



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

CITY CLERK'S OFFICE
NEW BEDFORD, MA

2021 FEB -4 A 11:17

CITY CLERK

January 29, 2021

City Council President Joseph P. Lopes
Honorable Members of the City Council
City of New Bedford
133 William Street
New Bedford, MA 02740

Dear Council President Lopes and Honorable Members:

Enclosed for your review and approval please find an Order approving and accepting a Thirty (30) year Term Preservation Restriction granted by the Waterfront Historic Area League of New Bedford, Inc. to the New Bedford Historical Commission for property containing about 2,952 square feet, more or less, improved by a building and owned by the Waterfront Historic Area League of New Bedford, Inc. The subject property is located at 305-307 Pleasant Street, New Bedford, Massachusetts, being more particularly described in a quitclaim deed dated December 1, 1999, and recorded in Book 4573, Page 60 in the Bristol County (Southern District) Registry of Deeds.

The subject property received Community Preservation Act funding in the amount of \$105,000 to assist in the restoration and rehabilitation of the property. The Preservation Restriction has been prepared in accordance with the requirements of Massachusetts General Laws, Chapter 44B, Section 12 and ensures that the investment of public funds benefits the public.

Very truly yours,

Jonathan F. Mitchell
Mayor

JFM/el

Encls. 305-307 Pleasant Street Preservation Restriction
cc: New Bedford Historical Commission

IN CITY COUNCIL, February 11, 2021

Referred to the Committee on City Property – Yeas 10, Nays 0.

Dennis W. Farias, City Clerk

a true copy, attest:

City Clerk

PRESERVATION RESTRICTION AGREEMENT

between

WATERFRONT HISTORIC AREA LEAGUE OF NEW BEDFORD, INC.

and the

**CITY OF NEW BEDFORD, MASSACHUSETTS
BY AND THROUGH THE NEW BEDFORD HISTORICAL COMMISSION**

The Parties to this Preservation Restriction Agreement (this "Agreement") are the WATERFRONT HISTORIC AREA LEAGUE OF NEW BEDFORD, INC., located at 15 Johnny Cake Hill, New Bedford, Massachusetts, 02740 ("Grantor"), and the CITY OF NEW BEDFORD ("Grantee"), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Bristol County, Massachusetts, to be administered, managed and enforced by its agent, the NEW BEDFORD HISTORICAL COMMISSION, located at 133 William Street, New Bedford, Massachusetts, 02740 ("Commission").

WHEREAS, the Grantor is the owner of certain real property located at 305-307 Pleasant Street, New Bedford, Massachusetts, referred to as "**the Property**" and containing about 2,952 square feet, more or less, being more particularly described in a quitclaim deed dated December 1, 1999 recorded with the Bristol County Southern District Registry of Deeds in Book 4573, Page 60, attached as Exhibit A, hereto and incorporated herein by reference. The property is also shown as Parcel 41 on Assessor's Map 210 attached as Exhibit B, hereto and incorporated herein by reference. Said property improved by a building referred to hereinafter as "**the Building**", described as follows:

The building is a two and one-half story Colonial Revival with a hipped roof and asymmetrical projecting gables. It has a two bay façade with its primary double entry to the north and a two story pedimented front gable bay window to the south with a wide frieze board with swag motif defining the bay window. The entry has a new gable roof portico sheathed with manufactured siding and trim; its pediment supported by two fiberglass columns with wood stairs and aluminum railing. Fenestration consists of two over one aluminum clad windows with simulated lights. The structural system is wood-framed on a raised granite foundation. The exterior wall fabric is cedar clapboard with wide corner paneled pilasters and deep cornice with a wide frieze and moldings. The roof is asphalt with a hipped-roof dormers on all façades. New aluminum gutters and downspouts have been installed.

WHEREAS, the Agreement is intended to protect the cultural, historical and architectural significance of the Building, which emanates from its construction circa 1896, determined to be significant in the history, archaeology, architecture or culture of New Bedford as a contributing property within the County Street National Register District. The Building is important for its association with the cultural, economic, political, and social history related to the city's whaling and textile industries, and to the public's enjoyment and appreciation of New Bedford's architectural and historical heritage; and

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

WHEREAS, the preservation values of the Building and Property are documented in a series of photographs and documents (hereinafter, "Baseline Documentation") incorporated herein and attached hereto by reference as

Exhibit C, which Baseline Documentation the parties agree provides an accurate representation of the Building and Property as of the effective date of this grant; and

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

WHEREAS, upon the recommendation of the Community Preservation Committee and approved by the City Council on August 16, 2018, the sum of one hundred five thousand dollars (\$105,000) 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 M.G.L. Chapter 184, sections 31, 32, and 33 ("Act"); and

WHEREAS, the Commission, established under the General Laws of the Commonwealth of Massachusetts, Chapter 40, Section 8D is authorized by the City of New Bedford, a duly established municipal corporation authorized to accept preservation restrictions under the Act;

WHEREAS, the Commission is 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 are hereby acknowledged, the Grantor conveys to the Grantee this Restriction over the Property and exterior of the Building, which shall apply for a period of thirty years, to be administered, managed and enforced by the Commission.

