

**PRESERVATION RESTRICTION AGREEMENT
BETWEEN THE TOWN OF SOUTHBOROUGH
BY AND THROUGH THE SOUTHBOROUGH HISTORICAL
COMMISSION
AND
84 MAIN STREET SOUTHBOROUGH, LLC**

The parties to this Preservation Restriction Agreement (“Agreement”) are 84 Main Street Southborough, LLC, (“Grantor”) a limited liability company duly organized and existing under the laws of the Commonwealth of Massachusetts, having a usual place of business at 42 Westboro Road, North Grafton, record owner in fee of certain real property, located at 84 Main Street, Southborough, by Deed dated August 7, 2014 and recorded in the Worcester Registry of Deeds in Book 52671, Page 4, being historically known as the Joseph Burnett House, the record owner having an address of 42 Westboro Road, North Grafton, MA 01536, together with its heirs, successors, administrators and assigns and the Town of Southborough (“Grantee”), a duly organized and existing municipal corporation established in 1727 with a Government address of 17 Common Street, the Town House, Southborough, MA 01772, to be administered, managed and enforced on behalf of Grantee by and through its agent, the Southborough Historical Commission (“Commission”).

WHEREAS, the Grantor is the owner in fee simple of certain real property with improvements thereon known as the “Joseph Burnett House” and located at 84 Main Street, Southborough, Massachusetts (“Premises”), more particularly described in the

Deed dated August 7, 2014 and recorded in the Worcester Registry of Deeds in Book 52671 Page 4, which Premises are described in Exhibit "A" attached hereto and incorporated herein by reference. The Premises are also shown on Map 53 as Parcel 1 on the Town of Southborough Assessors Maps (Exhibit B), the Form B- Massachusetts Historical Commission Building Inventory Form, prepared June 1999 (Exhibit C), and exterior photographs of the Premises (Exhibit D), together with original digital electronic and archival print copies of which are also on file with the Town Clerk and Grantor, all being attached as Exhibits B, C and D hereto and incorporated herein by reference; and

WHEREAS, this Agreement is intended to protect and preserve **historical features** of (i) the existing Joseph Burnett House ("Main House") and accessory historical buildings which includes the carriage house ("Carriage House) and the original St. Marks Chapel ("Chapel) (the Main House, Carriage House and Chapel collectively being hereinafter referred to as "Buildings of Historical Significance"); and (ii) the land located at the Premises as further depicted on the attached plan (Exhibit E), which depicts the Buildings of Historical Significance and the view as protected land ("Protected Land"), said plan is attached hereto and incorporated by reference; furthermore at the Grantor's discretion, it may **historically** reconstruct or replicate the Cottage and relocate same at the Premises in the area as noted in Exhibit E, however, such replication is to substantively replicate the Cottage in the image as noted in the historical photos and will require submission, review and approval of such replication/renovation plans ("Cottage Plans") by the Commission, which approval may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Commission may only

disapprove said Cottage Plans if they determine by a majority vote of at least four (4) sitting members at a duly called meeting of the Commission that the Cottage Plans do not substantively reflect the image as noted in the historical photographs of the Cottage; and

WHEREAS, the Buildings of Historical Significance are in need of preservation and restoration and the Protected Land is in need of maintenance; and

WHEREAS, Exhibits B, C, D and E shall collectively make up the base line documentation (“Baseline Documentation”) referred to hereinafter and the following generally further describes the Main House, Carriage House, Chapel, Cottage and grounds and the general extent of the Grantor’s restoration, repair and maintenance of the exterior of the Main House, Carriage House, Chapel, Cottage and Protected Land;

- 1. Description Main House.** The Main House being originally built in 1849, is a striking example of Second Period French Empire Architecture. It has eleven bedrooms, a ballroom, sitting room, French style kitchen, a keeping room, and billiard room. The closure of the Main House is constructed of a variety of local Southborough stone that creates a strong polychrome effect, as the natural hues of the material range from what appears to be a light gray schist to another dark gray stone used in corner quoining and window lintels and sills, to a contrasting warm brown stone interspersed as smaller pieces among the larger gray blocks. The double-hung windows are wood, as is the main cornice, adorned with oversized, molded modillion-like brackets.

