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**PRESERVATION RESTRICTION AGREEMENT**

The Parties to this Preservation Restriction Agreement (this "Agreement") are the CITY OF NEWTON, a Massachusetts municipal corporation with a place of business at 1000 Commonwealth Avenue, Newton, MA 02459, acting by and through the Newton Historical Commission (hereinafter the "City"), and Newton Historical Society, Inc., formerly The Newton Historical Society At The Jackson Homestead, Inc., a Massachusetts nonprofit corporation with a place of business at 527 Washington Street, Newton, MA 02458 (herein together with successors, administrators and assigns "Owner").

**RECITALS**

WHEREAS, Owner, pursuant to that certain deed recorded with the Middlesex South Registry of Deeds at Book 56848, Page 285, is the owner in fee simple of two contiguous parcels together known as the Durant Kenrick Homestead, located at 286 Waverley Avenue, Newton, MA, consisting of approximately 50,993 square feet of land, as more particularly described on Exhibit A attached hereto and incorporated herein, together with all improvements thereon.

WHEREAS, The premises protected by this Agreement consist of the Durant Kenrick House, together with the open land immediately adjacent to the house itself and described as Parcel 1 and Parcel 2 above (hereinafter the "Premises"). The Premises are also shown in the photographs attached as Exhibit B hereto.

WHEREAS, the Durant Kenrick House is historically significant and worthy of preservation. The Durant Kenrick House was constructed circa 1732 with later additions in the nineteenth and twentieth centuries. The building is an excellent example of Georgian period architecture and was listed in the National Register of Historic Places in 1976. This property is also significant in the agricultural history of Newton as the site of the Kenrick Nursery in the 19<sup>th</sup> century. The Durant Kenrick House consists of a two-and-one-half-story west facing main block, with a rear salt box lean-to. Also located on the property are stone wall remnants. The open space on the property consists of mature trees, shrubbery, and open lawn as well as archaeological resources located below ground contributing to the historic and natural setting and character of the property. Baseline photographic depictions of the Premises are on file with the City, copies of which are included in Exhibit B, attached hereto and made a part hereof.

WHEREAS, the Newton Historical Commission designated the Durant Kenrick House a local landmark in 1993.

WHEREAS, Massachusetts General Laws, Chapter 184, Sections 31-32, authorize the creation and enforcement of preservation restrictions appropriate to the preservation of a site or structure for its historical significance and for its natural, scenic and open condition. Owner and City recognize the historic, architectural, cultural, scenic and aesthetic value and significance of the Premises, and have the common purpose of conserving and preserving the aforesaid value and significance of the Premises. To that

end, Owner desires to grant to City, and City desires to accept, the Preservation Restrictions set forth in this Agreement, pursuant to Massachusetts General Laws, Chapter 184, Sections 31-33.

NOW THEREFORE, in consideration of a Community Preservation Fund grant in the amount of \$2,710,000, receipt and sufficiency of which are hereby acknowledged, Owner does hereby grant, release and convey to City, its successors and assigns this Restriction Agreement in perpetuity, in and to the Premises, as follows.

I. **RECITALS, DEFINITIONS AND EXHIBITS.**

1.1 **Recitals.** The parties acknowledge that the recitals set forth above are true and correct and are hereby made a part of this Agreement as if fully set forth herein.

1.2 **Definitions.**

1.2.1 **Addition.** "Addition" shall mean and include all construction attached to the Durant Kenrick House in any way, and any subsequent construction that attaches to any such addition, including, without limitation, a deck, terrace, porch, ramp, stair or landing.

1.2.2 **Structure** "Structure" shall mean any combination of materials assembled at a fixed location to give support or shelter, including, without limitation, a building, deck, terrace, arbor, trellis, sign, driveways and walkways, fencing, walls, game courts, swimming pools and poles (utility and otherwise).

1.2.3 **Façade(s) and Elevation(s).** "Façade(s) and elevation(s)" shall include, without limitation, all exterior doors, door frames, windows, window sashes, window frames, shutters, wall sheathing, clapboards, porticos, gutters, panels, transoms, cornices, moldings and other decorative elements and all other elements, whether decorative or structural, which support any of the foregoing. For convenience of reference, the front elevation of the Durant Kenrick House, facing Waverley Avenue, shall be called the west facade, the rear elevation of the house shall be called the east facade and the other facades of the Durant Kenrick House shall be called the north and south facades, based upon such facade's orientation relative to the east façade.

1.2.4 **Protected Features.** "Protected Features" shall mean those historical and architectural features protected pursuant to Sections 2 or 3 of this Agreement.

1.3 **Exhibits.**

1.3.1 **Plans.** A plan by E.S. Smilie, Surveyor, dated June 2, 1903, and recorded with Middlesex South Registry of Deeds at the end of Book 3045 is attached as Exhibit C-1 and incorporated herein by reference, and a plan by E.S. Smilie, dated August 4, 1899, and recorded with Middlesex South District Registry of Deeds at the End of Book 2773 is attached as Exhibit C-2 and incorporated herein by reference.

1.3.2 **Documentary Photographs.** In order to establish with more certainty the condition of the building and the character of the Protected Features as of the date hereof, attached hereto as Exhibit B and incorporated herein by reference are copies of 17 exterior photographs taken by Brian Lever on August 18, 2011 and 66 interior photographs taken by Brian Lever on January 22 and February 3, 2010. It is stipulated between Owner and City that such copies accurately represent the external and internal condition of the Durant Kenrick House, the Premises and the character of the Protected Features on the date hereof and as of the date this Agreement is first recorded with the Registry.

2. **EXTERIOR RESTRICTIONS.** Owner agrees that, without the prior written approval of City, no activity shall be undertaken which City determines will alter or adversely affect the appearance, materials, workmanship or structural stability of the following exterior portions of the Durant Kenrick House as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit B:

- 2.1 all facades and elevations including windows, doors, and exterior materials, including, but not limited to, the wood clapboard siding.
- 2.2 the massing and profiles of the roofs and chimneys, with roof additions, skylights, and dormers being expressly forbidden.
- 2.3 decorative woodwork including pilasters, wood gutters, and cornices.
- 2.4 all foundations; and fieldstone steps.
- 2.5 Roofing materials including wood and asphalt shingles.

3. **INTERIOR RESTRICTIONS.** Owner agrees that, without the prior written approval of City, no activity shall be undertaken which City determines will alter or adversely affect the appearance, materials, workmanship or structural stability of the following interior portions of the Durant Kenrick House as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit B:

Main Block and Saltbox lean-to:

- 3.1 The main block and saltbox lean-to, all structural members and framing included but not limited to, interior beams, posts, girts, plates, studs, rafters, masonry walls and piers.

Main Block and Saltbox lean-to

- 3.2 At the main block and saltbox lean-to, the space configuration and door locations on the first and second floors including all rooms, hallways, and stairhalls.

- 3.3 At the main block and saltbox lean-to, the floors of all the rooms in the first and second floor rooms, halls, and stairhalls, and the attic.
- 3.4 At the main block and saltbox lean-to, the plaster walls and ceilings in all the first and second story rooms including halls and stairhalls, with the exception of the second floor bathroom and caretaker's office located in the northeast corner of the saltbox lean-to.
- 3.5 At the main block and saltbox lean-to, all the woodwork in all the first and second floors and attic rooms, halls, and stairhalls, including but not limited to cornices, mantelpieces, paneling, wainscoting, baseboards, stairs, railings, balusters, newels, doors, door casings, windows, window sash, window casings, interior window shutters and other decorative elements and any paint or varnish thereon.
- 3.6 At the main block and saltbox lean-to, the fireplaces and hearths in their entirety, including any attached iron or brass hardware, whether decorative or functional.
- 3.7 At the main block, the floor stencils located on the first and second floors.
- 3.8 At the main block, the decorative tiles located around the first floor fireplace.

4. **REVERSIBLE ALTERATIONS.** City shall approve the activities identified below, provided that City first determines that the proposed activity will not alter or adversely affect any Protected Features:

- 4.1 installation of asphalt shingle or wood shingle roof coverings on the roofs of the Durant Kenrick House replacing existing in kind;
- 4.2 installation of screens, storm windows, storm doors or seasonal window-mounted air-conditioning units and/or window fans;
- 4.3 installation of insulation in the attic floor or in the cellar, provided that no insulation shall be introduced in any way into any vertical wall cavities;
- 4.4 installation of removable interior partition walls or exhibit displays in all rooms of the Durant Kenrick House, provided that they do not disturb or alter the floors, walls, or ceilings;
- 4.5 electrical re-wiring, provided that no electrical fixtures are in any manner imbedded in or attached to protected woodwork and structural members and other framing members are not cut or otherwise altered;
- 4.6 replacement of existing plumbing lines and plumbing fixtures provided that they do not disturb or alter wall, floor, or ceiling surfaces;

4.7 interior and exterior painting or paint removal, provided that the material(s) and method(s) to be used to remove paint shall not damage the underlying substrate and provided that the material(s) and method(s) to be used shall allow hand-planed surfaces to remain visible and undamaged, and such that sanding, grit blasting or other abrasive methods shall not be used and provided further that no unpainted surfaces shall be painted;

4.8 replacement of broken window glass; and

4.9 repair and replacement of wooden clapboard siding in kind.

4.10 erection of a tent or other temporary structure for a period not to exceed three days, exclusive of the time to erect and disassemble.

5. **USE, MAINTENANCE AND OTHER ACTIVITIES.**

5.1 **Additions.** No additions to the Durant Kenrick House shall be erected hereafter without prior written approval of City.

5.2 **Additional Structures.** No structure not on the Premises as of the date of this Agreement shall be erected or placed on the Premises hereafter without prior written approval of City, except as provided for in paragraph 4.10.

5.3 **Topographical Changes and Landscaping.** In order to protect the historic setting and Protected Features of the Durant Kenrick House, no alterations may be made to the topography of the Premises that either raise or lower grade levels without prior written approval of City. No soil, loam, rock or mineral resource or natural deposit shall be excavated, dredged or removed from the Premises and no soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever shall be placed, filled, stored or dumped thereon, provided that this Subsection shall not be deemed to prohibit improvements and activities approved under Subsection 5.1 or 5.2, if any, or permitted under Subsection 5.5. No vegetation shall be planted on or removed from the Premises without the prior written approval of the City. Notwithstanding the foregoing, the provisions of this Subsection 5.3 shall not be deemed to restrict activities necessary and desirable (i) to preserve or protect the Premises, (ii) to maintain existing trees, lawns, gardens or utilities associated with the Premises, (iii) associated with approved driveway or parking plans or (iv) related to an approved Archaeology Plan or restoration after archaeological activity as provided for in Subsection 5.10. If any surface or subsurface excavations are proposed on the Premises, the Owner shall submit to the Massachusetts Historical Commission scaled project plans showing existing and proposed conditions with current photographs of the project areas keyed to the plans. The Massachusetts Historical Commission shall determine whether or not archaeological investigations are warranted for the excavation project. The Owner shall implement the recommendations of the Massachusetts Historical Commission for archaeological investigations to assist in the identification and evaluation of significant archaeological deposits and features, and the Owner shall consult and cooperate with the Massachusetts Historical Commission to consider and implement feasible alternatives to avoid,

minimize or mitigate any adverse project effects to significant archaeological deposits or features. City shall consider the recommendations and alternatives in considering its approval of any proposed excavations. Removal of mature trees, particularly the beech and oak trees on the Premises, shall require the prior written approval of the City, as well as removal of any stone wall or foundation remnants on the Premises.

5.4 **Demolition.** Owner shall not permit or allow to occur, either through positive action or neglect, demolition of the Durant Kenrick House or any portion thereof.

5.5 **Relocation.** No portion of the Durant Kenrick House shall be moved from its present location unless such moving is required by a taking by eminent domain.

5.6 **Signs.** No signs, billboards or other advertising displays shall be placed on, painted onto or affixed to the Durant Kenrick House or Premises except that, subject to City's prior written approval, Owner may erect a sign or marker which is appropriate to identifying the (i) historical significance and associations of the Premises; or (ii) use of the Premises.

5.7 **Use.** Owner shall not permit any uses to be carried on, in or around the Premises that are unlawful, constitute a nuisance, or which are determined by City to be inconsistent with the intent of this Agreement or to adversely affect the historic significance of the Durant Kenrick House and surrounding landscape. Specifically, and without limiting the generality of the foregoing, Owner and City agree that the Premises may be used for a historic house, landscape, and museum or for purposes that are consistent with the intent of this Agreement and that are permitted under the Zoning Ordinance of the City of Newton. In order to protect against accidental damage, the use of open flame heating elements included but not limited to candles, stoves, Sterno-type burners, barbecue grills, and gas water heaters is hereby prohibited within the Durant Kenrick House and within 50 feet of the Durant Kenrick House. The storage of hazardous materials, included but not limited to oil, gasoline, and other flammable materials, is prohibited within the Durant Kenrick House and if on the Premises must be contained within a separate building located more than 50 feet from the Durant Kenrick House. With respect to matters not covered by this Agreement, Owner shall have the right to operate and use the Premises in such manner as it determines, provided that such operation and use is not inconsistent with the intent of this Agreement.

5.8 **Maintenance.**

5.8.1 **General.** Owner covenants at all times to maintain the Durant Kenrick House and Premises in good and sound state of repair in order to prevent the deterioration or destruction through alteration or neglect of Protected Features. Landscaping activities and maintenance shall be in accordance with an approved landscape preservation/restoration plan. Subject to the casualty provisions of Section 7, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction of the Durant Kenrick House and the Premises whenever necessary in accordance with The Secretary of Interior's Standards for The Treatment of Historical Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic

Buildings (CFR 67 and 68), and the Secretary of the Interior's Guidelines for the Treatment of Cultural Landscapes, as these may be amended from time to time (hereinafter called the "Secretary's Standards")."

5.8.2 **Cost of Maintenance.** Owner shall assume the total cost of continued maintenance, repairs and administration of the Premises in order to preserve the protected architectural and historic features, materials, appearance and workmanship of the Durant Kenrick House. Owner covenants that it shall indemnify and hold City harmless from and against any such costs. The foregoing shall not prohibit the Owner from seeking financial assistance for the foregoing purposes from any sources available to it.

