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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" or "Grantee"), and the Newton Housing Authority., a Massachusetts public authority established by Chapter 479 of the Acts of 1982 located at 82 Lincoln Street, Newton, MA 02461 (herein together with successors, administrators and assigns "Owner" or "Grantor").

**RECITALS**

WHEREAS, Owner, pursuant to the Quitclaim Deed dated January 8, 2021 and recorded with the Middlesex South Registry of Deeds in Book 76817, Page 36, is the owner of the "Historic House Building (as defined in the Master Deed of 236 Auburn Street Condominium dated April 23, 2020 and recorded with the Middlesex South Registry of Deeds in Book 74545, Page 376 (the "Master Deed")) located at 236 Auburn Street, Newton, Massachusetts, which is contained within "Unit Two" in the 236 Auburn Street Condominium and consists of approximately .43 acres of land and a single family house (hereinafter "the Historic House") and a duplex house of new construction, as more particularly described in the aforesaid Master Deed and in Exhibit A, attached hereto and incorporated herein, and on a plan entitled "Site Plan of 236 Auburn Street Condominium, 236 Auburn Street, Newton, MA." prepared by Everett M. Brooks Co., , and recorded at the Middlesex South Registry of Deeds as Plan #289 1/4 of 2020, a copy of which is attached hereto and incorporated herein as Exhibit B, together with all improvements thereon.

WHEREAS, the Historic House protected by this Agreement consists of a single family house, which is further described and depicted in a series of six (6) photographs attached hereto and incorporated herein as Exhibit C, copies of which baseline photographic depictions are on file with the City, and in the Architectural Description of Significant Features attached hereto and incorporated herein as Exhibit D.

WHEREAS, the Historic House is historically significant for its architecture, and/or associations and qualifies for the protections of perpetual preservation restrictions under M.G.L. Chapter 184, sections 31, 32 and 33 (hereinafter "the Act").

WHEREAS, the Historic House is included in the Inventory of Historic and Archaeological Assets of the Commonwealth maintained by the Massachusetts Historical Commission (Inventory No. NWT.2191).

WHEREAS, the Act authorizes the creation and enforcement of preservation restrictions appropriate to the preservation of a structure or site historically significant and for its architecture, archaeology, and/or associations, and Owner and City recognize the historic architectural and associative significance of the Historic House and have the common purpose of conserving and preserving the aforesaid value and significance of the Historic House. To that end, Owner desires to grant to City, and City desires to accept, the Preservation Restrictions set forth in this Agreement, pursuant to the Act.

NOW, THEREFORE, in consideration of a Newton Community Preservation Fund grant in the amount of \$977,700.00, and for other good and valuable consideration, the receipt of which is acknowledged, Owner does hereby grant, and convey to City and its successors and permitted assigns a preservation restriction in perpetuity and for preservation purposes over the Historic House. Owner herein declares that the Historic House shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, and restrictions hereinafter set forth, which covenants, conditions, and restrictions shall be deemed to run with the land in perpetuity and to burden the Historic House in perpetuity, so long as they remain in force and effect, and that the Owner conveys the following restrictions and covenants to the City, :

## **1. 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 Historic 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 Historic House. "Historic House" shall mean and include all portions of the main house including the foundation, front and rear porches as it currently exists as of the date of this Agreement. Parties recognize that the house was relocated from its original location to a different location on the site to create room for new residential structures. These new structures and the grounds upon which they are located are not covered by this Agreement.

1.2.3 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).

1.2.4 Façade(s) and Elevation(s). "Façade(s) and elevation(s)" shall include, without limitation, all exterior doors, door frames, roofs, roof sheathing, 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 Premises, facing Auburn Street, shall be called the north facade, the rear elevation of the house shall be called the south facade and the other facades of the Premises shall be called the east and west facades, based upon such facade's orientation relative to the south facade.

