

**GRANT OF
HISTORIC PRESERVATION RESTRICTION**

THIS HISTORIC PRESERVATION RESTRICTION is made this ____ day of _____, 2025, by and between **The Shirley-Eustis House Association**, a nonprofit Massachusetts corporation, with a mailing address of 33 Shirley Street, Boston Massachusetts 02119 (hereinafter "Grantor") and the **Boston Landmarks Commission** (hereinafter the "Commission") acting for and on behalf of the City of Boston, Massachusetts (the "City") having an address of 20 City Hall Avenue, Floor 3, Boston, MA 02108 (collectively hereinafter "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of a certain parcel of land, together with the buildings thereon, located in the Roxbury Section of Boston, Massachusetts, now known and numbered as 42-44 Shirley Street, being the property described in Grantor's deed dated June 15, 2023 and recorded with the Suffolk Registry of Deeds at Book 69159, Page 176, and in Exhibit A, attached hereto and incorporated herein by reference. The Property is also shown on the plan entitled "Plan of the Estate of the late Gov. Eustis in Roxbury", prepared by A. M Hoyt, dated 1867, recorded with the Suffolk Registry of Deeds in Book of Plans 2, Plan 40 (see also Norfolk County Registry of Deeds, Book 5, Page 162). The Property includes the following structures:

The Shirley-Eustis Outbuilding/W. Elliott Woodward Rental House (ca. 1750) (hereinafter "the Building") was likely constructed as an outbuilding, possibly a barn, for Governor Shirley and later was converted ca. 1868 into a duplex following Caroline Eustis's death. The Building is a southeast-facing, astylistic, two-story, three-bay-by-two-bay, massive timber-frame duplex that measures approximately 40 feet southwest-northeast and 30 feet northwest-southeast. It rests on a parged rubblestone foundation that is exposed on the northeast, southwest, and northwest elevations. The Building has a side-gable roof punctuated by paired chimneys. The walls are clad with asbestos shingles, and the roof is covered with asphalt shingles. The Building may have had Italianate-style ornamentation after its conversion to housing, but subsequent alterations, including the application of synthetic siding and soffits, have removed much of any decorative material. The southeast (façade) elevation has a projecting center entrance bay flanked by one-story bay windows. The entrance is filled by a metal door protected by a metal awning. Secondary entrances are on the

northwest elevation within a shed-roof projecting entry bay seated on a raised concrete block foundation. Entrances are located in the east and west faces of the entry bay and are accessed by steep runs of wood and concrete steps. Entrances into each side of the basement are in the northwest elevation of the entry bay foundation, flanked by six-over-six wood sash windows. Fenestration throughout the Building consists of symmetrically spaced windows filled with one-over-one, double-hung vinyl replacement sash with simple surrounds. Small window openings pierce each gable end. At the interior of the building timber framing and sheathing boards are present at all stories, and remnants of horsehair plaster, riven lath and square cut nails survive at the walls and ceilings of the first story southwest and southeast rooms. The basement is divided into east and west rooms by a center brick partition wall. Exposed framing at the east basement is lime washed.

The Property also includes a former two-car Garage, subsequently partially infilled to create a one-car garage, at the northeast corner of the lot, resting on concrete piers and a brick-faced concrete retaining wall. The Garage, constructed in 1933, has brick-clad concrete walls, a flat roof, and a stepped concrete parapet. Also on the Property are several rubble stone retaining walls, including one with a flight of sandstone steps at the southwest boundary of the property along Shirley Street. The square cut rubble in the retaining wall was originally used in the foundation of the main house prior to its move across Shirley Street, ca. 1868. The sandstone steps are the remnants of the grand flight of entry steps at the original west façade.