- 1 **PURPOSE:** It is the Purpose of this Restriction to assure that the architectural, historical, and cultural features of the Building will be retained and maintained in their current condition or in a restored condition approved by the Commission for preservation purposes, and to prevent any change to 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 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 6, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency 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 as 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 THE 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 purpose of this Restriction, the Grantor shall expend such Community Preservation Funds to rehabilitate and restore the Building.

4 **GRANTOR'S COVENANTS: COVENANT TO MAINTAIN:** Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions 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 as 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").

4.1 **GRANTOR'S COVENANTS: PROHIBITED ACTIVITIES:** The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:

- a) the Building or any part thereof shall not be demolished, removed, or razed (by affirmative action or through neglect or failure to repair and maintain) except as provided in Paragraphs 9 and 10;
- b) no additional aboveground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded;
- c) no freestanding or attached towers, exterior antennas, wind turbines, solar panels, or similar communication or energy-producing structures shall be installed or affixed on the Property without the prior approval of the Commission;
- d) moving the Building to another location shall be forbidden without prior approval of the Commission;

4.2 **GRANTOR'S COVENANTS: NEW CONSTRUCTION:** Grantor agrees that all new construction to the exterior of the Building and the construction of new structures on the Property shall preserve historic materials, features, and spatial relationships that characterize the Building and the Property. To protect the integrity of the Building and its immediate environment, all new exterior construction shall be compatible with the historic materials, features, size, scale, proportion and massing of the Building and shall be in strict compliance with the Commission's Guidelines and the Secretary's Standards.

5 **CONDITIONAL RIGHTS REQUIRING GRANTEE APPROVAL:** Subject to Paragraph 4 and the terms and conditions of this Restriction and such other terms and conditions the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the Building without the 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, ridgeline 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 without approval of the Commission.

Activities by the Grantor to maintain the Building and the Property which are intended to be performed in accordance with the provisions of Paragraph 4, and of 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, which are attached hereto as Exhibit D and hereby incorporated as reference.

- 6 GRANTOR'S RESERVED RIGHTS NOT REQUIRING FURTHER APPROVAL BY GRANTEE: Subject to the provisions of Paragraphs 2 and 4.1, 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 Grantee:

a) the right to engage in all those activities 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, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this 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 Building. Changes in appearance, materials, or workmanship from that existing prior to the maintenance and repair requires 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 Grantee for 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. Such submission shall also include a timetable for the proposed activity sufficient to permit the Commission to monitor such activity. Within forty-five (45) days of receipt of Commission's receipt of any plan or written request for approval hereunder, the Commission shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Commission shall provide Grantor with written suggestions for modification or a written explanation for the Commission's disapproval. Any failure by the Commission to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Commission of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

- 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 the Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify the

Commission in writing within fourteen (14) days of the damage or destruction or such reasonable time thereafter, depending upon the circumstances 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 ninety (90) 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 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 as of 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, Grantor may, with the prior written consent of the Commission, alter, demolish, remove, or raze the Building, and/or construct new improvements on the Property. Grantor and the Commission may then agree to extinguish this Restriction in whole or in part 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's 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 "A1" or better by Best's for the full replacement value against loss from 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, officers, employees, or independent contractors from and against any and all claims, liabilities, expense, costs, damages, losses, and expenditures (including reasonable attorney's 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, death or other damage occurring on or about the Property; unless such injury, death or damage is caused by Grantee or its boards, commissions, agents, directors, officers, employees, or independent contractor of Grantee. 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: Waterfront Historic Area League of New Bedford, Inc.
 15 Johnny Cake Hill
 New Bedford, Massachusetts, 02740
- Grantee: City of New Bedford
 c/o New Bedford Historical Commission
 133 William Street
 New Bedford, MA 02740
- 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 the 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 at the convenience of both Grantor and Grantee. 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 purpose, 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 documented expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including court costs, and attorneys', architectural, engineering, and expert witness fees. Grantor shall, at its own expense and with the approval of the 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 material 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 Grantee is hereby granted a thirty (30) year term right 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" and "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 hereof, 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 or conservation 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 as a condition of the transfer. 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 the new designee is qualified 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 New Bedford, and the New Bedford Historical Commission, its being recorded with the Bristol County Southern 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 in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such a change in conditions may include, but are not limited to, partial or total destruction of the Building resulting from casualty. Such an extinguishment must meet all the requirements of the Act, including public hearings by the City of New Bedford to determine that such extinguishment is in the public interest. In the event of any sale of all or a portion of the Property, net proceeds of such 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 herein contained.
 - b) This instrument may be executed in two counterparts, one of which may be retained by the Grantor, and the other, after recording, to be retained by the Grantee. In the event of any discrepancy 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 to the thirty (30) year term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private Restriction either in existence either now or hereafter.
 - 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.