5.9 **Compliance with Law.** Nothing contained herein shall be interpreted to authorize or permit the Owner to violate any law, ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any law, ordinance or regulation and the terms hereof, Owner promptly shall notify City in writing of such conflict and shall cooperate with City and the appropriate authorities to accommodate the purposes of both this Agreement and such law, ordinance or regulation. No construction and no other alteration or change of use or occupancy which would create such conflict, or cause such conflicting law, ordinance or regulation to be applicable to the Durant Kenrick House or any protected element thereof shall be undertaken without the prior written approval of City.

5.10 **Conditional Rights Requiring the Approval of the Massachusetts Historical Commission.** The conduct of archeological activities on the Premises, including without limitation, survey, excavation and artifact retrieval, may occur only following the submission of an archaeological field investigation plan (the "Archaeology Plan") prepared by or on behalf of Owner and approved in writing by the State Archaeologist of the Massachusetts Historical Commission (M.G.L. Ch. 9, Section 27C, 950 C.M.R. 70.00). Archaeology Plans shall be submitted to City in advance of excavation, and such excavation shall be conducted only in accordance with an Archaeology Plan approved by City.

## 6. **INSURANCE.**

6.1 **Property.** Owner, at its expense, shall carry and maintain at all times property damage insurance on the Durant Kenrick House with historic replacement cost coverage, increased from time to time to take into account inflation, against loss from all perils commonly covered under the broadest standard homeowner's policy form in use from time to time, including without limitation fire, lightning, wind storm, hail, explosion, damage by vehicles, smoke, vandalism, malicious mischief, weight of ice, snow, or sleet, freezing of plumbing, HVAC or sprinkler systems, and sudden and accidental damage from artificial electrical current explosion. The policy required pursuant to this Subsection 6.1 shall name City as a loss payee with funds to be held in escrow for repair of property damage to the Durant Kenrick House.

6.2 **Liability.** Owner, at its expense, shall carry and maintain at all times general liability insurance, with coverage against claims for personal injury, death, and property damage, identifying the Durant Kenrick House as covered premises, and for not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) per year, such sum to be increased from time to time to reflect increases in the cost of living from the date of this Agreement. The policy required pursuant to this Subsection 6.2 shall name City as an additional insured.

6.3 **Other Requirements.** Every policy required pursuant to this Section 6 shall be issued by an insurance company rated "A" or better by A.M. Best Company or equivalent rating by a comparable rating service, and shall provide for the sending of any and all notices of cancellation by the insurer to City at least twenty (20) days prior to any cancellation taking effect. Owner shall promptly provide copies of all insurance policies required by this Section and all supplements or endorsements thereto to City.

6.4 **Changes in Practice.** City reserves the right to change the coverage requirements provided under this Section 6 from time to time to reflect changes in the best practices for property and liability coverages for historic houses in New England provided City first gives Owner thirty (30) days advance notice of any such change.

## 7. **CASUALTY DAMAGE**

7.1 **Notice.** In the event that the Durant Kenrick House or any portion thereof is damaged or destroyed, Owner shall notify City in writing within two (2) days of the damage or destruction, and such notification shall identify what, if any, emergency protective work has already been completed.

7.2 **Restoration.** Except as set forth in this Section, in the event of any casualty damage (as hereinafter defined), (a) Owner shall submit to City a proposal in accordance with Section 12 of this Agreement for City's approval to restore the Durant Kenrick House using similar materials, workmanship and design and in a manner which shall protect those Protected Features which have not been totally destroyed, and (b) Owner shall then restore the Durant Kenrick House in accordance with such proposal as City has approved. City shall release casualty insurance proceeds to fund such approved restoration, and any casualty insurance proceeds in excess of the cost of such restoration shall be released as directed by Owner.

7.3 **Substantial Casualty.** Notwithstanding any other provision of this Agreement to the contrary, in the event of substantial casualty damage to the Durant Kenrick House, Owner may request the approval of City not to restore the Durant Kenrick House pursuant to this Agreement. If City determines that the extent or nature of such casualty damage would prevent restoration in a manner which would protect the remaining Protected Features, then City may grant such approval and Owner may elect not to restore the Durant Kenrick House pursuant to this Agreement. In the event of such approval not to restore, before any remaining portion of the premises is relocated or otherwise altered, Owner shall allow City to enter onto and into the Premises for the



purpose of choosing and removing for posterity any such Protected Features, or portions thereof, together with the materials in which such features are set, that City desires to salvage, and thereupon all casualty insurance proceeds shall be released as follows: first, to City, an amount not to exceed the total amount of City funds provided for the preservation, restoration, and rehabilitation of the Durant Kenrick House; with the balance to Owner.

7.4 **Damage Defined.** For the purposes of this Agreement casualty damage shall be defined as such sudden damage or loss which would qualify for a loss deduction pursuant to Section 165(c)(3) of the Internal Revenue Code (construed without regard to the legal status, trade, or business of Owner or any applicable dollar limitations).

8. **CONDEMNATION.** If the Premises, or any substantial portion thereof, shall be made the subject of a procedure threatening a taking by eminent domain, or if Owner shall receive notice from a governmental authority of the intent to institute such proceeding, City shall immediately be given notice thereof by Owner. City shall have the right to enter its name as an additional party in eminent domain proceedings, pursuant to Massachusetts General Laws, Chapter 79, Section 5A, but shall not have the right to any monetary award which would diminish the award to be made to Owner resulting from such taking. In the event of such taking, City shall have the right to enter onto and into the Premises (or portion thereof subject to such taking) for the purpose of choosing and removing for posterity any Protected Features, or portions thereof, together with the materials in which such features are set, that City desires to salvage, prior to the effective date of such taking.

9. **TAXES.** Owner shall pay on or before the due date all general taxes, special taxes, special assessments, water charges, sewer service charges and other charges which may become a lien on the Premises.

10. **INDEMNIFICATION.** Owner shall indemnify, defend with counsel acceptable to City, and hold City harmless from and against any claims, liability, costs, attorneys' fees, judgments or expenses to City or any officer, employee, agent or independent contractor of City resulting from actions or claims of any nature by third parties arising in connection with or out of this Agreement, including without limitation claims related to the presence of oil or hazardous substances.

11. **INSPECTION.** City may inspect the Premises at least annually to ensure that the Owner is in compliance with the preservation restrictions hereby imposed. In addition, City may inspect the Premises more frequently during periods of repair, renovation or reconstruction as City deems appropriate for the nature of the work being conducted. Owner agrees to grant City free access to all areas of the Premises. Such inspections shall be made at reasonable hours and only after prior notice to the Owner. This right of inspection shall be assignable by City to any governmental body or qualified non-profit entity whose purposes include preservation of structures or sites of historic or aesthetic significance. The failure of City to exercise this right of inspection for any period of time, however, shall under no circumstances be construed as a waiver of such right.

12. **WRITTEN APPROVAL.**

12.1 **Approval.** Whenever Owner desires to undertake any activity at the Durant Kenrick House or otherwise on the Premises which, by the terms of this Agreement, is not to be undertaken without City's approval, Owner shall first deliver to City a written request for approval, describing the specific activity proposed (including, but not limited to, the nature, scope, schedule, budget and, if applicable, materials, design and location thereof, and by whom the activity will be performed, when known), together with detailed plans and/or drawings in sufficient detail as determined by City to enable it to evaluate the proposed activity and the potential effect thereof upon the features and interests protected by this Agreement (a "Request for Approval"). In exercising its discretion, City shall apply the Secretary's Standards, as appropriate, as a basis for review and any other standards that it establishes from time to time of general applicability to similar historic properties on which it holds a preservation restriction. Approval by City for any such activity shall be in recordable form, executed and acknowledged by one or more of the Chair or Vice-Chair of the Newton Historical Commission or their designee, or such officer or officers who may succeed to their responsibilities under other titles.

12.2 **Waiver: Other Approval.** City may, in its sole discretion, waive the submittal of a Request for Approval or the issuance of a recordable approval, or both, for any activity described in Section 4. Notwithstanding any other provision of this Agreement to the contrary, City may, in its sole discretion, grant written approval for any other activity by Owner which is restricted by any provision of this Agreement in addition to those activities which are not to be undertaken without approval by City, but only in accordance with the procedures set forth in Subsection 12.1.

12.3 **Timing.** City shall grant or deny its approval for such proposed activity not later than ninety (90) days after the later of the date (i) City has received a Request for Approval or (ii) City either inspects the Premises, as mutually and reasonably agreed upon by City and Owner, for the purpose of evaluating such proposal or delivers to Owner a written waiver of such inspection. If City does not give the Owner a written request for such inspection within sixty (60) days after City has received a Request for Approval, City shall be deemed to have waived such inspection for such proposal. The provisions of this Subsection 12.3 shall not apply to any proposed activity that is prohibited by the terms of this Agreement.

12.4 **Conditions.** City may approve or deny all or any portion of the activity set forth in a Request for Approval, or grant its approval subject to conditions, or any combination thereof. Such conditions may include the expiration of such approval to activity conducted within a certain period of time or prior to conveyance of the Premises. If an activity is conditionally approved, such activity shall not be undertaken except in compliance with such condition(s) and the failure to conform to such condition(s) shall be a breach of this Agreement. Approval as to any activity shall under no circumstances be construed to waive the requirement for approval for any other activity or for a

duplication of the same activity at a later time or affecting any other portion of the Premises.

13. **DISPUTE RESOLUTION.**

13.1 **Submittal.** Owner agrees that if any dispute shall arise between it and City concerning the terms or conditions of this Agreement or their application in any instance, Owner and the City shall first attempt to resolve such dispute through a mutually agreed upon, non-binding mediation in accordance with the provisions of this Section 13. The fees and expenses of the agreed upon mediation procedure shall be borne equally between City and Owner

13.2 **Violation and Objection Letters.** The City and the Owner agree that in the event the City believes the Owner has failed to perform or observe any restriction, agreement or condition in this Agreement, the City shall give the Owner written notice of the violation ("Violation Letter"), sent in accordance with the Section 17 of this Agreement.

In addition to describing the failure or violation, such Violation Letter shall inform the Owner of the following:

- (a) of its right to dispute the existence of such failure or violation;
- (b) that if the Owner disputes such failure or violation, it must send a reply ("Objection Letter") to the City not later than thirty (30) days from the date of the Violation Letter;
- (c) that the Objection Letter must be sent to the City in accordance with Section 17 of this Agreement;
- (d) that such dispute, if any, is subject in the first instance to mediation in accordance with Section 13 of this Agreement, the procedure for which shall be mutually agreed upon by the City and Owner within ten (10) days from the date of the City receives the Objection Letter, or such additional time as agreed to by the parties; and
- (e) that failure to respond shall constitute an agreement on the part of the Owner with the contents of the Violation Letter and the Owner shall conclusively have waived all right thereafter to dispute the existence of such failure or violation.

In the event that the Violation Letter contains all the aforementioned statements and the Owner fails to send a timely Objection Letter, then the Owner shall conclusively be deemed to agree with the contents of the Violation Letter and to waive all right thereafter to dispute the existence of such failure.

**13.3 Timelines.** The Owner shall have thirty (30) days from the date of the Violation Letter to send its Objection Letter to the City. The City and the Owner shall have ten (10) days from the date of the City receives the Objection Letter to agree upon the mediation procedure. The City and the Owner shall have thirty (30) days from the date the mediation procedure is agreed upon to resolve the dispute. The parties can mutually agree upon extensions of time for any of the timelines set out in this subsection 13.3.

If the City and Owner reach an agreement, the parties shall execute a Memorandum of Understanding reflecting the agreed upon resolution of the dispute.

In the event that the Owner and City fail to resolve the dispute in accordance with the timelines set out in this subsection 13.3, or any extension of time agreed upon, the City may elect to seek injunctive relief or otherwise litigate the subject matter of such dispute in accordance with the provisions of Section 14 of this Agreement. The provisions of this Section 13 shall not limit the City's rights pursuant to the provisions of Section 14.

**13.4 Stand-Still Provision.** In consideration for the City's agreement to attempt to resolve disputes first through mediation, the Owner agrees to cease the activity cited in a Violation Letter sent to it in accordance with the provisions of Subsection 13.2 from the date the Violation Letter is received until the dispute is either resolved through mediation, or the time periods specified herein for either 1) agreement on the mediation procedure to be followed or 2) resolution of the dispute have expired and the parties have not mutually agreed to an extension of time to continue efforts to resolve the dispute without litigation.

#### **14. ENFORCEMENT.**

**14.1 General.** If Owner shall fail to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed. Owner acknowledges that such a failure will cause City irreparable harm, and City shall have the right to enforce this Agreement by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (Owner agreeing that City has no adequate remedy at law if Owner shall fail to perform or observe any restriction, agreement or condition contained in this Agreement). The foregoing shall be in addition to, and not in limitation of, any other rights and remedies available to City.

**14.2 Venue and Jurisdiction.** Owner hereby irrevocably consents and agrees that any legal action, suit or proceeding arising out of or in any way in connection with this Agreement may be instituted or brought in the courts of the Commonwealth of Massachusetts, including but without limitation, the United States District Court for Massachusetts, or in the courts of any other jurisdiction wherein City's business office(s)

may be located, as City may elect. By execution and delivery of this Agreement, Owner irrevocably accepts and submits to the non-exclusive jurisdiction of any such court and to service of any summons, complaint and/or legal process by registered or certified United States mail, postage prepaid, to Owner at the Premises, such method of service to constitute, in every respect, sufficient and effective service of process in any legal action or proceeding. Owner shall not seek a trial by jury in any lawsuit, proceeding, counterclaim or any litigation procedure based upon or arising out of this Agreement or the dealings or the relationship between City and Owner, or any person claiming by, through or under Owner.