WHEREAS, the Grantor as owner of the Property wishes to impose certain restrictions, obligations and duties upon the Property and on the successors to its right, title, and interest therein with respect to maintenance, protection, and preservation of the Building and Property;

WHEREAS, Massachusetts General Laws, Ch. 184, §§31, 32, and 33 (hereinafter "the Act"), authorize the creation and enforcement of preservation restrictions appropriate to the preservation of a site or structure for its historical significance, and the Grantee is authorized to create, impose, accept and enforce preservation restrictions to

protect sites and structures historically significant for their architecture, archeology or associations;

WHEREAS, the Building is historically significant for its architectural design, scale, and historic uses that reflect the aesthetic and cultural history of Boston, more specifically for its association with the Shirley and Eustis estates, as an unusual surviving example of mid-eighteenth-century timber-frame outbuilding construction, and later as a representative example of multi-family housing from the mid-nineteenth century in Roxbury;

WHEREAS, because of its architectural, historic, and cultural significance, the Property was designated a Boston Landmark by the City of Boston on August 7, 2021, and as a result of the foregoing is also listed in the State Register of Historic Places;

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

WHEREAS, the preservation values of the Building and the Property are documented in a set of reports, drawings, and photographs (hereinafter the “Baseline Documentation”) attached hereto and incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Buildings and Property as of the effective date of this grant;

WHEREAS, the Baseline Documentation shall consist of the following: (1) Legal Property Description (Exhibit A); (2) MassMapper Assessors’ Parcel Map for 42-44 Shirley Street (Exhibit B); and (3) a set of twelve (12) exterior photographs and six (6) interior photographs produced by Joseph Cornish, dated October 21, 2022, (Exhibit C); Massachusetts Historical Commission Inventory Form B, prepared by Public Archaeology Laboratory, Inc., dated June 2017 (Exhibit D), said documentation to be kept on file at the offices of the Boston Landmarks Commission.

WHEREAS, the grant of a preservation restriction by the Grantor to Grantee on the Property and the Building will assist in preserving and maintaining the Property and the Building, and its architectural, historic, and cultural features for the benefit of the

people of the City of Boston, Commonwealth of Massachusetts, and the United States of America; and

WHEREAS, the granting of a preservation restriction was a requirement of the City of Boston Community Preservation Act funding that supported the acquisition of the Property; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation restriction in perpetuity on the Property and the Building pursuant to the Act;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the Act, Grantor does hereby voluntarily grant and convey unto the Grantee this preservation restriction (hereinafter "the Restriction"), in perpetuity, over the Property, and the exterior and specific interior elements including framing members, sheathing boards, and remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms of the Buildings, and expressly excluding any and all other property now or hereafter belonging to the Grantor.

1. **PURPOSE.** It is the Purpose of this Restriction to assure that the architectural, structural, historic, and cultural features of the Property and the Building as defined herein will be retained and maintained as set forth herein forever substantially in their current condition or in a restored or rehabilitated condition that has been approved by the Grantee for conservation and preservation purposes. To these ends, subject to Paragraphs 2 and 3 of this Restriction, the Property and the Building will be retained and maintained forever substantially unchanged; and any change of the Property or the Building that will significantly impair or interfere with the preservation values of the Property or the Building is hereby prohibited.

2. **GRANTOR'S COVENANTS.**

2.1 **Grantor's Covenants: Covenant to Maintain.** Grantor agrees at all times to maintain, replace, repair, and reconstruct the Building, as hereinafter set forth, as necessary to preserve the Building in substantially the same structural condition and state of repair as that existing on the effective date of this Restriction. Subject to the casualty

provisions of Paragraphs 7 and 8 of this Restriction, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the exterior and specific interior elements including historic framing members, sheathing boards, and remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms of the Building whenever necessary in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter "the Secretary's Standards"). It is desirable, though not a requirement of this Agreement, that the current cementitious and synthetic exterior siding of the Building be removed at a future date, and the extant underlying wood cladding be restored and/or replaced with historically appropriate wood materials. For the purpose of identifying categories of Major Maintenance requiring review and approval by Grantee and Minor Maintenance that, pursuant to Paragraph 6(c) hereof, does not require such review, copies of maintenance guidelines are attached hereto and incorporated herein by reference as Exhibit E and hereinafter referred to as the "Restriction Guidelines." Grantor's obligation to maintain shall be subject to the provisions of Paragraphs 3.1(f) and 6(b) hereof, as well as any applicable review processes arising out of the Landmark status of the Property.