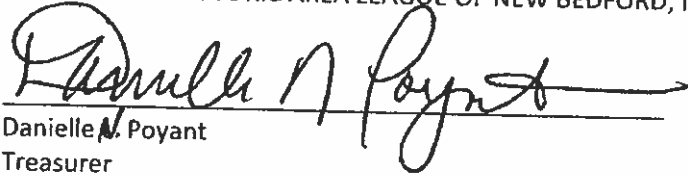
If any court or other tribunal determines that any provision of the instrument is invalid or unenforceable, such provision shall be deemed to have been incorporated herein automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event 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 the 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 thirty (30) year 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 Bristol County Southern 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 for a term of thirty (30) years 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 the approval following a public hearing by the City of New Bedford to determine that such a release is in the public interest.

GRANTOR

IN WITNESS WHEREOF, the Grantor sets its hands this 30 day of December, 2020.
By:

WATERFRONT HISTORIC AREA LEAGUE OF NEW BEDFORD, INC.



Danielle N. Poyant

Treasurer

Waterfront Historic Area League of New Bedford, Inc.

COMMONWEALTH OF MASSACHUSETTS

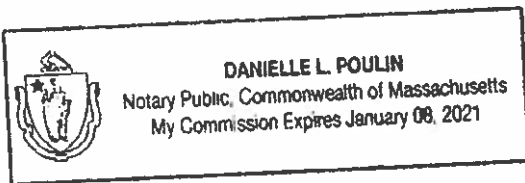
Bristol County, ss.

On this 30th day of December, 2020, before me, the undersigned notary public, personally appeared Danielle N. Poyant, 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 Treasurer for Waterfront Historic Area League of New Bedford, Inc.

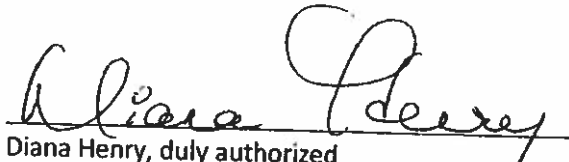


Notary Public Danielle L. Poulin
My Commission Expires:

11/8/2021



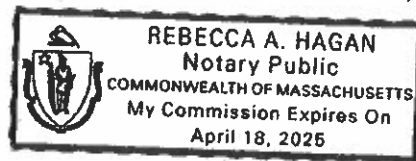
ACCEPTANCE BY THE NEW BEDFORD HISTORICAL COMMISSION

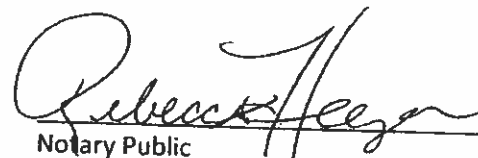

Diana Henry, duly authorized
Chair, New Bedford Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Bristol County, ss.

On this 23rd day of December, 2020, before me, the undersigned notary public, personally appeared Diana Henry, proved to me through satisfactory evidence of identification, which was (a current driver's license), (a current U. S. passport), (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes.




Notary Public
My Commission Expires: 04/18/2025

ACCEPTANCE AND APPROVAL BY THE CITY OF NEW BEDFORD

I, the undersigned City Clerk of the City of New Bedford, Massachusetts, hereby certify that at a meeting duly held on _____, 2020, 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.

CITY OF NEW BEDFORD

By its Clerk

Dennis Farias

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

CITY OF NEW BEDFORD

Jonathan F. Mitchell, Mayor

COMMONWEALTH OF MASSACHUSETTS

Bristol County, ss.

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

Notary Public
My Commission Expires:

SCHEDULE OF EXHIBITS

- A. Legal Property Description**
- B. Assessor's Parcel Map**
- C. Baseline Documentation**
- D. Restriction Guidelines**

EXHIBIT A

Legal Property Description

The land in New Bedford, Bristol County, Massachusetts, bounded and described as follows:

BEGINNING at a point in the WEST line of Pleasant Street, formerly Fifth Street, at the SOUTHEAST corner of the lot to be conveyed and at the NORTHEAST corner of land now or formerly of B.R. Ricketson;

thence WESTERLY by last named land one hundred and four (104) feet to a corner;

thence NORTHERLY by land now or formerly of the Estate of Joseph Vera forty-four and 12/100 (44.12) feet to a corner;

thence EASTERLY by other land now or formerly of the Estate of Joseph Vera one hundred and four (104) feet to the WEST line of Pleasant Street; and

thence SOUTHERLY in said WEST line of Pleasant Street forty-three and 73/100 (43. 73) feet to the place of beginning.