**14.3 Self -Help.** If Owner shall fail to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed, other than an obligation to pay money, and shall not cure such default within seven (7) days after notice from City specifying the failure, City may, at its option, without waiving any other remedy or any claim for damages for breach of this Agreement, at any time thereafter apply for and obtain in its own name or in Owner's name such permits and approvals as may be necessary to cure such failure, enter upon the Premises, and cure such failure for the account of Owner, and any amount paid in any contractual liability incurred by City in so doing shall be deemed paid or incurred for the account of Owner, Owner agreeing to reimburse City promptly therefore and save City harmless therefrom. City may cure any such failure as aforesaid prior to the expiration of said waiting period, but after notice to Owner, if the curing of such failure prior to the expiration of said waiting period is reasonably necessary to protect the Premises or any Protected Features. Without limiting the generality of this Subsection 14.3, Owner's obligation to reimburse City as aforesaid shall be entitled to the status of a contract pursuant to Massachusetts General Laws, Chapter 254, as amended from time to time (sometimes known as the Mechanics' Lien Law) and in order to cause this Agreement to constitute a Notice of Contract or such other notice as is necessary to afford City the right to file a claim pursuant thereto, notice is hereby given that by virtue of this Agreement between Owner and City, as contractor for the purposes of this Subsection 14.3, City may furnish labor and material or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building, structure, or other improvement, including landscape improvements, on the Premises as set forth in this Section.

**14.4 Costs and Expenses.** Owner shall indemnify and hold harmless City, and shall pay to City on demand, all costs and expenses, including but without limitation attorneys' disbursements and fees, incurred by City in connection with enforcement of this Agreement in which the City is the prevailing party. If Owner is required pursuant to this Agreement to pay a sum of money to City, the obligation to pay such sum constitutes a lien upon the Premises for the amount of such sum until it is paid, and if Owner shall fail to pay all or any portion of such sum within thirty (30) days of City's written demand therefore, Owner shall also pay to City interest on the unpaid amount at an annual rate equal to the judgment interest rate then in effect under the laws of the Commonwealth of Massachusetts.

14.5 **Mortgage Protection.** Any lien which may arise pursuant to this Section 14 shall be subject and subordinate to a first mortgage of record held by a bank, saving and loan association, trust company, credit union, insurance company, pension fund or other institutional lender to the extent of the principal amount secured by such mortgage and disbursed as of the date such notice of lien is recorded.

14.6 **No Waiver.** Failure of City to complain of any act or omission on the part or Owner, no matter how long the same may continue, shall not be deemed to be a waiver by City of any of its rights hereunder. No waiver by City at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. No waiver by City at any time of the requirements for submittal of a Request for Approval or issuance of a recordable approval, pursuant to Subsection 12.2, for an activity described under Section 4 shall be deemed a waiver of such requirements as to such activity at any other time or as to any other activity. No payment by Owner or acceptance by City of a lesser amount than shall be due from Owner to City shall be deemed to be anything but payment on account, and the acceptance by City of a check for a lesser amount with an endorsement or statement thereon or upon a letter accompanying such check that such lesser amount is payment in full shall not be deemed an accord and satisfaction, and City may accept such check without prejudice to recover the balance due or pursue any other remedy. Any and all rights and remedies which City may have under this Agreement or by operation of law, either at law or in equity, upon any breach shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by City or not, shall be deemed to be in exclusion of other, any two or more or all of such rights and remedies being exercisable at the same time.

14.7 **Estoppel Certificate.** City agrees to deliver to Owner and/or to any holder of a mortgage on the Premises identified by Owner a statement to City's knowledge whether Owner is in compliance with this Agreement, not later than thirty (30) days after the later of the date (i) City has received a written request for such statement from Owner, or (ii) City either inspects the Premises, as mutually and reasonably agreed upon by City and Owner, for the purpose of responding to such request or delivers to a Owner a written waiver of such inspection. If City does not give the Owner a written request for such inspection within fifteen (15) days after City has received such request from Owner, City shall be deemed to have waived such inspection for such request.

15. **EXTINGUISHMENT.** Owner and City acknowledge the possibility that circumstances may arise in the future to render the purpose of this Agreement impossible to accomplish. In addition, both parties recognize that the possibility of condemnation and casualty always exists. In the event such circumstances do in fact arise, the parties agree that those provisions of this Agreement which are rendered impossible of performance by such circumstances, condemnation or casualty, may be extinguished by judicial proceedings in a court of competent jurisdiction, and all other provisions of this Agreement shall remain in full force and effect unless and until this Agreement is terminated or may be extinguished following fulfillment of all the requirements of the

laws of the Commonwealth of Massachusetts for such extinguishment, including without limitation approval by the City and by the Massachusetts Historical Commission following public hearings by the City and by the Massachusetts Historical Commission to determine that such extinguishment is in the public interest.

16. **TRANSFERS.**

16.1 **Subdivision and Leasing.** The Premises shall not be subdivided for conveyance or lease, provided that this Section shall not be deemed to prohibit the leasing of the Durant Kenrick House for uses permitted by this Agreement. For the purposes of this Agreement, the definition of "to subdivide" shall include to cause any portion of the land less than the entirety thereof to be divided, conveyed or made conveyable as a distinct parcel apart from the remainder of the land, including, to submit a plan which shows the land as other than one unitary lot for the preliminary or final approval or endorsement of any governmental authority for such a division, or to cause any such plan (whether or not approved or endorsed by a governmental authority) to be filed or recorded with any land records office or registry. Any lease or occupancy agreement of the Premises or any portion thereof shall be in writing and shall include the following notice in capitalized letters: "This Lease is subject to a Preservation Restriction Agreement granted to the City of Newton, a copy of which is attached hereto, which substantially restricts construction, alteration and redecorating activities inside and outside the Premises subject to this Lease. Notwithstanding any other provision of this Lease, no such activity shall be undertaken without prior review of such restrictions and strict compliance therewith. Any failure to comply with such restrictions may, at Landlord's sole discretion, be deemed a default under this Lease."

16.2 **Insertion in Subsequent Instruments.** Owner shall insert a reference to this Agreement, such reference to include Registry book and page number of this Agreement, into any subsequent deed or other legal instrument by which Owner divests itself of either the fee simple title to or any lesser estate in the Premises. Concurrently, with its entering into any such deed or other legal instrument, Owner shall give written notice to City of same. Failure by Owner to comply with the requirements of this Subsection 16.2 shall not affect the validity, enforceability or priority of this Agreement or any lien arising hereunder.

16.3 **Written Acceptance.** Before taking legal possession of the Premises or any portion thereof each new Owner of the Premises shall indicate its acceptance of these preservation restrictions contained herein by a letter to City. Such acceptance shall include a promise to maintain at all times and in good condition, the significant historical, architectural, scenic and environmental characteristics of the Premises covered by these restrictions. Failure by any new Owner to so indicate, and failure by City to demand such indication, shall not affect the validity, enforceability or priority of this Agreement or any lien arising hereunder.

16.4 **Restrictions Run with the Land.** Notwithstanding anything to the contrary contained in Section 15 above, the burden of this Agreement shall constitute a binding servitude and shall run with the land in perpetuity.

16.5 **Assignment.** All of the rights and restrictions enforceable by City pursuant to this Agreement shall be assignable by City for preservation purposes only and without consideration, to any governmental body or any charitable corporation or trust qualified to hold perpetual preservation restrictions under M.G.L. Chapter 184, section 32, whose purposes include the preservation of buildings or sites of historical and architectural significance.

17. **NOTICES.** Every notice, request, demand, consent, waiver or other communication which either party hereto may be required to give to the other party pursuant to this Agreement, shall be in writing and shall be given either by postage prepaid registered or certified U.S. mail with return receipt requested or by a national overnight delivery service with acknowledgement of receipt required.

If to Owner:

Executive Director  
Newton Historical Society, Inc.  
527 Washington Street  
Newton, MA 02458

If to City:

Chair, Newton Historical Commission  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

And to

City Solicitor  
Newton City hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Each party may change its address set forth herein by written notice to such effect to the other party. Such notice, etc., shall be deemed given as of the sooner of the date of signed receipt or the date when delivery was first attempted.

18. **SUBORDINATION OF PRIOR LIENS.** Owner represents and warrants to City that the Premises are subject to no mortgages, liens, leases, restrictions, easements or encumbrances prior in right to this Agreement. Owner covenants and warrants that this Agreement shall never be subordinated to any mortgage or other encumbrance.

19. **MISCELLANEOUS.** The following provisions in this Section 19 shall govern the effectiveness, interpretation and duration of this Agreement:



19.1 **Counterparts.** This Agreement, with all exhibits hereto, is executed in three (3) identical counterparts. After execution hereof, one (1) such counterpart shall be held by each of Owner and City, and one (1) such counterpart shall be recorded immediately at the Registry.

19.2 **Strict Construction.** Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this Agreement and this Agreement shall be interpreted broadly to effect its purposes, and the restrictions herein contained.

19.3 **Owner.** This Agreement shall extend to and be binding upon the Owner, and all persons hereafter claiming under or through the party executing this Agreement as "Owner" and all successors in title to the Premises, and the word "Owner" when used herein shall include all such persons, whether or not such persons have signed this Agreement or now have an interest in the Premises. A person who ceases to hold title to the Premises after having been an Owner shall cease to have any liability hereunder to City except that such person shall remain jointly and severally liable with the successors as Owner for any monetary liability hereunder for City that accrued during the time of such person's ownership.

19.4 **Amendment.** For purposes of furthering the preservation of the Durant Kenrick House and the associated landscape, and of furthering the other purposes of this Agreement, and of meeting changing conditions, Owner and City are free to amend jointly the terms of this Agreement in writing, and such amendment shall become effective upon recording it at the Registry.

19.5 **Validity of Agreement.** This Agreement is made pursuant to Massachusetts General Laws, Chapter 184, Sections 31-33, but the invalidity of such statutes or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms, it being the intent of the parties to agree and to bind themselves, their heirs, successors, administrators and assigns in perpetuity to each clause of this Agreement whether it be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto. This Agreement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain enforcement of this Agreement or any part thereof. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement or any ancillary or supplementary agreement relating to the subject matter herein.

19.6 **Captions.** The captions used as headings for the various Sections and Subsections of this Agreement are used only as matter of convenience for reference, and are not to be considered a part of this Agreement or used in determining the intent of the parties to this Agreement.

19.7 **No Warranty.** The approval by City of any action by Owner, including without limitation, the approval of the design of any alteration or construction, shall not constitute a warranty, representation or acknowledgment that any action taken in conformity with such approval shall comply with any law, regulation, order, ordinance, code or by-law or shall be suitable for any particular purpose, and Owner shall be solely responsible for its own actions.


19.8 **Time.** Where a specific number of days are stated for an activity to occur, time is of the essence. If any act required under this Agreement becomes due on a Saturday, Sunday or legal holiday in the Commonwealth of Massachusetts, then such act shall be due on the immediate following business day.

20. **MHC Preservation Restrictions.** Owner and City acknowledge that Owner, as of the date of this Agreement, intends to enter into a perpetual Preservation Restriction Agreement to be held on the Durant Kenrick Homestead and parcel at 286 Waverly Avenue, Newton, Massachusetts (identified in Exhibit A to this Agreement as "Parcel One") by the Commonwealth of Massachusetts by and through the Massachusetts Historical Commission (hereinafter the "MHC Agreement"). Owner agrees that, once the MHC Agreement is fully executed and recorded, Owner, in addition to complying with the restrictions contained in this Agreement, will comply with the restrictions contained in the MHC Agreement. Owner and City agree that whenever approval is required under this Agreement and the MHC Agreement, the approval of both the City and the Massachusetts Historical Commission will be required.

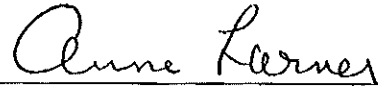
THIS SECTION DELIBERATELY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal  
this 13<sup>th</sup> day of October, 2011.


WITNESS

  
\_\_\_\_\_

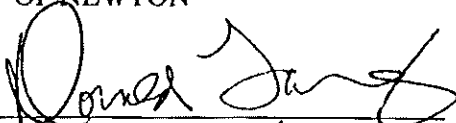
NEWTON HISTORICAL SOCIETY, INC.

  
By: Anne Larner  
Its: President

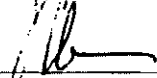
WITNESS

  
\_\_\_\_\_

CITY OF NEWTON

  
By: DONALD LANZA  
Chair, Newton Historical Commission

APPROVED:

  
Setti D. Warren, Mayor

Approved as to legal character and form:

  
Assistant City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 13<sup>th</sup> day of October, 2011 before me, the undersigned notary public,  
personally appeared Anne Larner, proved to me through satisfactory  
evidence of identification, which was personal knowledge, to be the  
person whose name is signed on the preceding or attached document, and acknowledged  
to me that s/he is the President of Newton Historical Society, Inc. and signed it  
voluntarily for its stated purpose in such capacity.

  
Notary Public  
My commission expires:



COMMONWEALTH OF MASSACHUSETTS

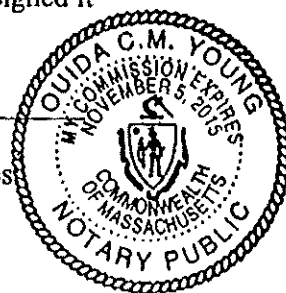
Middlesex, ss.

On this 20th day of October, 2011, before me, the undersigned notary public, personally appeared Daniel King, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he is the Chairman of the Newton Historical Commission and signed it voluntarily for its stated purpose in such capacity.



Notary Public

My commission expires



COMMONWEALTH OF MASSACHUSETTS

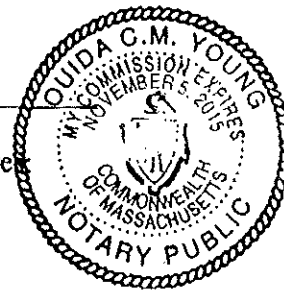
Middlesex, ss.

On this 21st day of October, 2011, before me, the undersigned notary public, personally appeared Setti D. Warren, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he is the Mayor of the City of Newton and signed it voluntarily for its stated purpose in such capacity.



Notary Public

My commission expires



APPROVAL BY 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.

Date: 10/27/11

Brona Simon  
Brona Simon  
Executive Director and Clerk  
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

October 27, 2011

On this 27<sup>th</sup> day of October, 2011, before me, the undersigned notary public, personally appeared the above-named **Brona Simon**, proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as **Executive Director and Clerk** for the **Massachusetts Historical Commission**.