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 Building shall not be demolished, removed, or razed except as provided in Paragraphs 7 and 8 hereof; nor shall any of the following features be removed or altered;
 - (1) exterior massing, the Building footprint, foundation walls, masonry walls, internal timber framing and iron supports;
 - (2) exterior rubble stone foundation at all elevations;
 - (3) roof profiles; or
 - (4) interior historic framing members, sheathing boards, and remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms.

- (b) nothing shall be erected or allowed to grow on the Property that would impair the visibility of the Building from Shirley Street;
- (c) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;
- (d) the Property shall not be divided or subdivided in law or in fact, except that it may be converted to condominium ownership provided that the entirety of the protected elements of the Building shall be deemed "common area" and shall remain under the ownership and therefore management of a single condominium trust and/or association and that the Master Deed for said condominium and each deed for individual units shall contain reference to this Preservation Restriction and the obligations created hereunder;
- (e) no aboveground utility transmission lines, except those reasonably necessary for the existing Building or made pursuant to utility easements already recorded, may be created on the Property; and
- (f) no air rights over the Property shall be sold, leased, or otherwise used, and no structure shall be constructed in the airspace above the Building.

3. **GRANTOR'S CONDITIONAL RIGHTS.**

3.1 **Conditional Rights Requiring Approval by Grantee.** Without the prior express written approval of Grantee, which approval may not be unreasonably withheld, but which may be subject to such reasonable conditions as Grantee in its discretion may determine, Grantor shall not undertake any of the following actions on the Building:

- (a) alter the following features of the Property and Building, subject, however, to the maintenance covenants of Paragraph 2.1 hereof:
 - (1) exterior wall cladding consisting of asbestos shingles installed over original wood shingles; all wood door cases, window cases, corner trim, and other wooden trimmings;
 - (2) roof coverings, and chimneys;
 - (3) all windows at all elevations including:

- (4) all entries including paneled doors, moulded casings, and thresholds;
 - (5) interior historic framing members, sheathing boards, and remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms.
- (b) undertake restoration of the Building's exterior by removal of added asbestos shingles to expose and repair original wooden shingles and wooden trimmings; if deteriorated beyond repair, wooden elements must be replaced in kind;
- (c) erect or replace any external signs or external advertisements, or allow or cause any sign to be lighted or emit light, by direct lighting back lighting, internal lighting or otherwise except: (i) such plaque permitted under Paragraph 12.8 of this Restriction; (ii) a sign stating solely the address of the Property; (iii) a sign stating the name(s) of organization(s) or business(es) occupying the building may be placed in locations permitted under Paragraph 6(b);
- (d) make permanent substantial topographical changes, with the existing sandstone steps and retaining walls being retained and maintained;
- (e) construct additional structures;
- (f) demolition of existing Garage;
- (g) change the use of the Building and the Property to any use which Grantee reasonably determines would cause damage to historic features protected under this Restriction and thereby conflict with the Purpose of the Restriction; and,
- (h) conduct activities identified as Major Maintenance and Minor Maintenance in the Restriction Guidelines that may reasonably be expected to make material changes in the appearance, materials, or workmanship of the protected features of the Building, including interior historic framing members,

sheathing boards, remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms except as otherwise provided herein.

3.2 Archaeological Activities. The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by Grantor and approved in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (Mass. Gen. Laws, c. 9, §27C, 950 C.M.R. 70.00), as well as review and approval in writing by the City of Boston Archaeologist.

3.3 Review of Grantor's Requests for Approval. In connection with Grantee's approval of the conditional rights set forth in Paragraphs 3.1 and 3.2 above, Grantor shall submit to Grantee two copies of information (including plans, specifications, and designs) 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 forty-five (45) days of Grantee's 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 Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by 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 so long as the request sets forth the provisions of this Paragraph relating to deemed approval after the passage of time, provided nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.

4. STANDARDS FOR REVIEW. Grantee shall apply the Secretary's Standards in exercising any authority created by this Restriction to inspect the Property or the exterior of the Building or to the extent necessary to inspect the interior of the Building for the sole purpose of evaluating any construction to or alteration, repair, maintenance, or reconstruction of the exterior or interior historic framing members, sheathing boards, and remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms; to review any construction, alteration, repair, or

maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage.