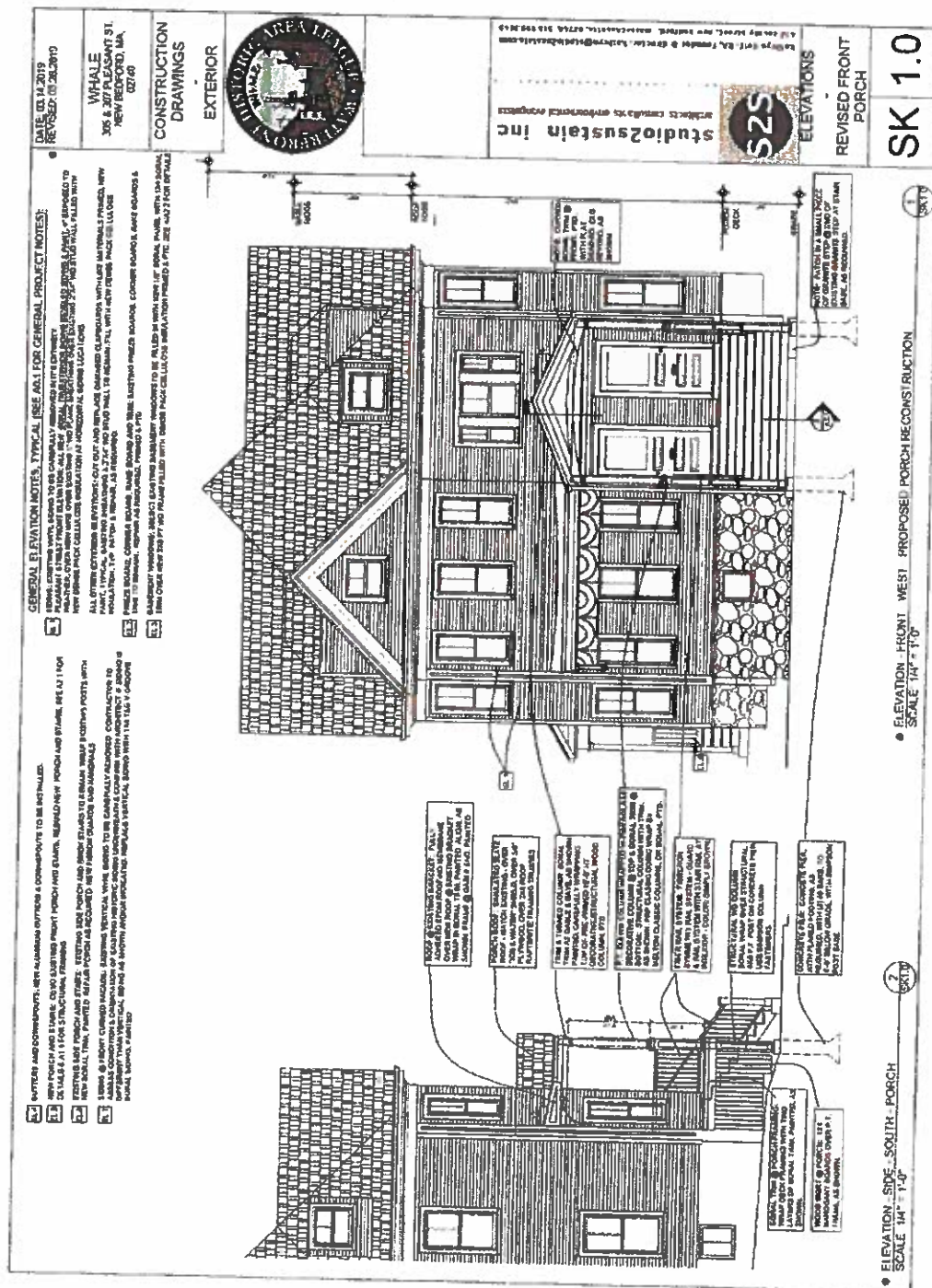
CONTAINING 16.77 square rods, more or less.