Nancy Maida  
Notary Public  
My Commission expires: January 19, 2012

**EXHIBIT A**  
**Legal Description**

PARCEL ONE -- 286 WAVERLY AVENUE

That certain parcel of land, with the buildings thereon, presently known as and numbered 286 Waverly Avenue, Newton, Middlesex County, Massachusetts, being bounded and described as follows:

Beginning at a point on the southeasterly line of Waverly Avenue, two hundred feet distant from Kenrick Street at land now or late of Haley, and thence running

Southeasterly by said Haley land and land now or late of Seager two hundred and forty-one and 90/100 (241.90) feet to Kenrick Terrace, at a point on the northwesterly line of said Terrace, two hundred feet distance from said Kenrick Street; thence turning and running

Southwesterly by said Kenrick Terrace, one hundred and one (101) feet; thence turning and running

Northwesterly on land of Katherine T. Holbrook, two hundred and forty and 36/100 (240.36) feet to said Waverly Avenue at a point one hundred and one (101) feet distant southwesterly from the point of beginning; and thence

To said point of beginning, running on said Waverly Avenue, one hundred and one (101) feet;

Excepting, however, from the above-described premises so much thereof as was released to the City of Newton by deed dated April 30, 1906, recorded with said Registry of Deeds in Book 3330, Page 526.

Together with the right, title and interest in the private way called Kenrick Terrace, and containing twenty-four thousand three hundred fifty-four (24,354) square feet, more or less according to a Plan by E.S. Smilie, Surveyor, dated June 2, 1903, and recorded with Middlesex South Registry of Deeds at the end of Book 3045.

Said premises being conveyed subject to a Landmark Designation of the Newton Historical Commission dated December 6, 1993, recorded at said Registry at Book 24624, Page 111.

Said premises being conveyed also subject to such other restrictions of record as may be in force and applicable.

For title, see Confirmatory Deed from Ruth D. Ewing, Trustee of the Durant Homestead Trust under declaration of trust dated February 5, 1954, recorded at said Registry at Book 8211, Page 333, said deed being dated November 2, 2005, and recorded with said

Registry at Book 46450, Page 133; and accompanying Trustee's Certificate of Ruth D. Ewing dated November 2, 2005, recorded with said Registry at Book 46450, Page 131.

PARCEL TWO – VACANT PARCEL @ WAVERLY AVE. & KENRICK ST.

That certain parcel of land, situated in the City of Newton, Middlesex County, Massachusetts, and shown as Lots 13 and 14 on a plan made by E.S. Smilie, dated August 4, 1899, and recorded with Middlesex South District Registry of Deeds, at the End of Book 2773. Said Lots together being bounded and described as follows:

Northerly by Kenrick Street, one hundred twenty-four and 80/100 (124.80) feet;

Westerly by Waverley Avenue, two hundred (200) feet;

Easterly by Lots 9, 8 and 7 shown on said plan, two hundred (200) feet;

Southerly by Lot "A" shown on said plan, one hundred and twenty-one and 90/100 (121.90) feet;

Containing twenty-four thousand six hundred and seventy square feet more or less (24,670).

Said premises being conveyed also subject to such other restrictions of record as may be in force and applicable.

For title, see deed from Ruth D. Ewing, Trustee of the Durant Homestead Trust under declaration of trust dated February 5, 1954, recorded at said Registry at Book 8211, Page 333, said deed being dated November 2, 2005, and recorded with said Registry at Book 46450, Page 137; and accompanying Trustee's Certificate of Ruth D. Ewing dated November 2, 2005, recorded with said Registry at Book 46450, Page 135.

AS TO BOTH PARCELS ONE AND TWO, SEE THE FOLLOWING:

Clerk's Certificate of Margaret A. Avery, Clerk of the Durant Homestead Foundation, Inc., dated April 5, 2011 recorded herewith; and

Certified copy of Judgment of the Supreme Judicial Court in the case of *Durant Homestead Foundation, Inc. vs Martha Coakley as she is the Attorney General of Massachusetts, and The Newton Historical Society at the Jackson Homestead, Inc.*, docket #SJ-2011-0155, dated April 25, 2011 recorded herewith.

**EXHIBIT B**  
**Photographs**





286 Waverley – West Façade



286 Waverley Front – North Façade (1)



286 Waverley Front – North Façade (2)



286 Waverley East Façade



286 Waverley - South Façade



Facing East Across Rear Yard House Lot



Facing North Across Rear Yard House Lot



Facing West Across Rear Yard House Lot



Facing South Across Rear Yard House Lot



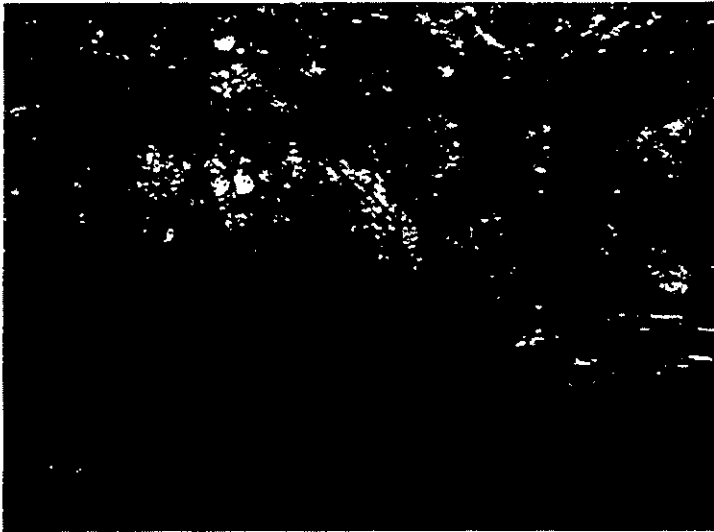
Facing E Across Kenrick St. – Waverley Ave. Lot



Facing N Across Kenrick St. – Waverley Ave. Lot



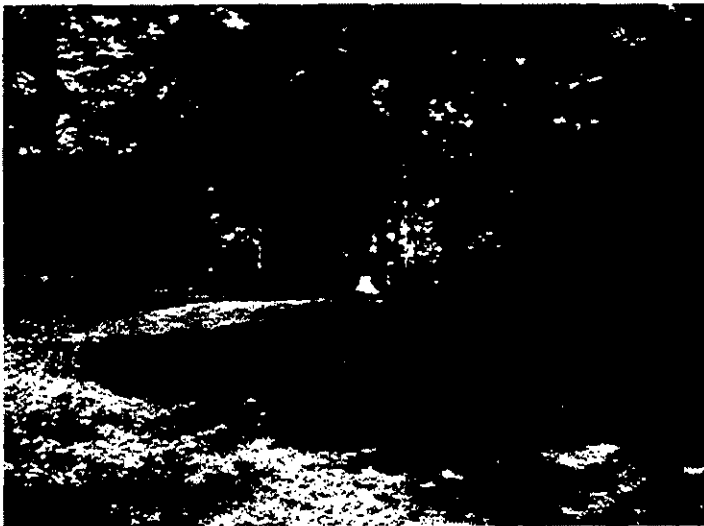
Facing S Across Kenrick St. – Waverley Ave. Lot



Facing SE Across Kenrick St. – Waverley Ave. Lot



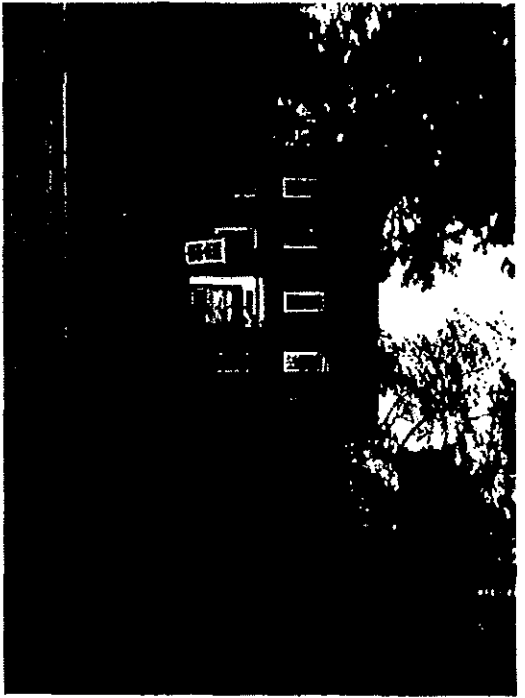
Facing SE Across Kenrick St. – Waverley Ave. Lot



