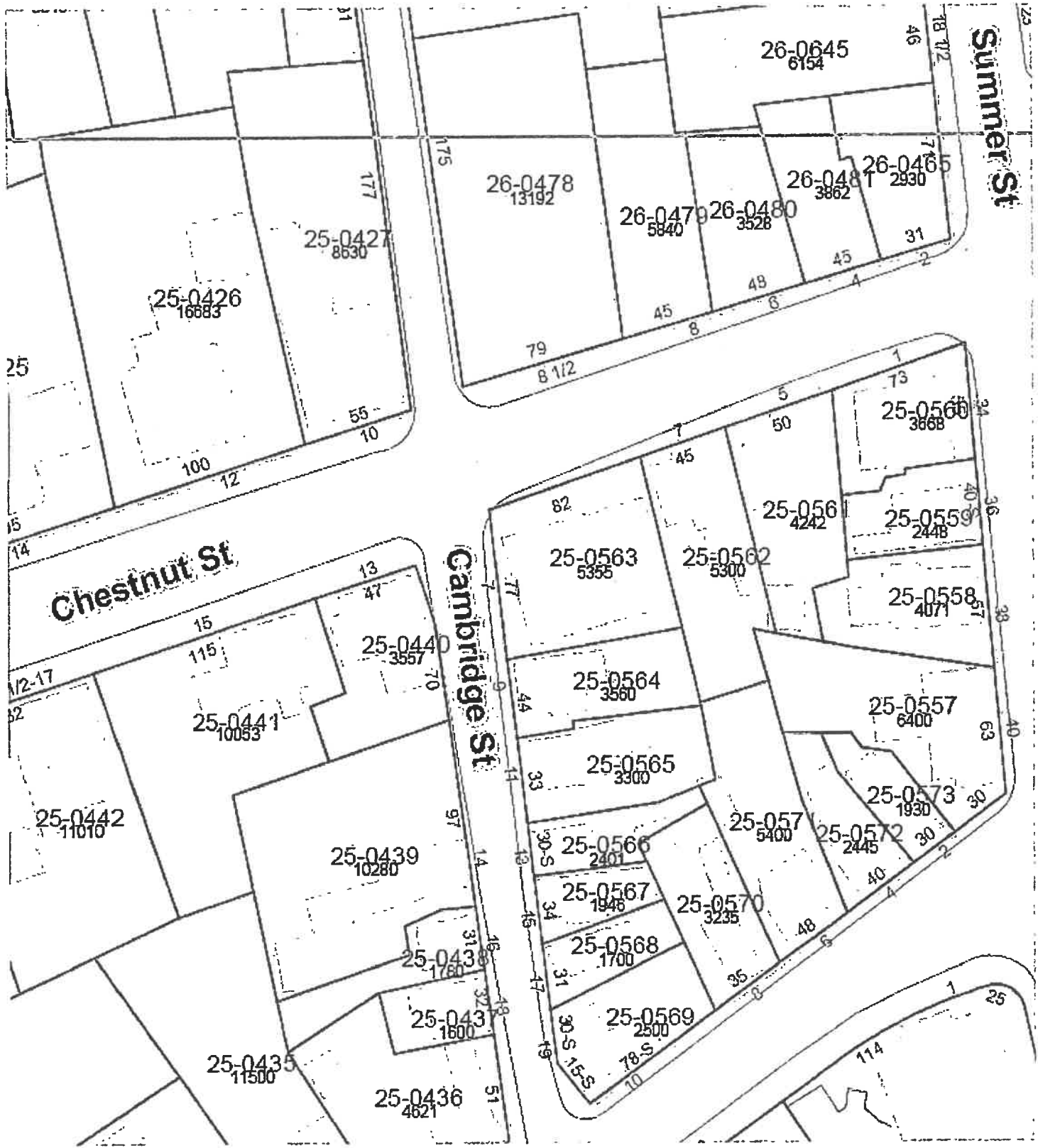


EXHIBIT C
BASELINE PHOTOGRAPHS



Photo 1: Cambridge Street (west) façade



Photo 2: Cambridge Street entrance with 1845 Greek Revival style portico

Photo 3: Pedimented gable with lunette