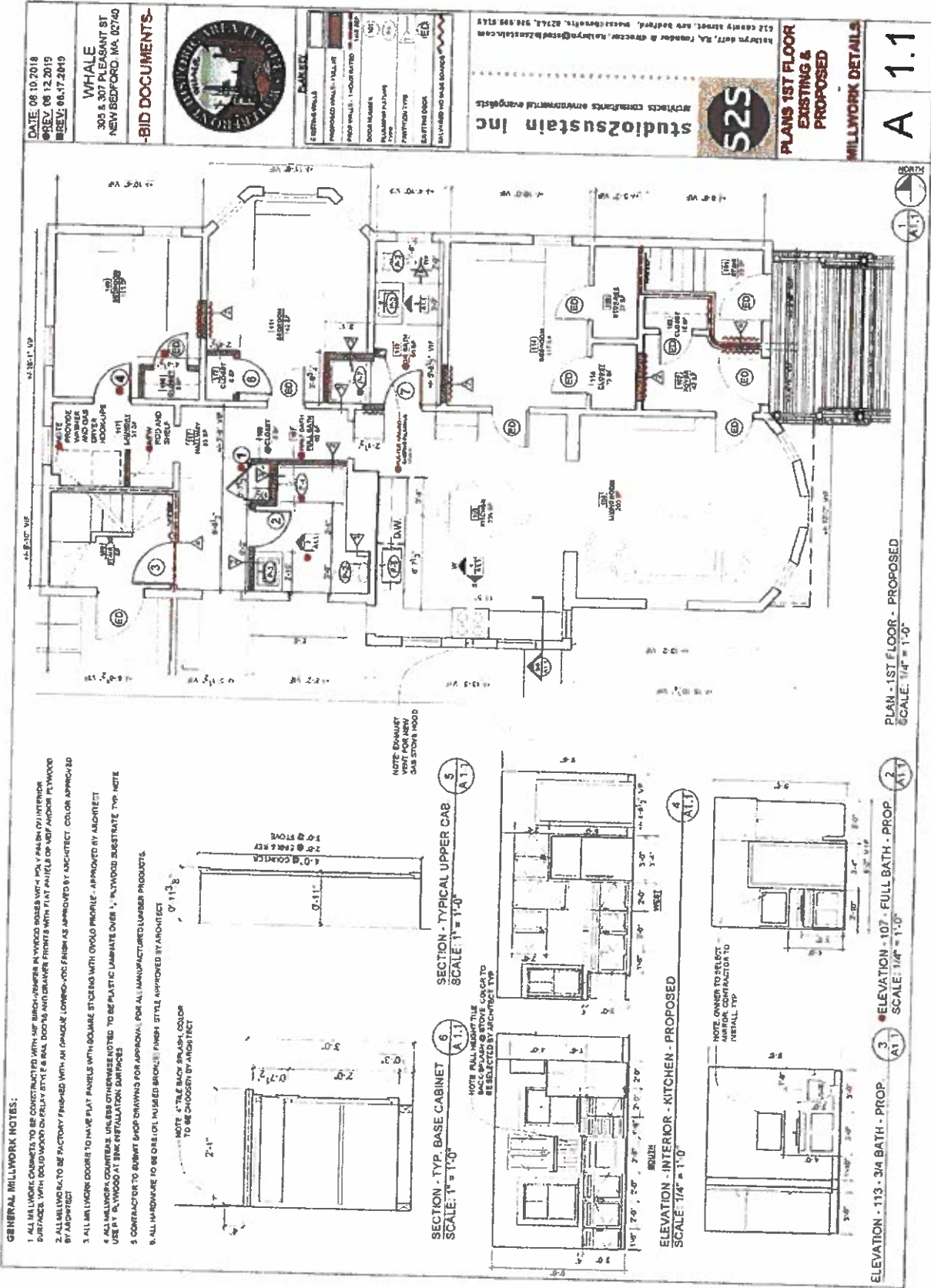
SOURCE: Bristol County S.D. Registry of Deeds, Book 4573, Page 60.