1.2.5 Protected Features. "Protected Features" shall mean the entire exterior envelope of the Historic House including the front and rear porches and those historical and architectural features

specifically identified in Exhibit D, Architectural Description, of this Agreement.

### 1.3 Exhibits.

1.3.1 Legal Description. Attached as Exhibit A and incorporated herein by reference is the legal description of the Historic House , excerpted from that certain deed recorded with the Middlesex South Registry of Deeds at Book 76817 Page 36.

1.3.2 Plans. Attached as Exhibit B and incorporated herein by reference is a copy of the Site Plan of 236 Auburn Street Condominium, 236 Auburn Street, Newton, MA dated January 10, 2020, by Everett M. Brooks Co. as recorded in Middlesex South Registry of Deeds Book of Plans 2020 as Plan #289 1/4\_of 2020\_.

1.3.3 Documentary Photographs. In order to establish with more certainty the condition of the Historic House and the character of the Protected Features as of the date hereof, attached hereto as Exhibit C and incorporated herein by reference are five (5) exterior photographs and one (1) interior photograph for a total of six (6) photographs taken by the Owner on February 17, 2020. It is stipulated between Owner and City that such copies accurately represent the exterior and interior condition of the Historic House and the character of the Protected Features on the date hereof and as of the date this Agreement is first recorded with the Registry

1.3.4 Architectural Description of Significant Features. Attached hereto as Exhibit D and incorporated herein by reference is an Architectural Description of Significant Features.

1.3.5 Restriction Guidelines. Attached hereto as Exhibit E and incorporated herein by reference are Restriction Guidelines included to clarify the terms of the preservation restrictions set forth in this Agreement.

## **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 exterior of the Historic House as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit C, including, but not limited to:

- 2.1 bay left façade with a low sloped roof
- 2.2 extended eave with returns that are heavily bracketed with pairs of supports at each corner
- 2.3 deeply set, front and side windows have high corniced, bracketed heads and scrolled sills
- 2.4 an original pair of are located over the entry
- 2.5 wood clapboards, corner/water table/frieze trims are found on the front, rear, and side exteriors
- 2.6 flat roofed open entrance porch with wide overhangs and decorative brackets, original Italianate style double doors at front entrance

### 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 Historic House as they exist as of the date of this Agreement, documented in the photographs attached hereto as part of Exhibit C:

3.1 marble fireplace surround

### 4. CHANGES, ADDITIONS, USES, MAINTENANCE AND OTHER ACTIVITIES.

4.1 Owner's Covenants: Covenant to Maintain. Subject to Sections 2 and 3, the terms and conditions of this Restriction and such other terms and conditions as the City may reasonably impose to accomplish the purposes of this Restriction, Owner covenants at all times to maintain the Historic House in good and sound state of repair 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. Subject to the casualty provisions of Sections 10, 11 and 12, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction of the Historic House 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) as these may be amended from time to time (hereinafter called the "Secretary's Standards").

Subject to the casualty provisions of Sections 10, 11 and 12, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Historic House whenever necessary in accordance with the policies and procedures of the City and in accordance with the Secretary's Standards (see first reference in Section 4.1 above).

Should the City and the Owner disagree regarding either the need for maintenance or how such maintenance shall be done, the parties agree to follow the dispute resolution provisions of Section 16.

4.2 Cost of Maintenance. Owner shall assume the total cost of continued maintenance, repairs and administration of the Historic House in order to preserve the protected architectural and historic features, materials, appearance and workmanship of the Historic 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. The City recognizes that the Owner will rely on income from operations and rental of the Historic House, as well as continued fund-raising activities in order to pay for such maintenance

4.3 Owner's Covenants: Prohibited Activities. Owner shall not permit any uses to be carried on, in or around the Historic House that are unlawful or constitute a nuisance.

In order to protect against accidental damage, and with the exception of existing gas central heating or hot water systems, or their planned replacements as approved by the City, the use of open flame heating elements including but not limited to candles, Sterno-type burners, and barbecue grills is hereby prohibited within the Historic House and within 50 feet of the Historic House.