5. **PUBLIC ACCESS.** Nothing herein contained shall be construed as affording the public access to any portion of the Property, although the Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is consistent with the terms of this Restriction. Grantor shall not block views of the Building from the public right of way on Shirley Street- either by intentional planting or fencing; Grantor further agrees to permit Grantee to make baseline documentation available to interested members of the public at Grantee's offices and by depositing copies of such baseline documentation in Grantee's library.

6. **GRANTOR'S RESERVED RIGHTS NOT REQUIRING FURTHER APPROVAL BY GRANTEE.** Subject to the provisions of Paragraphs 2.1, 2.2, 3.1 and 3.2 of this Restriction, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by Grantee without further approval by Grantee:

- (a) the right to engage in all those activities and uses that: (i) are permitted by governmental statute or regulation; and (ii) are not inconsistent with the Purpose of this Restriction;
- (b) the right to maintain a sign identifying the organization, organizations, business or businesses occupying the Building, provide that such signs shall be limited to the Building's entries, and, if attached to the structure, shall not cover or damage protected historic features subject to the provisions of Paragraph 3.1(b); such signs shall comply with all local sign ordinances;
- (c) the right to conduct Minor Maintenance of the Building, as such maintenance is defined in the Restriction Guidelines, that is not reasonably expected to make material changes in the exterior appearance, materials, or workmanship of the Building or interior historic framing members, sheathing boards, and remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms, provided such work is done strictly according to the Secretary's Standards, and provided that the Grantor uses in-kind materials,

applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Building;

- (d) the right to continue to maintain existing paved walkways with the use of same or similar surface materials; the right to maintain existing utility lines, and the right to perform routine maintenance, and upkeep, consistent with the Purpose of this Restriction and Paragraphs 2 and 3 of this Restriction;
- (e) the right to renovate, update, and otherwise alter or change the interior finishes of the Building provided that such renovations, updating or alterations shall not require the removal or alteration interior historic framing members, sheathing boards and remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms;
- (f) the right to conduct in the Building or on the Property activities that are not inconsistent with the protection of the preservation values of the Property and the exterior and interior historic framing members, sheathing boards and remnants of horsehair plaster and riven lath in the first story southwest and southeast room of the Building; and
- (g) The right to make such modifications to the Building as may be required by governmental entities to comply with local, state or federal laws, provided that such changes are reviewed and approved by the Grantee whose approval shall not be unreasonably withheld.

7. **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE.** In the event that the Building 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 such damage or destruction, such notification to include what, if any, emergency work has already been completed. Grantor shall undertake no repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and to protect public safety, without Grantee's prior written approval. Within forty-five (45) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a

written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

- (a) an assessment of the nature and extent of the damage including a detailed description of the impact of the damage on the Building;
- (b) a determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and
- (c) an analysis of the restoration/reconstruction work necessary to return the Building to the condition existing as of the date hereof.

8. **REVIEW AFTER CASUALTY DAMAGE OR DESTRUCTION.** If, after reviewing the report provided in Paragraph 7 above and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 hereof, Grantor and Grantee agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 hereof, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of the Grantee, alter, demolish, remove, or raze the Building, and/or construct new improvements on the Property. Grantor and Grantee may then agree to seek to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and Paragraph 14 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9 of this Agreement, Grantor and Grantee are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, then the aggrieved party may only bring suit in the Suffolk County Superior Court in Boston, Massachusetts.

However, nothing herein shall compel the Grantor to expend funds in excess of those received from insurance proceeds so long as the Grantor has maintained the insurance coverage required by this Agreement.

9. **Insurance.** Grantor shall keep the Building insured by an insurance company rated "A" 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 Grantors or contribution or coinsurance from Grantors. Grantors shall deliver to the Grantee, within thirty (30) business days of the Grantee's written request thereof, 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.

