



## CAMBRIDGE HISTORICAL COMMISSION

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Bruce A. Irving, *Chair*; Susannah Barton Tobin, *Vice Chair*; Charles Sullivan, *Executive Director*  
Joseph V. Ferrara, Chandra Harrington, Elizabeth Lyster, Jo M. Solet, Yuting Zhang, *Members*  
Gavin W. Kleespies, Paula A. Paris, Kyle Sheffield, *Alternates*

September 11, 2024

To: Yi-An Huang, City Manager

From: Charles Sullivan, Executive Director

Re: 90 Brattle Street Preservation Restriction for City Council Approval

Historic New England, a regional historic preservation non-profit organization, has been working with property owner Susan Paine to ensure that her nationally significant property, the Mary Fiske Stoughton House at 90 Brattle Street, is protected with a Preservation Restriction.

The Stoughton House is a large shingle style dwelling designed by H.H. Richardson in 1882 (with later c. 1900 and c. 1925 additions) that is nationally significant as a domestic commission by Richardson as well as an early and influential example of Shingle Style design. The property is a National Historic Landmark and is also individually listed in the National Register of Historic Places. Publicly-visible exterior features are protected by the Cambridge Historical Commission through the Old Cambridge Historic District. The proposed restriction will protect significant interior features and exterior features not visible from public ways.

Historic New England holds more than 125 preservation restrictions across New England, including the Chadwick House in North Cambridge and several nearby in Boston, Brookline, Newton, Waltham, and Medford.

Pursuant to Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33, the City Council must vote to approve the restriction in order for it to be valid in perpetuity. The Cambridge Historical Commission concurs that the Stoughton House is historically significant for its architecture and its historical and cultural associations; that it qualifies for the protections of a perpetual preservation restriction under Chapter 184; and that the restriction will serve the public interest in a manner consistent with the purposes of the statute.

On September 5, 2024, the Historical Commission voted unanimously to recommend that the City Council approve the proposed restriction.

Attachment

cc: Dylan Peacock, Historic New England

## **PRESERVATION RESTRICTION AGREEMENT**

### **SOCIETY FOR THE PRESERVATION OF NEW ENGLAND ANTIQUITIES**

This Preservation Restriction Agreement (this "Agreement") is made and entered into as of \_\_\_\_\_, 2024 (the "Effective Date"), by and between the **SOCIETY FOR THE PRESERVATION OF NEW ENGLAND ANTIQUITIES, D.B.A. HISTORIC NEW ENGLAND**, a Massachusetts charitable corporation having an address at Harrison Gray Otis House, 141 Cambridge Street, Boston, Massachusetts 02114-2702 (together with its successors and assigns permitted hereunder, "Grantee"), and **SUSAN W. PAINE** having an address at 90 Brattle Street, Cambridge, Massachusetts 02138-3401 (together with her heirs, successors, administrators and assigns as further described herein, "Grantor").

### **RECITALS**

Grantor is the owner in fee simple of certain property known as the Mary Fiske Stoughton House and located at 90 Brattle Street, Cambridge, Massachusetts, which includes certain premises consisting of approximately 10,196 square feet of land, being more particularly described in Exhibit A attached hereto and in that certain deed (the "Deed"), recorded with the Middlesex South Registry of Deeds (the "Registry") in Book 19163 Page 236 together with all improvements thereon (the "Premises"). The Premises are also shown in the photographs and diagrams attached as Exhibits B, C and D hereto. The building protected by this Agreement consists of the Mary Fiske Stoughton House (the "Stoughton House") as labeled and more particularly shown in Exhibits B, C and D.

Grantee is a Massachusetts, non-profit charitable corporation created in 1910 and exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code. By its Articles of Organization and By-Laws, and in accordance with the applicable provisions of M.G.L. c. 184, §§ 31-33 (the "Act"), Grantee is authorized to create, impose, accept and enforce preservation restrictions to protect sites and structures historically significant for their architecture, archaeology or other associations.

The Stoughton House is historically significant and worthy of preservation. Constructed in 1882-1883 by Mary Fiske Stoughton, with later significant alterations dating to c. 1900 and c. 1925, the house is nationally significant as a seminal work of architect Henry Hobson Richardson, one of his few residential commissions. It is among the earliest examples of Shingle Style architecture, cementing it as one of the nation's most important examples of domestic architecture both for its influence on the development and popularization of the Shingle Style, which remains in vogue to this day, and its inspirational impact on later architectural movements including the work of Frank Lloyd Wright. Architectural historian Henry Russell Hitchcock declared: "this is one of [Richardson's] most successful works and is, perhaps, the best suburban wooden house in America."

Stoughton's son, John Fiske (a noted historian and librarian at Harvard College) made significant alterations in 1900 through the firm of Shepley, Rutan, and Coolidge, which included expansion of the kitchen wing westward with a large library above, and expansion of the rear of the house southward to add a conservatory and music room. Interior designer Pierre la Rose modernized the interior with lighter Edwardian interventions, which may have included changes to moldings, the oak floors, and the addition of some leaded glass windows. In 1988, the grade was dropped in the original kitchen to create access for an attached garage. A brick wall, which was raised to its current height in the 1940s, stretches along Brattle Street onto Ash Street, providing privacy to the front garden. In recognition of these qualities, the Stoughton House was individually listed as a National Historic Landmark on June 29, 1989, and is a contributing property in both the Old Cambridge National Register Historic District and the Old Cambridge local historic district.

The Stoughton House is comprised of a two and a half-story, north facing main block (the "Main Block"), featuring an inset entry porch and three-bay wide loggia above. Attached to the east side of the Main Block's south elevation is the rear ell (the "Rear Ell") with its separate entrance porch onto Ash Street, also attached to the south elevation is a glass conservatory (the "Conservatory"), and attached to the west elevation is the west addition (the "West Addition"), converted at the ground floor into an attached garage in the 1980s. The open space of the Premises consists primarily of brick and stone paved patios and walking paths along with garden beds, providing a setting that complements the Stoughton House, thereby endowing the Premises with historic, scenic, natural and aesthetic value and significance also worthy of preservation.