The following additional acts or uses are expressly forbidden except as otherwise conditioned in this section:

- a. the Historic House shall not be demolished, removed, or razed except as provided in Sections 10, 11 and 12;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited around or near the Historic House;
- c. no above-ground utility transmission lines, except those reasonably necessary for the existing Historic House, may be connected to the Historic House, as it exists of the date of this Agreement, subject to utility easements already recorded;
- d. no additions and/or outbuildings may be attached to the Historic House without prior approval of the City; and
- e. moving the Historic House to another location shall be forbidden without prior approval of the City.

4.4 Additions & Changes. Any changes which would impact the building facades or roof of the Historic House, and any new construction or structural additions to the Historic House must be reviewed and approved by the City prior to application for a building permit. The City will give special attention to changes that may affect the key architectural features (Significant Features) of the property including the elements listed in Exhibit D, Architectural Description. In furtherance of the foregoing provisions, and not by way of limitation, Owner shall not make any changes to the Historic House, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the Historic House, without the prior approval of City given pursuant to the provisions of this Agreement. Similarly Owner shall not make any alterations to the Historic House, that would obscure the public's current view of the Historic House from Auburn Street.

4.5 Additional Structures. No new structure may be erected or placed within the boundaries of the parcel of land, as it exists of the date of this Agreement, containing the Historic House hereafter without prior written approval of City, except as provided for in this Section 4.

4.6 Newly Discovered Historic Features. The Owner will report to the City and seek City approval for the treatment of any additional potentially historically significant features that are not listed in Exhibit D but that are discovered through further repairs, ground disturbance or excavation.

4.7 Signs. All signs that shall be placed on, painted onto or affixed to the Historic House are

subject to City's prior written approval.

**4.8 Compliance with Law.** Nothing contained in this section 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 Historic House or any protected element thereof shall be undertaken without the prior written approval of City.

## **5. OWNER'S CONDITIONAL RIGHTS REQUIRING CITY APPROVAL.**

Subject to Section 4 and the terms and conditions of this Restriction and such other terms and conditions as the City may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the Historic House without prior express written approval of the City.

## **6. CONDITIONAL RIGHTS REQUIRING THE APPROVAL OF THE MASSACHUSETTS HISTORICAL COMMISSION.**

The conduct of archeological activities within the legal boundaries of the property that includes the Historic House, 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.

## **7. OWNER'S RESERVED RIGHTS NOT REQUIRING FURTHER APPROVAL BY THE CITY.**

Activities by Grantor to maintain the Historic House which are intended to be performed in accordance with the provisions of Section 4.1, and which are of a minor nature, shall not require the prior approval of the City. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines (Exhibit E), which are attached to this Agreement and hereby incorporated by reference.

Without limiting the generality of the foregoing, Owner and City agree that the Historic House may be used as affordable rental housing for families of low-to-moderate income; for any other purposes allowed by the funding agreements entered into by the Owner and the permits, including the Comprehensive Permit, received by the Owner in 2017-2020 for the rehabilitation of the Historic House; or for any other purposes permitted under the Zoning

Ordinance of the City of Newton that are also consistent with the requirements of said funding agreements and permits.

Subject to the provisions above and of Sections 2 and 4, the Grantor has the right, without further approval by the City:

- a. to maintain and repair the Historic House strictly according to the Secretary's Standards. As used in this sub-section, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the Historic House. The right to maintain and repair as used in this sub-section shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the City in accordance with the provisions of Section 5.

#### **8. REVIEW OF OWNER'S REQUESTS FOR APPROVAL.**

For any action by the Grantor that requires prior written approval by the Grantee, as set forth in this Agreement, Grantor shall submit a written request for such approval which must include the following information identifying the proposed activity with reasonable specificity: a description of the proposed activity; plans; specifications; and designs, where appropriate. Within forty-five (45) days of the City's receipt of Grantor's written request for approval hereunder, the City 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 City shall provide Grantor with written suggestions for modification or a written explanation for the City's disapproval. Any failure by the City 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 City of the plan or request as submitted, so long as the request sets forth the provisions of this section relating to approval due to failure of the City to act provided however that nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

#### **9. STANDARDS FOR REVIEW.**

In exercising any authority created by this Restriction to inspect the Historic House; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Historic House following casualty damage, the City shall apply the Secretary's Standards.