Facing W Across Kenrick St. – Waverley Ave. Lot

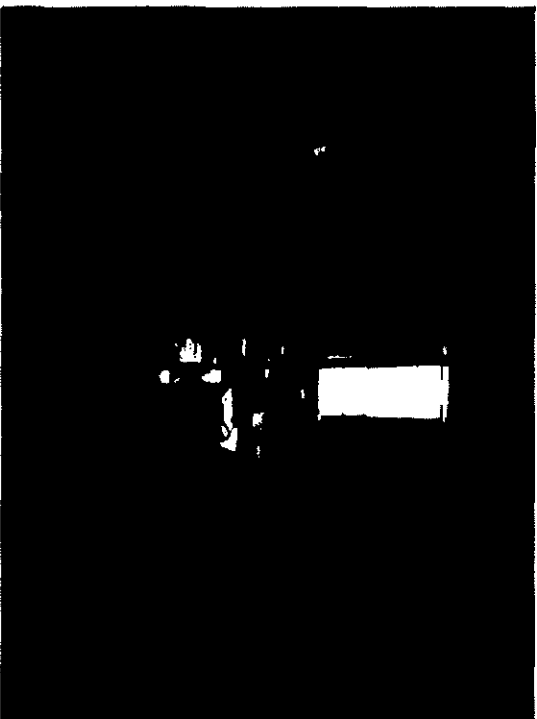


Facing East Along Driveway House Lot

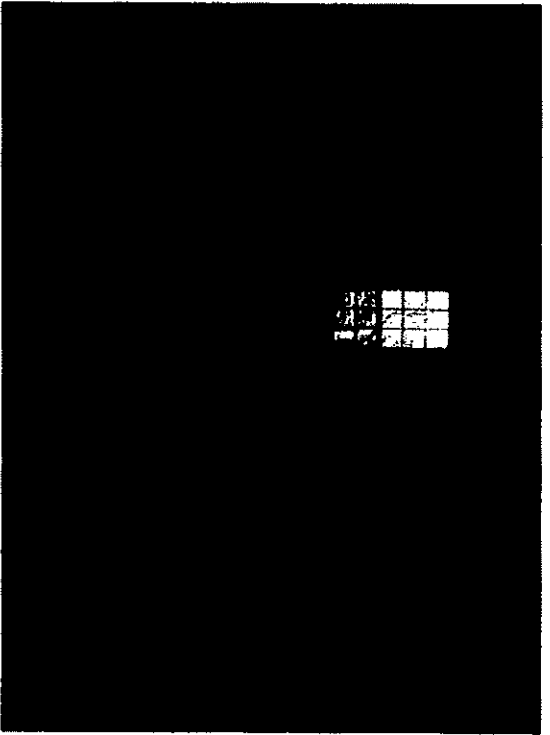


Facing East Towards House Lot

### Interior Photographs



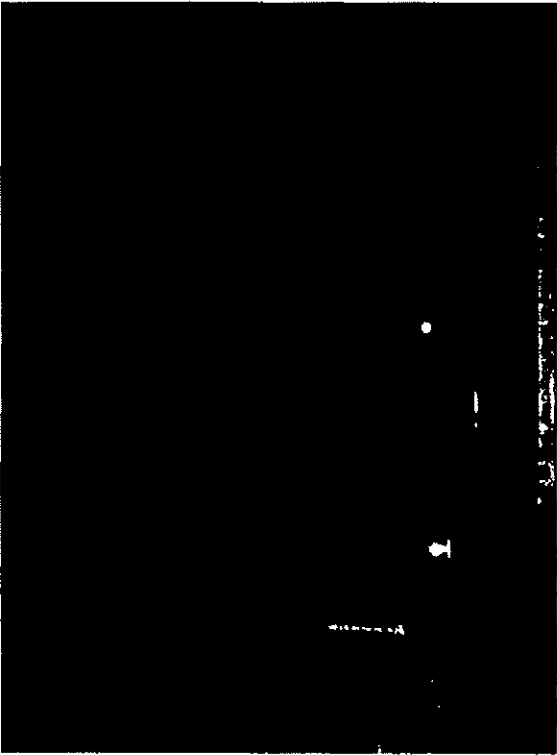
Attic Facing North



Attic Facing South



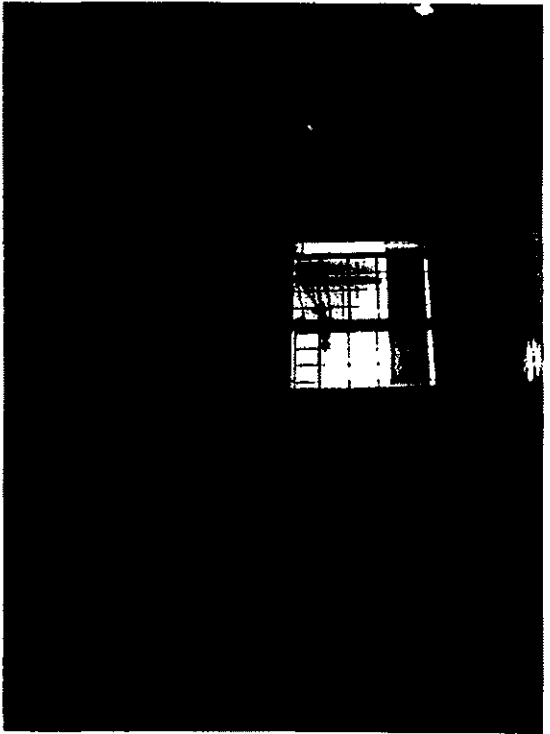
Basement Chimney Support Arch



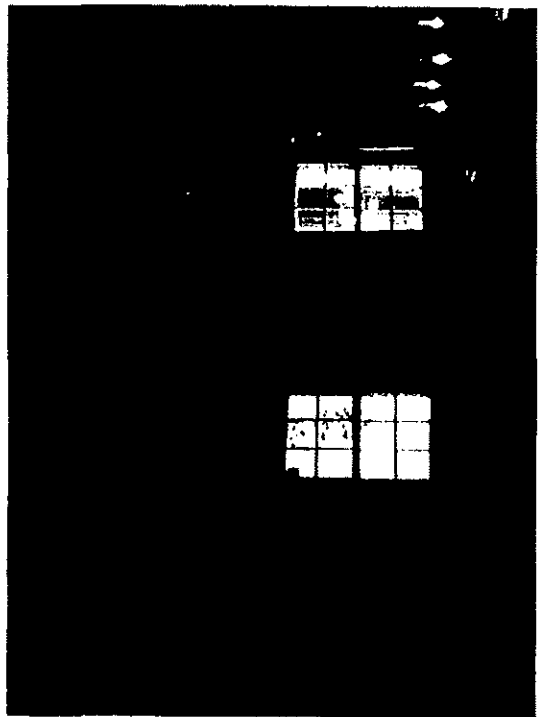
Basement Facing North



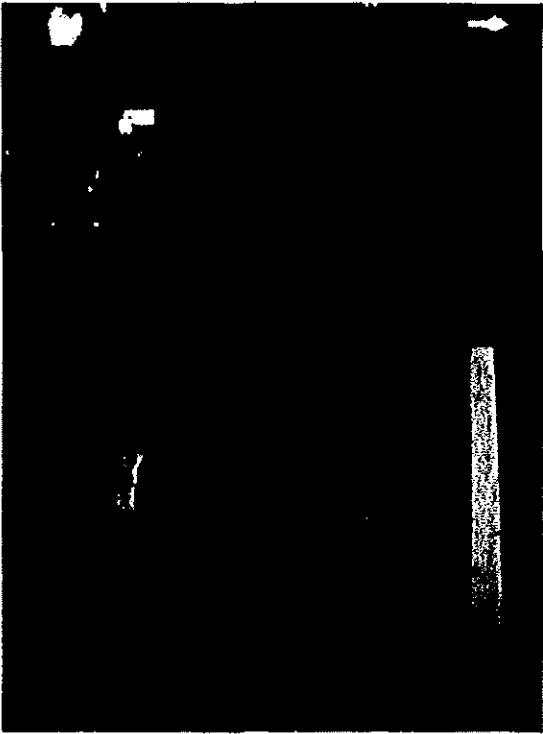
Basement Facing South



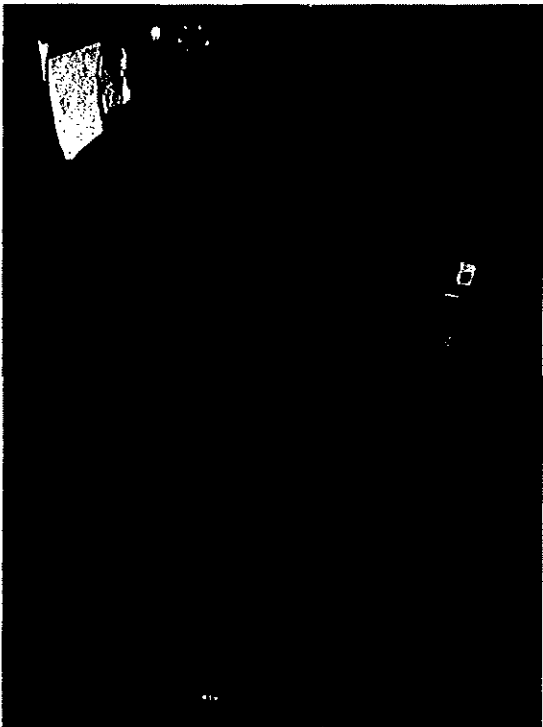
Kitchen East Wall



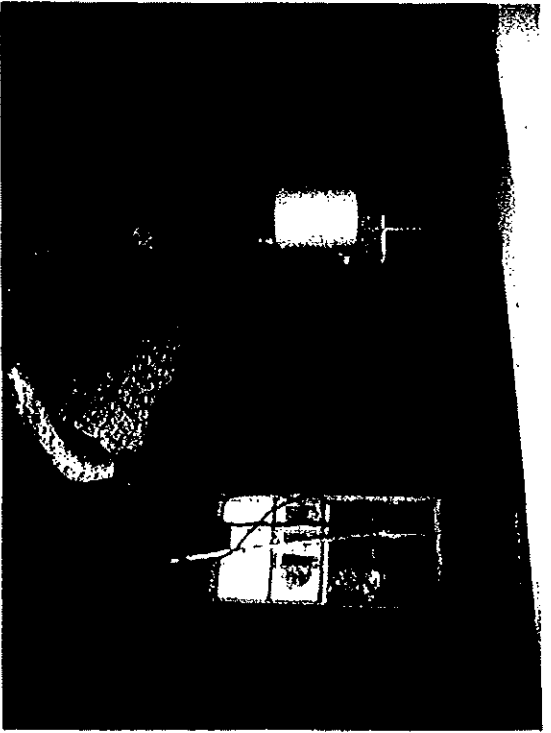
Kitchen North Wall



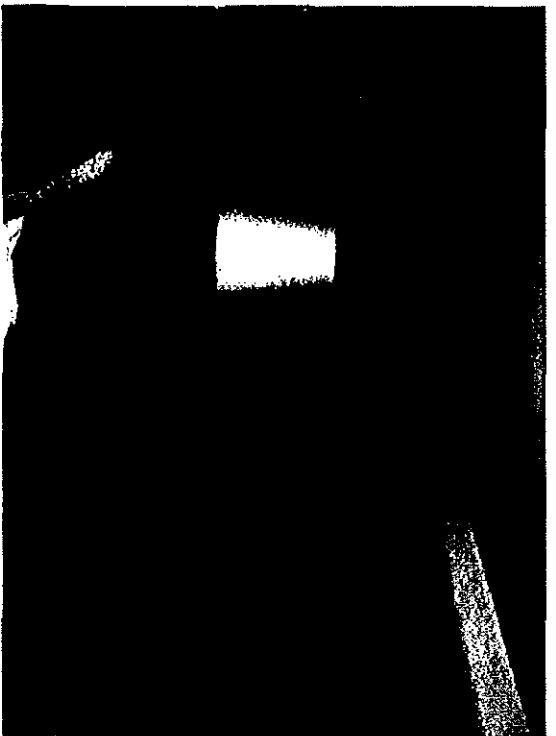
Kitchen South Wall



Kitchen West Wall



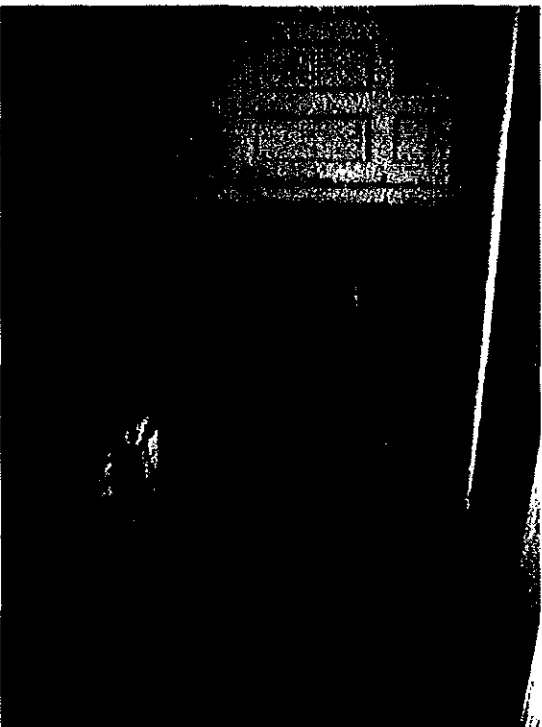
Library East Wall



Library North Wall

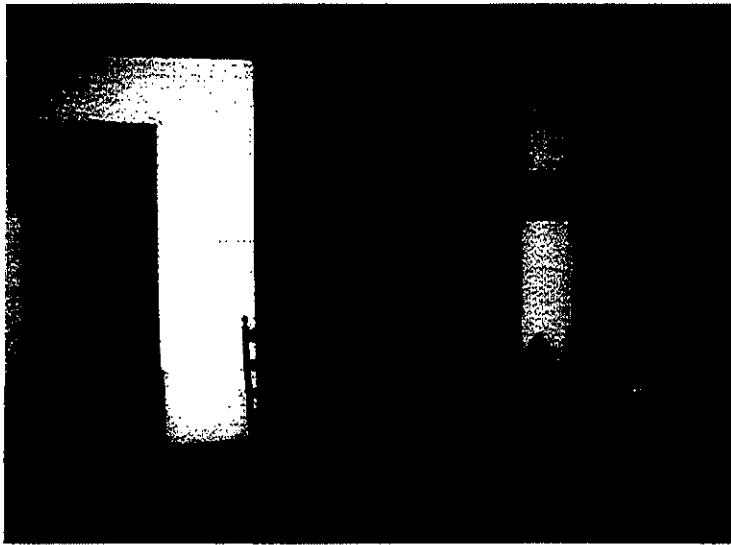


Library South Wall

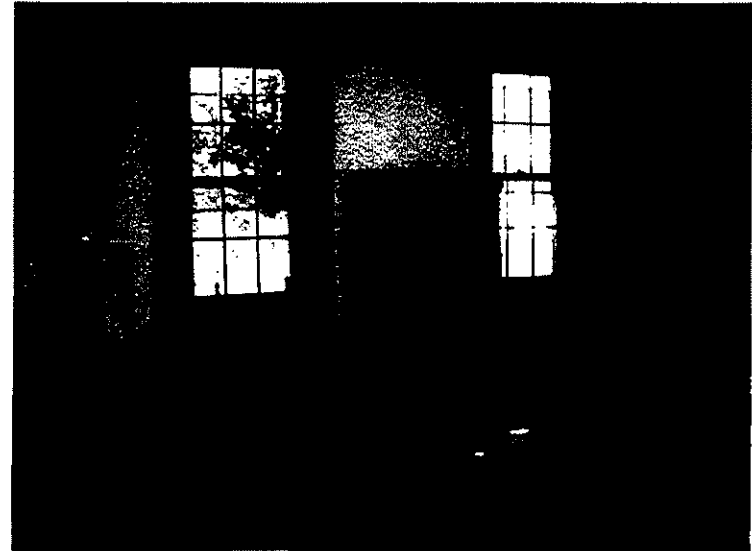


Library West Wall

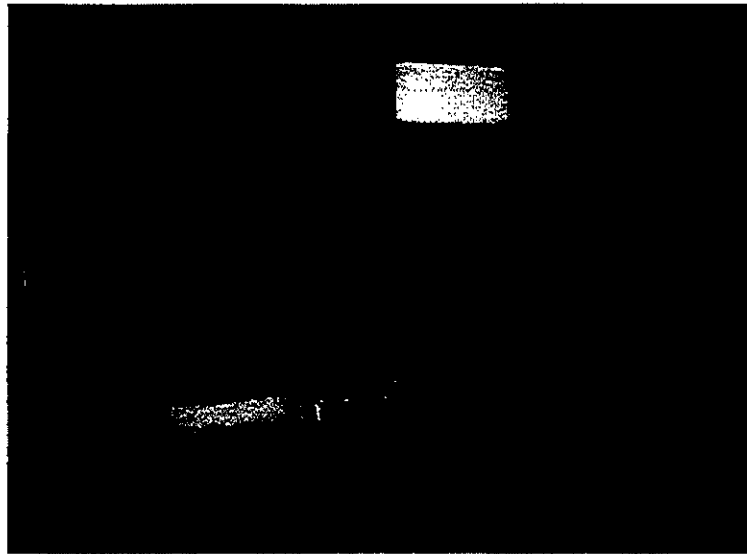




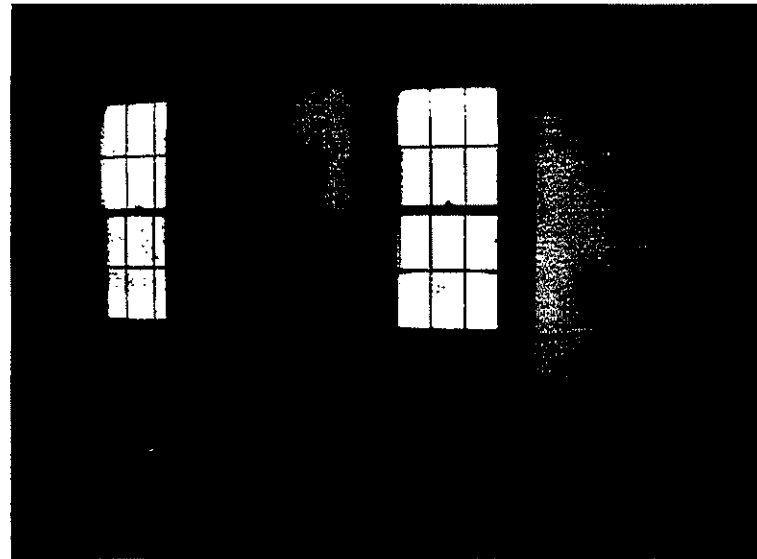
Northwest Room East Wall