Massachusetts General Laws, Chapter 184, Sections 31-33, authorizes 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.

Grantor and Grantee each 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, Grantor desires to grant to Grantee, and Grantee 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 One Dollar (\$1.00), the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby irrevocably grant, release and convey unto Grantee (together with its successors and assigns permitted hereunder) this Preservation Restriction Agreement in gross and in perpetuity, in and to the Premises, and Grantor and Grantee hereby agree as follows.

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.

## 1.2 **Definitions.**

- 1.2.1 **"Addition."** "Addition" shall mean all construction that adds to or expands to the building envelope of the Stoughton House in any way, and any subsequent construction that attaches to any such addition, including, without limitation, a deck, porch, ramp, stair or landing, and/or any building appurtenances.
- 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, ramp, arbor, trellis, sign, paving, fencing, walls, game courts, swimming pools and poles (utility and otherwise).
- 1.2.3 **"Facade(s) and Elevation(s)."** "Facade(s) and elevation(s)" shall mean the exterior façades, faces and elevations of the Stoughton House, including, without limitation, all exterior doors, door frames, windows, window sash, window frames, transoms, sidelights, shutters, hardware, wall sheathing, clapboards, siding boards, porches, porticos, panels, cornices, balustrades, 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 elevations of the Stoughton House facing Brattle Street shall be called the north facades, the rear elevations of the Stoughton House shall be called the south elevations, and the other elevations of the Stoughton House shall be called the east and west elevations, based upon such elevation's orientation relative to the north facade.
- 1.2.4 **"Protected Features."** "Protected Features" shall mean those certain historical, architectural and landscaping features of the Premises protected by this Agreement and which are specifically identified in Sections 2 and 3 of this Agreement.

## 1.3 **Exhibits.**

- 1.3.1 **Plans.** Plans entitled "Floor Plan" and "Site Plan" are attached as Exhibit C and D respectively and incorporated herein by this 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 Effective Date, attached hereto as Exhibit B and incorporated herein by this reference are copies of twenty-one (21) exterior photographs taken by Aaron Usher on October 3, 4 and 5, 2023, and forty-one (41) interior photographs taken by Aaron Usher on October 3, 4 and 5, 2023, together with an affidavit specifying certain technical and locational information with respect to such photographs. It is stipulated between Grantor and Grantee that such copies accurately represent the external and internal

condition of the Stoughton House and the Premises and the character of the Protected Features as of the Effective Date.

**2. EXTERIOR RESTRICTIONS.**

**2.1 Stoughton House.** Grantor covenants and agrees that, without the prior written approval of Grantee, no activity shall be undertaken which will alter or adversely affect the appearance, materials, workmanship or structural stability of the exterior portions of the Stoughton House as they exist as of the Effective Date, as documented in the photographs attached hereto as part of Exhibit B, including, without limitation, as follows:

**2.1.1** all Facades and Elevations (Exhibit B, RSID 451162 through 451182);

**2.1.2** the massing and profiles of the roofs; skylights, dormers or other roof additions being expressly forbidden (Exhibit B, RSID 451162 through 451165, 451168 through 451179, 451181 through 451182), except as otherwise expressly provided herein;

**2.1.3** the chimneys of the Main Block and Rear Ell in their entirety (Exhibit B, RSID 451162 through 451165, 451168 through 451173, 451173 through 451177, 451181 through 451182);

**2.1.4** all foundations (Exhibit B, RSID 451162 through 451182);

**2.2 Masonry Walls.** Grantor covenants and agrees that, without the prior written approval of Grantee, no activity shall be undertaken which will alter or adversely affect the appearance, materials, workmanship or structural stability of the masonry wall along the north and east boundaries of the Premises, along Brattle Street and Ash Street as they exist as of Effective Date, as documented in the photographs attached hereto as part of Exhibit B (Exhibit B, RSID 451165, 451168, 451170 through 451174).

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

Main Block, Rear Ell, Conservatory, and West Addition:

**3.1** all structural members and framing, including but not limited to, interior beams, posts, girts, plates, studs, sheathing boards, rafters, purlins, masonry walls and masonry piers (Exhibit B, RSID 451188, 451189, 451191, 451218 through 451224);

## Main Block and Rear Ell

- 3.2** the space configuration and door locations of all rooms, closets, halls and stair halls at the first and second stories, excepting all bathrooms and lavatories, and at the Rear Ell, excepting the southeast bedroom and the southwest bedroom (Exhibit B, RSID 451183 through 451216);
- 3.3** all hardwood and softwood floors of all rooms, closets, halls and stair halls at the first and second stories, excepting all bathrooms and lavatories, and at the Rear Ell, excepting the southeast bedroom and the southwest bedroom (Exhibit B, RSID 451183 through 451216);
- 3.4** all plaster walls and ceilings of all rooms, closets, halls and stair halls at the first and second stories, excepting all bathrooms and lavatories, and at the Rear Ell, excepting the southeast bedroom and the southwest bedroom (Exhibit B, RSID 451183 through 451216);
- 3.5** all woodwork of all rooms, closets, halls and stair halls at the first and second story, including but not limited to cornices, mantelpieces, paneling, wainscoting, baseboards, door stops, stairs, railings, balusters, newels, doors, door casings, windows, window sash, window casing, columns, and other decorative elements and any paint thereon, excepting all bathrooms and lavatories, and at the Rear Ell, excepting the southeast bedroom and the southwest bedroom (Exhibit B, RSID 451183 through 451216);
- 3.6** all fireplaces and hearths in their entirety, including any attached iron or brass hardware, whether decorative or functional (Exhibit B, RSID 451184 through 451186, 451195, 451196, 451198, 451199, 451201, 451202, 451212, 451214);
- 3.7** all door and window hardware at all rooms, closets, halls and stair halls at the first and second stories, excepting all bathrooms and lavatories, and at the Rear Ell, excepting the southeast bedroom and the southwest bedroom (Exhibit B, RSID 451183 through 451186, 451186 through 451203, 451205 through 451216);
- 3.8** at the Main Block, the built-in shelving with glass doors at the first story east Study (Exhibit B, RSID 451195 through 451197);
- 3.9** at the Main Block, the built-in seating along the north wall of the first story entry hall (Exhibit B, RSID 451184 through 451187);
- 3.10** at the Main Block, the decorative tiles surrounding the entry hall firebox (Exhibit B, RSID 451185 through 451186);