This complex building has several wings and appendages. The core of the house is a high 2 1/2-story block with an east-facing, three-bay facade. A short full-height wing extends to its south, with a longer west wing behind it. In the angle between the rear of the main house and the west wing is a three-story square tower with a hipped roof. The tower was once much higher, with a prominent mansard roof. A square one-story section northeast of the tower with a distinctive red slate hipped monitor roof is apparently a billiard room.

Windows throughout the house are mainly 6-over-6 or 4-over-4-sash. Pedimented, pilastered dormers with 6/6 sash are set into the nearly vertical lower faces of the roof. The main east facade is three bays wide, with a somewhat severe appearance due to the loss of its wide porch. The wide center entry, recessed into a quoined surround of rock-faced gray granite, has a large, varnished double-leaf door with round-headed lights over single panels. Early photos show that the facade windows had louvered wood shutters, and that the center second-story window was tripartite, with what appear to be French doors and a pilastered surround with segmental-arched pediment above it. A wide "piazza" spanned the main facade, and a balustraded open terrace continued north along the drive.

The east facade of the south wing has paired 4/4 sash at both first and second stories, with a narrow 6/6 toward the north end. Projecting from the south wall of the wing is a flat-roofed one story den or sunroom, which echoes another of similar design abutting the north end of the main block. Viewed from the south, the south wing is one-bay deep, and the west wing behind it is three bays long, punctuated by segmental-arched window openings crowned with five small

stone blocks. The segmental-arched theme of the west wing is continued in a southwest entry in what appears to have been a former one-story kitchen or pantry ell. Fronting the entry is a modern wooden deck. The view of the rear (west) elevation reveals the square tower, tucked into the angle of the two bay width of the main house and the west wing.

The tower has one window on each face at first and second stories, and a pair of narrow 4-over-4-sash at the third, all set into segmental-arched openings. Northeast of the tower is a feature that was becoming fashionable in luxurious American country houses by the Civil War era, a one-story billiard room. Many billiard rooms were designed, like this one, on a square plan, and often had this type of hipped roof with a monitor skylight in the center to light the billiard table. The monitor windows appear to have been filled in here, but the general form remains, along with the distinctive red slate of the roof. The wide rear chimney is another typical feature, marking the location of the large fireplace which warmed the room.

The Grounds

Since the nineteenth century the spectacular setting of this house has been altered only by the building of a modern house at the southeast corner of the grounds, well screened by trees. It otherwise retains its park-like surroundings, with mature specimen trees that include a huge copper beech tree, a weeping beech, weeping cedar, a line of tall pines along Main Street, and a double row of sugar maples flanking the long drive up to the house. Stone walls remain along both the Main Street and Deerfoot Road street fronts, and remnants of a granite

block retaining wall are still in place just downhill from a small grove of trees south of the house. In place of the demolished front porch, a narrow grassed terrace with a granite-block retaining wall now fronts the main facade.

Carriage House, Chapel and Cottage

Three distinctive outbuildings are clustered at the southwest corner of the property, in the angle of Deerfoot Road and Stony Brook, which was channeled as an aqueduct in the 1890s.

- (i) Carriage House. Just northeast of the Chapel and Cottage, facing north over a curving drive, is a large 1 1/2- story wood-frame mansard-roofed Carriage House/stable, with a small stone-walled paddock extending to the south behind it. In contrast to the house and chapel, this building is clad in wood shingle and stands on a brick foundation. The roof, which has a polygonal cupola in the center, is slate on its lower slopes, asphalt shingle on the upper sections. The windows are 2-over-2-sash, including those in the hip-roofed dormers. The main carriage entry is located in the center of the north side of the building, under a large mansard wall dormer that retains its double-leaf, vertical board hay door and a slender copper finial. The overhead garage door in the carriage entrance is a modern replacement.

A flat-roofed stable wing extends to the west, displaying six small stall- or stanchion windows high in the wall facing Deerfoot Road, and a glass-and-panel walk-in door facing the drive. The wood trim of this

building includes flat unadorned corner boards, window surrounds, and water table, and the same type of widely-spaced, modillion-like cornice brackets as the main house.