10. **INDEMNIFICATION.** Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors, officers, and employees, or independent contractors from and against any and all claims, liabilities, expense, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; 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, death, or other damage occurring on or about the Property, unless such injury, death, or damage is caused by Grantee or any agent, director, officer, employee, or independent 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.

11. **TAXES.** Grantor shall pay immediately, 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

object to the amount or validity of the assessment or charge and diligently prosecute an appeal thereof, in which case the obligation hereunder 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. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon ten (10) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment 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 Grantee shall constitute a lien on the Property which in Grantee's discretion may be evidenced by a "Notice Lien," except that such lien shall not jeopardize the priority of any recorded mortgage given in connection with a promissory note secured by the Property.

12. ADMINISTRATION AND ENFORCEMENT

12.1. **Written Notice.** Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods: (a) overnight courier postage prepaid; (b) registered or certified mail return receipt requested; or (c) hand delivery.

Notices to Grantor should be addressed to:

The Shirley-Eustis House Association
33 Shirley Street
Boston, MA 02119
attention: Executive Director

Notices to Grantee should be addressed to:

City of Boston
Landmarks Commission
20 City Hall Avenue - 3rd Floor
Boston, MA 02108-4301
attention: Executive Director

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

12.2. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within fourteen (14) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance (or non-compliance, if applicable) with any and all obligations of Grantor contained in this Restriction and otherwise evidences the status of this Restriction.

12.3. **Inspection.** Grantee shall be permitted to conduct an annual inspection of the Property and the Building, in order to confirm Grantor's compliance with this Preservation Restriction Agreement. Such inspection shall be conducted at reasonable times and following advance notice to the Grantor of no less than ten (10) days. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

12.4. **Grantee's Remedies.** Grantee may, following thirty (30) days written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this Restriction 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 Building to the condition and appearance that existed prior to the violation complained of. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, which violation has continued more than thirty (30) days after notice by the Grantee to the Grantor, Grantor shall reimburse Grantee for any reasonable costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including court costs and attorney, architectural, engineering, and expert witness fees.

In the event that Grantor is required to reimburse Grantee pursuant to the terms of this Paragraph, the amount of such reimbursement until discharged shall constitute a lien on the Property.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting 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.

12.5 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 ten (10) business 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.

12.6 Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property prior to sale closing.

12.7 Liens. Any lien on the Property created pursuant to any Paragraph of this Restriction may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien provided in Mass. Gen. Laws c. 254, §5, except that no lien created pursuant to this Restriction 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.

12.8 Plaque. Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 12 inches by 24 inches in size, giving notice of the significance of the Building and the existence of this Restriction. The plaque shall be approved by Grantor prior to installation, such approval not to be unreasonably withheld.

13. BINDING EFFECT; ASSIGNMENT.

13.1 Runs with the Land. Except as provided in Paragraphs 8 and 14 hereof, the obligations imposed by this Restriction shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Building and Property. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest, and all persons hereafter claiming by, under, or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also 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 such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Building and the Property shall have no obligation pursuant to this instrument when such owner shall cease to have any ownership interest in the Building and the Property by reason of a *bona fide* transfer. The restrictions, stipulations, and covenants contained in this Restriction shall be included by Grantor, by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of the fee simple title to or any lesser estate in the Building and the Property or any part hereof, including by way of example and not limitation, a lease of all or a portion of the Property, but excluding any lease with a term of fewer than one hundred twenty (120) days.

13.2 Assignment. Grantee may convey, assign, or transfer this Restriction to a local, state, or national organization that qualifies under the Act as an eligible donee whose purposes, *inter alia*, are the preservation of buildings or sites historically significant for their architecture, associations, and/or archaeology, or if no such organization agrees to accept such assignment, then to a unit of federal, state, or local government, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out as a condition of the transfer. Grantee shall give Grantor sixty (60) days written notice prior to making any such assignment.

13.3 Recording and Effective Date. Grantor shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of Suffolk Registry of Deeds. Grantor and Grantee intend that the restrictions arising under this Restriction take effect on the day and year this instrument is recorded in the land records of Suffolk Registry of Deeds.