on Cambridge Street (west) elevation

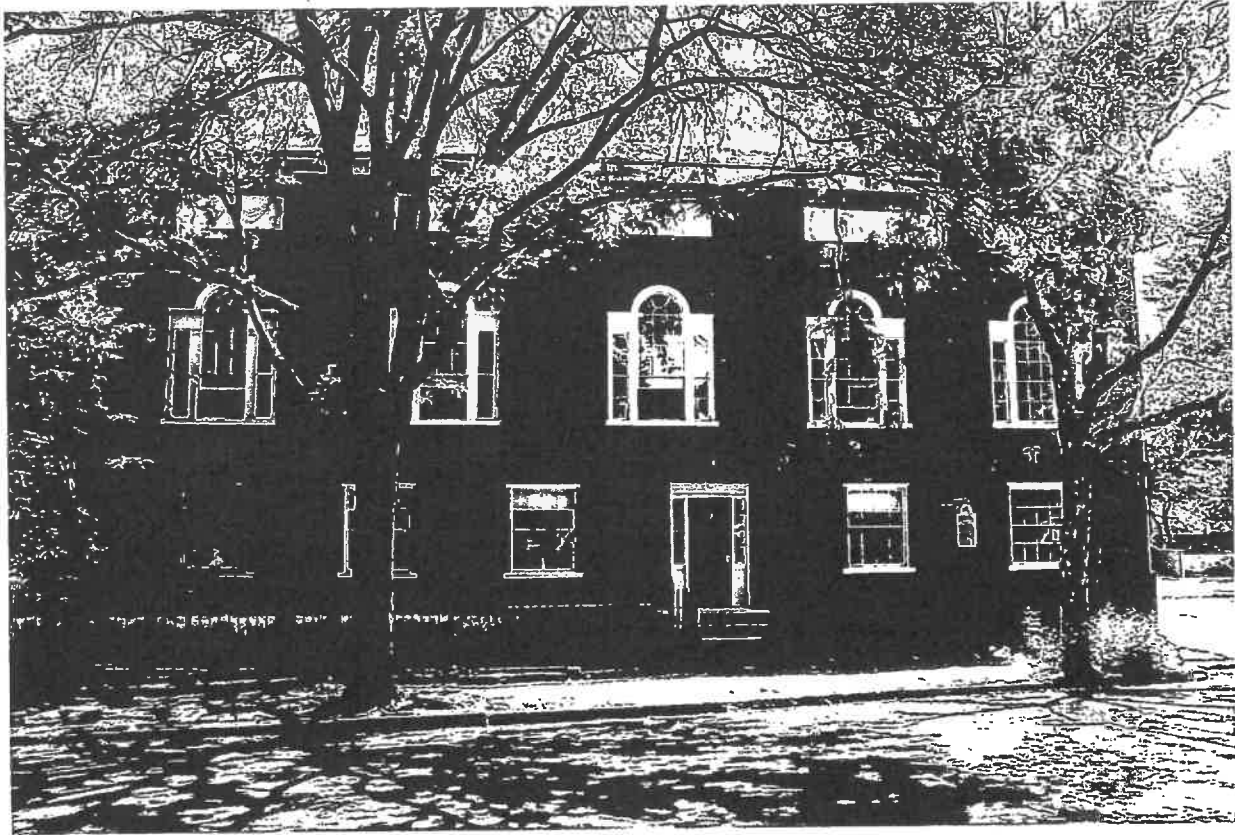


Photo 4: Chestnut Street (north) façade



Photo 5: Northwest corner of Chestnut Street façade – Palladian windows and panels with carved swags