(ii) Chapel. First is the two-story gable-roofed “stone shop” located on the bank of the brook, just below the 1890s stone dam. It was built in 1848 as the headquarters for the building crew of the mansion, and its position so close to the water indicates that a water wheel in its high basement story may have once turned machinery that aided in preparation of the stone, or in other building activities. This little building is constructed of the same combination of stone as the house, and, like the house, has a slate roof. It is currently in deteriorated condition, with large holes in the roof, and boarded-up windows and doors. What appear to be four large window openings line the lower wall on the west, Deerfoot Road side, with second-story window openings aligned above them. The Chapel is 40 x 18 feet in size.

The north gable end has a six-panel door mounted high in the wall, with a boarded-over door opening below it and a lunette opening under the gable peak. A wooden cornice at the unboxed eaves is in deteriorated condition.

(iii) Cottage. Close against the east wall of the chapel, but standing as an independent building, is a rare example of what appears to be a wood-frame Gothic Revival summerhouse. Also in very deteriorated condition, it is a one-story structure with a very steeply-pitched hipped

roof pierced by a distinctive narrow pointed-arched dormer on its east slope. The board-and-batten siding is consistent with the building's Gothic Revival form; the asphalt shingle roof is a twentieth-century feature. Large empty window openings fill each side of the building. A historic photo taken before 1897 shows this building in a slightly different position, apparently further east on the bank of the brook before it was channelized for the Boston water system. At that time, it also had a low pointed steeple at the west end of the roof.

2. **Restoration.** The Grantor intends to restore the original exterior, trim, windows (adding low reflective energy panels which are single sheets of framed glass or a single sheet of framed glass covering the windows), and slate roof including adding slate where it was removed. In addition, the Grantor intends to rebuild the front porch that had been removed, add a sun atrium onto the kitchen area in the rear, and to restore the original doors. All of the foregoing being defined as the "Exterior Work". The Exterior Work shall comply with the Secretary's Standards and shall preserve the view of the Main House. The Exterior Work anticipated and the work detailed on Exhibit G and incorporated into the Buildings of Historical Significance and the Protected Land shall be in a style and nature similar to the Baseline photographs and shall comply with the Secretary's Standards. Prior to undertaking any work as described in this section and in in Exhibit G, Grantor shall submit to the Commission of the intended Exterior Work or work on Exhibit G for its review and approval, plans and/or narrative

describing the Grantor's proposed restoration/renovation or reconstruction sufficiently detailed for the Commission to determine that the proposed work meets the requirements of this Agreement. The Commission's approval shall not be unreasonably withheld, conditioned or delayed, the Grantor's rights and obligations to undertake such restoration/renovation or reconstruction in a timely manner under the terms of this Agreement being acknowledged. Notwithstanding the foregoing, if such proposed renovation/restoration or reconstruction is substantively in conformance with the Baseline and historical photographs and the Secretary's Standards, such approval shall be deemed granted by the Commission, unless the Commission provides a written disapproval of such plans and/or narrative to the Grantor within thirty (30) days of receipt of said plans and/or narrative. Any disapproval of such plans and/or narrative by the Commission will require disapproval by a majority vote of at least four (4) sitting members at a duly called meeting of the Commission. Thereafter, any such restoration, renovation or reconstruction work to be completed other than as stated herein as Exterior Work or included on Exhibit G, shall require the Grantor to submit plans and/or narrative descriptions to the Commission for prior review and approval pursuant to the requirements of Paragraph 17 herein.

3. Relative to the Protected Land, the landscape shall be professionally pruned, irrigated, loamed and shaped as needed. No perimeter fencing or tall hedges shall be placed on the property blocking the view. There will be wrought iron gates at both entrances to the property. All healthy monumental trees to be conserved, diseased trees to be replaced with minimum 3" caliper ; Prior to commencing any

alteration or restoration of the Protected Land Grantor will provide the Commission with an existing conditions landscape plan that will detail the current conditions and locations of all hardscape and softscape features currently on the property, which shall include: lawns, drives, outbuildings, decks, porches, patios as well as the location of all trees greater than six (6") inch caliper and shrubs more than 4' high. Furthermore relative to the Protected Land, Grantor shall provide a Landscape Master Plan that details all proposed changes to the current landscape, both hardscape and softscape that will show approximate final locations of all buildings, walkways, patios, decks and pools, including details such as pavement type, outdoor lighting, irrigation, trees to be removed; as well as a planting plan which details species, sizes and approximate locations of all proposed plantings ("Master Landscape Plan"). The Commission shall review and comment on the Landscape Master Plan as furnished by Grantor. Such comments and subsequent approval by the Commission shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, a disapproval of the proposed Landscape Master Plan by the Commission shall require a majority vote of at least four (4) sitting members at a duly called meeting of the Commission. The parties agree to work together to realize an acceptable plan, Grantor and Commission acknowledging their common interest in the creation and execution a Landscape Master Plan that meets the Secretary's Standards, that is consistent with the style and nature of the landscape setting and ambiance of the Protected Land and Buildings of Historic Significance as depicted in the Baseline and historic photographs, and that is consistent with the preservation purposes of