West Addition

3.11 the masonry firebox, including gothic arch opening, and the wooden mantelpiece at the West Addition's second story Library (Exhibit B, RSID 451217); and

3.12 the six (6) historic tulip wall sconces on the west and east walls of the Library.

4. **REVERSIBLE ALTERATIONS.** To the extent Grantee's approval is required hereunder, Grantee shall approve the activities, installations and other work items identified below (collectively, the "**Reversible Alterations**"), except as noted below, provided that Grantee first determines in writing in its reasonable discretion that the proposed activity will not adversely affect any Protected Features:

4.1 installation of new or replacement roof coverings on the roofs of the Stoughton House consistent in appearance with the roof coverings as of the Effective Date (the sections of the roof that are currently wood shingles shall remain as wood shingles);

4.2 installation of screens, storm windows, storm doors or window-mounted air-conditioning units;

4.3 installation of insulation at the attic floor or in the cellar, provided that no insulation shall be introduced in any way into any vertical wall cavities;

4.4 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 are not cut or otherwise altered, and protected lighting fixtures are not altered. Removal of the protected tulip wall sconces, noted in Section 3.12 above, shall be allowed provided they are labeled and stored in a safe dry location on site;

4.5 replacement of existing plumbing lines and plumbing fixtures;

4.6 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;

4.7 painting of, or paint removal from, softwood floors, provided that the material(s) and method(s) to be used shall allow surfaces to remain visible and undamaged, and such that sanding, grit blasting or other abrasive methods shall not be used;

4.8 replacement of broken window glass; and

- 4.9 interior wallpapering and carpeting, provided the same shall not dislodge, damage or destroy protected woodwork, paint, plaster, floor or hardware as identified in Section 3 above; and

For the avoidance of doubt: (a) the foregoing list of Reversible Alterations is not intended to be an exclusive or exhaustive list, and Grantee shall approve other similar “reversible” activities, installations and other work items prior to any such activities first being conducted, provided that Grantee first determines in writing in its reasonable discretion that the proposed activity will not adversely affect any Protected Features; and (b) any approval or determination to be made by Grantee under this Section 4 shall be subject to the same provisions governing approvals under Section 12 below.

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

- 5.1 **Additions.** No Additions to the Stoughton House not existing as of the Effective Date shall be erected hereafter without prior written approval of Grantee.
- 5.2 **Additional Structures.** No Structure not on the Premises as of the Effective Date shall be erected or placed on the Premises hereafter without the prior written approval of Grantee; provided, however, notwithstanding the foregoing, Grantee’s prior written approval shall not be required for any temporary Structure that is removed within thirty (30) days of its installation and does not adversely affect any Protected Features.
- 5.3 **Communication and Energy Source Structures.** Notwithstanding any provision in this Agreement to the contrary, freestanding or attached towers, exterior antennas, wind turbines, solar panels or similar communications or energy producing structures shall not be installed or affixed on the Premises without the prior written approval of Grantee; and installing or affixing towers and wind turbines on the Main Block is prohibited; provided, however, notwithstanding the foregoing, Grantee shall approve and permit the installation of solar panels or other energy-producing structures on the roof of Stoughton House that are not readily visible to pedestrians on Ash Street and/or Brattle Street and subject to such conditions as Grantee may reasonably require in order to protect and preserve the Protected Features.
- 5.4 **Central HVAC.** Notwithstanding anything in this Agreement to the contrary, Grantor specifically reserves the right to install, maintain and repair one or more new central heating, ventilation and air conditioning systems in the Premises; provided, however, Grantor shall reasonably cooperate with Grantee to minimize any adverse effects that any such installation might have on the Protected Features.
- 5.5 **Topographical Changes and Landscaping.** In order to protect the historic setting and Protected Features of the Premises, without Grantee’s consent, (a) no alterations may be made to the topography of the Premises that either raise or



lower the average grade levels of the ground by more than one (1) foot, (b) no material amounts of soil, loam, rock or mineral resource or natural deposit shall be excavated, dredged or removed from the Premises, if such removal would adversely affect the foundation of the Stoughton House or otherwise adversely affect the Protected Features, (c) no unreasonable accumulations of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substances shall be permitted thereon (it being acknowledged that residential trash cans, composting bins and other similar equipment and facilities are not restricted hereunder). Furthermore, this Subsection shall not be deemed to prohibit improvements or activities approved under Subsection 5.1 or 5.2, if any, or permitted under Subsection 5.6. Furthermore, the provisions of this Subsection 5.4 shall not be deemed to restrict any activities necessary and desirable (i) to preserve or protect the Premises and/or the Protected Features, (ii) to maintain or replace the existing hardscaping, landscaping and utilities associated with the Premises, (iii) for the planting of trees, shrubs, flowers, herbs or grasses, (iv) related to an approved Archaeology Plan or restoration after archeological activity as provided for in Subsection 5.11.