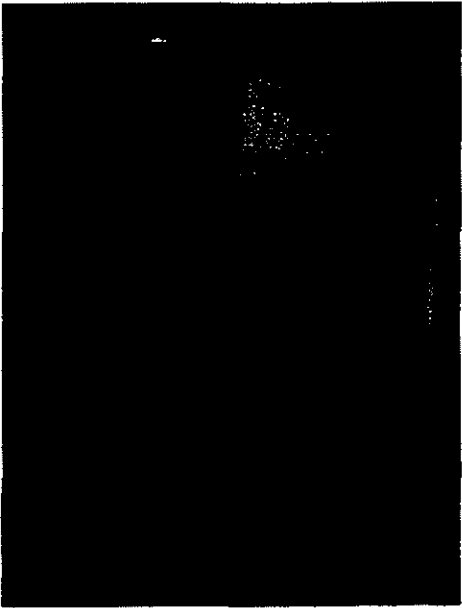
Northwest Room North Wall



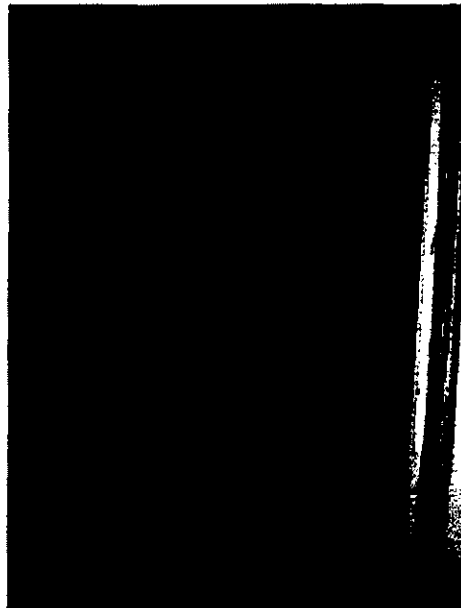
Northwest Room South Wall



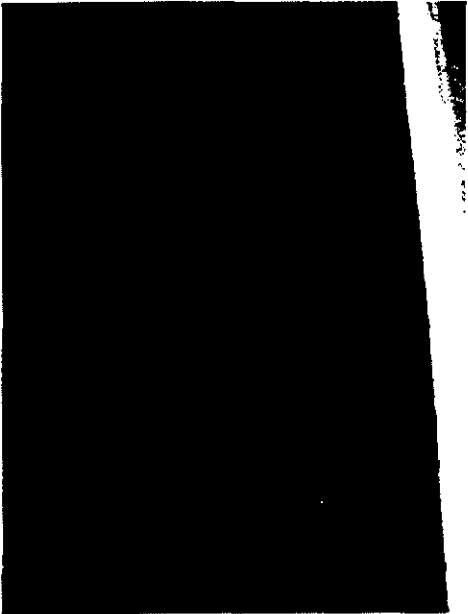
Northwest Room West Wall



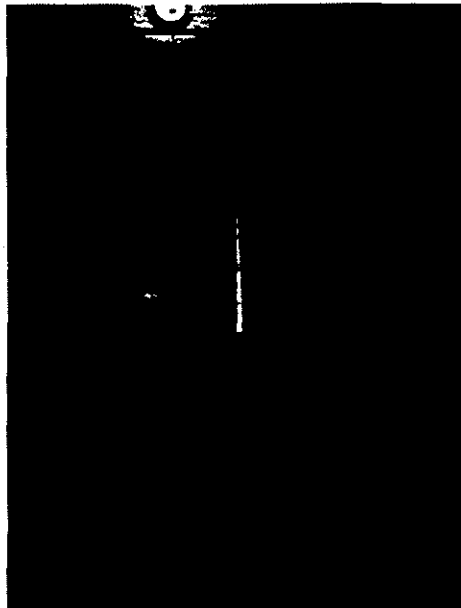
Rear Second  
Floor Hallway  
(1)



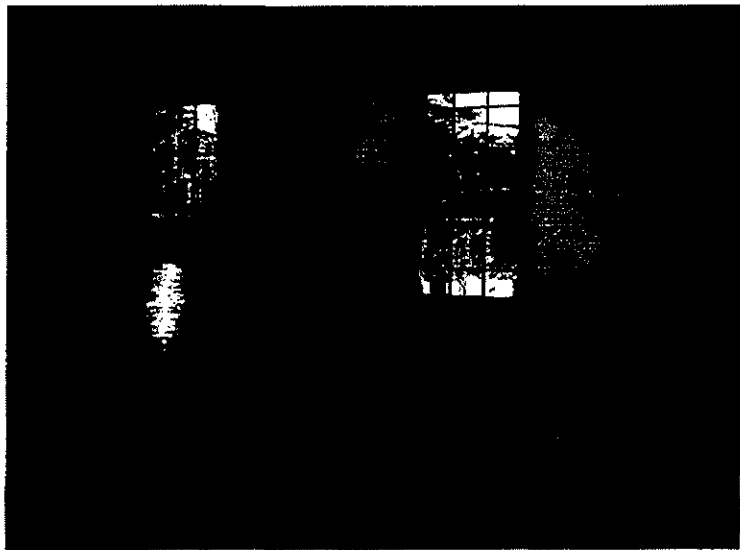
Rear Second  
Floor Hallway  
(2)



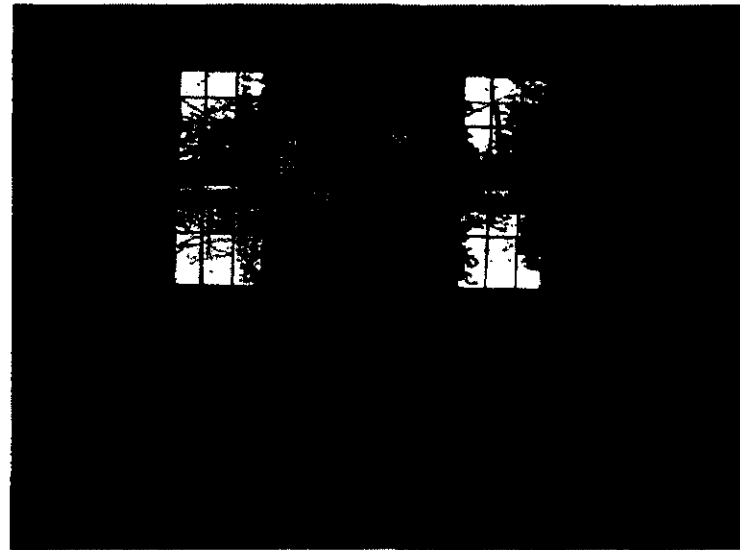
Second Story  
South  
Stairwell  
Staircase



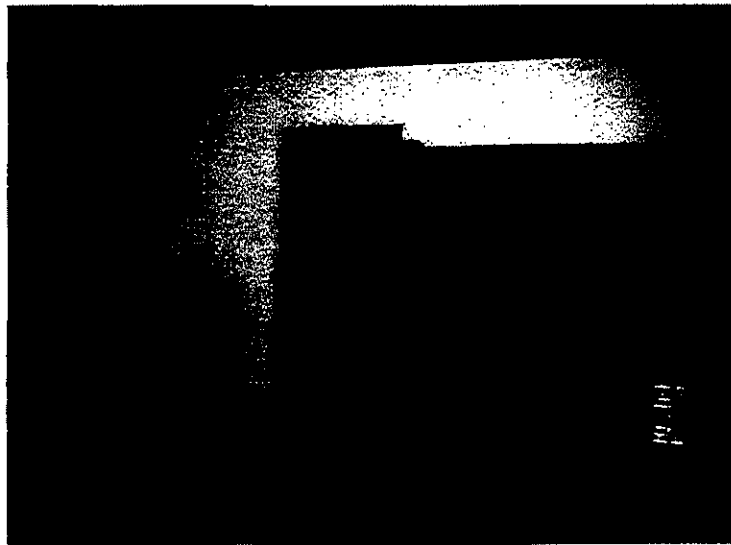
Second Story  
South  
Stairwell  
Facing West



Second Story Northwest Chamber East Wall



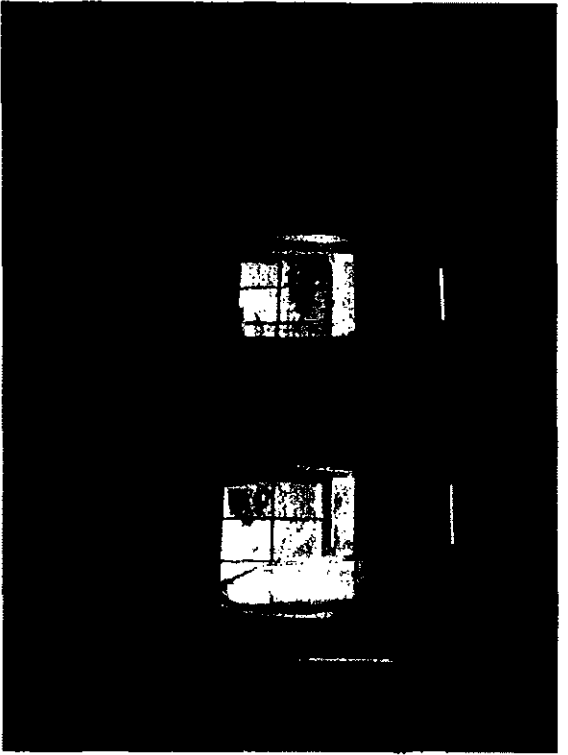
Second Story Northwest Chamber North Wall



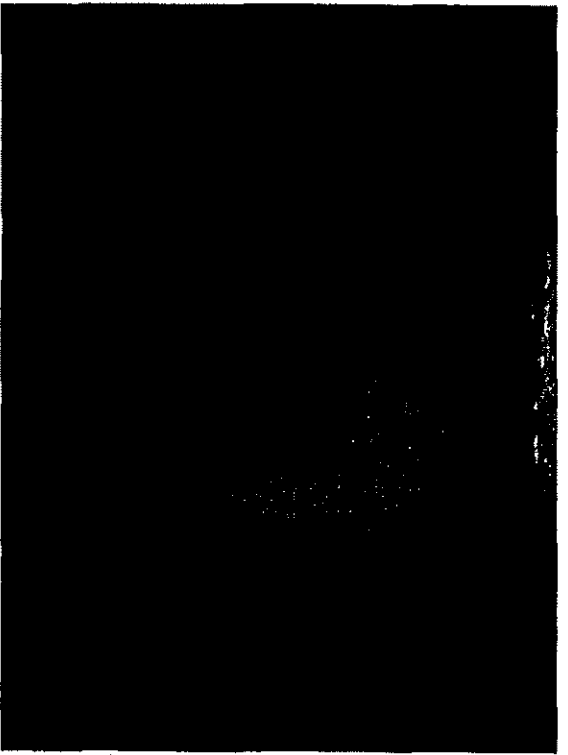
Second Story Northwest Chamber South Wall



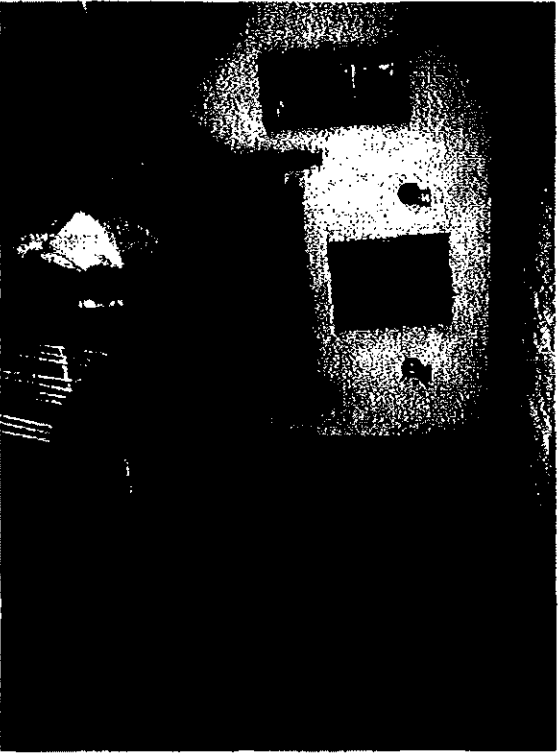
Second Story Northwest Chamber West Wall



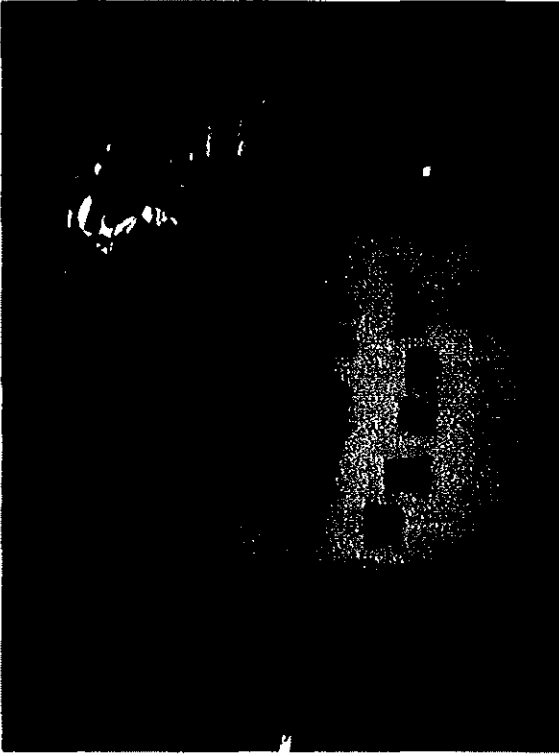
Second Story Southeast Chamber East Wall



Second Story Southeast Chamber North Wall



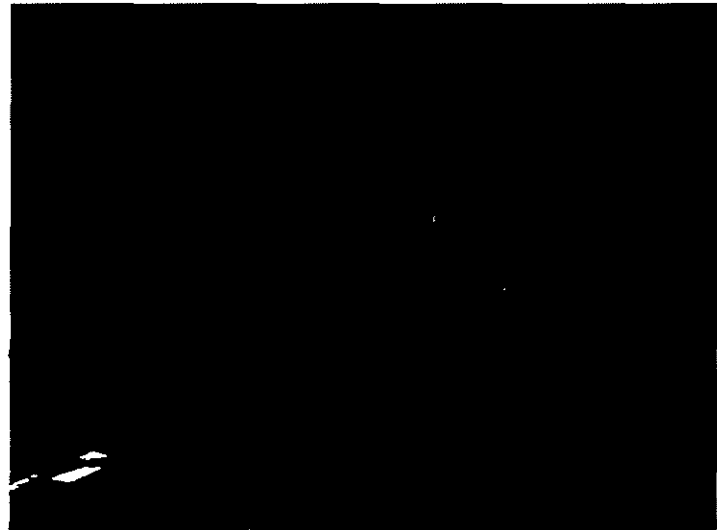
Second Story Southeast Chamber South Wall