this Agreement. Notwithstanding any right of disapproval by the Commission, the Commission shall determine the final Landscape Master Plan to be in compliance if it meets the foregoing requirements of this Paragraph 3 and the terms and conditions of this Agreement. This Master Landscape Plan is to be created by a landscape design firm in conjunction with a civil engineering firm selected by Grantor and the Commission and at Grantor's sole cost and expense and will form the basis of the initial work to be completed by Grantor. Once the work, renovations, restorations and plantings are completed pursuant to the Master Landscape Plan, any subsequent deviation or change to the Master Landscape Plan or other major activity as defined by the Restriction Guidelines attached hereto and incorporated herein as Exhibit F, shall require the prior review and written approval of the Commission pursuant to Paragraph 17 herein, which approval shall not be unreasonably withheld, conditioned or delayed, before the Grantor implements any changes thereto; and

WHEREAS, the restrictions contained in this Agreement have not been purchased with state funds, but were authorized by the vote of the Town of Southborough under Articles 13 and 14 of the April 2016 Annual Town Meeting appropriating \$970,000.00 in Community Preservation Act funds for the purpose of acquisition of the development rights and said Preservation Restriction upon the Buildings of Historical Significance and Protected Land (collectively the "Historic Property"); with the approval of the Community Preservation Committee pursuant to M.G.L. c.44B; and

WHEREAS, the Grantor wishes to impose certain restrictions, obligations and duties upon itself as the owner of the Premises and on its heirs, successors, administrators and assigns to its right, title and interest therein, with respect to such maintenance, protection, and preservation of the Historic Property in order to substantively protect the architectural and historical integrity and significance thereof; and

WHEREAS, the Premises is included in the Inventory of Historic and Archaeological Assets of the Commonwealth was found by the Massachusetts Historical Commission staff to be eligible for listing in the National Register of Historic Places in an opinion dated July 30, 2014, is historically significant for its architecture, associations and/or archaeology, and is qualified for the protections of a perpetual preservation restriction under M.G.L. Chapter 184, sections 31, 32 and 33; and the preservation of the Historic Property 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 G.L. c.184, §§ 31, 32 and 33, hereinafter referred to as “the Act”, and is for a bonafide public purpose; and

WHEREAS, the Historic Property has been determined by the Grantee to be a significant historic asset in the Town, notable in that:

- Grantor and Grantee recognize the architectural, historic and cultural values (hereinafter “preservation values”) and significance of the Buildings of Historical Significance and the Protected Land, and have the common purpose of preserving

the aforesaid preservation values and significance of the exterior of the Buildings of Historical Significance and the Protected Land;

- The Historic Property was the Homestead of the best known and most influential Southborough citizen in the Town's history, Joseph Burnett (1820-1894), founder of St. Mark's School, St. Mark's Church, Deerfoot Farm and the commercial enterprise of the nationally known Burnett's Flavor Extracts.

WHEREAS, the Parties agree that the Historic Property retain its rural vista and historical character as it is important to maintain the setting and sense of place; and

WHEREAS, the Buildings of Historical Significance and Protected Land at the Premises together are a historically and architecturally significant property, qualified for the protections of a perpetual preservation restriction under the Act; and

WHEREAS, the Grantee is a government body authorized to accept these preservation restrictions under G.L. c.40, §8D and the Act; and

WHEREAS, to foster educational opportunity and instill continued appreciation of the Buildings of Historic Significance and the Protected Land, only during the ownership of the Premises by the current trustee of Grantor (John Delli Priscoli) and his immediate family members ("Current Grantor"), Current Grantor shall consider and do their best to accommodate two educational tours of the Grounds each calendar year for Southborough students in the accompaniment of teachers, proctors or adult volunteers.