#### **10. INSURANCE.**

10.1 Insurance Coverage. The Owner shall maintain all-risk property insurance covering the replacement value of the Historic House, including the cost of replacing historic features protected by the recorded Preservation Restriction in compliance with The Standards for

Reconstruction stated in the Secretary's Standards.

**10.2 Other Requirements.** Every policy required pursuant to this Section 10 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.

**10.3 Changes in Practice.** City reserves the right to change the coverage requirements provided under this Section 10 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.

## **11. CASUALTY DAMAGE OR DESTRUCTION.**

In the event that the Historic House shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Owner shall notify the City in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Historic House and to protect public safety, shall be undertaken by Owner without the City's prior written approval of the work. Within sixty (60) days of the date of damage or destruction, if required by the City, Owner at its expense shall submit to the City a written report prepared by a qualified restoration architect and an engineer who are acceptable to both the Owner and the City, 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 Historic House and/or reconstruction of damaged or destroyed portions of the Historic House; and
- c. a report of such restoration/reconstruction work necessary to return the Historic House to the condition existing at the date hereof or the condition subsequently approved by the City.

If the Owner and the City agree that the Purpose of the Restriction will be served by such restoration/reconstruction, the Owner and the City shall establish a schedule under which the Owner shall complete the restoration/reconstruction of the Historic House in accordance with plans and specifications consented to by the parties.

If the Owner and the City agree that restoration/reconstruction of the Historic House is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, the following provisions will apply:

**11.1 Repayment of CPA Funds.** The Owner shall assign to the City of Newton Community Preservation Fund a portion of the insurance proceeds equal to the total funding the Owner has received from that source, up to nine hundred seventy-seven thousand seven hundred dollars (\$977,700).



11.2 Assignment of Additional Funds. In the event that the Owner receives subsequent to this agreement any additional funds for the rehabilitation of the Historic House from the City, through its Community Preservation Fund or otherwise, the Owner shall and hereby agrees that in the event of an agreed upon total loss of the Historic House, it shall assign a proportionally increased amount of the insurance proceeds to the City.

11.3 Arbitration. If the Owner and the City are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/ reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts arbitration statute then in effect, and all other applicable laws, rules, regulations, and ordinances. Arbitrator shall have experience in historic preservation matters.

## **12. CONDEMNATION.**

If the Historic House, 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 Historic House (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.

## **13. 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 Historic House.

## **14. 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.

## **15. INSPECTION.**

City may inspect the Historic House at least annually to ensure that the Owner is in compliance with the preservation restrictions hereby imposed. In addition, City may inspect the Historic House 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 Historic House. 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 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.

## **16. DISPUTE RESOLUTION.**

16.1 Submittal. For any dispute that shall arise between the Owner and the City concerning the terms or conditions of this Agreement or their application in any instance that is not covered by the provisions of Section 11 above, 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 16. The fees and expenses of the agreed upon mediation procedure shall be borne equally between City and Owner.

16.2 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 Section 20 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 20 of this Agreement;
- (d) that such dispute, if any, is subject in the first instance to mediation in accordance with Section 16 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.

**16.3 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 16.3.

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 16.3, 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 17 of this Agreement. The provisions of this Section 16 shall not limit the City's rights pursuant to the provisions of Section 17.