- 5.6 Demolition.** Grantor shall not permit or allow to occur, either through positive action or neglect, demolition, removal or razing of the Stoughton House; provided, however, the foregoing shall not restrict Grantor from performing any maintenance, repair or replacement work permitted or required hereunder.
- 5.7 Relocation.** No portion of the Stoughton House shall be moved from its present location as of the Effective Date unless such moving is required by a taking through eminent domain and expressly subject to the provisions of Section 7 and Section 8 below.
- 5.8 Signs.** No advertising signs, billboards or other similar displays shall be placed on, painted onto or affixed to the Stoughton House except that, subject to Grantee's prior written approval, Grantor may erect a sign or marker which is appropriate to identifying the historical significance and associations of the Stoughton House. This paragraph shall not prevent Grantor from placing temporary decorations or signs on the lawn or other areas on the Premises outside of the Stoughton House.
- 5.9 Use.** Grantor shall not use the Premises for any use that is unlawful, constitutes an unreasonable nuisance, or which is reasonably determined by Grantee to be inconsistent with the express provisions of and intent of this Agreement or to adversely affect the historic significance of the Stoughton House in any material respect. For the avoidance of doubt but without limiting the generality of the foregoing, the Premises may be used for a single-family residence, which may include the use of a portion of the Premises for a home professional office for a member of the family in residence, and may also include a guest or rental residential unit at the third floor. With respect to matters not covered by this Agreement, Grantee shall have the right to operate and use the Premises in such

manner as it reasonably determines, provided that such operation and use is not inconsistent with the express provisions and intent of this Agreement.

**5.10 Maintenance.**

**5.10.1 Covenant to Maintain.** Grantor covenants and agrees at all times to maintain the Stoughton House and the Premises in good and sound condition and state of repair in order to prevent the deterioration or destruction through alteration or neglect of the Protected Features.

**5.10.2 Cost of Maintenance.** Grantor shall be responsible for the total cost of the maintenance, repairs and administration of the Premises in order to preserve the Protected Features as required under this Agreement. Grantor covenants that it shall indemnify and hold Grantee harmless from and against any such costs. Nothing contained in this Agreement shall limit or prohibit Grantor from seeking financial assistance for the foregoing purposes from any sources available to it.

**5.11 Compliance with Law.** Nothing contained herein shall be interpreted to authorize, permit or require the Grantor to violate any law, ordinance or regulation relating to building materials, construction methods or use. Further, Grantor shall not initiate any construction at or material alterations to the Premises or change the use or occupancy of the Premises in a manner that would reasonably be expected to result in a conflict between any provision of this Agreement and any such law, ordinance or regulation. If Grantor receives written notice alleging that the Premises, the Stoughton House or any provision of this Agreement conflicts with any applicable law, ordinance or regulation, or that any construction or alterations proposed by Grantor will result in such a conflict, Grantor promptly shall notify Grantee in writing of such conflict, and Grantor shall reasonably cooperate with Grantee and local authorities to accommodate the purposes of both this Agreement and such law, ordinance or regulation to the extent practicable.

**5.12 Archaeology.** The conduct of archaeological activities, including, without limitation, archaeological surveys and excavation for the purpose of archaeology and artifact retrieval, may occur only in accordance with an archaeological field investigation plan (the "Archaeology Plan") prepared by or on behalf of Grantor and approved in advance of such activity in writing by the State Archaeologist of the Massachusetts Historical Commission (or, if Massachusetts General Laws cease to require approval by the Massachusetts Historical Commission for the perpetual enforceability of historic preservation restrictions, then by the official recognized by Grantee from time to time as having comparable responsibilities for preservation of archaeological resources in the Commonwealth of Massachusetts). Plans for restoration of the site of archaeological activity shall be submitted to Grantee in advance of restoration, and such restoration shall be conducted only in accordance with a plan approved by Grantee.

## 6. INSURANCE.

- 6.1 **Property.** Grantor, at its sole cost and expense, shall carry and maintain at all times property damage insurance on the Stoughton House with full replacement cost coverage against loss from all perils commonly covered under the broadest standard home insurance 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, in each case to the extent such insurance is readily available for a competitive premium.
- 6.2 **Liability.** Grantor, 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 Stoughton House as covered premises, and for not less than one million dollars (\$1,000,000) per person per occurrence, such sum to be reasonably increased from time to time to reflect increases in the cost of living from the Effective Date upon written notice given by Grantee to Grantor, in each case to the extent such insurance is readily available from multiple insurance companies in the marketplace for a reasonable premium. Every policy required pursuant to this Subsection 6.2 shall name Grantee as an additional insured.

*[Notwithstanding anything in this Agreement to the contrary, in the event members of the public, as distinct from specific invitees, are allowed access to the Premises, the following provisions shall apply in lieu of the foregoing provision of this section 6.2:*

***Liability.** Grantor, at its expense, shall carry and maintain at all times commercial general liability coverage identifying the Stoughton House as covered premises, and with a general aggregate limit of not less than one million dollars (\$1,000,000) per person 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. In the event that the use of the Stoughton House changes such that it is no longer open to the public, Grantor, at its expense, shall subsequently carry and maintain at all times general liability insurance, with coverage against claims for personal injury, death, and property damage, identifying the Stoughton House as covered premises, and for not less than one million dollars (\$1,000,000) per person per occurrence, such sum to be increased from time to time to reflect increases in the cost of living from the date of this Agreement. Every policy required pursuant to this Subsection 6.2 shall name Grantee as an additional insured.]*

- 6.3 **Other Requirements.** Every insurance policy required pursuant to this Section 6 shall be issued by a reputable insurance company licensed to do business in the Commonwealth of Massachusetts and shall provide for the sending of any and all notices of cancellation by the insurer to Grantee at least ten (10) days prior to any cancellation taking effect. Upon Grantee's prior written request, Grantor shall

promptly provide certificates evidencing all insurance policies required by this Section and all supplements or endorsements thereto.