14. EXTINGUISHMENT. Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Property and the Building in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but shall not be limited to, partial or total destruction of the Building resulting from casualty. Extinguishment shall meet the requirements of the Act for extinguishment including approvals following public hearings by the City of Boston and the Massachusetts

Historical Commission as required by the Act to determine that such extinguishment is in the public interest. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or of any other property received in connection with an exchange or involuntary conversion of the Property) after such extinguishment, all expenses reasonably incurred by Grantor and Grantee in connection with such sale shall be paid out of the sale proceeds; and the net proceeds shall be paid to Grantor unless otherwise ordered by a court or other government authority of competent jurisdiction.

15. **CONDEMNATION.** If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds; and the net proceeds shall be paid to Grantor unless otherwise ordered by a court or other government authority of competent jurisdiction.

16. **INTERPRETATION.** The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Building and the Property shall not apply in the construction or interpretation of this Restriction, 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 may be executed in two counterparts, one of which may be retained by the Grantor, and the other, after recording, to be retained by the Grantee. In the event of any discrepancy between the counterparts produced, the recorded counterpart shall in all cases govern. In the event of any discrepancy between two copies of any documentation retained by the parties, the copy retained by Grantee shall control.

(c) This instrument is made pursuant to the provisions of the Act, but the invalidity of the Act or any part thereof shall not affect the validity and enforceability of this Restriction 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 be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(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 governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property and Building are devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property and the Building during the term of the Restriction, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Restriction.

17. **AMENDMENT.** If the circumstances arise under which an amendment to or modification of this instrument would be appropriate to promote the purpose of this Restriction and the protection of the conservation and preservation values of the Property, Grantor and the Grantee are free to jointly amend this instrument; provided that no amendment to this Restriction shall be allowed that will affect the qualifications of this instrument under any applicable law. Any amendment must be consistent with the conservation and preservation purposes of this instrument and may not affect its perpetual duration. Any amendment must be in writing, signed by both parties, and recorded with the Suffolk Registry of Deeds. An amendment shall not permit any private inurement to any person or entity, and nothing contained herein shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

18. **COMPLIANCE WITH BUILDING LAWS.** Grantor and Grantee recognize that there may be circumstances where alterations are required to be made to the Building in order to comply with local, state, and/or federal ordinances and laws which might otherwise not be permissible under this Restriction without Grantee's approval. In such event, Grantor agrees to notify Grantee in writing of such requirement and, if requested by Grantee within forty-five (45) days of such notification, to cooperate with Grantee in seeking a variance or waiver from such requirement or a modification of such requirement to mitigate any adverse effect of such compliance.

THIS RESTRICTION reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Historic Preservation Restriction, unto the said Grantee and its successors and permitted assigns forever. This HISTORIC PRESERVATION RESTRICTION may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

EXECUTED and SEALED on _____, 2025.

GRANTOR

Shirley-Eustis House Association

BY: _____
William S. Kutter, President

BY: _____
Stephen Vitello, Treasurer

GRANTEE

Boston Landmarks Commission

BY: _____
Braford Walker, Chair

BY: _____
Elizabeth A. Sherva, Executive Director

Shirley-Eustis House Association

BY: _____
William S. Kutter, President

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____, 2025, before me, the undersigned notary public, personally appeared the above-named William S. Kuttner, President of the **Shirley-Eustis House Association** proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as President of the **Shirley-Eustis House Association**, a non-profit Massachusetts corporation.

Notary Public
My Commission Expires:

Shirley-Eustis House Association

BY: _____
Stephen Vitello, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____, 2025, before me, the undersigned notary public, personally appeared the above-named _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she/he signed it voluntarily for its stated purpose in her/his capacity as _____.

Notary Public
My Commission Expires:

Boston Landmarks Commission

BY: _____
Bradford Walker, Chair

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____, 2025, before me, the undersigned notary public, personally appeared the above-named Bradford Walker, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she/he signed it voluntarily for its stated purpose in her/his capacity as _____.

Notary Public
My Commission Expires:

Boston Landmarks Commission

BY: _____
Elizabeth A. Sherva,
Executive Director

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this ____ day of _____, 2025, before me, the undersigned notary public, personally appeared the above-named Elizabeth A. Sherva, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and who acknowledged to me that she/he signed it voluntarily for its stated purpose in her/his capacity as _____.

Notary Public
My Commission Expires:

CITY OF BOSTON
IN CITY COUNCIL

**APPROVING A PRESERVATION RESTRICTION ON THE SHIRLEY-
EUSTIS OUTBUILDING / W. ELLIOTT WOODWARD RENTAL HOUSE AT
42-44 SHIRLEY STREET IN ROXBURY.**

WHEREAS: Pursuant to Chapter 184, Section 32 of the Massachusetts General Laws, the City of Boston is empowered to approve preservation restrictions for historically significant structures located in the City; and

WHEREAS: The Shirley-Eustis Outbuilding/ E. Elliott Woodward Rental House, 42-44 Shirley Street, Roxbury, is a structure which is historically significant for its architecture and cultural significance to the City of Boston and is therefore appropriate for preservation; and

WHEREAS: The Shirley-Eustis House Association, the owner of the Shirley-Eustis Outbuilding/ E. Elliott Woodward Rental House has conveyed a historic preservation restriction to the exterior and interior historic framing members, sheathing boards and remnants of horsehair plaster and riven lath in the first story southwest and southeast rooms of 42-44 Shirley Street, Roxbury to the Boston Landmarks Commission acting for and on behalf of the City of Boston, Massachusetts as a qualified recipient of historic preservation restrictions under Massachusetts General Laws, Chapter 184, §§31, 32, and 33; and

WHEREAS: the Massachusetts Historic Commission has approved the Preservation Restriction pursuant to Chapter 184, §32 of the Massachusetts General Laws and the Boston Landmarks Commission, as the preservation planning agency of the City of Boston, has approved the Preservation Restriction.

NOW THEREFORE BE IT

ORDERED: That pursuant to Chapter 184, Section 32 of the
Massachusetts General Laws, the Preservation Restriction on
the Shirley-Eustis Outbuilding/ E. Elliott Woodward Rental
House at 42-44 Shirley Street, Roxbury, as set forth in the
attached instrument be and the same hereby is approved.

In City Council _____
Passed

_____ *City Clerk*

Approved _____

_____ *Mayor*

**APPROVAL BY MASSACHUSETTS HISTORICAL COMMISSION
COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Mass. Gen. Laws c. 184, §32.

Brona Simon
Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk ,ss.

On this ____ day of _____, 2025, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it in her capacity as Executive Director and Clerk of the Massachusetts Historical Commission for its stated purposes.

Notary Public

My Commission Expires _____

SCHEDULE OF EXHIBITS

- A. Legal Property Description**
- B. Assessors Parcel Map**
- C. Baseline Photographs**
- D. Massachusetts Historical Commission - Inventory Form B**
- E. Restriction Guidelines**

EXHIBIT A

Legal Property Description

The land in that part of said Boston, formerly Roxbury, with the buildings thereon now numbered 42 and 44 Shirley Street, being Lot numbered (25) as shown on a plan of the estate of the late Gov. Eustis in Roxbury, made by A. M. Hoyt in 1867, and recorded with the Suffolk Deeds in Book of Plans 2, Plan 40, and bounded and described as follows:

SOUTHERLY by Shirley Street, seventy-five (75) feet;

EASTERLY by Lot 24 as shown on said plan, one hundred twenty (120) feet;

NORTHERLY by Lot 34 as shown on said plan, seventy-five (75) feet; and

WESTERLY by Lot 26 as shown on said plan, one hundred twenty (120) feet.

Containing nine thousand (9,000) square feet of land.

Source: Suffolk Registry of Deeds, Book 69159, Page 176

EXHIBIT B

ASSESSORS' PARCEL MAP
42-44 SHIRLEY STREET, BOSTON
SOURCE: MASS GIS - MASSMAPPER



EXHIBIT C



Photo 1. South Facade from Shirley Street



Photo 2. South boundary of property showing retaining wall

EXHIBIT C



Photo 3. Sandstone entry steps at south boundary of property



Photo 4. West elevation and south facade

EXHIBIT C



Photo 5. West elevation and south facade



Photo 6. South facade and east elevation showing south facade of garage

EXHIBIT C



Photo 7. South facade and east elevation showing south facade of garage

EXHIBIT C



Photo 8. South facade of garage

EXHIBIT C



Photo 9. North elevation

EXHIBIT C



Photo 10. North elevation

EXHIBIT C



Photo 11. North and west elevations

EXHIBIT C



Photo 12. West elevation

EXHIBIT C



Photo 13. First Story SW Room - West & North Walls

EXHIBIT C



Photo 14. First Story SW Room - Early exterior siding at South Wall

EXHIBIT C



Photo 15. First Story SE Room - North & East Walls

EXHIBIT C



Photo 16. Second Story NE Room - North & East Walls

EXHIBIT C



Photo 17. Basement, SE Room - West Wall

EXHIBIT C



Photo 18. Basement, SE Room - Detail of historic framing

EXHIBIT D

EXHIBIT E

RESTRICTION GUIDELINES

The purpose of these Restriction Guidelines is to clarify the terms of this Historic Preservation Restriction that deal with maintenance and alteration to the Building and Property. Under Paragraph 3, prior permission from the City of Boston through its Landmarks Commission (the "Commission") is required for any Minor Maintenance that may reasonably be expected to materially change the appearance, materials, colors, or workmanship from that existing prior to the maintenance and for any Major Maintenance. Minor Maintenance that is part of ordinary maintenance and repair and does not materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance does not require Commission review and approval.

In an effort to explain what constitutes Minor Maintenance and Major Maintenance, the following list is provided. The list is by no means comprehensive. It is a sampling of common structural alterations.

PAINT

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

Major: Painting or fully stripping decorative surfaces or distinctive stylistic features, including murals, stenciling, ornamental woodwork, stone, and woodwork.

WINDOWS AND DOORS

Minor: Regular maintenance including caulking, painting, and necessary re-glazing. 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. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor: Spot repair of existing roofing and metal cladding of roof-top structures, including in-kind replacement of membrane roofing, metal cladding, 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 or full re-pointing of masonry. Structural stabilization of the property is also considered a major alteration.

MASONRY

Minor: Spot-pointing repairs to foundation stonework or to the brick chimney shall be considered to be minor repairs.

Major: Any re-pointing of masonry exceeding three (3) linear feet, re-setting stones, patching holes, cleaning or other work undertaken on stone or brick surfaces shall be subject to review as a Major Repair.

EXTERIOR WALLS

Minor: Making fully reversible, temporary exterior changes (i.e. sealing off doors *in situ*, leaving doors and door openings fully exposed).

Major: Creating new openings in exterior walls or party walls, or permanently sealing off existing openings.

INTERIOR

Minor: Making fully reversible changes to cover interior historic framing members, sheathing boards and remnants of horsehair plaster and riven lath, and changes to non-historic partitions, woodwork, plaster and flooring.

Major: Altering, removing or repairing interior historic framing members, sheathing boards, and remnants of horsehair plaster and riven lath at the first-story southeast and southwest rooms.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor: Repair of existing systems.

Major: Installing or upgrading systems which will result in major exterior appearance changes (i.e. exterior ducts, piping, ventilators, HVAC units); the removal of original materials in the course of construction.

Changes classified as Major Maintenance are not necessarily unacceptable. Under the Historic Preservation Restriction such changes must be reviewed by the Commission in order to assess their impact on the historic integrity of the Property and Building.

It is the responsibility of the Grantor to notify the Commission in writing when any Minor Maintenance that may reasonably be expected to materially change the appearance, materials, colors or workmanship from that existing prior to the maintenance or any Major Maintenance is contemplated. Substantial alterations identified as Major Maintenance shall require review of plans and specifications.

The intent of this Historic Preservation Restriction is to enable the Commission to review proposed alterations and assess their impact on the historical and architectural integrity of the Property and the Building. Commission staff will attempt to work with the Grantor to develop mutually satisfactory solutions which are in the best interest of preserving the historical values of the Property.