All such visits or other visits to relevant portions of the Premises that may be allowed by the Current Grantor shall be at the Current Grantor's discretion.

WHEREAS, the Grantor, for itself and its heirs, successors, administrators and assigns, as well as for the benefit of the Town of Southborough, further desires and agrees to substantively restore the exterior of the Historic Property to its 19th Century splendor, which will include a specific restriction that will ensure that the exterior of the Main House, Chapel and Carriage House will be protected pursuant to the terms herein and the Protected Land will not be subdivided.

NOW, THEREFORE, in consideration, of the amount of Nine Hundred Seventy Thousand (\$970,000.00) Dollars and other valuable consideration granted in the public interest, the Grantor conveys to the Grantee the following preservation restrictions, which shall apply in Perpetuity to the exterior of the Buildings of Historical Significance and Protected Land.

These preservation restrictions are set forth so as to ensure the specific preservation of those substantive characteristics which contribute to the exterior, architectural and historic integrity of the Protected Land and Buildings of Historical Significance. Such characteristics that contribute to the architectural and historical integrity thereof include the setting and location of the Buildings of Historical Significance and Protected Land; existing exterior architectural features, materials,

appearance, and workmanship of the Historic Property. These existing features are shown and described on the Baseline Documentation.

The terms of the Preservation Restriction are as follows:

- (1) No further division or subdivision: Conveyance in fee 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 cost of continued maintenance and repair of the Historic Property so as to maintain the Historic Property in a good and sound state of repair and to preserve the exterior characteristics that contribute to the architectural and historical integrity of the Historic Property in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties, with Guidelines for Preserving, Rehabilitation, Restoring and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time and as they may relate to the exterior of the Buildings of Historical Significance, and the Secretary of the Interior's Guidelines for Treatment of Cultural Landscape (both documents herein "The Secretary's Standards"). This includes, but is not limited to, pruning and maintenance required to maintain the viewsapes to the Buildings of Historical Significance from Parkerville Road, Deerfoot Road and Main Street. Grantee does not assume any obligation for maintaining, repairing or administering the Historic

Property. Notwithstanding the above, the Grantor shall not be restricted from maintaining, repairing or upgrading its current septic facility or underground utilities on the Property in compliance with and as required by applicable law, so long as the current grade is not increased by greater than one (1) foot or a plan is approved pursuant to Paragraph 17 herein. Notwithstanding the foregoing, Grantor shall substantively restore any disturbed area to its condition as indicated on the Master Landscape Plan.

- (3) Demolition and Relocation: Grantor shall not demolish or knowingly cause or permit to be demolished the Buildings of Historical Significance, other than as allowed herein pursuant to paragraph 10.

- (4) Alterations: The Grantor agrees that no alterations, other than disclosed or allowed herein, shall be made to the exterior of the Buildings of Historic Significance or to protected architectural features, other than pursuant to the Secretary's Standards:
 - a. Alterations which are minor in nature and do not substantively 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 to be governed by the Restriction Guidelines, attached hereto as Exhibit F.

- b. Grantee has reviewed a draft site plan (Exhibit E), photographs (Exhibit D) and, preliminary proposed renovation/restoration work specifications pursuant to Exterior Work and detailed on (Exhibit G) submitted by Grantor, which also may include but are not limited to: the reconstruction of the tower or porches on the Main House as depicted in the Baseline historic photographs; the addition of a greenhouse/atrium off the kitchen at the rear of the Main House; and other historically documented features and other minor modifications as they may relate to the renovation of the Main House, Carriage House, Chapel and Cottage. Grantee and Commission have determined that the aforementioned renovation/restoration work will not substantially impair the characteristics that contribute to the architectural or historical integrity or style of the Premises or Historic Property if the renovation/restoration work is undertaken in substantial conformance with the historical photographs, and with the Secretary's Standards. Grantor and Commission acknowledge Grantor's rights and obligations to undertake the renovation/restoration work in a timely manner under the terms of this Agreement. Grantor shall submit plans and/or a narrative for review and approval of all such renovation/restoration work to the Commission prior to initiating any such work. However, if such proposed

renovation/restoration or reconstruction is substantively in conformance with the Baseline and historical photographs and the Secretary's Standards, such approval shall be deemed granted by the Commission, unless the Commission provides a written disapproval or objection within thirty (30) days of receipt of said plans and/or narrative. Any objections to such submission or disapproval by the Commission must not be unreasonable or unreasonably withheld, conditioned or delayed, and such disapproval or objection shall require a majority vote of at least four (4) sitting members of the Commission at a duly called meeting of the Commission.