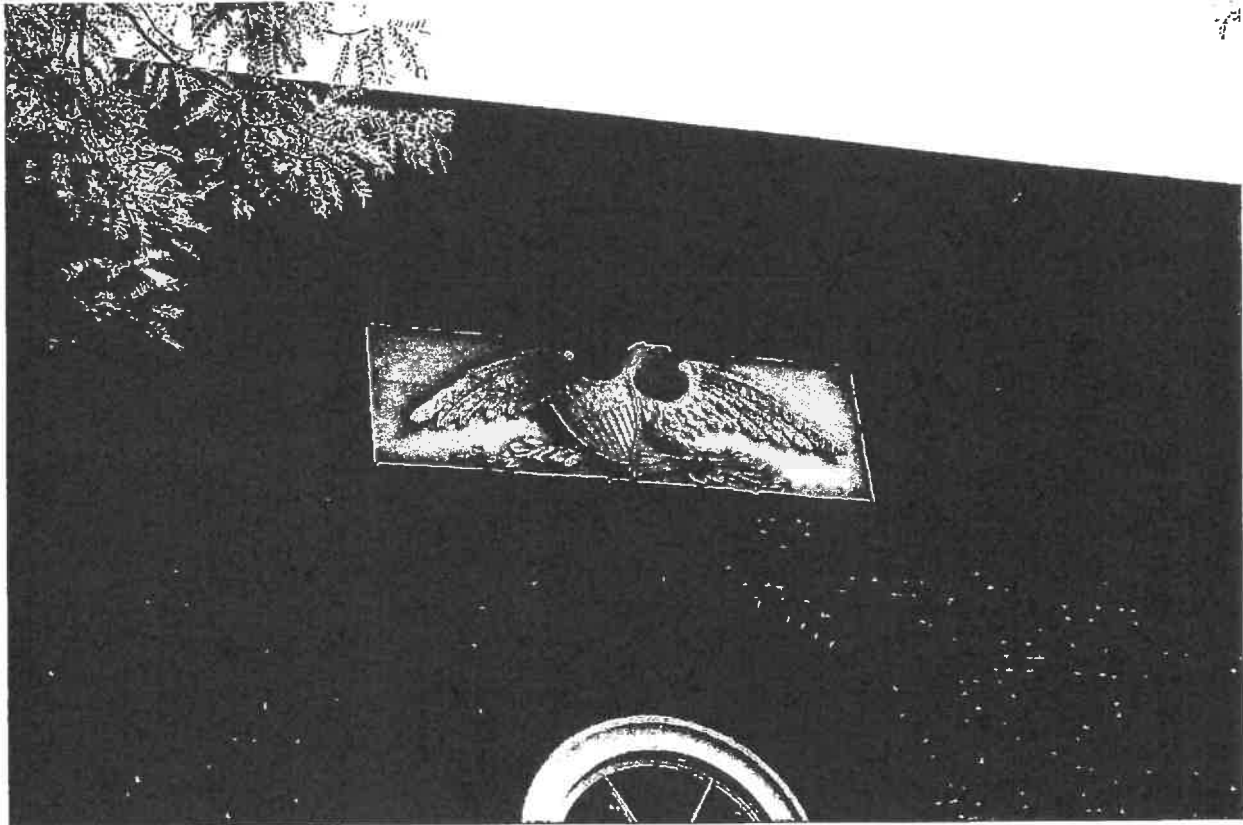


Photo 6: Chestnut Street façade: center panel with replica carved eagle and shield