- 6.4 **Changes in Practice.** Grantee 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 Grantee first gives Grantor not less than ninety (90) days advance notice of any such change. Any such coverage must be readily available for a competitive premium.

7. **CASUALTY DAMAGE.**

- 7.1 **Notice.** In the event that the Stoughton House or any portion thereof is damaged or destroyed by fire or other casualty (other than to a de minimis extent), Grantor shall notify Grantee thereof in writing within seven (7) business days of such damage or destruction. To the extent applicable, 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) Grantor shall submit to Grantee a proposal in accordance with Section 12 of this Agreement for Grantee's approval to restore the Stoughton House in a manner consistent with this Agreement and which protects and preserves those Protected Features which have not been totally destroyed, and (b) Grantor shall then restore the Stoughton House in accordance with such proposal as Grantee has approved.
- 7.3 **Substantial Casualty.** Notwithstanding any other provision of this Agreement to the contrary, in the event of substantial casualty damage to the Stoughton House, Grantor may request the approval of Grantee not to restore the Stoughton House pursuant to this Agreement. If Grantee determines in good faith that the extent or nature of such casualty damage would reasonably prevent restoration in a manner which would protect the remaining Protected Features, then Grantee shall grant such approval and Grantor may elect not to restore the Stoughton House pursuant to this Agreement. In the event of such approval not to restore, before any remaining portion of the Stoughton House is relocated or otherwise altered, Grantor shall allow Grantee to enter onto and into the Premises at Grantee's sole risk, cost and expense 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 Grantee desires to salvage and preserve.
- 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 the Grantor 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 through eminent domain, or if Grantor shall receive written notice from a governmental authority of the intent to institute such proceeding, Grantee shall promptly be given notice thereof by Grantor. Grantee 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 Grantor resulting from such taking. In the event of such taking, Grantee 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 Grantee desires to salvage and preserve, prior to the effective date of such taking.
9. **TAXES.** Grantor 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.** Grantor shall indemnify, defend with counsel reasonably acceptable to Grantee, and hold Grantee harmless from and against any claims, liability, costs, attorneys' fees, judgments or expenses to Grantee or any officer, employee, agent or independent contractor of Grantee 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 but expressly excluding claims arising out of or in connection with the gross negligence or willful misconduct of Grantee or any officer, employee, agent or independent contractor of Grantee.
11. **INSPECTION.** Grantee shall inspect the Premises at least annually to ensure that Grantor is in compliance with the preservation restrictions hereby imposed. In addition, Grantee shall inspect the Premises more frequently during periods of repair, renovation or reconstruction as Grantee in good faith deems appropriate based on the nature of the work being conducted. Grantor agrees to grant Grantee access to the Premises for such purposes. Such inspections shall be made at a mutually agreeable time or times following prior notice to the Grantor, and Grantor shall have the right to have a representative present during any such inspections. This right of inspection shall be assignable by Grantee 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 Grantee 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 Grantor desires to undertake any activity which, by the terms of this Agreement, is not to be undertaken without Grantee's approval, or which otherwise contemplates Grantee's approval, Grantor shall first deliver to Grantee 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 if then known) in sufficient detail to enable Grantee to evaluate the proposed activity and the potential effect thereof upon the Protected Features (a "Request for Approval"). Grantor shall supplement the written Request for Approval with any and all supplementary documentation, including, but not limited to, architectural drawings, site plans, photos or digital images, as Grantee determines in good faith are necessary to describe the proposed activity for the purposes of this Section 12, to the extent such supplementary documentation is in Grantor's possession or control. Upon receipt of any Request for Approval, Grantee may require an inspection of the Premises in accordance with Section 11. In granting or withholding any approval required hereunder, Grantee shall apply (on an equitable and nondiscriminatory basis) reasonable and established standards of general applicability that it applies to similar historic properties on which it holds preservation restrictions. Any denial by Grantee of a Request for Approval shall be in writing and, to the extent Grantee deems appropriate, include an explanation of the reason(s) for such denial. Approval by Grantee for any activity shall be in recordable form, executed and acknowledged by any one or more of the President, Treasurer, Director or such officer or officers who may succeed to their responsibilities under other titles.

- 12.2 Waiver; Other Approval.** Grantee may, in its reasonable discretion, but without having any obligation to do so, 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, Grantee may, in its reasonable discretion, but without having any obligation to do so, grant written approval for any other activity by Grantor which is restricted by any provision of this Agreement in addition to those activities which are not to be undertaken without approval by Grantee, but only in accordance with the procedures set forth in Subsection 12.1.
- 12.3 Timing.** Grantee shall endeavor to grant or deny its approval for any requested activity within a reasonable period of time following receipt of any such request; provided, however, in all events Grantee shall grant or deny its approval for such proposed activity not later than sixty (60) days after the later of the date (i) Grantee has received a Request for Approval or (ii) Grantee either inspects the Premises, as mutually and reasonably agreed upon by Grantee and Grantor, for the purpose of evaluating such proposal or delivers to a Grantor a written waiver of such inspection. If Grantee does not give the Grantor a written request for such inspection within sixty (60) days after Grantee has received a Request for Approval, Grantee shall be deemed to have waived such inspection for such proposal. If Grantee does not deny a Request for Approval in writing within the time period specified herein, Grantee shall be deemed to have approved such Request for Approval. The provisions of this Subsection 12.3 shall not apply to any proposed activity that is expressly prohibited by the terms of this Agreement.

**12.4 Conditions.** Grantee 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 that are intended to preserve and protect the Protected Features, or any combination thereof, in each case in accordance with the terms and provisions of this Agreement. 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.** Grantor and Grantee each agrees that if any dispute shall arise between them concerning the terms or conditions of this Agreement or their application in any instance, Grantor and Grantee shall negotiate in good faith to resolve such dispute for not fewer than ten (10) business days. After ten (10) business days, either Grantor or Grantee may submit such dispute for resolution by arbitration in Boston, Massachusetts, by the American Arbitration Association, its successor, or other arbitral forum as mutually agreed by Grantor and Grantee (the "Arbitration Association"), and such arbitration shall be submitted, commenced, held and determined in accordance with the Commercial rules and regulations of the Arbitration Association, as hereby modified. The provisions of this Section 13 shall not, however, limit the provisions of Section 14, and if either party shall submit any such dispute to arbitration as aforesaid and Grantee shall elect to seek injunctive relief or otherwise litigate the subject matter of such dispute, Grantee shall give notice of such election to the Arbitration Association. In such circumstances, the arbitration shall be recessed or adjourned if the outcome of the action brought by Grantee may render the arbitration moot. Once arbitrated, the decision of arbitration shall be binding and enforceable in any court of competent jurisdiction, subject to Subsection 14.2 hereof.

**13.2 Appointment and Procedure.** In the arbitration of any dispute involving Sections 2, 3, 4, 5, 7, 8 or 16.1 hereof, all arbiters shall have a bachelor's or graduate degree in architecture, art history or historic preservation and at least ten (10) years' experience in the field of preservation of historically significant structures or artifacts. Each party shall nominate a qualified arbiter by notice to the Arbitration Association and the other party within thirty (30) days of the initial demand for arbitration, describing such qualifications. All challenges to a proposed arbiter's qualifications shall be submitted to the Arbitration Association within ten (10) days thereafter and all such challenges shall be decided by the Arbitration Association. The two arbiters appointed by the parties shall name a third neutral arbiter within ten (10) days after such challenge period expires. Within thirty (30) days of the appointment of the third arbiter, the panel of

arbiters shall take evidence and argument and close the hearing, and they shall decide the matter and issue their decision within thirty (30) days after close of the hearing. Without limiting the generality of this Section, the fees and expenses of arbitration charged by the Arbitration Association shall be borne equally between Grantee and Grantor unless the arbiters determine that some other division shall under the circumstances be more equitable and such determination of the arbiters shall be conclusive and binding upon the parties. Notwithstanding anything to the contrary in this Subsection 13.2, if Grantor shall fail to name a qualified arbiter in the time allotted, there will be only one arbiter, appointed by Grantee.

**13.3 Communications.** The provisions of this Subsection 13.3 shall not limit the generality of any other provision of this Agreement. If Grantee determines that Grantor has failed to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed, Grantee shall deliver written notice thereof (a "Violation Letter") to Grantor. Grantor may respond in writing within thirty (30) days of receiving such a Violation Letter, disputing the existence of such failure and demanding arbitration thereof (an "Objection Letter"). Grantee may record notice of such Violation Letter with the Registry. If an arbitration finds that the failure that is the subject of a Violation Letter does not exist, Grantee shall record with the Registry a rescission or extinguishment of any notice of such Violation Letter recorded with the Registry. Whether or not Grantor delivers an Objection Letter to Grantee, if the activity that gave rise to the Violation Letter remains in progress, Grantor shall promptly cease such activity until any dispute with respect thereto is settled.

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

**14.1 General.** If Grantor shall fail to perform or observe any restriction, agreement or condition in this Agreement contained on its part to be performed or observed, Grantor acknowledges that such a failure will cause Grantee irreparable harm. Accordingly, if Grantor shall not cure or remedy any such failure within thirty (30) days after receiving written notice thereof from Grantee, then Grantee 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 (Grantor agreeing that Grantee has no adequate remedy at law if Grantor 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 Grantee.

**14.2 Venue and Jurisdiction.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Grantor 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 a court of appropriate jurisdiction in the Commonwealth of Massachusetts, or in the courts



of any other jurisdiction wherein Grantee's business office(s) may be located, as Grantee may elect. By execution and delivery of this Agreement, Grantor 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 Grantor at the Premises, such method of service to constitute, in every respect, sufficient and effective service of process in any legal action or proceeding. The parties 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 Grantee and Grantor, or any person claiming by, through or under Grantor.

- 14.3 Self Help.** If Grantor 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 commence curing such default within thirty (30) days after Grantor receives any applicable Violation Letter from Grantee and/or diligently pursue such cure to completion, Grantee 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 Grantor'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 Grantor, and any amount paid or any contractual liability incurred by Grantee in so doing shall be deemed paid or incurred for the account of Grantor, Grantor agreeing to reimburse Grantee promptly therefor and save Grantee harmless therefrom; provided, however, if Grantor's failure to cure any such default within thirty (30) days would pose a substantial threat to any of the Protected Features, then Grantee may commence to cure any such default from and after the date which is five (5) business days following the delivery of the applicable Violation Letter to Grantor. Grantee may cure any such failure as aforesaid prior to the expiration of said waiting period, but after notice to Grantor, 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, Grantor's obligation to reimburse Grantee 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 Grantee the right to file a claim pursuant thereto, notice is hereby given that by virtue of this Agreement between Grantor and Grantee, as contractor for the purposes of this Subsection 14.3, Grantee 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 on the Premises as set forth in this Section.
- 14.4 Costs and Expenses.** Subject to Section 13, Grantor shall indemnify and hold harmless Grantee, and shall pay to Grantee on demand, all costs and expenses, including but without limitation reasonable attorneys' disbursements and fees, incurred by Grantee in connection with the successful enforcement of this