- (5) Permanent Restriction as to Cutting of Monumental Trees: Grantor acknowledges, other than as herein approved and subsequent to the implementation of the Master Landscape Plan, there will be a prohibition against all cutting other than general maintenance of trees of 18" diameter or greater ("Monumental Trees") or ornamental trees detailed on the Master Landscape Plan , unless designated diseased or damaged beyond salvation by a certified arborist, mutually agreed upon by the Grantor and Commission and upon the Commission's approval, which approval may not be unreasonably withheld, conditioned or delayed. Any disapproval by the Commission shall require a majority vote of at least four (4) sitting members at a duly called meeting of the Commission.

(6) Rights of First Option: In furtherance of the intended preservation of the Premises, Grantor grants to the Town a Right of First Option, as to any future sale of the underlying fee simple of the Premises outside of Grantor's immediate family defined as Grantor's Managers or its successors spouse and children. The Town, in its discretion for public interest purposes, consistent with the intent of this restriction in its sole discretion, may, in the future, assign transfer or convey the underlying Right of First Refusal or fee interest acquired herein to a qualified non-profit or charitable entity and/or will take all required action to insure there will not be a merger of interest by conveying its interest herein to an entity qualified to hold same. Such Right of First Option must be exercised by the Selectmen within thirty (30) days of such notice of intended sale and approved by Town Meeting and consummated within one hundred fifty (150) days thereafter.

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Restrictions set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder pursuant to the doctrine of "merger" or any other legal doctrine. To further the purpose and intent of this Paragraph 6, Grantee hereby expressly covenants and agrees that in the event Grantee subsequently takes title to the underlying fee interest in the Property, Grantee shall immediately transfer this Preservation Restriction to a governmental entity or to an organization qualified to hold preservation restrictions under the Act, or

shall reserve this Preservation Easement upon its subsequent transfer of the underlying fee interest in the Property.

- (7) Completion of Period Restoration: Grantor shall complete the period restoration of the exterior of the Buildings of Historical Significance as required herein within 48 calendar months from the later of the approval of the Southborough Town Meeting to accept this preservation restriction for such consideration or the transfer of consideration and recording of this Agreement with the Worcester Registry of Deeds.

So as to ensure timely completion of the exterior restoration/renovation, specified herein, Grantor agrees to provide a surety bond or equivalent security issued by a qualified surety company naming the Town as the Guarantee party, for the amount of the proceeds paid by the Town only for the restoration/renovation costs of the Buildings of Historical Significance (\$345,000) and not for the amount attributed towards the Development Rights of the Land. However the Grantor will not be required to pay more than a rate of two (2%) percent of the value thereof for such surety. Such surety to be provided and furnished to the Town at the time of closing and shall remain in effect proportionately until the renovation/restoration work contemplated herein is completed.

- (8) Removal of Invasive Species along Aqueduct: Grantor shall take reasonable steps necessary, in it's sole discretion to pursue state and local approval, including but not limited to approvals of the State DCR and Town Conservation Commission to remove invasive vegetation species and other vegetation along the contiguous

aqueduct area, so as to restore the waterway bank adjacent to the Premises to its 19th century appearance.

- (9) Exterior Landscape Decision: Once reviewed and approved by the Commission and the Grantor, with a disapproval of the Commission requiring a majority vote of at least four (4) sitting members at a duly called meeting of the Commission, the Grantor shall implement the Master Landscape Plan and Grantor shall take reasonable steps to create, preserve, and maintain all exterior landscaping on the Protected Land to be consistent with the Master Landscape Plan on or before forty eight (48) months of this Agreement and recorded in the Worcester Registry of Deeds. The Grantor agrees not to make substantive changes to the finished landscape after the implementation of the Master Landscape Plan, other than those deemed minor under the Restriction Guidelines attached hereto as Exhibit F, without prior written approval of the Commission , which approval shall not be unreasonably withheld, conditioned or delayed. Furthermore at Grantors option, with the approval of the Grantee , which approval is granted herein, shall attend to the maintenance of the isolated grass area on the corner of Deerfoot Road and Main Street, as shown on a sketch, plan or photos to be provided to Grantor and the Commission including the placement of a soft/low illuminated historical marker and house sign, such historical marker and house sign to be collaborative and with the approval of the Commission.

Grantor reserves the right to seek necessary Zoning Relief to allow the Joseph Burnett Main House to be used as an Eleven Unit, Bed and Breakfast lodging

facility, with the accessory Carriage House, also to be utilized as an Antique Shop, provided that such use conforms to the provisions of this Preservation Restriction.

- (10) Insurance/Casualty Damage: Grantor shall keep the Historic Property insured by an insurance company rated "A-1" 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 Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Commission within ten (10) business days of the Commission's written request thereof certificates of, such insurance coverage naming the Town of Southborough as an additional insured with the policy so endorsed. 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.

In the event that a Building(s) of Historical Significance or the Premises shall be damaged, or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of the damage or destruction, such notification including what, if any,

emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building(s) of Historical Significance or Premises and to protect public safety, shall be undertaken by Grantor without the Commission's prior written approval of the work. Within ninety (90) days of the date of damage or destruction or notice by the Commission, whichever is later, if requested by the Commission, Grantor at its expense shall submit to the Commission a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Commission, 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 Building(s) of Historical Significance and/or reconstruction of damaged or destroyed portions of the Building(s) of Historical Significance; and
- c. a report of such restoration/reconstruction work necessary to return the Building(s) of Historical Significance to the condition existing at the date hereof or the condition subsequently approved by the Commission.

If after reviewing the report provided for above and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under this paragraph 10, Grantor and the Commission agree that the purpose of this restriction will be served by such restoration/reconstruction Grantor and the Commission shall establish a schedule under which Grantor shall complete the

restoration/reconstruction of the Building(s) of Historical Significance in accordance with plans and specifications consented to by the parties up to the total casualty insurance proceeds available to Grantor, however Grantor shall not be obligated to expend any funds greater than the available insurance proceeds.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under this paragraph, Grantor and the Commission agree that restoration reconstruction of the Building(s) of Historical Significance is impractical or impossible, or agree that the purpose of the restriction would not be served by such restoration/reconstruction and Grantor may, with prior written consent of the Commission, alter, demolish, remove or raze, a Building(s) of Historical Significance or the Buildings of Historical Significance and/or construct new improvements on the property, Grantor and Grantee may agree to extinguish this restriction in accordance with the laws of the Commonwealth of Massachusetts and the terms herein.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lenders claims under this paragraph, Grantor and the Commission are unable to agree that the purpose of the restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to mediation and settled in accordance with paragraph 14, herein and if not resolved the parties shall pursue a claim in the Worcester Superior Court. The Mediator shall have experience in historic preservation matters.

(11) Indemnification: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend, at its own cost and expense, Grantee, its boards, commissions and agents, 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 the existence of this Restriction and in connection with injury to or death of any person; physical damage to the Building; the presence or release in, 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 other damage occurring on or about the Building; unless such injury, death, or damage is caused by Grantee or its boards, commissions and agents,. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, which includes if necessary the dispute resolution process herein, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

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

- (13) 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 and shall be in addition to and not in limitation of any other rights and remedies available to Grantee. Provided that if a violation of this Agreement is 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 measures to remedy, abate any violation thereof. To the contrary, if Grantee's claim is found to be without merit, Grantee shall pay Grantor its reasonable costs, fees and expenses to defend such claim, including without limitation its reasonable attorney's fees.

By its acceptance of the terms of this Agreement, Grantee does not undertake any liability or obligation relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations. Nothing herein shall impose upon the Grantee any affirmative obligation or liability relating to the condition of the Premises. 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.

- (14) Dispute Resolution. In the event of any disputes between Grantor and Grantee under this Agreement, then the parties shall submit such dispute to mediation by a mediator reasonably approved by both parties. If the parties are unable to resolve the dispute by mediation, the matter shall be resolved by arbitration. Unless otherwise agreed to by the parties, the arbitration shall be conducted by one arbitrator in accordance with the American Arbitration Association Commercial Rules in effect at the time. The arbitration award shall be final, and if applicable, judgment shall be entered upon such award in accordance with applicable award in any court having jurisdiction of such dispute. The costs of the mediation and arbitration shall be shared equally between the parties and the parties shall be responsible for their own attorney's fees and expenses.
- (15) Assignment: The Grantee may assign this Agreement to another governmental body or to any charitable corporation or trust qualified under the Act, 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 or Grantee shall exercise its Right of First Option pursuant to paragraph (6).
- (16) Binding Effect and Release: The burden of this Agreement shall run with the Premises in perpetuity (other than public access), 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 the Act and the laws of the Commonwealth. Such release shall be subject to approvals by the Town of Southborough, though its Board of Selectmen, and the Massachusetts Historical Commission following public hearings to determine that such release is in the public interest.

- (17) Written Notice of Approval: Whenever prior approval by Grantee is required under the provisions of this Agreement or the Historic Standards & Guidelines, 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 or request further reasonable information concerning such request in writing within forty-five (45) days (unless a shorter period is required pursuant to this Agreement) of receiving such notice or within forty-five (45) days of receiving the requested information, whichever is later. The failure by Grantee to act within such forty-five (45) days (or shorter period as may be required herein) of its receipt of such original written request, as may be amended herein, for Grantee's approval required under this Agreement shall be deemed to be approval of the request, so long as the request sets forth the provisions of this paragraph relative to deemed approval with the passage of time. Notwithstanding the above, nothing in this paragraph shall be deemed to permit Grantor to undertake any activities

otherwise prohibited by the terms of this Agreement. Whenever prior approval by Grantee is required under this Agreement, Grantee shall not unreasonably withhold, condition or delay such approval, with the parties knowledge that Grantee is a government agency, regulated by applicable law.

- (18) Validity and Severability: The invalidity of 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.
- (19) 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.
- (20) Mortgage Release and Discharge: Grantor represents to Grantee that if the Premises are subject to a mortgage or other security agreements prior in right to recording of this Agreement, that such encumbrances shall be released, otherwise discharged or subordinated to this Agreement at the time of conveyance of the restriction. Should an existing encumbrance require subordination, an original copy executed and notarized subordination shall be included with the executed preservation restriction agreement when submitted to the MHC for signature approval.

(21) Archeological Activities: Archeological field investigation activities on the Premises, including without limitation, archeological survey, excavation and artifact retrieval, may occur only following the submission of an archeological field investigation plan prepared by the Grantor and approved in writing by the State Archeologist of the Massachusetts Historical Commission (M.G.L. c. 9, § 27C, 950 CMR 70.00).

IN WITNESS WHEREOF, we have hereunto set our hands and seals

this _____ day of _____, 2016.

GRANTOR: 84 MAIN STREET SOUTHBOROUGH, LLC

By its duly authorized Manager:

Jon Delli Priscoli, Manager

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared Jon Delli Priscoli, proved to me through satisfactory evidence of identification, which was a Massachusetts Drivers License to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____

GRANTEE: Town of Southborough

APPROVAL AND ACCEPTANCE BY THE
SOUTHBOROUGH BOARD OF SELECTMEN

We, the undersigned, being a majority of the Board of Selectmen of the Town of Southborough, Worcester County, Massachusetts, hereby certify that at a meeting duly held on _____, 2016, said Board voted to approve and accept the foregoing Preservation Restriction.

Southborough Board of Selectmen:

hereto duly authorized, with no personal liability.

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was a _____ to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was a _____ to be the person whose name is

signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was a _____ to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was a _____ to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was a _____ to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____

ACCEPTANCE BY THE SOUTHBOROUGH HISTORICAL COMMISSION

The undersigned hereby certifies that the foregoing preservation restrictions have been accepted pursuant to Massachusetts General Laws, Chapter 184, Section 32 and by a duly authorized Vote, approving and authorizing the foregoing at a meeting duly held on _____, 2016.

Southborough Historical Commission

By: _____
Hereunto duly authorized.

Southborough Historical Commission

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

On this ____ day of _____, 2015, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was a _____ to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

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 and by a duly authorized Vote, approving and authorizing the foregoing at a meeting duly held on _____, 2016.

Massachusetts Historical Commission

By: Brona Simon
Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this ____ day of _____, 2016, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was a _____ to be the person whose name is signed on the preceding or attached document, and acknowledge to me that he/she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires: _____