Second Story Southeast Chamber West Wall



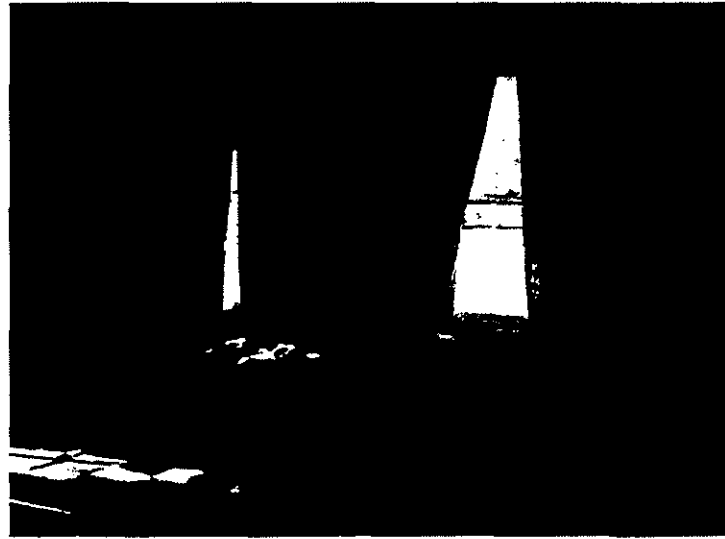
Second Story Southwest Chamber East Wall



Second Story Southwest Chamber North Wall



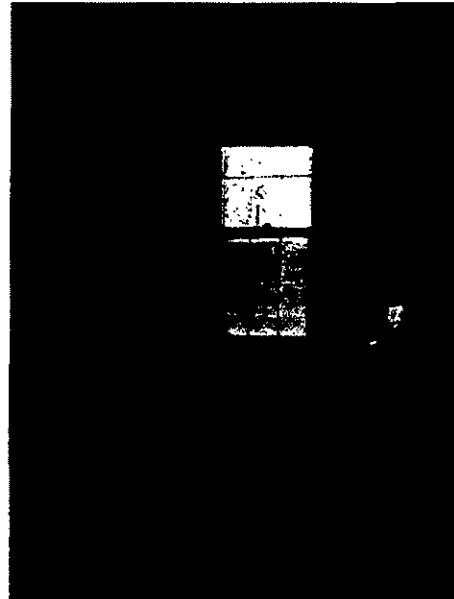
Second Story Southwest Chamber South Wall



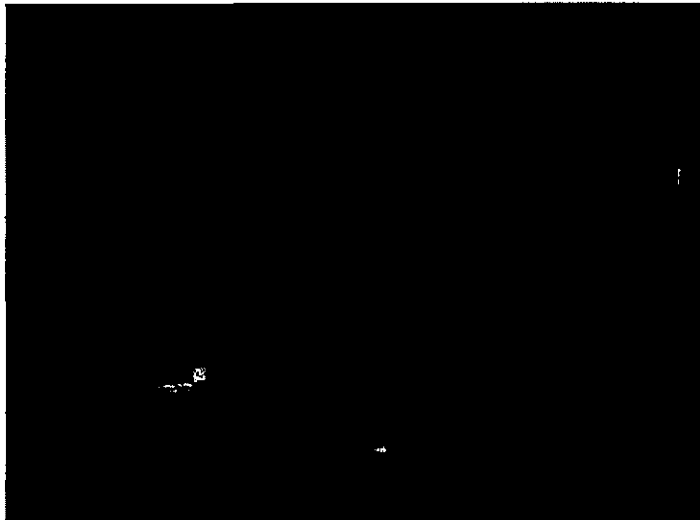
Second Story Southwest Chamber West Wall



Second  
Story West  
Landing  
Facing East



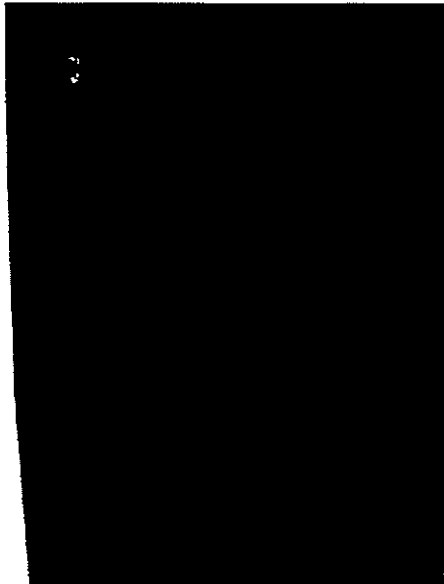
Second  
Story West  
Landing  
Facing West



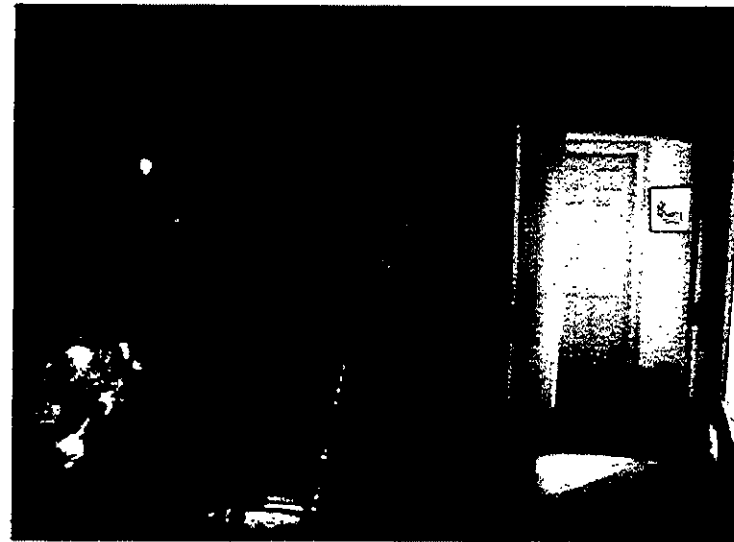
Second Story West Rear Hall



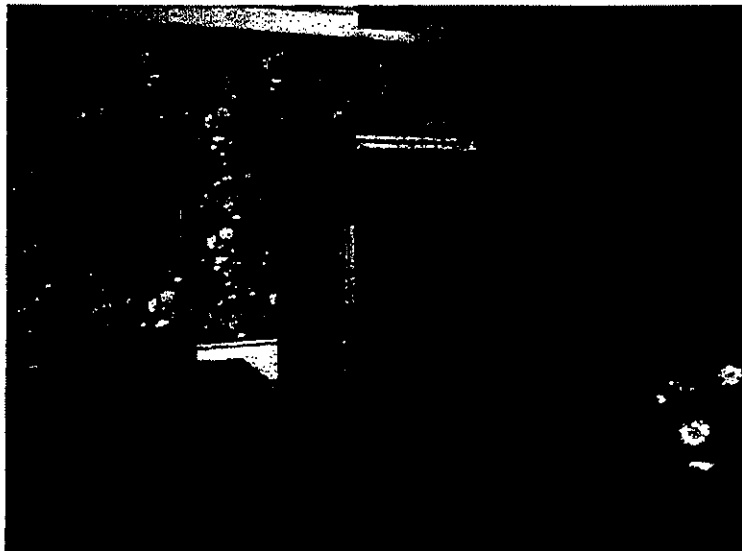
South Side  
Entryway  
Door



South Side  
Entryway  
North Wall



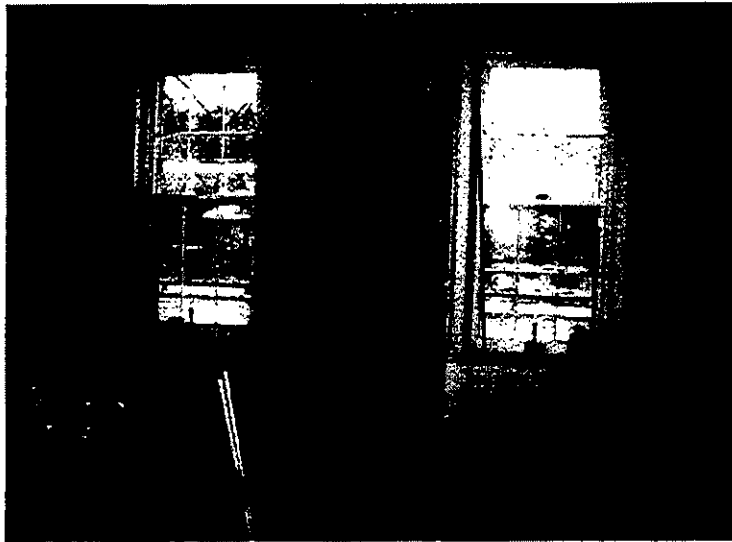
Southwest Room East Wall



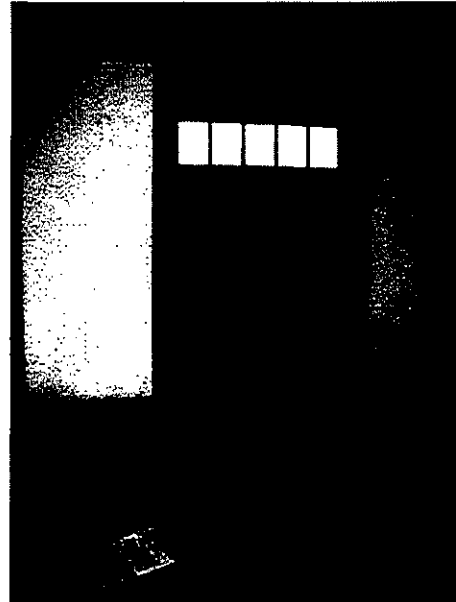
Southwest Room North Wall



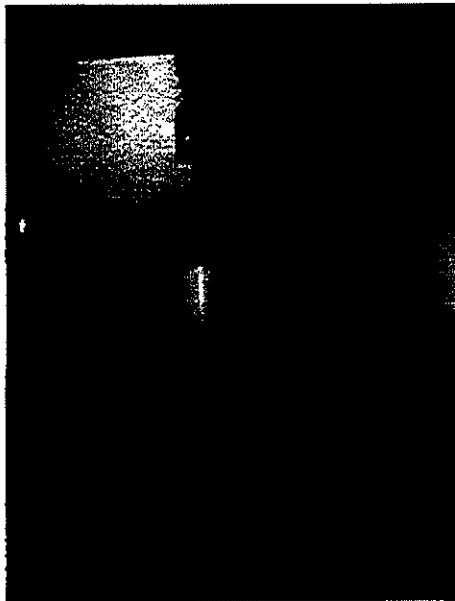
Southwest Room South Wall



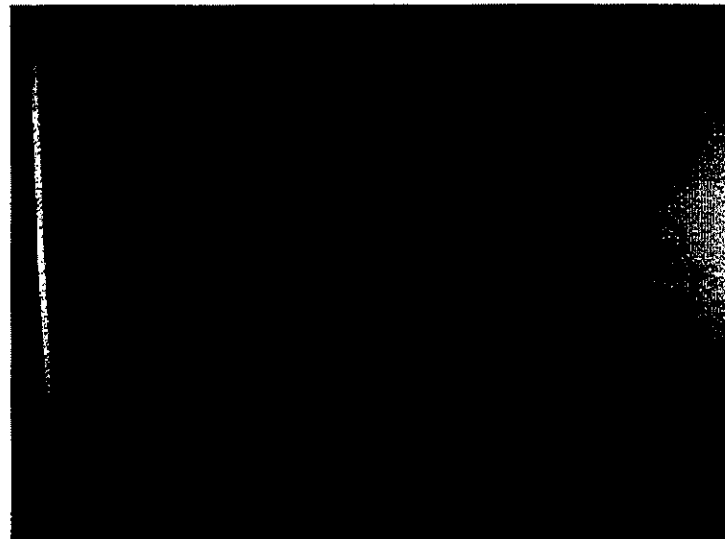
Southwest Room West Wall



West Front  
Entrance  
Facing West

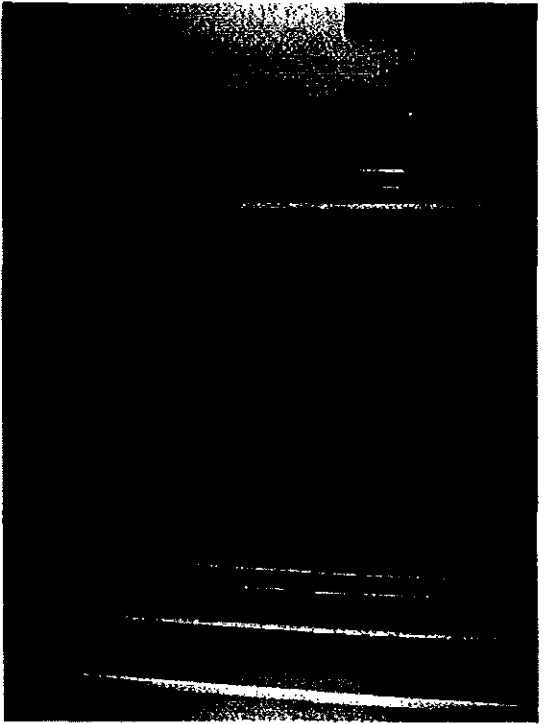


West Front  
Entrance  
Stairhall  
Facing East



West Rear Entrance Facing East





West Rear Entrance Facing West



West Rear  
Entrance Stairs

**EXHIBIT C-1**

**1903 Plan**

Kerrick Terrace

200 ft. from

Kerrick St.

27.36

73.64

120.

120.

120.

5.33 S.E.

27.04

73.96

101.

5.33 S.E.

121.90

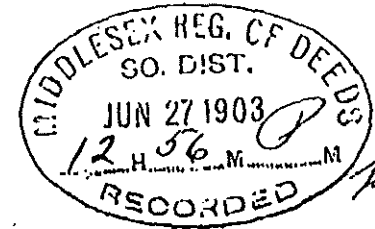
120.36

Hubey

HOUSE

12234 sq. ft.

Heirs of Anna C. Kerrick & M. M. Taylor



200 ft. from  
Kerrick St.

101.

Waverley Ave.

Page 38

Plan of Land in Newton

Scale, 1 in. = 40 ft.

(3045)

E. S. SMILIE, SURV.

JUN 2, 1903.

COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX S.S. 3.22.11

SOUTH DIST REGISTRY OF DEEDS  
CAMBRIDGE, MA

I HEREBY CERTIFY THE FOREGOING  
IS A TRUE COPY OF

PLAN # \_\_\_\_\_ OF \_\_\_\_\_

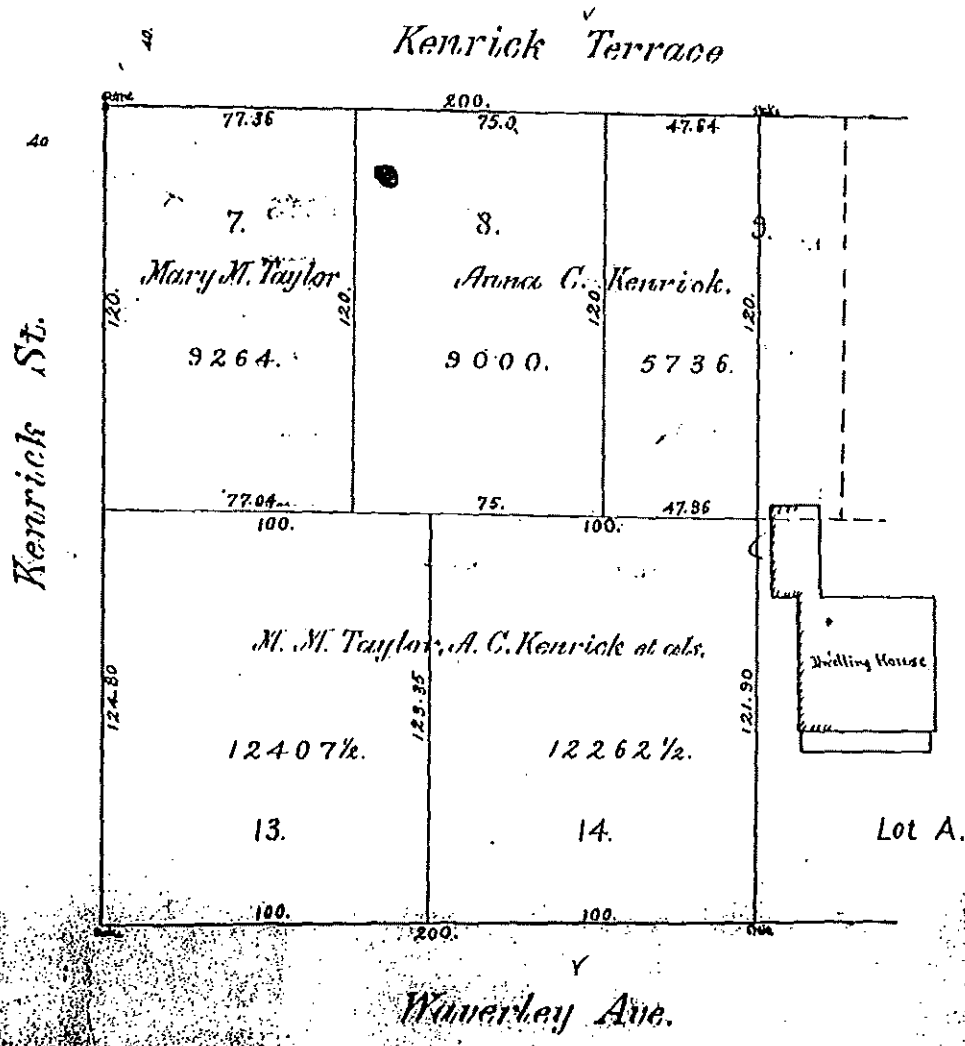
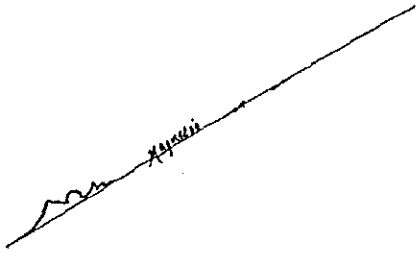
RECORDED IN  
BOOK 3045 PAGE End

*Eugene C. Burns*  
Register

**EXHIBIT C-2**

**1899 Plan**

3 15 P  
 1850



*Plan of a part of the estate of John Kenrick  
 as owned by Mary M. Taylor and Anna C. Kenrick*

COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX S.S. 3.22.11  
SOUTH DIST. REGISTRY OF DEEDS  
CAMBRIDGE, MA

I HEREBY CERTIFY THE FOREGOING  
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BOOK 2773 PAGE End

*Eugene C. Bruce*  
Register

## EXHIBIT D

### Architectural Description of Significant Features

The Durant Kenrick House, built circa 1732, faces west toward Waverley Avenue on an approximately one-acre site that slopes up gradually from the street to the house. The site, which includes a second lot north of the house noted for its towering copper beech tree, contains a mix of lawn and plantings, some of which may be survivors from the Kenrick Nursery period. The northern boundary of the property is Kenrick Street. The neighborhood in which the house is located is characterized by substantial mid-to-late 19<sup>th</sup> and early 20<sup>th</sup> century houses and is dotted with large ornamental trees that are remnants or descendants of nursery specimens.

The Durant Kenrick House is five bays wide with a slightly asymmetrical plan, and two-and-one-half stories in height with a gambrel roof and a full raised lean-to across the rear (east) side of the building. The lean-to roof springs from the curb of the gambrel roof. A circa 1876 two-story, gable-roofed ell (demolished 2011), appended to the rear of the building, extended beyond the north wall of the main structure by about six feet. A woodshed and small additional storage building (demolished 2011), both with shed roofs, were attached to the east end of the ell. A garage, built in 1925 (demolished 2011), was located southeast of the house.

The west slopes of roof are covered with wood shingles. The rest of the roof is clad with asphalt shingles. The exterior walls are clapboarded. Some clapboards, distinguished by their narrow weathers and skived ends, survive from the 18<sup>th</sup> or early 19<sup>th</sup> centuries. The foundation is of fieldstone reinforced in places with cement. Plain boards trim the eaves and the corners of the main building and the ell. A simple molded cornice runs across the eave of the west façade below a gutter. The mid-18<sup>th</sup>-century central doorway on the west façade is composed of fluted pilasters in either of paneled door. Above are transom lights and a flat entablature, embellished with a small dentil course. There is a circa 1835 doorway in the Greek Revival style on the south façade in which a molded architrave with corner blocks surrounds the door and sidelights. On the east façade, a simple doorway enters onto a porch added in 1925.

The windows on the west façade and on the north and south elevations of the front rooms and attic are more or less symmetrically placed and vertically aligned. The window frames, now containing Colonial Revival 6/6-replacement sash, are the original plank-framed ones with molded window heads above. Elsewhere the window frames are smaller and less symmetrically placed. Those on the second floor of the lean-to date from the period circa 1800 when the lean-to was raised to two stories with the exception of one recent replacement window. All window sash, except the circa 1876 west windows of the ell, date from the late 19<sup>th</sup> or 20<sup>th</sup> centuries.

In plan, the main part of the Durant Kenrick house is two rooms deep on both floors. Four rooms are disposed on either side of a broad central passage that is divided into front and rear halls. Chimneys that serve fireplaces in all but the northeast chamber are



placed between the front and rear rooms. There is a cellar under the front rooms. Above the west rooms is finished attic. A unfinished attic is found above the lean-to rooms. The ell contains four rooms on two floors.

### **Description of Interiors**

The timber frame of the house is concealed everywhere except in the attics, the cellar and closets. Historic plaster on split wooden lath is found in most ceilings and walls. Areas where early plaster has been replaced by modern sheetrock are noted in the Historic Structure Report. Doors with their trim are in keeping with the decorative treatment of the various parts of the house, being Georgian doors with two or four raised-field panels in the west rooms, Federal style flat-panel doors of circa 1800 in the library and upstairs east rooms, and modest circa 1876 Victorian style doors or modern replacements in the ell. Floors throughout the house are early, if not original, wide board floors. In the second floor east rooms and in the ell wooden floors date from circa 1800 and 1876 respectively. In the kitchen modern tongue-in-groove flooring is found.

### **Northwest room**

The northwest room, the largest first floor room in the house, preserves its historic Georgian woodwork. The focal point of the room is the chimneybreast with two overmantel panels. The panels are surmounted by an entablature that breaks forward from the room's cornice and repeats elements of the cornice. Below these elements a cyma-molded architrave further accents the chimneybreast. An architrave around the firebox is similar in design to the door casings.

The room has four windows with paneled window seats below and paneled shutters that fold back into the window embrasures. The outer trim of the window is an extension of the intermediate member of the cornice molding that turns 90 degrees and forms the side frame of the windows. Two narrow two-panel doors flank the chimneybreast on the east wall of the room, and a wider two-panel door gives access from the hall. The walls are plain plaster.

No posts are visible in the northwest room. Those in the outer corners are hidden behind the outer walls that were brought forward into the room to allow construction of the window seats. The intermediate sidewall posts are behind the fireplace wall. The ceiling framing is concealed.

The wide board floors preserve the stenciling of the 1790s as restored in 1925. In the northeast quadrant of the room, where they were cleaned in 1980, the stencils are most clearly visible.

### **Northwest chamber**

The northwest chamber repeats the woodwork in the northwest room, but without the window seats. Ceiling framing is concealed in the room, but the posts in the west corners of the room are visible in beaded cases. This room preserves wide board floors with the stencils restored in the 1920s, though the stencil designs are now very faint.

### **Front stair hall**

The ample, eight-foot-wide stair hall is notable for its high ceilings embellished with cornice moldings, its paneled dado and its elaborate staircase that now incorporates balusters of two different periods. Original balusters, three turnings per step, are found on the upper run of the stairs and on the balustrade on the second floor. Cut out step ends are also original. The simple balusters, square in section, and newel post of the lower run date from a remodeling in the Federal period circa 1800. Floor stencils, repainted in 1925, are now concealed under later paint.

### **Southwest room**

The southwest room was partially redone in the Federal period. The design of the mantelpiece in the room was taken Asher Benjamin's *American Builders' Companion* published in 1806. The flat panel dado is consistent with that period. Window and door frames were also updated in the Federal period. The tiles flanking the firebox are more in keeping with mid-eighteenth century decoration. The articulated posts and beams in beaded cases appear to be survivals from the earlier period. Traces of the stencils as restored in the 1920s remain on the floor.

### **Southwest chamber**

This room preserves its original woodwork intact including a paneled chimneybreast with the bolection molding around the firebox. All of the framing in this room is visible in cases below the ceiling or in front of the walls. Remnants of early plaster parging are seen inside the firebox. The stencil designs of the 1920s are barely visible.

### **Kitchen**

The kitchen was restored in 1925 to suggest its earlier appearance by replacing the previously existing fireplace wall finish materials with vertical sheathing removed from a partition in the attic. The vertical feather edged paneling on the south wall of the kitchen has been in place since the house's construction, being a typical finish treatment for utilitarian spaces in a 1730s house. Arthur Dewing installed a leaded glass casement window from Canterbury, England in the east wall during his ownership in the 20<sup>th</sup> century.

### **Library**

The walls of this room are covered with bookcases that were installed in the 1920s to replace earlier shelves shown in a historic photograph. The mantelpiece is a later copy intended to suggest a circa 1800 design. The post and beam cases are modern.

### **Southeast chamber**

This chamber, low ceilinged like the other rear rooms of the house, preserves simple woodwork from the Federal period circa 1800.

### **Northeast chamber**

The chamber displays simple Federal period finishes materials and has always been unheated.

### **Rear Stair hall**

Original vertical sheathing, the reverse of that in the kitchen, lines the north wall of the hall on the first floor. Doors in the hall lead to the exterior, the kitchen, the front stair hall, the cellar and the staircase to the second floor. The staircase is enclosed on the first floor. On the second floor simple balusters, square in section, and plain newel posts attest to the circa 1800 installation of the staircase at the time that the lean-to roof was raised. The second floor stair hall, simply finished, is also an important circulation space and includes an enclosed staircase to the lean-to attic, as well as doors to the adjoining rear rooms and a door to the northwest chamber, two steps up.

### **Bathroom**

The bathroom, carved out of the second floor of the rear hall, installed originally around the turn of the 20<sup>th</sup> century, now contains a shower stall and fixtures from circa 1970.

### **Attic**

Attic stairs:

There are two sets of stairs to the attic. The south stairs consist of a set of ingenious winders that offer access to the lean-to attic half way up and then rise above a plastered soffit to the main attic. The second stairs, installed circa 1800, give access to the lean-to attic directly, but are also connected to the main attic by a second short flight of steps.

Main Attic:

The spacious main attic is now finished with plaster walls and ceilings that cover all framing except the rafters of the lower deck of the roof. The attic retains a small fireplace served by the south chimney. The fireplace has been closed off with modern boarding. South of the fireplace are remnants of the kind of sheathing that Arthur Dewing removed from the attic and installed in the kitchen.

Lean-to attic:

The lean-to attic is unfinished. The space preserves evidence that a lower lean-to was part of the original construction. The original rafters for the lower lean-to remain in the north and south walls, laid against the lower ends of gambrel rafters. When the roof was raised, rafters were extended from the upper deck of the gambrel roof at an angle shallow enough to permit a full second story. What had been the original exterior of the lower roof deck was captured inside the new roof, providing a time capsule of roof finishing practices of some 200 years ago. Reinforcements from the 1920s and 1976 are found in the lean-to attic.

### **Cellar**

Just under the front rooms of the building, the cellar foundation walls are of faced rubble stonework. A set of early puncheon stairs, in which logs square or triangular in section were set on stringers or laid on dirt, survives in the cellar. The south chimney foundation is of solid stone and brick. The north foundation is a relatively narrow arch of stone and brick.

**Ell (demolished 2011)**

The ell, rebuilt after a fire in 1875, contained four rooms and a bathroom. Surviving elements of the ell's original construction were limited to plain-board window and door casings and baseboards, period west window sash, two Victorian four-paneled doors, original wood floors in one room, and period plaster. Changes made by the Dewings, or later for resident overseers, included installation of a hollow-core door and other modern doors, windows in recent styles inserted for convenience, vinyl flooring, wall-to-wall carpeting, and kitchen cabinets and bathroom fittings from the second half of the 20<sup>th</sup> century. The second floor east room, added in the 1920s was finished as a sleeping porch with large windows on the east and south sides and a screened panel covered with a shutter on the north side.