

**HEARINGS, MEETINGS, LICENSES**  
**6-16-08**



Town of Middleborough

CONSERVATION COMMISSION

MEMORANDUM

TO: Board of Selectmen  
Jane Lopes, Chair, Historical Commission  
Ruth Geoffroy, Town Planner  
Dan Murray, Town Attorney

FROM: Patricia J. Cassady, Conservation Agent 

DATE: June 11, 2008

RE: Draft Historic Preservation Restriction Agreement for the Dorothy M. Freitas property at 87 Vaughan Street

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Attached you will find the Draft Historic Preservation Restriction Agreement for the 1.84 acre Freitas property that was approved at Town Meeting on May 13<sup>th</sup>.

Please review the document and contact the Conservation office concerning any suggested edits.

Thank you.

pjc

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## PRESERVATION RESTRICTION AGREEMENT

Between

THE TOWN OF MIDDLEBOROUGH  
Acting by and through the Middleborough Historical Commission  
And

Dorothy M. Freitas

Concerning

PETER VAUGHAN HOUSE  
87 Vaughan Street  
Middleborough, MA

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87 Vaughan Street  
Historic Preservation Restriction Agreement  
Draft

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## PRESERVATION RESTRICTION AGREEMENT

between

THE TOWN OF MIDDLEBOROUGH  
acting by and through the Middleborough Historical Commission

and

Dorothy M. Freitas

THIS PRESERVATION RESTRICTION is made this \_\_\_\_ day of June, 2008, by and between Dorothy M. Freitas ("Grantor") and THE TOWN OF MIDDLEBOROUGH, a municipality of the Commonwealth of Massachusetts acting by and through the Middleborough Historical Commission ("Grantee").

WITNESSETH;

Whereas, Grantor is owner in simple fee of a certain parcel of real property located at 87 Vaughan Street in the town of Middleborough, Plymouth County, Massachusetts known as Peter Vaughan House, (hereinafter referred to as "the Property"), and described on a deed dated June 9, 1981 and known as one lot as identified on Middleborough Assessor's Map 77 as Lot 554 and as shown on a plan entitled "Plan of Land on Vaughan Street in Middleborough, Massachusetts", dated February 26, 2003 prepared by Outback Engineering and recorded as Plan 563 of 2003 at the Plymouth County Registry of Deeds at Book \_\_\_ Page \_\_\_.

all of which are attached hereto and incorporated herein, said Property including the following structure (hereinafter "the House" and "the Property"):

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87 Vaughan Street  
Historic Preservation Restriction Agreement  
Draft

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WHEREAS, Grantee is a municipality and is interested in the preservation and conservation of sites, buildings, and objects of local, state and national significance in the Town of Middleborough and is authorized to accept and hold preservation restrictions under the Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 (the "Act");

WHEREAS, Grantee has designated the Middleborough Historical Commission to administer, manage, and enforce this preservation agreement;

WHEREAS, the Middleborough Historical Commission, designee, is a governmental body whose purposes include the preservation and protection of sites, buildings, and objects of historical significance;

WHEREAS, the house is located on property farmed by members of the Freitas family since ca. 1981.

Improvement Data: The subject property's improvement include a single-family dwelling with a total living area of about 2,098 square feet, originally built in 1761, according to assessors' records. The timber-framed, gable-roofed, one-and-a-half-story building also has an attached, enclosed porch of about 317 square feet built within the past 50 years, as well as an attached barn of about 464 square feet, which appears to have been built more than 100 years ago. The attached barn has an exterior door and three windows on the first floor, as well as one window in the hay loft.

The living area is divided into eight rooms, including a kitchen, a living room, a den, and a bedroom, as well as a bathroom and a laundry room, on the first floor, and four rooms on the second floor, which may be used as bedrooms or studies. While the first floor has adequate headroom, the ceiling height on the second floor is about 82 inches, which is about eight inches less than the current building code requires.

The interior is finished with a mixture of drywall and plaster on most walls and ceilings; however, the second floor in the vicinity of the stairway has painted, wide-pine boards on the walls, which appear to be original. Floors on the first floor are covered with tongue-and-groove oak, while the kitchens and bathrooms have vinyl and ceramic tiles, respectively.

Floors on the second floor have original, wide-pine floors. The interior has wood-panel doors, with more than half being antique, mortise-and-tenon doors. Most interior trim, except for a few areas on the second floor, appears to have been replaced. The building has three fireplaces on the first floor and one on the second floor, all connecting to the central, beehive chimney. One of the fireplaces appears to be original, with eighteenth-century wood work, while two fireplaces appear to be more than 100 years old. An antique stairway is built into the chimney and leads from the front entry up to a landing, where it splits, with two routes to the second floor.

The building has a full-low-clearance basement under both the living area and the attached barn. The perimeter foundation walls are constructed of fieldstones, poured concrete and concrete blocks. The base of the beehive chimney has been encased in a concrete-block wall, in order to shore it up.

There is some unfinished attic space in the eaves of the second floor.

The residence is heated by an oil-fired, forced-hot-water furnace, with tankless hot water, which is located in the basement along with the oil tank. The building has a 150-amp electrical service, with fuses.

The exterior of the building has cedar shingles on the walls and composition shingles on the gable roof. Exterior trim is wood, but the window sills have been wrapped in aluminum. The roof structure appears to be original to the construction. Windows are double hung and double glazed.

The building is mostly in average condition, with no significant deferred maintenance noted.

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WHEREAS, because of its architectural, archeological and historical significance, including its important local and agricultural associations with the development of the Town of Middleborough, the staff of the Massachusetts Historical Commission has found the Property to be individually eligible for listing on the National Register of Historic Places;

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

WHEREAS, the Property's conservation and preservation values are documented in Exhibits A, B, and C (hereinafter, collectively "Baseline Documentation") incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Property as of the date of this grant;

WHEREAS, the Baseline Documentation includes the following:

1. Property Description and Statement of Significance (See Exhibit C)
2. Site Plan dated \_\_\_\_\_ (See Exhibit B)
3. Photographs as prepared by \_\_\_\_\_ (See Exhibit C)

WHEREAS, the grant of a Preservation Restriction Agreement by Grantor to Grantee on the Property will assist in the Preservation and maintenance of the Property and its architectural, archeological, historic and cultural features for the benefit of the people of the Town of Middleborough, the County of Plymouth, the Commonwealth of Massachusetts, and the United States of America;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept a Preservation Restriction Agreement in gross and in perpetuity on the Property pursuant to the Act;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Grantee a Preservation Restriction Agreement in gross and in perpetuity over the Property described in Exhibits A, B and C.

## PURPOSE

1. Purpose: It is the purpose of this Preservation Restriction Agreement to assure that

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the features and characteristics that embody the architectural, archeological, historic and cultural significance of the Property will be forever retained and maintained substantially in their current condition for conservation and preservation purposes and to prevent any use or change in the Property that will significantly impair or interfere with the Property's conservation or preservation values.

## STIPULATIONS FOR ARCHEOLOGICAL RESOURCE PROTECTION & PRESERVATION

### 1. Purposes of the Preservation Restriction

The Premises, comprised of approximately (2) acres of land, contain unusual, rare, and outstanding cultural, historical, archaeological, and scientific qualities the protection and preservation of which in their predominately natural condition will be of benefit to the public. These qualities include the presence of a significant historical archaeological site consisting of surface and subsurface historic and archaeological features and deposits of a former eighteen through twentieth-century farmstead and associated activity areas. The property is within the Wapanucket Site (19-PL-203), listed in the State and National Registers of Historic Places. The Wapanucket Site is significant at the national level and may be eligible as a National Historic Landmark. The Peter Vaughan House (MID.222) is a mid-18<sup>th</sup> century historic structure that may be eligible for listing in the National Register of Historic Places. Significant historic archaeological resources associated with the homestead are likely in the National Register of Historic Places. Significant historic archaeological resources associated with the homestead are likely present within the (2-acre) portion proposed for a Preservation Restriction.

## GRANTOR'S COVENANTS

2.1 Grantor's Covenants: Covenant to Maintain: Grantor agrees at all times to maintain the exterior of the House and property and shall comply with all federal, state and local laws, codes and by-laws applicable o the Property. Grantor's obligation to maintain shall require replacement, repair, reconstruction and where necessary replacement in kind by Grantor whenever necessary to preserve the House and Property in a good, sound and attractive condition and state of repair. Grantor's obligation to maintain shall also require that the Property's landscaping be maintained in good appearance. Subject to the casualty provisions of paragraphs 6 and 7, this obligation to maintain shall require

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Replacement, rebuilding, repair and reconstruction of the 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 the "Secretary's Standards").

## 2.2 Grantor's Covenants: Prohibited Activities.

The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this paragraph:

- (a) the House and the Property shall not be moved, demolished, removed or razed;
- (b) no barrier shall be constructed, erected or allowed to grow on the Property which would impair the visibility from Vaughan Street of the Property or the House without the prior approval of the Grantee;
- (c) no other buildings or structures, including camping accommodations, mobile homes or cell towers, agricultural outbuildings, riding rings, etc., shall be erected or placed on the Property hereafter except for temporary structures required for maintenance or rehabilitation of the Property, such as construction trailers without approval under paragraph 3.1;
- (d) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;
- (e) the Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit;
- (f) no above ground utility transmission lines, except those reasonably necessary for the existing House, may be created on the Property, subject to utility easements already recorded;
- (g) no additions to the existing dwelling, including no dormers, would be allowed.
- (h) no new structures of any kind would be allowed on the property.
- (i) no outside storage of any materials would be allowed.
- (j) no disassembling, removal, or reconstruction of any stonework on the property would be allowed.
- (k) no uses or activities that would materially impair significant historic preservation interests would be allowed.

The restrictions do not appear to preclude interior development of the attached barn as living space.

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## 3.1 Conditional Rights Requiring Approval by Grantee.

Without prior express written approval of the Grantee, which approval shall not be unreasonably withheld, conditioned or delayed by Grantee, Grantor shall not undertake any of the following actions:

### Prohibited Uses and Reserved Rights

#### A. Exterior Restrictions

1. Constructing, placing, or allowing any building, residential dwelling, tennis court, asphalt or concrete pavement, landing strip, mobile home, swimming pool, athletic facility or playing field, billboard or other advertising display, antenna, parking area, roadway, utility pole, tower, conduit, line, telecommunication tower, above or underground storage tanks, or any other temporary or permanent structure or facility on, below, or above the Premises.
2. Mining, excavating, dredging, or removing from the Premises of soil, loam, peat, gravel, sand, rock, or other mineral resource or natural deposit, or alteration of any natural contours or features whatsoever, including the excavation of holes (except as may be necessary for the installation of a boundary fence pursuant to Section II.B.1. hereof), or other features on the Premises with the intent of collecting or otherwise removing archaeological artifacts, excepting for the purposes of conducting archaeological activities approved by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official) as set forth in Section 11.B.3 below;
3. Placing, filling, storing or dumping on the premises of soil, refuse, trash, equipment, mobile home, trailer, automotive vehicle or parts, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance or material whatsoever;
4. Cutting, removing or otherwise destroying trees, grasses, shrubs or other natural vegetation, including cutting for firewood or timber, excepting for vegetative management purposes as described in Section II.B.2 below, in which case any trees shall be cut at or above ground level and the stumps left in place;

5. The disassembling, removal, or reconstruction in whole or any part of stonewalls or the filling or alteration of any other surface or subsurface historic or archaeological features and deposits, except for the purposes of historic preservation and/or public safety activities approved by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official) as set forth in Section II.B.4 and B.5, and in Section XI, below;
  6. Activities detrimental to erosion control, soil conservation, or archaeological conservation;
  7. Any other use of the Premises or activity which would materially impair significant historic preservation interests unless necessary for the protection of the historic preservation interests that are subject of this Preservation Restriction.
- B. Interior Restrictions.
1. Under the proposed Historic Preservation Restriction, certain interior elements must not be destroyed, including the beehive chimney and the three antique fireplaces, the stairway to the second floor (including the wide-pine walls in its vicinity), and the mortise-and-tenon doors and hardware.
  2. Notwithstanding the foregoing, alterations listed as "Minor" in the attached RESTRICTION GUIDELINES are considered part of ordinary maintenance and repair, and may be made to the House and Property without the Grantee's approval.

3.2 Review of the Grantor's Request for Approval. Should Grantor wish to exercise the conditional rights set out or referred to in paragraph 3.1, Grantor shall submit to Grantee, for Grantee's approval, two copies of information (including plans, specifications and designs where appropriate,) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within sixty (60) days of Grantee's actual receipt of any plan or written request for approval hereunder, Grantee 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 Grantee

shall provide Grantors with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within 60 days of actual receipt of Grantors' submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted.

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## 3.3 Conditional Rights Requiring the Approval of the Massachusetts Historical Commission.

The conduct of archeological activities on the Property, including without limitation, survey, excavation and artifact retrieval, may occur only following the submission of an archeological field investigation prepared by the Grantor and approved in writing by the State Archeologist of the Massachusetts Historical Commission (M.G.L. Ch.9, Section 27C, 950 CMR 70.00)

## 4. Standards for Review.

Grantee shall apply Secretary's Standards whenever

- a. exercising any authority created by the Preservation Restriction Agreement to inspect the;
- b. reviewing any construction, alteration, repair or maintenance;
- c. reviewing casualty damage or
- d. reconstructing or approving reconstruction of the House following casualty damage.

## GRANTORS' RESERVED RIGHTS

### 5. Grantors' Rights Not Requiring Further Approval by Grantee.

Subject to the provision of paragraphs 2.1 and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by the Preservation Restriction Agreement and by Grantee without further approval by Grantee:

- a. the right to engage in all those acts and uses that:
  1. are permitted by governmental statute or regulation;
  2. do not substantially impair the conservation and preservation values of the Property; and
  3. are not inconsistent with the Purpose of this Preservation Restriction Agreement;
- b. notwithstanding the provisions of Section 11.A, Grantor reserves to itself, its successors and assigns, the following rights, uses and activities so long as such uses do not materially impair significant historic preservation interests.

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1. The erection and maintenance of a fence along the boundary of the Premises in order to protect the Premises, or of interpretive signage or an interpretive kiosk, following submission of a plan and specifications and their approval in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
2. Selective cutting of trees (provided that any tree-cutting shall be at or above ground level with the stumps left in place), brush, grass for fire protection and vegetation management purposes (including without limitation the eradication of invasive or irritant species, e.g., poison ivy), or which pose an imminent threat of property damage or personal injury, and otherwise to maintain the Premises.
3. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
4. the repair and maintenance of historic stonewalls and any other historic or archaeological features, in accordance with accepted historic preservation standards and practices, following submission of a plan and specifications and their approval in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
5. The covering and/or filling of historic or archaeological features for historic preservation or public safety purposes, in such a manner as to preserve the structural elements and the vertical and horizontal relationships of surface and subsurface historic and archaeological features and deposits, and in such a manner as to not compress, compact or mix soil layers, and in such a manner as to reserve the practical and cost-effective ability for archaeological investigations, following submission of a plan and specifications and their approval in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).

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- c. pursuant to the provision of paragraph 2.1, the right to maintain and repair the house and Property strictly accordingly to the Secretary's Standards. As used in this subparagraph the right to 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 House and Property. The right to maintain and repair as used in this subparagraph shall not include the right to make changes in appearance materials, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of paragraphs 3.1 and 3.2;
  - d. the right to continue all manner of existing residential use and enjoyment of the Property, including but not limited to maintenance, repair, and restoration of existing stone walls and steps; the right to maintain the existing driveways, and paths with the use of same or similar materials; the right to maintain existing utility lines, walkways, steps and garden fences; the right to cut, remove and clear grass and other vegetation and to perform routine maintenance, landscaping, horticultural activities and upkeep, consistent with the purpose of this Preservation Restriction Agreement.
6. Access to the Premises  
This Preservation Restriction does not grant a right of access to the Premises to the general public or to the Grantee, provided, however, that upon advance notice to the Grantor, Grantor shall permit Grantee access to the Premises in the manner, time, and location reasonably specified by Grantor, for the purpose of allowing Grantee to inspect the Premises and determine whether the terms of this Preservation Restriction has been complied with. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.
7. Affirmative Obligation to Discourage Looting  
Grantor shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the historic interests protected by this Restriction, and shall promptly report any such disturbance to the Massachusetts Historical Commission or appropriate successor official. Nothing herein shall require Grantor to repair or restore the Premises in response to vandalism or other disturbance, whether caused by a third party, natural event, accident, or otherwise.

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## CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

8. Casualty Damage or Destruction.

In the event that the House or Property or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has been completed. No repairs or reconstruction of any type other than temporary emergency work to prevent further damage to the House and Property and to protect public safety shall be undertaken by Grantor without Grantee's prior written approval of the work. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at Grantor's expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and Grantee, 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 house and Property and/or reconstruction of damaged or destroyed portions of the House and Property;
- and
- (c) a report of such restoration and/or reconstruction work necessary to return the House and Property to the condition existing at the date thereof.

9. Review After Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 6 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 8, Grantor and Grantee agree that the Purpose of the Preservation Restriction Agreement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the House and Property in accordance with plans and specifications consented to by the parties to at least the total of the casualty insurance proceeds available to the Grantor.

If, after reviewing the report and assessing the availability of the insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 8, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Preservation Restriction Agreement would not be served by such restoration/reconstruction, Grantor may with prior written consent of Grantee, alter, demolish, remove or raze the House and/or construct new improvements on the Property. In such event, Grantor and Grantee may agree to extinguish this Preservation Restriction Agreement in accordance with the laws of the Commonwealth of Massachusetts and paragraph 22.2 hereof.

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If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 8, Grantor and Grantee are unable to agree that the Purpose of the Preservation Restriction Agreement 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 arbitration provision set forth in Section 14 below.

10. Insurance. Grantor shall keep the Property insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property House and without cost or expense to Grantor or contribution or coinsurance from Grantor. Such insurance shall include Grantee's interest and name Grantee as an additional insured. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefore, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

## INDEMNIFICATION; TAXES

11. Indemnification. Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person on or about the Property; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or damage occurring on or about the Property, unless such injury or damage is caused by Grantee or agent, trustee, employee or contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity until discharged shall constitute a lien on the Property with

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the same effect and priority as a mechanic's lien, provided, however, that nothing contained herein shall jeopardize the priority of any recorded first priority mortgage given in connection with a promissory note secured by the Property.

12. Taxes. Grantor shall pay when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecute an appeal thereof, in which case the obligation to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor in the place of Grantor, any payment relating to taxes, assessment, water rates, sewer rentals and other governmental or municipality charge, fine, imposition or lien asserted against the Property and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale or forfeiture. Such payment if made by the Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded first priority mortgage given in connection with a promissory note secured by the Property.

## ADMINISTRATION AND ENFORCEMENT

13. Written Notice. Any notice Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by overnight courier, facsimile transmission, registered or certified mail with return receipt requested or hand delivered; if to Grantor, at 87 Vaughn Street, Middleborough, MA 02346 and if to Grantee, at Middleborough Town Hall, 10 Nickerson Avenue, Middleborough, MA 02346.

Each party may change its address set forth herein by a notice to such effect to the other party given pursuant hereto.

14. Evidence of Compliance. Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidences the status of this Preservation Restriction Agreement to the extent of the Grantee's knowledge thereof.