Assessor's Parcel Map



EXHIBIT C





DATE: 08.10.2018
 REV: 08.12.2019
 REV BY: WHALE, 01.23.2020

WHALE
 305 & 307 PLEASANT ST
 NEW BEDFORD, MA 02740

BID DOCUMENTS

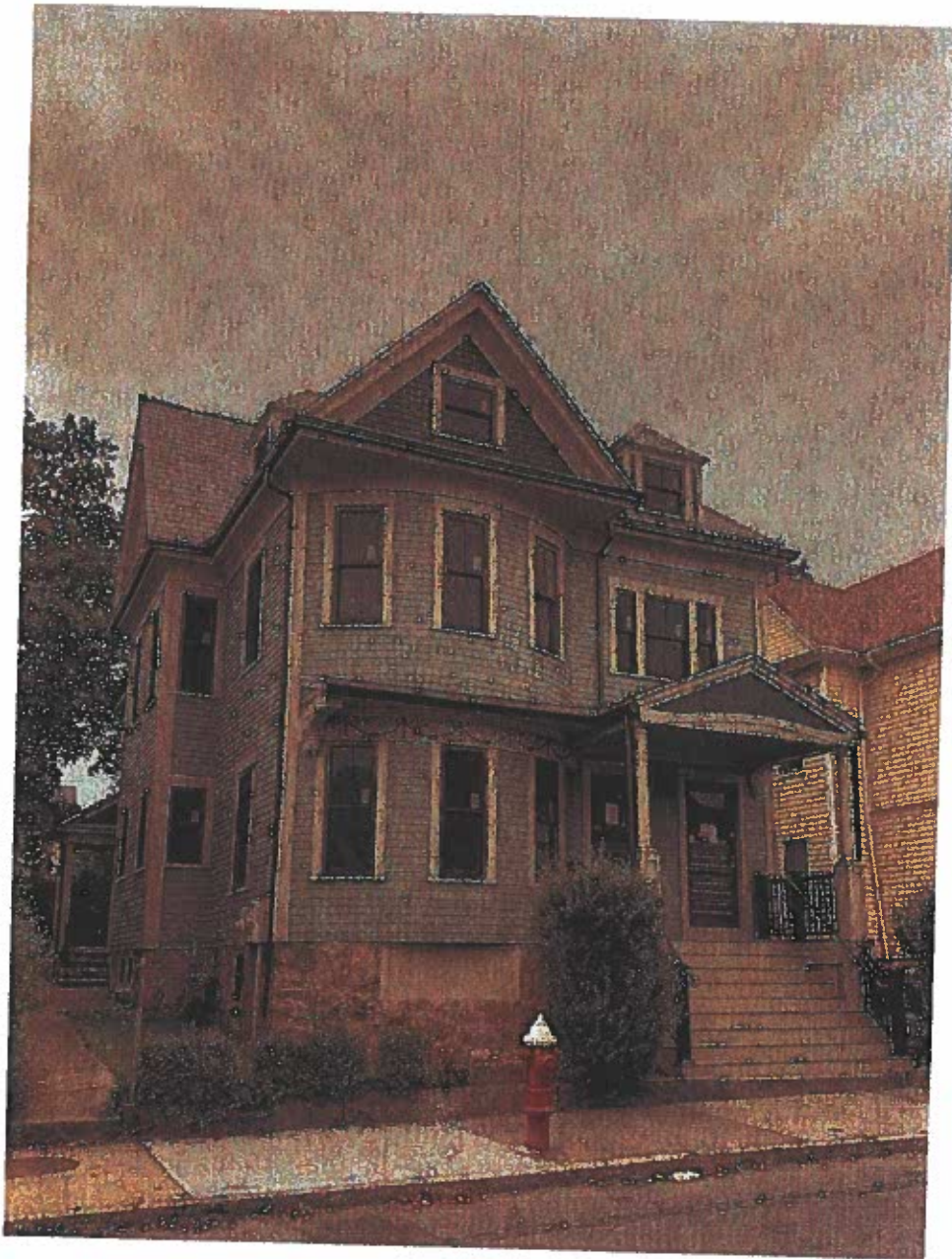


PLAN KEY					
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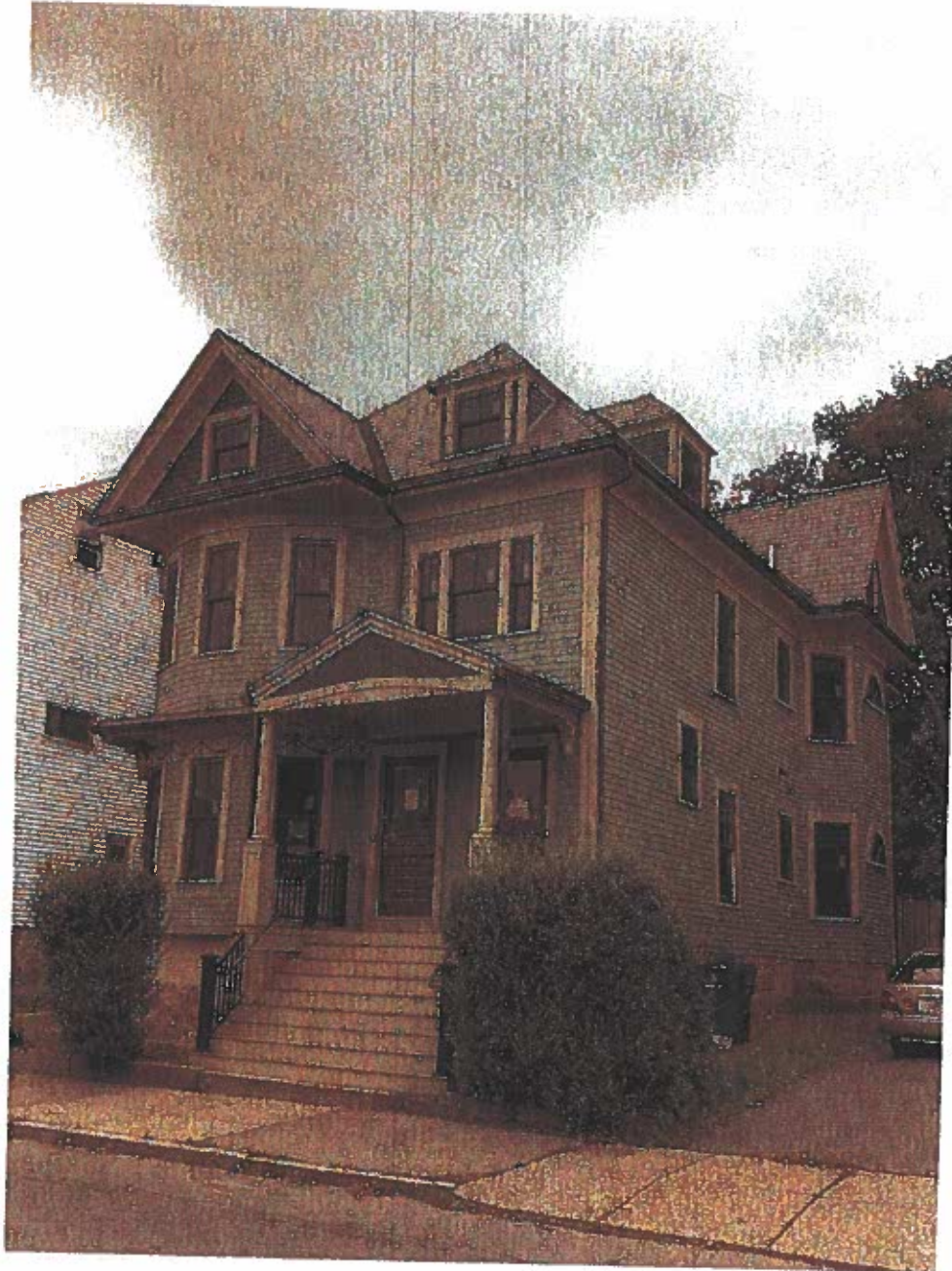
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EXHIBIT C

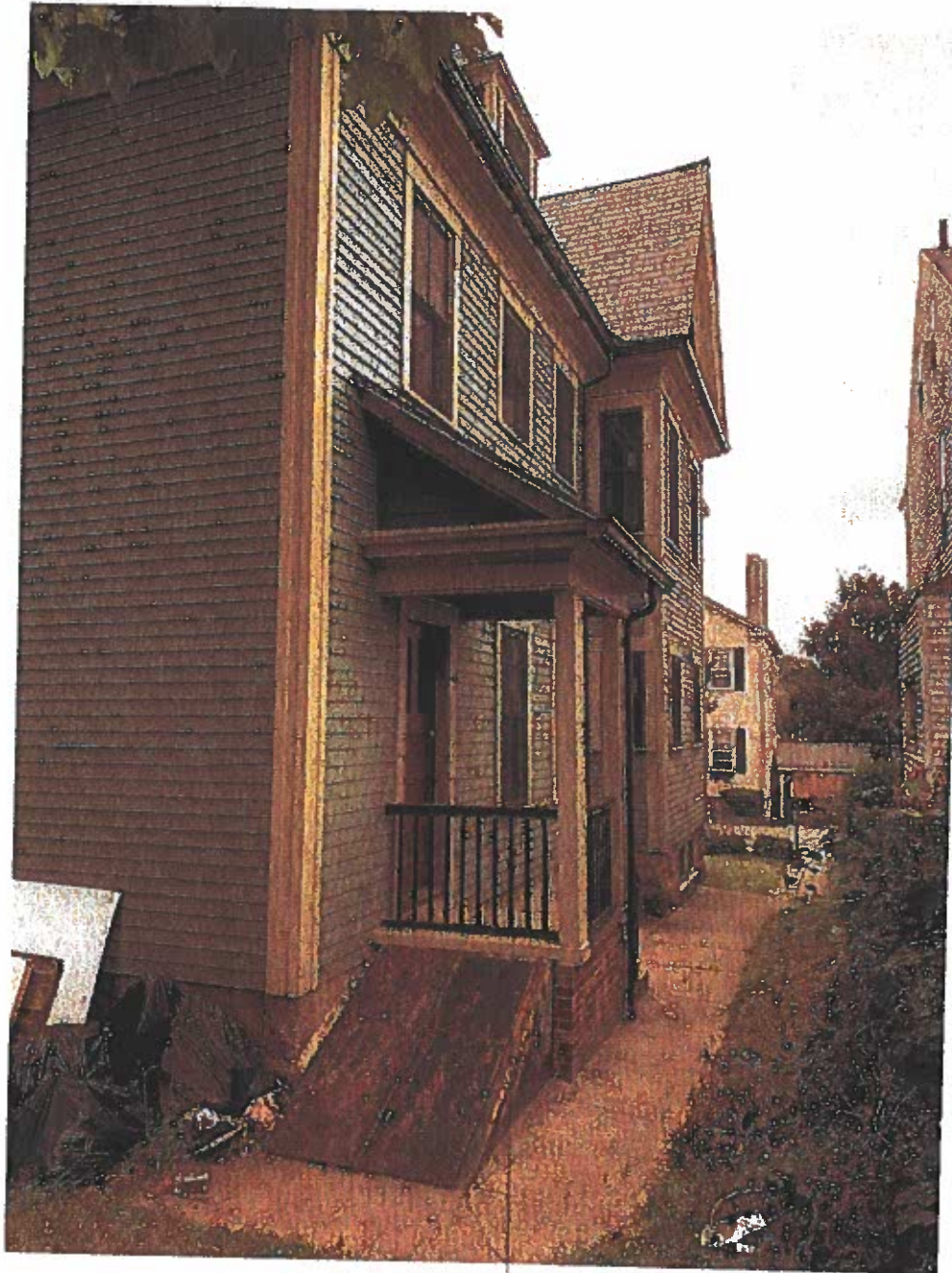
Baseline Documentation Photographs



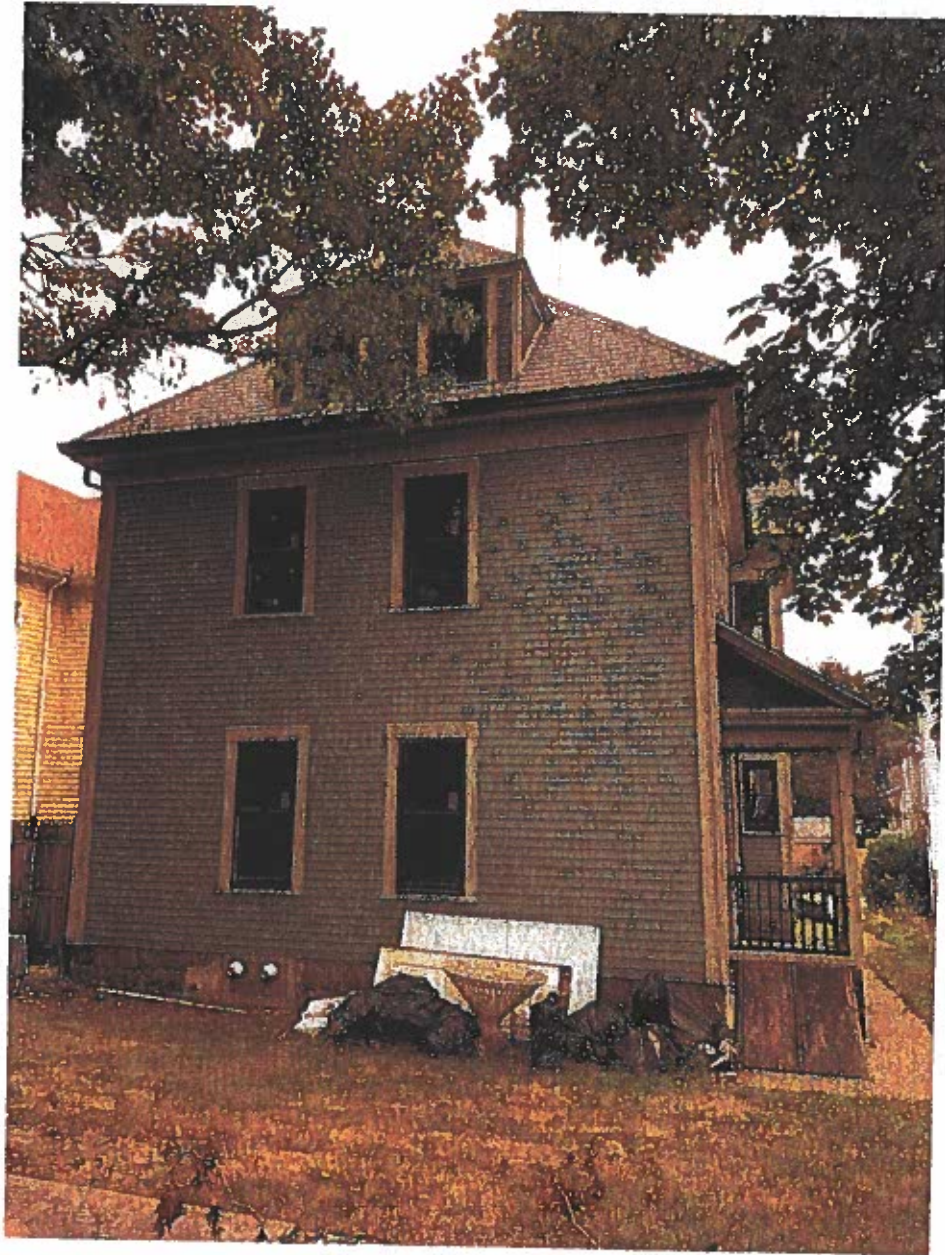
305- 307 Pleasant Street- East Elevation



305-307 Pleasant Street- North Elevation



305-307 Pleasant Street- South Elevation



305-307 Pleasant Street- West Elevation

EXHIBIT D

Restriction Guidelines

ATTACHMENT TO PRESERVATION RESTRICTION AGREEMENT BETWEEN THE CITY OF NEW BEDFORD AND THE WATERFRONT HISTORIC AREA LEAGUE OF NEW BEDFORD, INC.

The purpose of the Restriction Guidelines is to clarify Paragraph Three of the Terms of the Preservation Restriction Agreement, which deals with alterations to the Property. Under this Paragraph, prior permission from the New Bedford Historical Commission is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require the Commission's prior review.

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

WINDOWS AND DOORS

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

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows as well as any level of stained glass window conservation/restoration. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

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

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the Restricted Area 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 Building or Property; altering of Property; altering or removing significant landscape features such as gardens, vistas, walks, walls, plantings; ground disturbance affecting archaeological resources.

WALLS/PARTITIONS

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

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

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major appearance changes (i.e., dropped ceilings, disfigured walls or floors, exposed wiring, ducts, and piping); the removal of substantial quantities of original plaster or other materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the Preservation Restriction, such changes must be reviewed by the Commission and their impact on the historic integrity of the Property assessed.

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

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