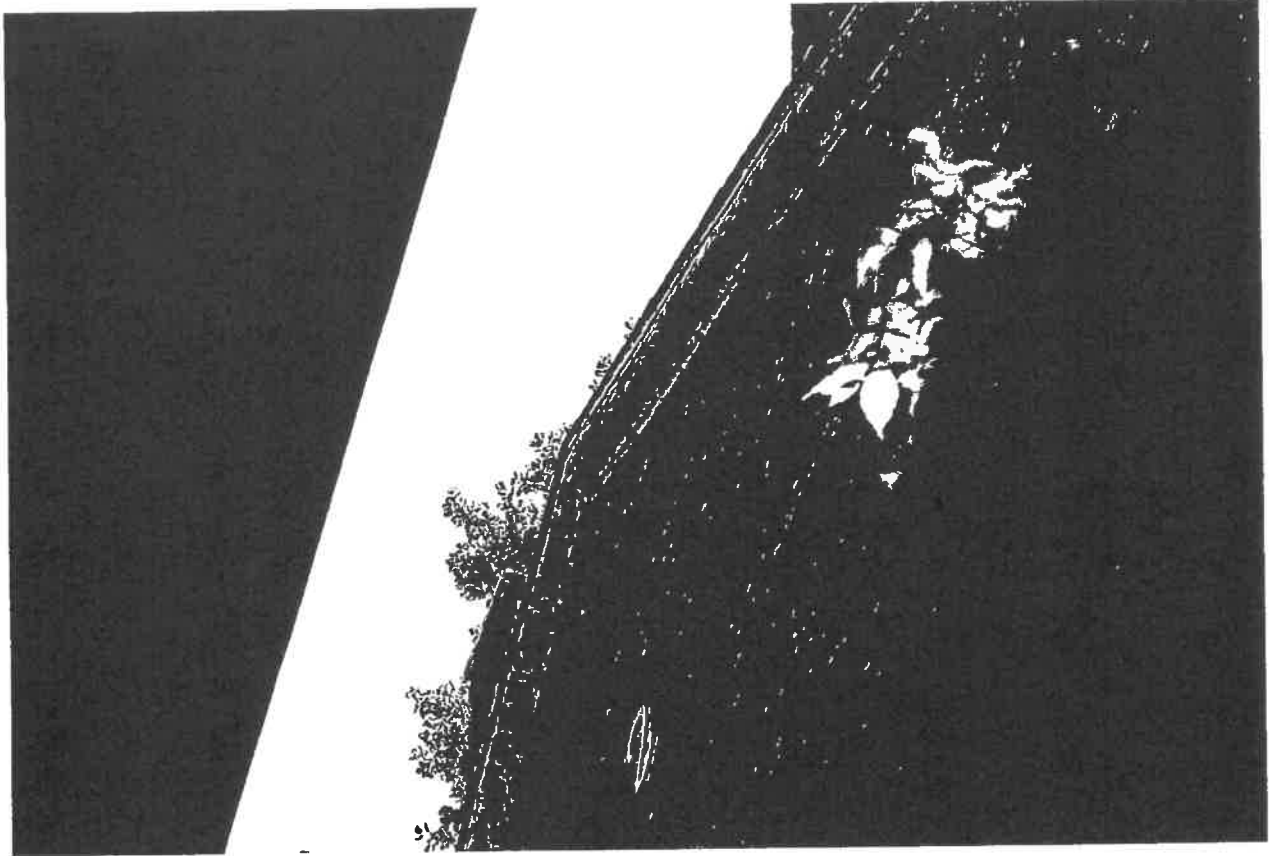


Photo 7: Brick corbels along roofline of east elevation

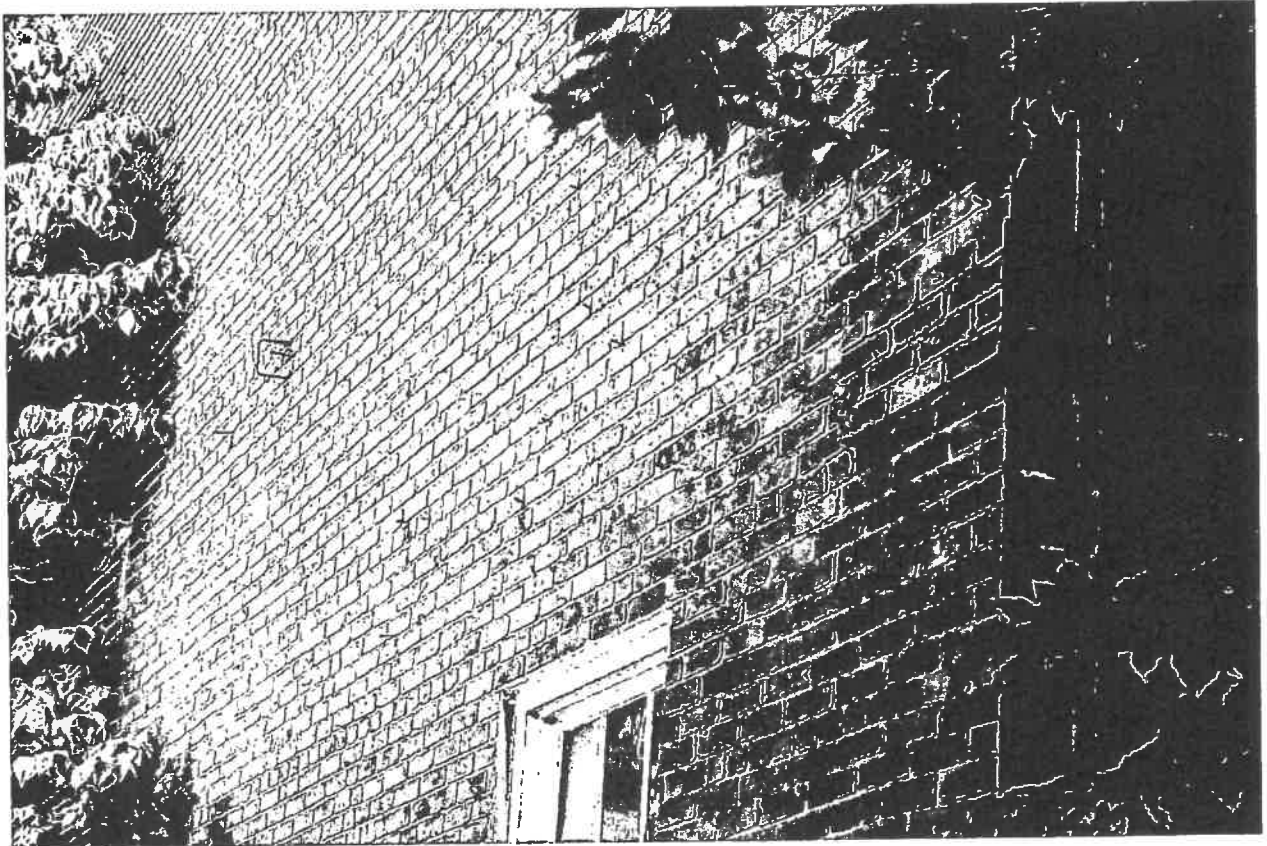


Photo 8: Brick quoin on east elevation

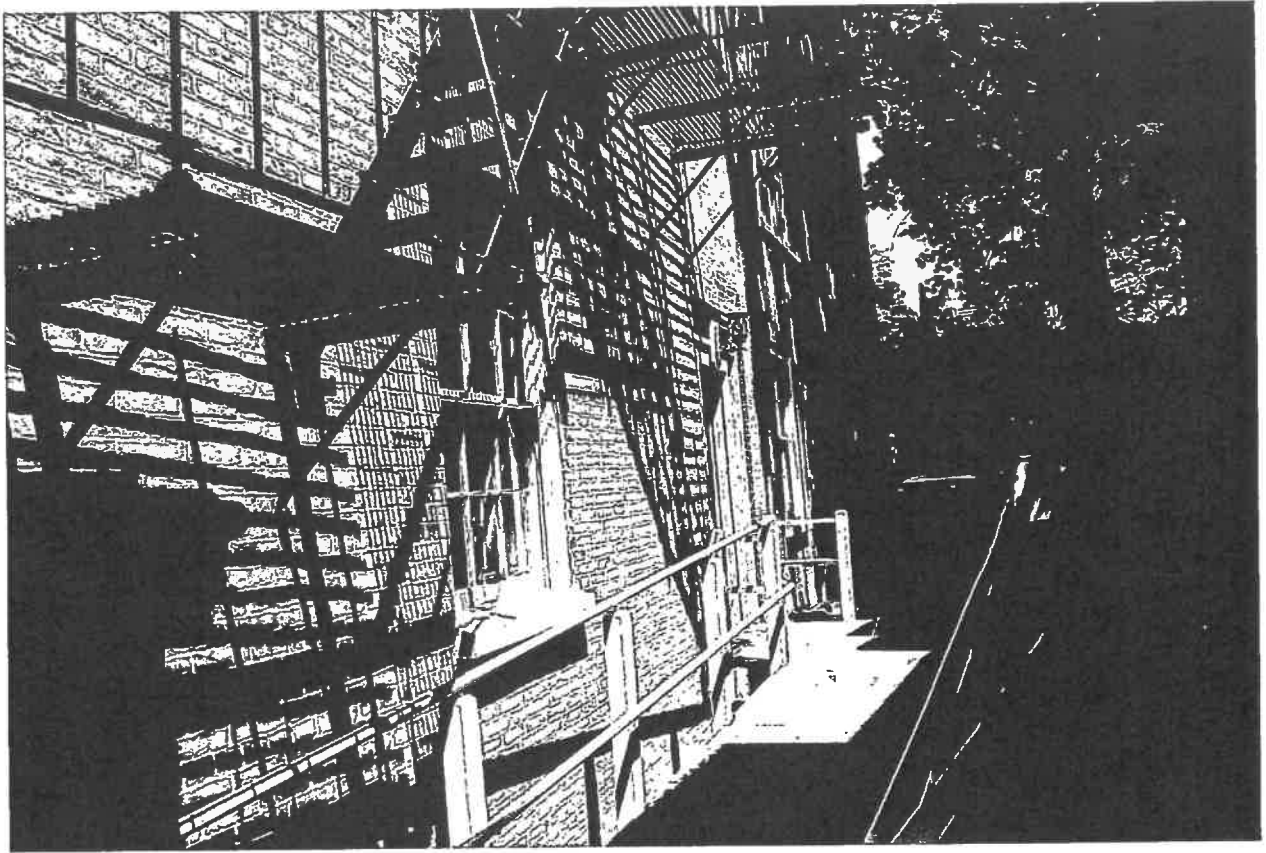


Photo 9: First story of south elevation

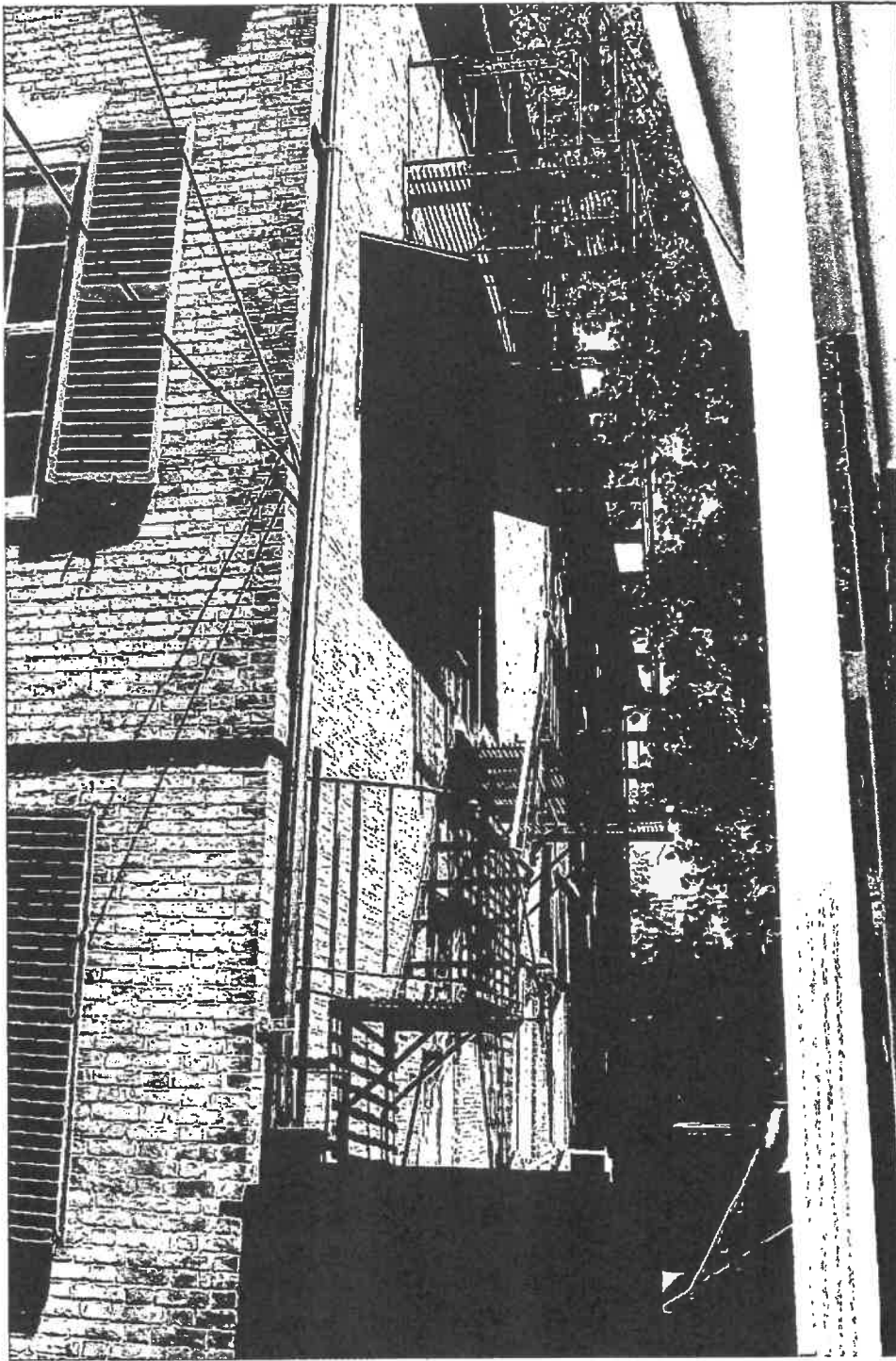


Photo 10: South elevation

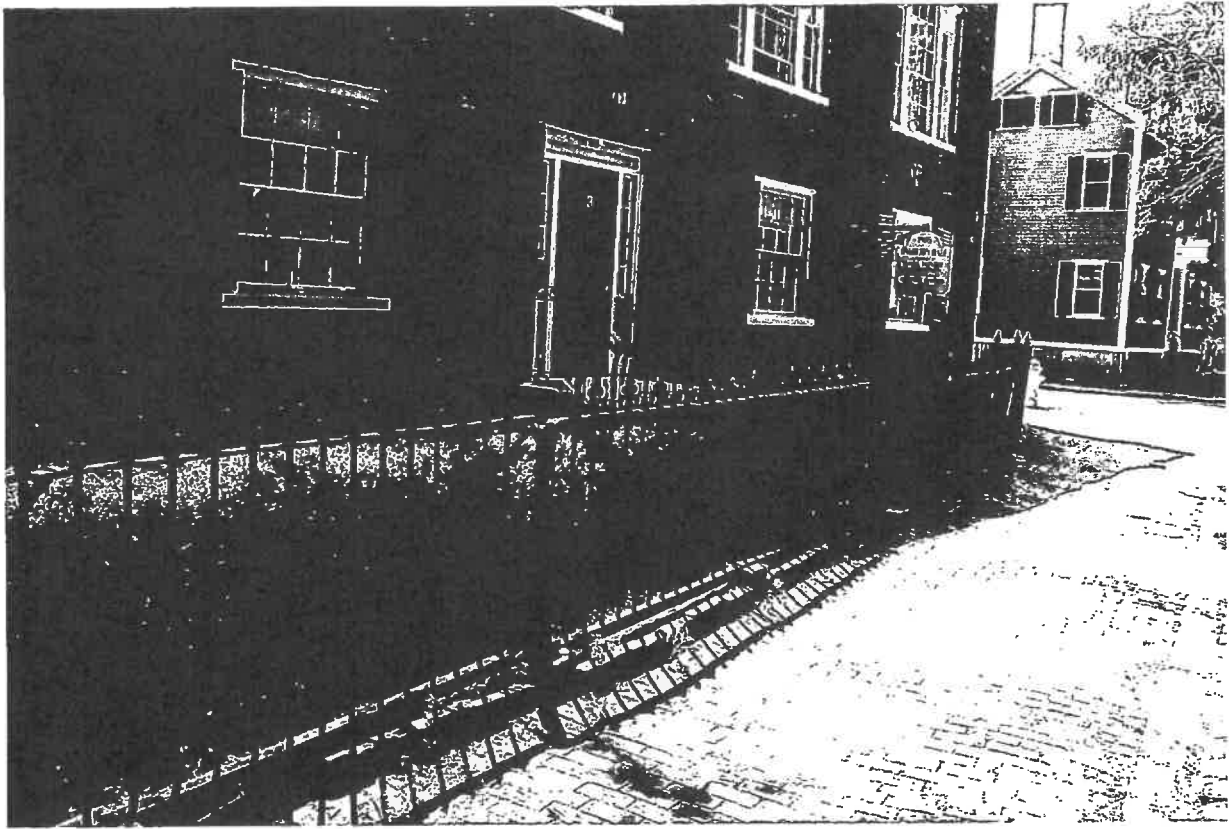


Photo 11: Iron fence on Chestnut Street

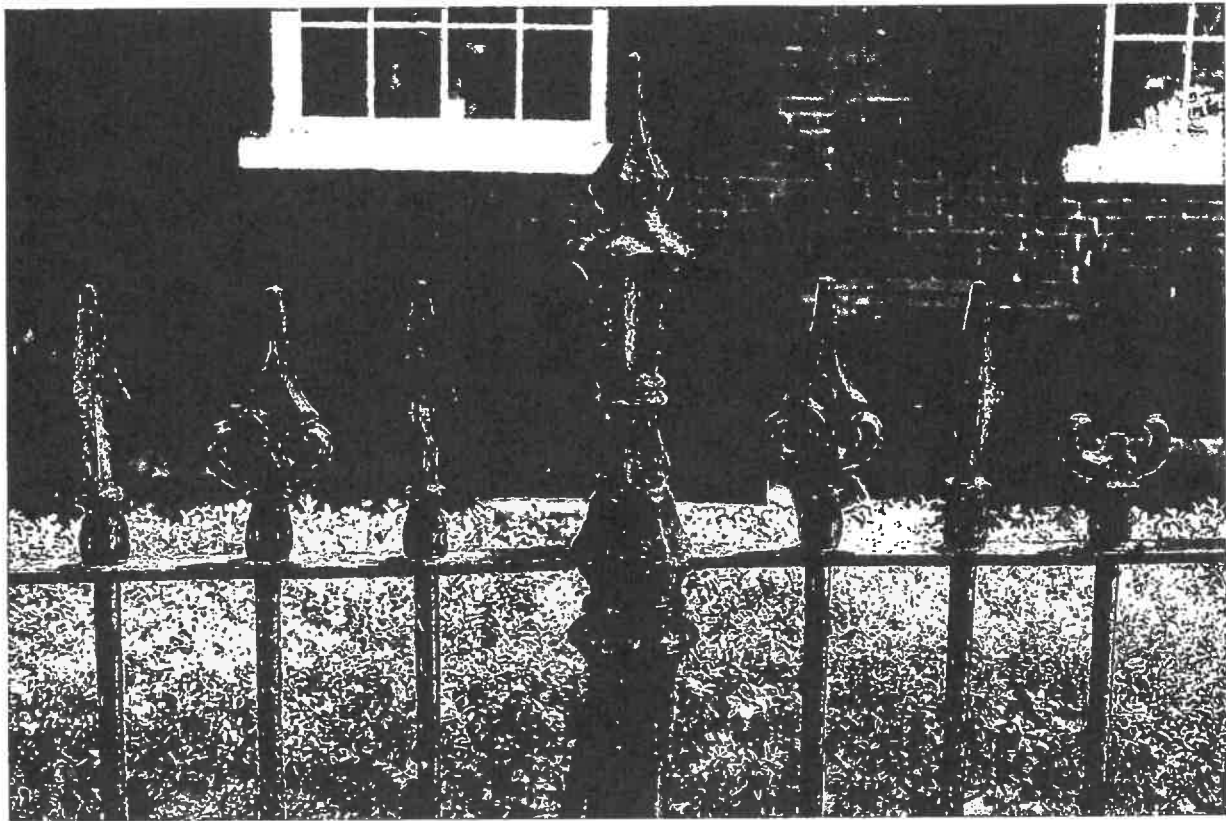


Photo 12: Detail of iron fence

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 or interior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, 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.