**16.4 Stand-Still Provision.** In consideration for the City's agreement to attempt to resolve disputes first through mediation, the Owner agrees that it will immediately cease any activity cited in a Violation Letter sent to it in accordance with the provisions of Section 20. The owner shall cease such activity from the date the Violation Letter is received until the dispute is either resolved through mediation or the Owner and City fail to resolve the dispute in accordance with the timelines set out in Subsectino 16.3. Should Owner fail to immediately cease any activity cited in a Violation Letter as required under this subsection 16.4, the City may immediately seek injunctive relief or otherwise litigate the subject matter of such dispute in accordance with the provisions of Section 17 of this Agreement.

## **17. ENFORCEMENT.**

**17.1 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 Historic House 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.

**17.2 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 address listed below,

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.

17.3 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 into the Historic House, 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 Historic House or any Protected Features. Without limiting the generality of this Subsection 17.3, 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 17.3, City may furnish labor and material or rental equipment, appliances or tools for the erection, alteration, repair or removal of the Historic House as set forth in this Section.

17.4 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 Historic House 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.

17.5 Mortgage Protection. Any lien which may arise pursuant to this Section 17 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.

17.6 No Waiver. Failure of City to complain of any act or omission on the part of 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 for an activity as required 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.

17.7 Estoppel Certificate. City agrees to deliver to Owner and/or to any holder of a mortgage on the Historic House 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 Historic House, as mutually and reasonably agreed upon by City and Owner, for the purpose of responding to such request or delivers to 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.

## **18. EXTINGUISHMENT.**

Owner and City acknowledge the possibility that circumstances in addition to those subject to the provisions of Section 11.3 above 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 according to the process stated in M.G.L. Chapter 184, Section 32, 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.

## **19. TRANSFERS.**

19.1 Restrictions Run with the Land. Notwithstanding anything to the contrary contained in

any other section of this Agreement, the burden of this Agreement shall constitute a binding servitude and shall run with the land in perpetuity and shall be binding on the Owner's successors and assigns. The Owner shall promptly provide notice to the City of any subsequent change in ownership of the Historic House.

19.2 Subdivision and Leasing. The Historic House shall not be subdivided without City approval. For the purposes of this Agreement, the definition of "to subdivide" shall include to cause any portion of the legal parcel containing the Historic House less than the entirety thereof to be divided, conveyed or made conveyable as a distinct parcel apart from the remainder of the property, 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 Historic House 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."

19.3 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 Historic House. 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 19.3 shall not affect the validity, enforceability or priority of this Agreement or any lien arising hereunder.

19.4 Written Acceptance. Before taking legal possession of the Premises or any portion thereof each new Owner of the Historic House 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.

19.5 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.

**20. 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 Housing Authority  
82 Lincoln Street  
Newton, MA 02461

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.

**21. SUBORDINATION OF PRIOR LIENS.**

Owner represents and warrants to City that the Historic House is not subject to any mortgages, liens, leases, or encumbrances prior in right to this Restriction other than the following: (1) Mortgage granted by Citizens for Affordable Housing in Newton Development Organization to Newton Community Development Authority Affordable Housing Covenant recorded with the Middlesex South Registry of Deeds in Book 70871, Page 508, as amended in Book 73474, Page 1 and in Book 74043, Page 427; (2) The Newton Community Development Authority Mortgage recorded with the Middlesex South Registry of Deeds in Book 74043, Page 420, through an Assignment and Assumption Agreement and consent recorded with the Middlesex South Registry of Deeds in Book 76817, Page 97. The Newton Community Development Authority has subordinated its mortgage to this Preservation Restriction Agreement with its Assent attached hereto and recorded herewith. Owner agrees not to enter into or permit other mortgages, liens or leases affecting the Historic House prior in right to this Preservation

Restriction Agreement.

**22. MISCELLANEOUS.**

The following provisions in this Section 22 shall govern the effectiveness, interpretation and duration of this Agreement:

22.1 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.

22.2 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.

22.3 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 Historic House, 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 Historic House. A person who ceases to hold title to the Historic House 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.

22.4 Amendment. For purposes of furthering the preservation of the Historic House, 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. No amendment shall be made that will adversely affect the qualification of this Agreement or the status of the Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Historic House and the Purpose of this Agreement; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural and historic values protected by this Agreement. Any such admendment shall be effective when the requirements of Massachusetts General Laws, Sections 31-33 with respect to amendments have been met and the amendment is recorded in the Middlesex South 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.

22.5 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.

22.6 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.

22.7 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.

22.8 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.


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IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this  
21 day of December 2021.

Newton Housing Authority

  
By: Amy Zarechian  
Its: Executive Director


CITY OF NEWTON

  
By: Peter Dimond  
Chair, Newton Historical Commission

APPROVED:

  
Ruthanne Fuller, Mayor


Approved as to legal character and form:

  
Alissa Giuliani, City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 21<sup>st</sup> day of December, 2021, before me, the undersigned notary public, personally appeared Amy Zarechian and , proved to me through satisfactory evidence of identification, which was drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he or she is an officer of the Newton Housing Authority as set forth beneath his or her name above, and signed it voluntarily for its stated purpose in such capacity.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 09/11/2026

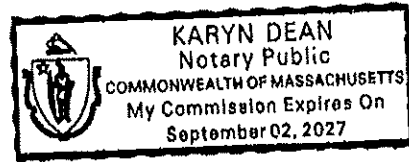


COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 31 day of March, 2022, before me, the undersigned notary public, personally appeared Peter Dimond, proved to me through satisfactory evidence of identification, which was MA LICENSE, 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.

Karyn Dean  
Notary Public  
My commission expires:

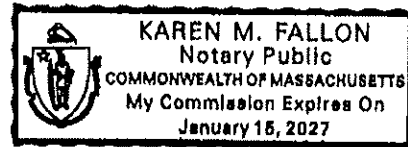


COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 11<sup>th</sup> day of April, 2022, before me, the undersigned notary public, personally appeared Ruthanne Fuller, 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 she is the Mayor of the City of Newton and signed it voluntarily for its stated purpose in such capacity.

Karen M. Fallon  
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.

*Brona Simon*

\_\_\_\_\_  
Brona Simon  
Executive Director and Clerk  
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

On this 20<sup>th</sup> day of April, 2022, before me, the undersigned notary public, personally appeared the above-named **Brona Simon**, proved to me through satisfactory evidence of identification, which was personal knowledge, 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 of the Massachusetts Historical Commission**.

*J. Dorin*

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_



**JOSHUA N. DORIN**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
September 15, 2028



**EXHIBIT A**

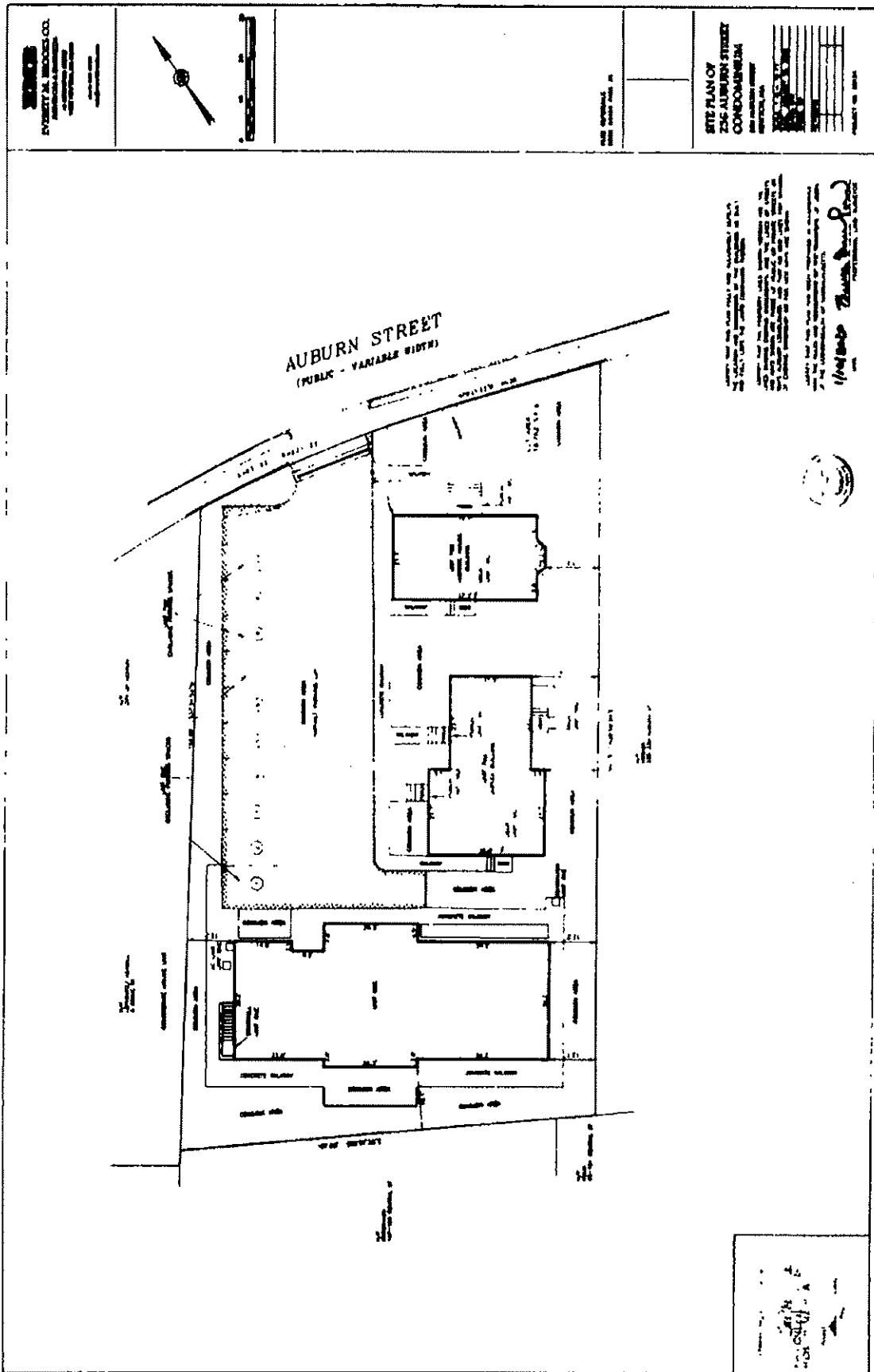
**Legal Description**

The "Historic House Building" (as defined in the Master Deed) located at 236 Auburn Street, Newton, Massachusetts, which is contained within "Unit Two" in the 236 Auburn Street Condominium created pursuant to the Master Deed of 236 Auburn Street Condominium dated April 23, 2020 and recorded with the Middlesex South Registry of Deeds in Book 74545, Page 376 (the "Master Deed").

**EXHIBIT B**

Site Plan of 236 Auburn Street Condominium, 236 Auburn Street, Newton, MA” \_, prepared by  
Everett M. Brooks Co., , and recorded at the Middlesex South Registry of Deeds as Plan #289  
1/4 of 2020

See attached document.



**EVERETT M. WOODS CO.**  
 ARCHITECTS  
 1000 BROADWAY  
 NEW YORK, N.Y. 10018  
 PHONE (212) 691-1000  
 FAX (212) 691-1001



**SITE PLAN OF  
 2345 AUBURN STREET  
 CONDOMINIUMS**  
 PREPARED BY  
 EVERETT M. WOODS CO.  
 ARCHITECTS  
 1000 BROADWAY  
 NEW YORK, N.Y. 10018  
 PHONE (212) 691-1000  
 FAX (212) 691-1001

**AUBURN STREET**  
 (PUBLIC - VARIABLE WIDTH)

THIS PLAN HAS BEEN PREPARED BY THE ARCHITECT AND IS TO BE USED ONLY FOR THE PROJECT DESCRIBED HEREIN. IT IS NOT TO BE USED FOR ANY OTHER PROJECT OR FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY OTHERS.

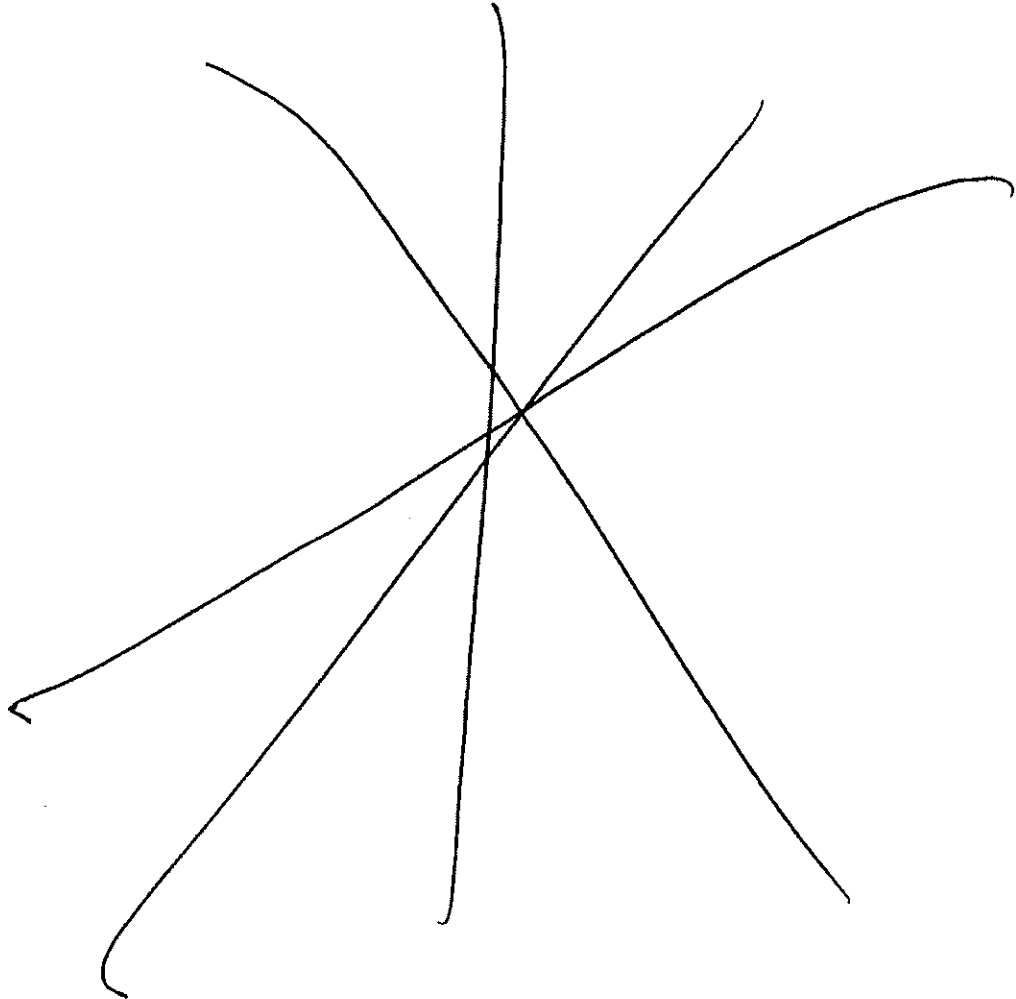
*(Signature)*  
 ARCHITECT

25

289 of 2000 (180)



**EXHIBIT C**  
**Baseline Photographs taken February 17, 2020**





1. North elevation facing Auburn Street



2. West elevation facing driveway and shared parking.



3. South Elevation. Rear additions removed. Historic windows and rear entry replaced.



4. South / East elevation.



5. Restored entry.



6. Original fireplace surround.

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