Agreement. If Grantor is required pursuant to this Agreement to pay a sum of money to Grantee, the obligation to pay such sum shall constitute a lien upon the Premises for the amount of such sum if it is not paid within thirty (30) days of Grantor's receipt of Grantee's written demand therefor, and if Grantor shall fail to pay all or any portion of such sum within such 30-day period, Grantor shall also pay to Grantee, at Grantee's election, interest on the unpaid amount an annual rate equal to the lesser of five percent (5%) or 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. Grantee shall provide any such mortgagee who has provided with its notice address a copy of any notice of lien filed hereunder.
- 14.6 No Waiver.** Failure of Grantee to complain of any act or omission on the part or Grantor, no matter how long the same may continue, shall not be deemed to be a waiver by Grantee of any of its rights hereunder. No waiver by Grantee 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 Grantee 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 Grantor or acceptance by Grantee of a lesser amount than shall be due from Grantor to Grantee shall be deemed to be anything but payment on account, and the acceptance by Grantee 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 Grantee may accept such check without prejudice to recover the balance due or pursue any other remedy. Any and all rights and remedies which Grantee 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 Grantee 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.** Grantee acknowledges that the Premises is in compliance with this Agreement as of the Effective Date. Grantee agrees to deliver to Grantor and/or to any holder of a mortgage on the Premises identified by Grantor a statement to Grantee's knowledge whether Grantor is in compliance with this Agreement and whether Grantor owes any monetary liability to Grantee hereunder, not later than thirty (30) days after the date Grantee has received a

written request for such statement from Grantor. Upon receipt of such a request, Grantee may require an inspection of the Premises in accordance with Section 11.

15. **EXTINGUISHMENT.** Grantor and Grantee 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 in compliance with the applicable requirements of Massachusetts General Laws chapter 184, section 32, as it may be amended from time to time, including approvals by the City of Cambridge and the Massachusetts Historical Commission following public hearings to determine that such extinguishment is in the public interest. All other provisions of this Agreement shall remain in full force and effect unless and until this Agreement is terminated or extinguished in compliance with said requirements.

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 Stoughton 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 Society for the Preservation of New England Antiquities D. B.A. Historic New England, 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.** Grantor 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 Grantor 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, Grantor shall give written notice to Grantee of same. Failure by Grantor 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 Grantor of the Premises shall indicate its acceptance of these preservation restrictions contained herein by a letter to Grantee. 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 in accordance herewith. Failure by any new Grantor to so indicate, and failure by Grantee 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 and the rights and obligations created or imposed by this Agreement shall be in effect in perpetuity. Grantor agrees that this Agreement shall constitute a binding servitude, and shall run with the land and Premises in perpetuity, and thus is not subject the limitations on the enforceability of restrictions in G.L. c. 184, §§31-33, and, in any event, shall bind and run with the Premises for a period of no less than ninety-nine (99) years from the recording hereof.
- 16.5 Assignment.** All of the rights and restrictions enforceable by Grantee pursuant to this Agreement shall be assignable by Grantee for preservation purposes only and without consideration, to any governmental body or any entity described in Section 170(b)(1)(A) of the Internal Revenue Code of 1986 as amended whose purposes include preservation of structures or sites of historic or architectural significance in perpetuity to whom Grantee has assigned all of its rights under any similar Preservation Restriction Agreements in the Commonwealth of Massachusetts. Any such non-governmental entity must also be qualified to hold preservation restrictions under Massachusetts General Law, Chapter 184, Section 32.
- 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 acknowledgment of receipt required--if to Grantor, then to Grantor at the Premises, and if to Grantee, then to the Historic New England Stewardship Program, Historic New England, 185 Lyman Street, Waltham, Massachusetts 02452-5645. 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 INTERESTS.**

18.1 **Prior Liens.** Grantor represents and warrants to Grantee that the Premises are subject to no mortgages, liens, leases, restrictions, easements or encumbrances prior in right to this Agreement other than as listed in Exhibit A-1 attached hereto.

18.2 **Homestead.** Each of the individuals who constitute Grantor hereby subordinates all of his or her rights of homestead and of any and all of his or her beneficiaries, affirms under the penalties of perjury that, as of the Effective Date, there is no person entitled to claim the benefit of homestead rights in the Premises other than Susan W. Paine.

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, may be executed in one or more counterparts, all of which shall constitute one and the same agreement. After execution hereof, one (1) counterpart shall be held by each of Grantor and Grantee, and one (1) counterpart shall be recorded promptly 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 **Grantor.** This Agreement shall extend to and be binding upon the Grantor, and all persons hereafter claiming under or through the party executing this Agreement as "Grantor" and all successors in title to the Premises, and the word "Grantor" when used herein shall include all such persons, whether or not such persons have signed this Agreement. A person who ceases to hold title to the Premises after having been a Grantor shall cease to have any liability hereunder to Grantee except that such person shall remain jointly and severally liable with the successors as Grantor for any monetary liability hereunder to Grantee that accrued during the time of such person's ownership of the Premises.

19.4 **Amendment.** For purposes of furthering the preservation of the Stoughton House and of furthering the other purposes of this Agreement, and of meeting changing conditions, Grantor and Grantee are free to amend jointly the terms of this Agreement in writing in accordance with the requirements of Massachusetts General Laws, Chapter 184, Sections 31-33, and such amendment shall become effective upon recording 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 Grantee of any action by Grantor, 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 Grantor shall be solely responsible for its own actions.
- 19.8 Time.** Where a specific number of days are stated for an activity or approval to occur, time is of the essence. If any act or approval 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.
- 19.9 Grantee's Use of Information.** During inspection of the Property and at other times reasonably agreed upon by the Grantor, including preparation of the baseline documentation, Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, and architectural character and features of the Property and may use such images and materials to promote the easement program and otherwise in support of its educational and charitable purposes, including reproduction in magazines, newsletters, or other publicly available publications.

*[signatures on following page]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2024

WITNESS

SOCIETY FOR THE PRESERVATION  
OF NEW ENGLAND ANTIQUITIES  
D.B.A. HISTORIC NEW ENGLAND

\_\_\_\_\_

\_\_\_\_\_  
Vin Cipolla, President and CEO

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared Vin Cipolla, President and CEO, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as President and CEO of Historic New England, a corporation.

\_\_\_\_\_  
Notary Public

My commission expires:

WITNESS

SOCIETY FOR THE PRESERVATION  
OF NEW ENGLAND ANTIQUITIES  
D.B.A. HISTORIC NEW ENGLAND

\_\_\_\_\_

\_\_\_\_\_  
George F. Fiske, Jr., Treasurer

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared George F. Fiske, Jr., Treasurer, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Treasurer of Historic New England, a corporation.

\_\_\_\_\_  
Notary Public

My commission expires:



WITNESS

GRANTOR

\_\_\_\_\_

\_\_\_\_\_

Susan W. Paine

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared Susan W. Paine, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

\_\_\_\_\_

Notary Public

My commission expires:

**APPROVAL OF PRESERVATION RESTRICTIONS**

**Pursuant to General Laws, Chapter 184, Section 32**

**Mary Fiske Stoughton House  
90 Brattle Street  
Cambridge, Massachusetts**

The undersigned Mayor of the City of Cambridge, Massachusetts hereby certifies that the foregoing Preservation Restrictions on the premises, with all improvements there, more particularly described in that certain deed recorded with the Middlesex South Registry of Deeds in Book 19163 Page 236, known as the Mary Fiske Stoughton, so called, located at 90 Brattle Street, Cambridge, Massachusetts and owned by Susan W. Paine of Cambridge, Massachusetts have been approved pursuant to Massachusetts General Laws, Chapter 184, Section 32.

**In approving these restrictions, the City of Cambridge assumes no responsibility, nor accepts any liability for enforcement.**

\_\_\_\_\_  
E. Denise Simmons, Mayor

**COMMONWEALTH OF MASSACHUSETTS**

County of Middlesex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared E. Denise Simmons, Mayor, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Mayor of the City of Cambridge.

\_\_\_\_\_  
Notary Public

My commission expires:

**APPROVAL OF PRESERVATION RESTRICTIONS**

**Pursuant to General Laws, Chapter 184, Section 32**

**Mary Fiske Stoughton House  
90 Brattle Street  
Cambridge, Massachusetts**

The undersigned Clerk of the City of Cambridge, Massachusetts, hereby certifies that the foregoing Preservation Restrictions granted by Susan W. Paine to the Society for the Preservation of New England Antiquities D.B.A. Historic New England on the Mary Fiske Stoughton House, Cambridge, Massachusetts, consisting of approximately 10,196 square feet of land, with all improvements thereon, more particularly described in that certain deed recorded with the Middlesex South Registry of Deeds in Book 19163 Page 236, have been approved by the City Council of the City of Cambridge by a vote of \_\_\_\_ in favor and \_\_\_\_ opposed at its regularly scheduled meeting that was held on \_\_\_\_\_, \_\_\_\_\_, 2024, pursuant to Massachusetts General Laws, Chapter 184, Section 32.

**In approving these restrictions, the City of Cambridge assumes no responsibility, nor any liability for enforcement.**

\_\_\_\_\_  
Diane P. LeBlanc  
City Clerk  
City of Cambridge

**COMMONWEALTH OF MASSACHUSETTS**

County of Middlesex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared Diane P. LeBlanc, City Clerk, City of Cambridge, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as City Clerk of the City of Cambridge.

\_\_\_\_\_  
Notary Public

My commission expires:

**APPROVAL OF PRESERVATION RESTRICTIONS**

**Pursuant to General Laws, Chapter 184, Section 32**

**MARY FISKE STOUGHTON HOUSE  
90 BRATTLE STREET  
CAMBRIDGE, MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission, hereby certifies that the foregoing preservation restrictions on the Mary Fiske Stoughton House located at 90 Brattle Street, Cambridge, Massachusetts, being more particularly described in that certain deed recorded with the Middlesex South Registry of Deeds in Book 19163, Page 236 have been approved pursuant to Massachusetts General Laws, Chapter 184, Section 32.

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

**COMMONWEALTH OF MASSACHUSETTS**

County of Suffolk, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared Brona Simon, Executive Director and Clerk, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as Executive Director and Clerk for the Massachusetts Historical Commission.

\_\_\_\_\_  
Notary Public

My commission expires:

**EXHIBIT A**

**DESCRIPTIONS OF PREMISES**

The land with buildings thereon known as 90 Brattle Street in Cambridge, Middlesex County, Massachusetts, bounded and described as follows:

- NORTHERLY            by Brattle Street, Eighty-Four and 77/100 (84.77) feet, more Westerly Four and 57/100 (4.57) feet;
- WESTERLY            by land now or formerly of Cary, One Hundred Six and 11/100 (106.11) feet;
- SOUTHERLY           by land now or formerly of Batchelder, One Hundred Five and 20/100 (105.20) feet;
- EASTERLY            by Ash Street, Seventy-Eight and 43/100 (78.43) feet; and
- NORTHEASTERLY    by a curved line at the junction of Ash Street and Brattle Street, Twenty-One and 35/100 (21.35) feet.

Said premises are believed to contain approximately 10,195.6 square feet. Being all of said measurements, more or less, or however otherwise said premises may be measured, bounded, or described.

**EXHIBIT B**

**PHOTOGRAPHER'S AFFIDAVIT**

Aaron Usher, being first duly sworn, states on oath as follows:

1. This affidavit is attached to a set of sixty-two (62) photographs taken by me on October 3, 4, and 5, 2023. Each photograph bears a letter-number symbol, Historic New England image identification numbers RSID 451162 to RSID 451224.
2. Each such exposure was made with a Nikon DSLR D810 camera with no filter, normal exposure and shutter speed settings.
3. Each such image was created by me in a normal manner without manipulation. Each such image was delivered to Historic New England for permanent safekeeping.
4. Manufacturers' specifications and recommendations were followed with respect to all photographic materials used, with respect to image exposure and with respect to the care and maintenance of all such materials and final products.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_

Date

On this \_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My commission expires: