

PRESERVATION RESTRICTION AGREEMENT  
between the TOWN OF HINGHAM  
by and through the HINGHAM HISTORICAL COMMISSION  
and [owners of the property]

The parties to this Preservation Restriction Agreement ("Agreement") are [owners] with an address of \_\_\_\_\_ together with their heirs, successors, administrators and assigns ("Grantor") and Town of Hingham, by and through the Hingham Historical Commission with an address of Town Office Building, 222 Central Street, Hingham, Massachusetts 02043, ("Grantee").

WHEREAS, the Grantor is the owner in fee simple of certain real property with improvements thereon known as the Leavitt Homestead ("Premises"), more particularly described as:

*[insert legal description]*

The Premises are also shown as Parcel \_\_\_\_ on the Assessors Map attached as Exhibit A hereto and incorporated herein by reference.

WHEREAS, the Agreement is intended to protect the Leavitt Homestead ("Historic Property") and its setting as shown on Exhibit A ;

WHEREAS, the Grantor wishes to impose certain restrictions, obligations and duties upon it as the owner of the Premises and on the successors to its right, title and interest therein, with respect to maintenance, protection, and preservation of the Premises in order to protect the architectural and historical integrity thereof; and

WHEREAS, the preservation of the Premises is important to the public for the enjoyment and appreciation of its architectural and historical heritage and will serve the public interest in a manner consistent with the purposes of M.G.L. chapter 184, section 32, hereinafter referred to as the Act; and

WHEREAS, the Premises have been determined by the Grantee as a significant historic asset in the town, notable as remarkably intact and little changed example of early 18<sup>th</sup> century building to which an even earlier building was moved

WHEREAS, the open space that surrounds the Historic Property retains its rural character and is important to maintaining its setting and sense of place;

WHEREAS, the Grantee is a government body authorized to accept these preservation restrictions under the Act;

NOW, THEREFORE, for good and valuable consideration, the Grantor conveys to the Grantee the following preservation restrictions, which shall apply in Perpetuity to the Premises.

These preservation restrictions are set forth so as to ensure the preservation of those characteristics which contribute to the architectural and historical integrity of the Premises. Characteristics that contribute to the architectural and historical integrity of the Premises include, but are not limited to, the setting and location of the Premises; architectural features, materials, appearance, and workmanship of the Historic Property; and the “Protected Architectural Features” located in the interior of the building that include: wooden floorboards; woodwork including cornices, mantelpieces, paneling, wainscoting, cupboards, baseboards, stairs, railings, balusters, newels, doors, door casings, windows, window sash, window casing; chimney, fireboxes, mantels and hearths; and iron hardware located at the doors, windows and fireplaces

The terms of the Preservation Restriction are as follows:

- (1) No further subdivision: Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted) is prohibited.
- (2) Maintenance of Premises: The Grantor agrees to assume the total cost of continued

maintenance, repair and administration of the Premises so as to maintain the Historic Property in a good and sound state of repair and to preserve the characteristics that contribute to the architectural and historical integrity of the Premises, in accordance with the Secretary of the Interior's "Standards for the Treatment of Historic Properties", a current copy of which is attached as Exhibit B hereto. Grantee does not assume any obligation for maintaining, repairing or administering the Premises.

(3) Demolition and Relocation: Grantor shall not demolish or knowingly cause or permit to be demolished the Historic Property. No portion of the Historic Property shall be moved, unless previously approved by Grantee, directed by a governmental authority, or required by a taking by eminent domain.

(4) Alterations: The Grantor agrees that no alterations shall be made to the exterior of the Historic Property or to Protected Architectural Features unless:

- a. Alterations are clearly of minor nature and do not affect the characteristics that contribute to the architectural or historical integrity of the Historic Property. Ordinary maintenance and repair of the Historic Property may be made without the written permission of the Grantee. For purposes of this Agreement, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the "Restriction Guidelines", attached to this Agreement as Exhibit C and hereby incorporated by reference;
- b. After reviewing plans and specifications submitted by Grantor, the Grantee has previously determined in writing that proposed alterations do not impair the characteristics that contribute to the architectural or historical integrity of the Premises; or
- c. Alterations are required by casualty or other emergency, promptly reported to the Grantee.

(5) New Addition: With the prior written approval of Grantee, which shall not be unreasonably withheld, conditioned or delayed, an addition may be added to the rear elevation only of the Historic Property, provided Grantee finds that such proposed

addition is compatible in terms of size, siting, height, location, materials, design and workmanship to the Historic Property.

(6) Outbuildings and ancillary structures: After prior notice to Grantee, Grantor may construct, demolish, alter, and maintain existing and new appurtenant structures, such as the existing barn and chicken coop, or a new garage, swimming pool, tennis court, barn, shed, and greenhouse; and including gardening and landscaping appropriate to such use, provided no such ancillary structure or outbuilding is used as a dwelling.

(7) Insurance: Grantor, at its sole expense, shall keep the Historic Property insured against fire and casualty, with limits not less than the appraised value of the Historic Property. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefore, certificates of such insurance coverage.

(8)

Casualty Damage: In the event of damage or destruction of the Historic Property caused by fire or other casualty, Grantor shall promptly notify Grantee of such damage or destruction and Grantor and Grantee shall each use best efforts to cooperate with one another and make any determinations that are necessary under this Paragraph 6. Grantor and Grantee may agree on plans and specifications for stabilization, restoration, rehabilitation or reconstruction of the damaged or destroyed structure. In the event that a substantial majority of the Historic Property is damaged or destroyed, or Grantee otherwise determines that stabilization or the damaged or destroyed Historic Property in accordance with the terms of this Agreement would be impractical, not consistent with the purposes of this Agreement, or otherwise infeasible, Grantee shall notify Grantor that Grantor may alter, demolish, remove or raze the Historic Property. In the event of a casualty loss, the prohibition against further subdivision included in Paragraph (1) shall remain in full force and effect. Grantor may thereafter construct a replacement structure, with Grantee's prior writing approval, which shall be granted upon a showing that the replacement structure is of substantially similar size, location, massing, and height to the destroyed Historic Property

(9) Inspection: Upon reasonable prior notice to Grantor, there is hereby granted to Grantee and its representatives the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance with this Preservation Restriction Agreement.

(10) Legal Remedies of Grantee: The rights hereby granted shall include 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 Property to its condition prior to the time of the injury complained of (it being agreed that 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 Grantee. Provided that a violation of this Agreement is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred, Grantor covenants and agrees to reimburse Grantee all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Agreement or in taking reasonable measure to remedy, abate any violation thereof. By its acceptance, Grantee does not undertake any liability or obligation relating to the condition of the Property, including with respect to compliance with hazardous materials or other environmental laws and regulations. This Agreement shall be enforced by Grantee in its sole discretion. Nothing herein shall impose upon the Grantee any affirmative obligation or liability relating to the condition of the Property. Failure by the Grantee to enforce any provision or condition set forth herein, or to exercise any rights hereby conveyed, shall not constitute a release or waiver of any such right or condition.

(11) Assignment: The Grantee may assign this Agreement to another governmental body or to any charitable corporation or trust among the purposes of which is the maintenance and preservation of historic properties only in the event that the Grantee should cease to function in its present capacity.

(12) Binding Effect and Release: The burden of this Agreement shall run with the Premises in perpetuity, and shall be enforceable against Grantor. If circumstances arise

(through condemnation or casualty or other causes) that render the purposes of this Agreement impossible to accomplish, this Agreement may be released, in whole or in part, by Grantee pursuant to the procedures established by MGL chapter 184.

- (13) Written Notice and Approval: Whenever prior written approval by Grantee is required under the provisions of this Agreement, Grantor shall notify Grantee in writing not less than forty-five (45) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the provision of this Agreement. Upon receipt of such notice, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receiving all requested information. The failure by Grantee to act within forty-five (45) days of its receipt of any written request for Grantee's approval required under this Agreement shall be deemed to be approval of the entire request. Whenever prior written approval by Grantee is required under this Agreement, Grantee shall not unreasonably withhold, condition or delay such approval.
- (14) Validity and Severability: The invalidity of M.G.L. c. 184 or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- (15) Recording: The Grantor agrees to record this Agreement with the appropriate Registry of Deeds and file a copy of such recorded instrument with the Grantee.
- (16) Mortgage Subordination. Grantor represents and warrants to Grantee that the Premises are subject to no mortgages, liens, or leases prior in right to this Agreement. Grantor agrees not to enter into or permit other mortgages, liens or leases affecting the Premises prior in right to this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this day of \_\_\_\_\_, 2002.

GRANTOR

\_\_\_\_\_  
[owner(s)]

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 2001

Then personally appeared the above named \_\_\_\_\_  
\_\_\_\_\_  
and acknowledged the foregoing instrument to be the free act and deed of \_\_\_\_\_  
\_\_\_\_\_, before me,

Notary Public  
My Commission Expires \_\_\_\_\_

GRANTEE

\_\_\_\_\_

Hingham Historical Commission

By its:

COMMONWEALTH OF MASSACHUSETTS

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

\_\_\_\_\_, 2001

Then personally appeared the above named \_\_\_\_\_

\_\_\_\_\_

and acknowledged the foregoing instrument to be the free act and deed of \_\_\_\_\_

\_\_\_\_\_, before me,

Notary Public

My Commission Expires \_\_\_\_\_

APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION

The undersigned hereby certifies that the foregoing preservation restrictions have been approved pursuant to Massachusetts General Laws, Chapter 184, section 32.

MASSACHUSETTS HISTORICAL COMMISSION

By \_\_\_\_\_  
Cara H. Metz  
Executive Director and Clerk  
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. \_\_\_\_\_, 2001

Then personally appeared the above named Cara H. Metz and acknowledged the foregoing instrument to be the free act and deed of the Massachusetts Historical Commission, before

Notary Public

\_\_\_\_\_

My Commission Expires \_\_\_\_\_

Exhibit A: Assessors Map

## Exhibit B

### **Secretary of the Interior's Standards for Historic Preservation Projects** *General Standards for Historic Preservation Projects*

The following general standards apply to all treatments undertaken on historic properties listed in the National Register.

1. Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance shall be discouraged.

4. Changes which have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment.

5. Distinctive architectural features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence from other buildings or structures.

7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

8. Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any acquisition, stabilization, preservation, rehabilitation, restoration, or reconstruction project.

#### *Specific Standards for Historic Preservation Projects*

The following specific standards for each treatment are to be used in conjunction with the eight general standards and, in each case, begin with number 9. For example, in evaluating acquisition projects, include the eight general standards plus the four specific standards listed under Standards for Acquisition. The specific standards differ from those published for use in historic Preservation Fund grant-in-aid projects (36 CFR Part 68) in that they discuss more fully the treatment of archaeological properties.

#### **Standards for Acquisition**

9. Careful consideration shall be given to the type and extent of property rights which are required to assure the preservation of the historic resource. The preservation objectives shall determine the exact property rights to be acquired.

10. Properties shall be acquired in fee simple when absolute ownership is required to insure their preservation.

11. The purchase of less-than-fee simple interests, such as open space or facade easements, shall be undertaken when a limited interest achieves the preservation objective.

12. Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archaeological, architectural or cultural significance.

### **Standards for Protection**

9. Before applying protective measures which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.

10. Protection shall safeguard the physical condition or environment of a property or archaeological site from further deterioration or damage caused by weather or other natural, animal, or human intrusions.

11. If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.

### **Standards for Stabilization**

9. Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.

10. Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance and significance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the aesthetic and historical or archaeological quality of the property, except where concealment would result in the alteration or destruction of historically or archaeologically significant material or spaces. Accurate documentation of stabilization procedures shall be kept and made available for future needs.

11. Stabilization work that will result in ground disturbance shall be preceded by sufficient archaeological investigation to determine whether significant subsurface features or artifacts will be affected. Recovery, curation and documentation of archaeological features or specimens shall be undertaken in accordance with appropriate professional methods and techniques.

### **Standards for Preservation**

9. Preservation shall maintain the existing form, integrity, and materials of a building, structure, or site. Archaeological sites shall be preserved undisturbed whenever feasible and practical. Substantial reconstruction or restoration of lost features general are not included in a preservation undertaking.

10. Preservation shall include techniques of arresting or retarding the deterioration of a program through a program of ongoing maintenance.

11. Use of destructive techniques, such as archaeological excavation, shall be limited to providing sufficient information for research, interpretation and management needs.

### **Standards for Rehabilitation**

9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural, or cultural material and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

10. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such addition or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

### **Standards for Restoration**

9. Every reasonable effort shall be made to use a property for its originally intended purpose or to provide a compatible use that will require minimum alteration to the property and its environment.

10. Reinforcement required for structural stability or the installation of protective or code required mechanical systems shall be concealed wherever possible so as not to intrude or detract from the property's aesthetic and historical qualities, except where concealment would result in the alteration or destruction of historically significant materials or spaces.

11. Restoration work such as the demolition of non-contributing additions that will result in ground or structural disturbance shall be preceded by sufficient archaeological investigation to determine whether significant subsurface or structural features or artifacts will be affected. Recovery, curation and documentation of archaeological features and specimens shall be undertaken in accordance with appropriate professional methods and techniques.

### **Standards for Reconstruction**

9. Reconstruction of a part or all of a property shall be undertaken only when such work is essential to reproduce a significant missing feature in a historic district or scene, and when a contemporary design solution is not acceptable. Reconstruction of archaeological sites generally is not appropriate.

10. Reconstruction of all or a part of a historic property shall be appropriate when the reconstruction is essential for understanding and interpreting the value of a historic district, or when no other building, structure, object, or landscape feature with the same associative value has survived and sufficient historical or archaeological documentation exists to insure an accurate reproduction of the original.

11. The reproduction of missing elements accomplished with new materials shall duplicate the composition, design, color, texture, and other visual qualities of the missing element. Reconstruction of missing architectural or archaeological features shall be based upon accurate duplication of original features substantiated by physical or documentary evidence rather than upon conjectural designs or the availability of different architectural features from other buildings.

12. Reconstruction of a building or structure on an original site shall be preceded by a thorough archaeological investigation to locate and identify all subsurface features and artifacts. Recovery, curation and documentation of archaeological features and specimens shall be undertaken in accordance with professional methods and techniques.

13. Reconstruction shall include measures to preserve any remaining original fabric, including foundations, subsurface and ancillary elements. The reconstruction of missing elements and features shall be done in such a manner that the essential form and integrity of the original surviving features are unimpaired.

Exhibit C  
RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify Paragraph (4) of the terms of the Preservation Restriction Agreement, that deals with alterations to the Historic Property. Under this section permission from the Hingham Historical Commission (“Grantee”) is required for any major alteration. Alterations of a minor nature that are part of ordinary maintenance and repair do not require Hingham Historical Commission’s review.

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

**PAINT**

Minor - Exterior hand scraping and repainting clapboards or non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including ornamental woodwork, stone, decorative or significant original siding.

**WINDOWS AND DOORS**

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

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows.

**EXTERIOR**

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

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot re-pointing of masonry. Structural stabilization of the property is also considered a major alteration.

**LANDSCAPE/OUTBUILDINGS**

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing buildings or property; altering of property; altering or

removing significant landscape features such as gardens, vistas, walks, plantings; ground disturbance affecting archaeological resources.

Changes classified as major alterations are not necessarily unacceptable. Under the Preservation Restriction Agreement, such changes must be reviewed by the Hingham Historical Commission to assess their impact on the historic integrity of the Premises.

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

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