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1. Inspection. With the consent of Grantor, representatives of Grantee shall be permitted at all reasonable times to inspect the Property. Grantor covenants not to unreasonably withhold consent in determining dates and times for such inspections.
2. Grantee's Remedies. Grantee may, following reasonable written notice to Grantor, institute suit (s) to enjoin any violation of the terms of this Preservation Restriction Agreement by ex parte, temporary, preliminary and or permanent injunction, including prohibitory and/or mandatory injunctive relief and to require the restoration of the Property and House to the condition and appearance required under this Preservation Restriction Agreement. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligation hereunder. In the event of any violation of any of the provisions of this Agreement, Grantee may notify the Grantor of such violation (a "Violation Notice"), together with recommendations as to how the violation may be cured (if such violation is curable). Such notice shall inform the Grantor as to the time period in which such violation must be cured (if such violation is curable), which time period shall be a reasonable one, in no event longer than thirty (30) days. In the event the Grantor contests either the existence of the violation or the length of time in which to cure it, Grantor shall notify Grantee not later than thirty (30) days after the receipt of the Violation Notice (Grantor's Objection) and if the parties cannot agree within ten (10) days thereafter, either party shall have the right any time after expiration of such ten day period to submit the matter to arbitration within thirty days after receipt of Grantor's Objection by sending notice to the other party to name an arbiter. The other party shall have thirty days after the receipt of such notice naming an arbiter. A third arbiter shall be selected by the other two arbiters within thirty days after naming the second arbiter. The three arbiters shall conclude the arbitration within one hundred twenty five days after the date the third arbiter is named. Findings of facts and decisions by a majority of the arbiters shall control. Each party shall bear the costs of the arbiter it names and both parties shall share equally the cost of the third arbiter. All Arbiters shall be persons having substantial education and experience regarding the preservation of historically significant structures or artifacts.

In the event Grantor is found to have violated any of Grantor's obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the term of this Preservation Restriction Agreement, including all reasonable court costs, and attorney's, architectural, engineering and expert witness fees, together with interest thereon at an interest rate two percent points (2%) higher than the prime lending rate.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting the use of any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Property to its condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

17. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

18. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for the Grantee to explain the terms of the Preservation Restriction Agreement to potential new owners prior to sale closing.

19. Liens. Any lien on the Property created pursuant to any paragraph of this Preservation Restriction Agreement may be confirmed by judgement and foreclosed by Grantee in the same manner as a mechanic's lien. Provided, however, that no lien created pursuant to this Preservation Restriction Agreement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

20. Plaque. Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 24 by 24 inches in size, giving notice of the significance of the Property. The Grantee shall obtain the approval of the Grantor for the size and contents of the sign prior to installation.

#### BINDING EFFECT; ASSIGNMENT

21. Runs with the Land. Except as provided in paragraphs 7 and 22.2, the obligations imposed by the Preservation Restriction Agreement shall be in effect in perpetuity and shall be deemed as a binding servitude with the Property.

This Preservation Restriction Agreement shall extend to and be binding upon Grantor and Grantee; their respective successors in interest and all persons hereafter claiming under or through Grantor or Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title or interest herein granted to Grantee shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of bona fide transfer. The restrictions, stipulations and covenants contained in this Preservation Restriction Agreement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part hereof, including by way of example but not limitation, a lease of all or a portion of the Property.

22. Assignment. Grantee may, at its discretion without prior notice to Grantor, convey, assign or transfer this Preservation Restriction Agreement to a unit of federal, state or local government or to a similar local, state or national organization that is a "qualified organization" under the Act, as amended, whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which the Preservation Restriction Agreement was granted will continue to be carried out.
23. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Instrument in the land records of Plymouth County Registry of Deeds. Grantor and Grantee intend that the restrictions arising under this Preservation Restriction Agreement take effect on the day and year this instrument is executed by Grantor and Grantee.

#### EXTINGUISHMENT

24.1 Intentionally omitted

24.2. Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in conditions affecting the Property may make impossible the continued ownership or use of the Property for the Purpose of this Preservation Restriction Agreement and necessitate extinguishment of the Preservation Restriction Agreement. Such a change in conditions may include, but is not limited to, partial or total destruction of the House and Property resulting from casualty. Such an extinguishment must be the result of a judicial proceeding, as well as public hearings and approval by the Grantee, or the then holder of the Preservation Restriction Agreement, if it has been assigned pursuant to Section 20 hereof, and the Massachusetts Historical Commission if this Agreement has been approved by the Massachusetts Historical Commission.

24.3. Condemnation. If all or any part of the Property is taken under the power of eminent domain by public, corporate or other authority, otherwise acquired by such authority through a purchase in lieu of a taking, Grantor may commence appropriate proceedings at the time of such taking to recover the full value of the Property that is subject to the taking and all incidental and direct damages from the taking.

#### INTERPRETATION

24. Interpretation. The following provisions shall govern the effectiveness, interpretation and duration of the Preservation Restriction Agreement:

- (a) 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 the Preservation Restriction Agreement, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.
- (b) This instrument is executed in two counterparts, one of which is to be retained by the Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart retained by the Grantee shall in all cases govern. Except as provided in the preceding sentence, each counterpart shall constitute the agreement of the parties.
- (c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of the Preservation Restriction Agreement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument is enforceable by reason of statute, common law or private agreement either in existence now or at any time subsequent hereto.
- (d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable government entity to accommodate the purpose of both the Preservation Restriction Agreement and such ordinance or regulation.

AMENDMENT

25. Amendment. If circumstances arise under which an amendment to or modification of this Preservation Restriction Agreement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Preservation Restriction Agreement, provided that no amendment shall be made that will adversely affect the qualification of this Preservation Restriction Agreement or the status of Grantee under the Act, or any applicable laws, including any other laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the Purpose of the Preservation Restriction Agreement; shall not affect its perpetual duration; shall not permit additional residential development on the Property other than the residential development permitted by this Preservation Restriction Agreement on its effective date; shall not permit any private inurement to any person of entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Preservation Restriction Agreement. Any such amendment shall comply with the provisions of the Act and shall be recorded in the land records of Plymouth County Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment to consult or negotiate regarding any amendment.

TO HAVE AND TO HOLD, this Preservation Restriction Agreement, unto the said Grantee and its successors and permitted assigns forever.

IN WITNESS WHEREOF, Grantor has set his/her hand under seal on the day and year set forth below.

GRANTOR:

\_\_\_\_\_  
Dorothy M. Freitas

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this \_\_\_\_\_ day of June 2008, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledge to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
(Official Signature and Seal of Notary)

My term expires:

20

87 Vaughan Street

Historic Preservation Restriction Agreement

Draft

ACCEPTANCE OF PRESERVATION RESTRICTION

Acceptance of this Preservation Restriction Agreement by the Town of Middleborough, acting by and through its Historical Commission pursuant to the authority granted to said Commission under G.L. c. 40, § 8D, is acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

TOWN OF MIDDLEBOROUGH  
Board of Selectmen

\_\_\_\_\_  
Adam Bond

\_\_\_\_\_  
Patrick Rogers

\_\_\_\_\_  
Marsha Brunelle

\_\_\_\_\_  
Stephen Spataro

\_\_\_\_\_  
Muriel Duphily

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, member of the Middleborough Historical Commission, as aforesaid, who 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/she/they signed it voluntarily for its stated purpose on behalf of the Town of Middleborough.

\_\_\_\_\_  
(Official signature and seal of Notary)

APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION  
COMMONWEALTH OF MASSACHUSETTS

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that the foregoing Preservation Restriction to the Town of Middleborough, acting by and through the Middleborough Historical Commission (Grantee), has been approved by the Massachusetts Historical Commission in the public interest pursuant to M.G.L. Chapter 184 Section 32.

By: \_\_\_\_\_  
William Francis Galvan

Secretary of the Commonwealth and  
Chair of the Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, Secretary of the Commonwealth and Chair of the Massachusetts Historical Commission, as aforesaid, who 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/she signed it voluntarily for its stated purpose on behalf of the Massachusetts Historical Commission.

\_\_\_\_\_  
(Official signature and Seal of Notary)  
My commission expires: