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July 17, 2013

Patricia Pope, City Council President  
City Council  
City of Marlborough  
140 Main Street  
Marlborough, MA 01752

Re: Historic Preservation Restriction – 197 Stow Road

Dear Councilor Pope:

My client, 197 Stow Road Realty Trust, seeks a Historic Preservation Restriction pursuant to Massachusetts General Laws chapter 184 section 31, for its property located at 197 Stow Road, Marlborough, as a condition of a special permit that was approved for a Limited Development Subdivision by the Marlborough Planning Board.

This Historic Preservation Restriction which preserves both the interior and exterior architectural features of what is now on the Massachusetts Historical Commission Inventory as the "Uriah Eager House" has been approved by the Massachusetts Historical Commission and the Marlborough Historical Commission. Because the restriction is considered an interest in land, 197 Stow Road Realty Trust now presents this matter to the City Council seeking its approval as well.

I look forward to addressing any questions the Council has regarding this matter.

Sincerely,



David P. Gadbois

PRESERVATION RESTRICTION AGREEMENT

between

THE CITY OF MARLBOROUGH,  
acting by and through the Marlborough Historical Commission

and

Philip E. Purcell, Trustee of the  
197 Stow Road Trust u/d/t dated December 24, 1997

Concerning

URIAH EAGER HOUSE  
197 Stow Road  
Marlborough, MA

# PRESERVATION RESTRICTION AGREEMENT

between

THE CITY OF MARLBOROUGH,  
acting by and through the Marlborough Historical Commission

and

PHILIP E. PURCELL, TRUSTEE OF THE  
197 STOW ROAD TRUST  
u/d/t DATED DECEMBER 24, 1997

THIS PRESERVATION RESTRICTION is made this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by and between Philip E. Purcell, Trustee of the 197 Stow Road Trust u/d/t dated December 24, 1997 (“Grantor”) and CITY OF MARLBOROUGH, a municipality of the Commonwealth of Massachusetts acting by and through the Marlborough Historical Commission (“Grantee”).

WITNESSETH:

WHEREAS, Grantor is owner in simple fee of a certain parcel of real property located at 197 Stow Road, Marlborough, Middlesex County, Massachusetts known as the Uriah Eager House, (hereinafter referred to as “the Property”), and described on a deed dated December 24, 1997, recorded with the Middlesex South Registry of Deeds, Book 28031, Page 239 (Exhibit A), also shown as “Lot 1” on “Plan of Land in Marlborough,” Middlesex South Registry of Deeds Plan No. 333 of 2008, recorded May 2, 2008, (Exhibit B) and more particularly described in the Inventory Form (Exhibit E), all of which are attached hereto and incorporated herein, said Property including the following structure (hereinafter “the Buildings”):

The house is an 18<sup>th</sup> century wood-frame, 2 ½ story large “double pile” side-gabled farmhouse with a central through-hall containing four rooms on the first floor. The house is vinyl sided and includes a long one story ell extending to the east of the house. To the east of the house is a small, historic, gable-front barn with modern garage door openings and a long, attached historic shed that extends to the east. The house and barn together constitute the Buildings.

WHEREAS, the Property occupies a lot of approximately 0.649 acres (28,301 s.f.), and the Property contributes to the setting, context, and the public’s view of the Buildings;

WHEREAS, Grantee is a municipality and is interested in the preservation and conservation of sites, buildings, and objects of local, state and national significance in the City of Marlborough

and is authorized to accept and hold preservation restrictions under the Massachusetts General Laws, Chapter 184, Sections 31, 32, and 33 (the “Act”);

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

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

WHEREAS, the Buildings were originally constructed in the late 18<sup>th</sup> century and are a significant example of a late Georgian vernacular with Greek Revival and Queen Anne accents in Massachusetts illustrating aesthetics of design and setting, and possessing integrity of materials and workmanship. The property is also significant in the history of Marlborough as the farmhouse of one of Marlborough’s 18<sup>th</sup>- and 19<sup>th</sup>-century farms, as well as for its association with members of the Eager and Barnes families and their relatives. Uriah Eager was a revolutionary war soldier.

The open space of the Property consists primarily of lawn that complements the Buildings, thereby endowing the Uriah Eager House with scenic, natural and aesthetic value and significance.

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

WHEREAS, Preservation of the Property is agreed upon between the City of Marlborough and the Grantor pursuant to the Special Permit for a Limited Development Subdivision Decision issued on March 14, 2007 recorded in Middlesex South Registry of Deeds in Book 49251 Page 99 on April 6, 2007 and attached hereto as Exhibit G;

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

WHEREAS, the Baseline Documentation includes the following:

1. Property Description and Statement of Significance (See Exhibit A)
2. Site Plan (See Exhibit B)
3. Photographic Documentation of the Uriah Eager house (See Exhibit C)
4. Sketch of Floor Plans (See Exhibit D)
5. Inventory Form B (See Exhibit E)
6. Special Permit dated April 23, 2007 (See Exhibit G)

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

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

NOW, THEREFORE, in consideration of Ten dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Grantee a Preservation Restriction Agreement in gross and in perpetuity over the Property described in Exhibits A through E.

## **1. PURPOSE**

1. Purpose: It is the purpose of this Preservation Restriction Agreement to assure that the features and characteristics that embody the architectural, historic and cultural significance of the Property will be forever retained and maintained substantially in their current condition for conservation and preservation purposes and to prevent any use or change in the Property that will significantly impair or interfere with the Property's conservation or preservation values.

## **2. GRANTOR'S COVENANTS**

2.1 Grantor's Covenants: Covenant to Maintain: Grantor agrees at all times to maintain the interior and exterior of the Buildings and shall comply with all federal, state and local laws, codes and ordinances applicable to the Property. Grantor's obligation to maintain shall require replacement, repair, reconstruction and where necessary replacement in kind by Grantor whenever necessary to preserve the Buildings in a good, sound and attractive condition and state of repair. It is highly desirable, though not a requirement of this Preservation Restriction Agreement, that the current synthetic siding of the exterior of the Buildings be removed at a future date, and that the extant, underlying wood cladding be restored and/or replaced with historically appropriate wood materials. Grantor's obligation to maintain shall also require that the Property's landscaping to be maintained in good appearance. The above notwithstanding, new landscaping or gardens may be created, and surface materials on paths or drives may be changed, only as provided under paragraph 3.1. Subject to the casualty provisions of Section 5, this obligation to maintain shall require replacement, rebuilding, repair and reconstruction of the Buildings whenever necessary in accordance with The Secretary of Interior's Standards for The Treatment of Historical Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

### 2.2. Grantor's Covenants: Prohibited Activities.

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

- (a) the Buildings shall not be moved, demolished, removed or razed except as described in Section 5;
- (b) no barrier shall be constructed, erected or allowed to grow on the Property which would impair the visibility from the street of the Property or the Buildings without the prior approval of the Grantee;
- (c) no other buildings or structures, including camping accommodations, mobile homes or cell towers, shall be erected or placed on the Property hereafter except for temporary structures required for maintenance or rehabilitation of the Property, such as construction trailers;
- (d) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;
- (e) the Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit;
- (f) no above ground utility transmission lines, except those reasonably necessary for the existing buildings, may be created on the Property, subject to utility easements already recorded;
- (g) the use of the property shall be limited to single-family residence as required by finding 6(b)(iv) of the Planning Board Special Permit attached hereto as Exhibit G.

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

#### 3.1 Conditional Rights Requiring Approval by Grantee.

No work to the premises, which changes its current appearance or which requires a building permit shall be allowed without the express written assent of the Marlborough Historic Commission. Grantor shall not undertake any of the following actions:

#### Exterior Restrictions.

- (a) increase or decrease the height of, make additions to, change the exterior construction materials of, or move, improve, alter, reconstruct or change the exterior facades of the Buildings, including without limitation the roofs, ridgeline, rooflines, windows, window sash, doors, exterior cladding, foundation, chimneys, porches, railings, trim or any other decorative or structural exterior features of the Buildings or any elements attached thereto;
- (b) erect any external signs or external advertisements except: (i) such plaque permitted under paragraph 7.8 of this Preservation Restriction Agreement; (ii) a sign stating solely the address and inhabitants of the Property; (iii) a historic house plaque provided by the Commission; and (iv) a temporary sign to advertise the sale or rental of the Property;
- (c) make permanent substantial topographical changes, such as by example excavation for the construction of roads, drives, and recreational facilities, or any changes to stone walls;

#### Interior Restrictions.

All alterations to the interior features of the Buildings.

Significant interior features have been identified, which features are worthy of protection and preservation. The Grantor, in maintaining the interior of the Buildings according to the Secretary's Standards as specified in paragraph 3.4, shall be mindful of said significant interior features, and shall as required, consult with the Marlborough Historical Commission prior to undertaking any of the following on the Buildings:

- (a) Remove or otherwise alter structural members and framing, including but not limited to, interior beams, posts, girts, plates, studs, sheathing boards, rafters, purlins, masonry walls and masonry piers;
- (b) Change the space configuration and door locations of the first- and second-story rooms, stair hall and stairs;
- (c) Remove or alter the woodwork at all first and second story rooms, enclosed stairs and stair halls, including but not limited to cornices, mantelpieces, paneling, baseboards, stairs, railings, balusters, newels, doors, door casings, window casings and other decorative elements;
- (d) Change door and window hardware at the first and second story rooms and stair halls;
- (e) Change masonry fireplaces and hearths, including any attached hardware.

Notwithstanding the foregoing, alterations listed as "Minor" in the attached RESTRICTION GUIDELINES are considered part of ordinary maintenance and repair, and may be made to the Buildings and Property without the Grantee's approval. (Exhibit F)

3.2 Review of the Grantor's Request for Approval. Should Grantor wish to exercise the conditional rights set out or referred to in paragraph 3.1, Grantor shall submit to Grantee, for Grantee's approval, two copies of information (including plans, specifications and designs where appropriate,) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within sixty (60) days of Grantee's actual receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted in which case Grantee shall provide Grantors with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within 60 days of actual receipt of Grantors' submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

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

3.4 Standards for Review. Grantee shall apply Secretary's Standards whenever (a) exercising any authority created by the Preservation Restriction Agreement to inspect the Property or the

interior of the Buildings; (b) reviewing any construction, alteration, repair or maintenance; (c) reviewing casualty damage or (d) reconstructing or approving reconstruction of the Buildings following casualty damage.

#### **4. GRANTOR'S RESERVED RIGHTS**

4.1 Grantor's Rights Not Requiring Further Approval by Grantee. Subject to the provision of paragraphs 2.1 and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Preservation Restriction Agreement and by Grantee without further approval by Grantee:

- (a) the right to engage in all those acts and uses that:
  - (i) are permitted by governmental statute or regulation;
  - (ii) do not substantially impair the conservation and preservation values of the Property; and
  - (iii) are not inconsistent with the Purpose of this Preservation Restriction Agreement;
- (b) pursuant to the provisions of paragraph 2.1, the right to maintain and repair the Buildings strictly accordingly to the Secretary's Standards. As used in this subparagraph the right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, 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 Buildings. The right to maintain and repair as used in this subparagraph shall not include the right to make changes in appearance, materials, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of paragraphs 3.1 and 3.2;
- (c) the right to continue all manner of existing residential use and enjoyment of the Property, including but not limited to maintenance, repair, and restoration of existing stone walls and steps; the right to maintain the existing driveways, and paths with the use of same or similar materials; the right to maintain existing utility lines, walkways, steps and garden fences; the right to cut, remove and clear grass and other vegetation and to perform routine maintenance, landscaping, horticultural activities and upkeep, consistent with the purpose of this Preservation Restriction Agreement.

#### **5. CASUALTY DAMAGE OR DESTRUCTION; INSURANCE**

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

- (a) an assessment of the nature and extent of the damage;

- (b) a determination of the feasibility of the restoration of the Buildings and/or reconstruction of damaged or destroyed portions of the Buildings; and
- (c) a report of such restoration and/or reconstruction work necessary to return the Buildings to the condition existing at the date thereof.

5.2 Review After Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 5.1 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 5.3, Grantor and Grantee agree that the Purpose of the Preservation Restriction Agreement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Buildings in accordance with plans and specifications consented to by the parties to at least the total of the casualty insurance proceeds available to the Grantor.

If, after reviewing the report and assessing the availability of the insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 5.3, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Preservation Restriction Agreement would not be served by such restoration/reconstruction, Grantor may with prior written consent of Grantee, alter, demolish, remove or raze the Buildings and/or construct new improvements on the Property. In such event, Grantor and Grantee may agree to extinguish this Preservation Restriction Agreement in accordance with the laws of the Commonwealth of Massachusetts and paragraph 9.1 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 5.3, Grantor and Grantee are unable to agree that the Purpose of the Preservation Restriction Agreement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the arbitration provision set forth in Section 7 below.

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

## **6. INDEMNIFICATION; TAXES**

6.1 Indemnification. Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors and employees, or independent

contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person on or about the Property; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or damage occurring on or about the Property, unless such injury or damage is caused by Grantee or agent, trustee, employee or contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity until discharged shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, provided, however, that nothing contained herein shall jeopardize the priority of any recorded first priority mortgage given in connection with a promissory note secured by the Property.

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

## **7. ADMINISTRATION AND ENFORCEMENT**

7.1 Written Notice. Any notice Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by overnight courier, facsimile transmission, registered or certified mail with return receipt requested or hand delivered; if to Grantor: Philip Purcell, Trustee of the 197 Stow Road Trust 116 Damon Road, Ashby, MA 01431, and if to Grantee: Marlborough Historical Commission City of Marlborough 140 Main Street, Marlborough, MA 01752.

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

7.2 Evidence of Compliance. Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the

obligations of Grantor contained herein, or that otherwise evidences the status of this Preservation Restriction Agreement to the extent of the Grantee's knowledge thereof.

7.3 Inspection. With the consent of Grantor, representatives of Grantee shall be permitted at all reasonable times to inspect the Property, including the interior of the Buildings. Grantor covenants not to unreasonably withhold consent in determining dates and times for such inspections.

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

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

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

The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including,

without limitation, relief requiring restoration of the Property to its condition prior to the time of the injury complained of (it being agreed that the Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee.

7.5 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 five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

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

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

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

## **8. BINDING EFFECT; ASSIGNMENT**

8.1 Runs with the Land. Except as provided in paragraphs 5.3 and 9.3, the obligations imposed by this Preservation Restriction Agreement shall be in effect in perpetuity and shall be deemed as a binding servitude with the Property. This Preservation Restriction Agreement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor or Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title or interest herein granted to Grantee shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of bona fide transfer. The restrictions, stipulations and covenants contained in this Preservation Restriction Agreement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any

part hereof, including by way of example but not limitation, a lease of all or a portion of the Property.

8.2 Assignment. Grantee may, at its discretion without prior notice to Grantor, convey, assign or transfer this Preservation Restriction Agreement to a unit of federal, state or local government or to a similar local, state or national organization that is a "qualified organization" under the Act, as amended, whose purposes, inter alia, are to promote preservation or conservation of historical, cultural or architectural resources, provided that any such conveyance, assignment or transfer requires that the Purpose for which the Preservation Restriction Agreement was granted will continue to be carried out.

8.3 Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Instrument in the land records of Middlesex South District Registry of Deeds. Grantor and Grantee intend that the restrictions arising under this Preservation Restriction Agreement take effect on the day and year this instrument is recorded at the Middlesex South Registry of Deeds following execution by Grantor and Grantee and approval by the Massachusetts Historical Commission.

## **9. EXTINGUISHMENT**

9.1 Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in conditions affecting the Property may make impossible the continued ownership or use of the Property for the Purpose of this Preservation Restriction Agreement and necessitate extinguishment of the Preservation Restriction Agreement. Such a change in conditions may include, but is not limited to, partial or total destruction of the Buildings resulting from casualty. Such an extinguishment must be the result of a judicial proceeding, and must meet all of the requirements of the act for extinguishment, including without limitation approval by the City of Marlborough following a public hearing to determine that such extinguishment is in the public interest, and approval by the Massachusetts Historical Commission following a public hearing to determine that such extinguishment is in the public interest.

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

## **10. INTERPRETATION**

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

- (a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of the Preservation Restriction Agreement and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

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

## **11. AMENDMENT**

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

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

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

GRANTOR:

\_\_\_\_\_  
Philip E. Purcell, Trustee

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned Notary Public, personally appeared Philip E. Purcell, who proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My term expires:

ACCEPTANCE OF PRESERVATION RESTRICTION

Acceptance of this Preservation Restriction Agreement by the City of Marlborough, acting by and through its Historical Commission pursuant to the authority granted to said Commission under G.L. c. 40, § 8D, is acknowledged this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

City of Marlborough,  
Historical Commission

\_\_\_\_\_  
Gary Brown, duly authorized Chairman

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned Notary Public, personally appeared Gary Brown, as aforesaid, who proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the City of Marlborough.

\_\_\_\_\_  
Notary Public:  
My term expires:

Approved:  
City of Marlborough,  
Mayor

\_\_\_\_\_  
Arthur G. Vigeant

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned Notary Public, personally appeared Arthur G. Vigeant, as aforesaid, who proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the City of Marlborough.

\_\_\_\_\_  
Notary Public:  
My term expires:

APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION  
COMMONWEALTH OF MASSACHUSETTS

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

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

COMMONWEALTH OF MASSACHUSETTS

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned Notary Public, personally appeared Brona Simon, Executive Director and Clerk of the Massachusetts Historical Commission, as aforesaid, who proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose on behalf of the Massachusetts Historical Commission.

\_\_\_\_\_  
Notary Public:  
My term expires:

EXHIBIT A  
PROPERTY DESCRIPTION AND STATEMENT OF SIGNIFICANCE

A certain parcel of land with the Buildings thereon in Marlborough, Middlesex County, Massachusetts, numbered 197 Stow Road, Marlborough, Massachusetts and being a portion of the land conveyed to Philip E. Purcell, Trustee of the 197 Stow Road Trust u/d/t dated December 24, 1997 and recorded in Book 280131 Page 239 shown as Lot 1 on a plan entitled "Plan of Land in Marlborough, MA" dated April 23, 2007 owned by Philip E. Purcell, Trustee of the 197 Stow Road Trust drawn by Connorstone Consulting Civil Engineers and Land Surveyors recorded in the Middlesex South Registry of Deeds as Plan No 333 of 2008, and bounded and described as follows:

NORTHEASTERLY by Stow Road by two lines measuring ninety-two and 59/100 (92.59) feet and sixty-five and 46/100 (65.46) feet,

SOUTHEASTERLY by other land now or formally owned by 197 Stow Road Trust by two lines measuring one hundred two 99/100 (102.99) feet and eighty-seven 47/100 (87.47),

SOUTHWESTERLY by land now or formally owned by 197 Stow Road Trust by three lines measuring one hundred one 05/100 (101.05) feet and ninety-four 68/100 (94.68) feet and fifty-eight 73/100 (58.73) feet,

NORTHWESTERLY by land now or formally owned by 197 Stow Road Trust one hundred thirteen 22/100 (113.22) feet to the point of the beginning.

Containing 28,301 square feet of land more or less according to said plan.

Statement of Significance

This house is one of Marlborough's few intact examples of a large double-pile, side gabled farmhouse of the late eighteenth century.

The farmhouse and surrounding property was first owned by Uriah Eager and his son Moses Eager in 1803. Uriah Eager was one of Marlborough's Revolutionary soldiers who saw action in Rhode Island and likely marched to Cambridge on April 19, 1775.

EXHIBIT B

SITE PLAN



CERTIFICATE OF THE MARLBOROUGH PLANNING BOARD  
ON APPROVAL OF THE PLANNING BOARD APPROVAL NOT REQUIRED PLAN HAS NOT BEEN REVIEWED. APPROVED OR REVERSED FOR THE PLAN EXHIBITED.

*[Signature]*

DATE: April 25, 2007

Registry of Deeds  
Middlesex District  
Middlesex, Massachusetts  
File No. 232 of 2006  
Title: 5-2-2006  
at 10:23 A.M.

Attest:  
*[Signature]*  
Clerk

APPROVAL UNDER THE SUBDIVISION CONTROL LAW IS NOT REQUIRED  
MARLBOROUGH PLANNING BOARD

*[Signature]*

DATE: April 23, 2007

ZONED: RESIDENCE A-1  
AREA = 22,500 sq ft  
FRONTAGE = 150 feet  
SETRACKS: FRONT = 10 feet  
SBL = 20 feet  
REAR = 40 feet

LIMITED DEVELOPMENT CRITERIA  
AREA = 56,250 sq ft  
FRONTAGE = 40 feet  
SETRACKS: FRONT = 50 feet  
SBL = 50 feet  
REAR = 50 feet

REFERENCES:  
ASSESSORS MAP 46, LOT 32  
FIELD BOOK 2803L, PAGE 239  
PLAN 11067 OF 1906  
MIDDLESEX SOUTH REGISTRY OF DEEDS  
SPECIAL PERMIT RECORDING 4-6-07  
MIDDLESEX SOUTH REGISTRY OF DEEDS  
DEED BOOK 49251, PAGE 99

**OWNER:**  
PHILIP E. & JULIE A. PURCELL  
197 STOW ROAD  
MARLBOROUGH, MA.

**PREPARED FOR:**  
NOBEL CONSTRUCTION  
P.O. BOX 225  
SOUTHBOROUGH, MA.

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS

*[Signature]* 4-6-2007  
ERIC R. WYMAN, P.E., S.M.A.S. DATE



**CONNORSTONE**  
CONSULTING CIVIL ENGINEERS  
AND  
LAND SURVEYORS  
276 WEST MAIN STREET  
NORTHBOROUGH, MASSACHUSETTS 01502

DESIGNED BY: REM  
CHECKED BY: BEK  
COMPUTED BY: JAS, REM  
FIELD SURVEY: JAS  
DRAWN BY: REM  
SCALE: 1" = 30'  
SHEET 1 OF 1

**PLAN OF LAND**  
IN  
**MARLBOROUGH, MA.**

DEC. 21, 2006  
NOV. 22, 2006  
JUNE 7, 2006  
REVISIONS  
DATE: MAY 10, 2006  
S-480  
MPL# 3077A

EXHIBIT C  
PHOTOGRAPHS

**197 Stow Road, Marlborough, MA**  
**Photographic Documentation**

Note: All photographs taken May 2013

- Photo 1: View looking NE showing west and south (façade) elevations of main house.
- Photo 2: View looking north at south (façade) elevation of main house with wing visible at right.
- Photo 3: View looking east at west elevation of main house.
- Photo 4: View looking NW at east elevation of main house with south and east elevations of wing visible at right.
- Photo 5: View looking north at south (façade) elevation of wing with detached garage/shed visible at right.
- Photo 6: View looking N-NE at south (façade) elevation of garage and attached shed, east of main house.
- Photo 7: View looking NW at south (façade) elevation of garage and shed. East end of wing is visible at extreme left.
- Photo 8: View looking east at shed attached to east end of garage.
- Photo 9: View looking north at south (façade) elevation of east end of garage/shed.
- Photo 10: View looking west at foundation under east elevation of ell.
- Photo 11: View looking south at north (rear) elevation of garage/shed.
- Photo 12: View looking SW showing north (rear) elevation of garage at left and north (rear) elevation of main house at right.
- Photo 13: View looking south showing north (rear) elevation of garage at left and north (rear) elevation of wing at right.
- Photo 14: View looking east showing west elevation of garage and north (rear) elevation of wing and main house (partial).
- Photo 15: View looking north at main entrance on south façade of main house.
- Photo 16: View looking north at detail of trim on front porch on south façade of main house.
- Photo 17: View looking N-NE at front porch on west elevation of main house.
- Photo 18: View looking NW at detail of rubble foundation at southeast corner of main house.

- Photo 19: View looking north at west ridge chimney on main house block.
- Photo 20: View in front entrance hall, first floor, looking SW; front door at left, door into parlor/living room at right
- Photo 21: View looking SE in front entrance hall, first floor
- Photo 22: View looking northwest, first floor stair hall showing stairs leading to second floor.
- Photo 23: View looking west, first floor front dining room (SE room) toward entrance hall and parlor/living room
- Photo 24: View looking SE in first floor dining room (SE room); front window at right; door into kitchen at left.
- Photo 25: View looking NW in first floor dining room (SE room) showing mantel and beams; door into kitchen at right.
- Photo 26: View looking south in first floor dining room showing detail of paneling.
- Photo 27: View looking NW from dining room into kitchen.
- Photo 28: View looking SE in SW room first floor. Door leads to front hallway.
- Photo 29: View looking SW in SW room, first floor.
- Photo 30: View looking NE in SW room, first floor. Mantel at left, door leads to office (NW room).
- Photo 31: View looking SE in first floor office (NW room). Door at left center leads to kitchen (NE room), door at right center leads to SW room.
- Photo 32: View looking west toward door on west elevation (NW room)
- Photo 33: First floor, door to backstairs, between NW and NE rooms, looking west
- Photo 34: View looking SW in kitchen (NE room) with door into dining room (SE room) visible at left.
- Photo 35: View looking west from kitchen (NE room) toward family room (wing). Chimney is at left; pantry door to right.
- Photo 36: View looking NE in kitchen (NE room); door to laundry room at center and doorway of family room is at right.
- Photo 37: View looking NE in kitchen (NE room).
- Photo 38: View looking west in kitchen (NE room) showing door leading to cellar stairs
- Photo 39: View looking south in kitchen (NE room) at pantry door

- Photo 40: View looking south down stairs from second floor down to first floor entrance hall
- Photo 41: Second floor, looking north at newel post at top of stairs
- Photo 42: Second floor, SE Bedroom, looking NW
- Photo 43: Second floor, SE Bedroom, looking east
- Photo 44: Second floor, SW Bedroom, looking NW
- Photo 45: Second floor, SW Bedroom, looking SE toward front stairhall
- Photo 46: Second floor, NW Bedroom, looking NE
- Photo 47: Second floor, NW Bedroom, looking west
- Photo 48: Second floor, NE Bedroom, looking NE
- Photo 49: Second floor, NE Bedroom, looking S-SW at doorway leading to SE bedroom
- Photo 50: Second floor, bathroom, looking east from SW bedroom
- Photo 51: Second floor, back stairs, looking down (south)
- Photo 52: Second floor, door to attic stairs, looking south
- Photo 53: Attic, looking northeast
- Photo 54: Attic, looking east
- Photo 55: Attic, looking west
- Photo 56: Detail of framing in attic, looking east
- Photo 57: View looking west, down stairs to basement
- Photo 58: View looking NE in basement
- Photo 59: View looking south in basement
- Photo 60: View looking east in basement toward bulkhead stairs
- Photo 61: View looking SE from first floor rec. room toward family room
- Photo 62: View looking east from family room (wing) toward rec. room, first floor of main house
- Photo 63: View looking E-SE in family room (wing)
- Photo 64: View looking N-NW in family room (wing) toward first floor of main house.

197 STOW ROAD, MARLBOROUGH, MA - PHOTOGRAPHIC DOCUMENTATION



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197 STOW ROAD, MARLBOROUGH, MA - PHOTOGRAPHIC DOCUMENTATION



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197 STOW ROAD, MARLBOROUGH, MA - PHOTOGRAPHIC DOCUMENTATION



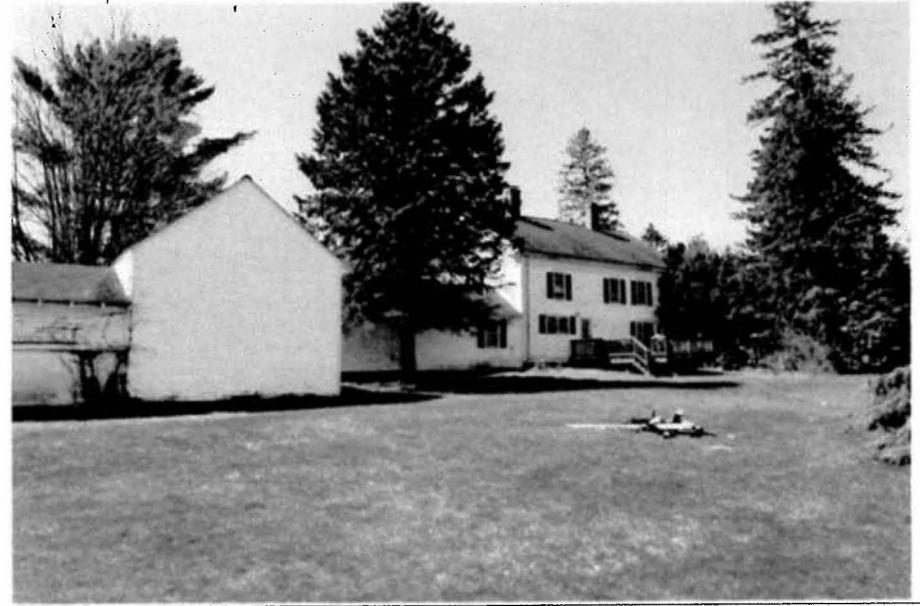
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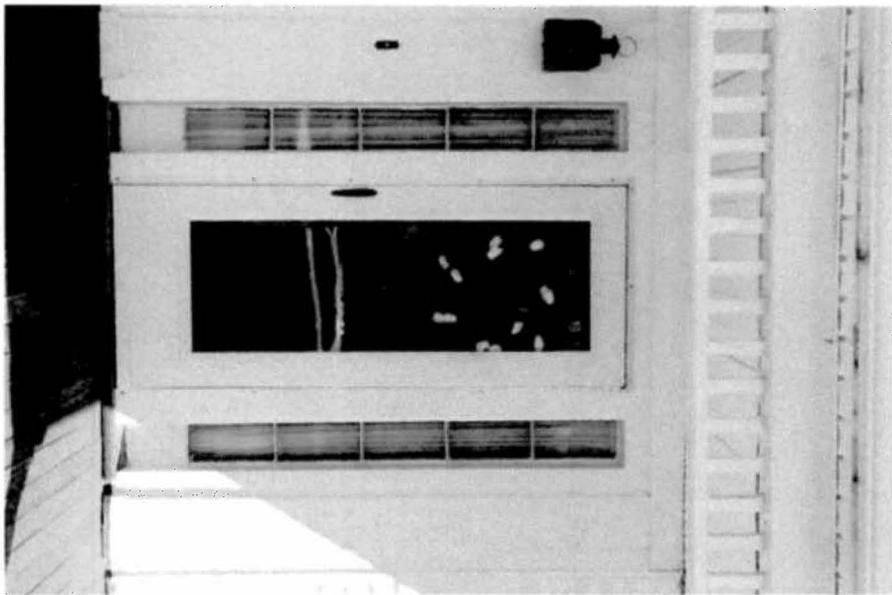
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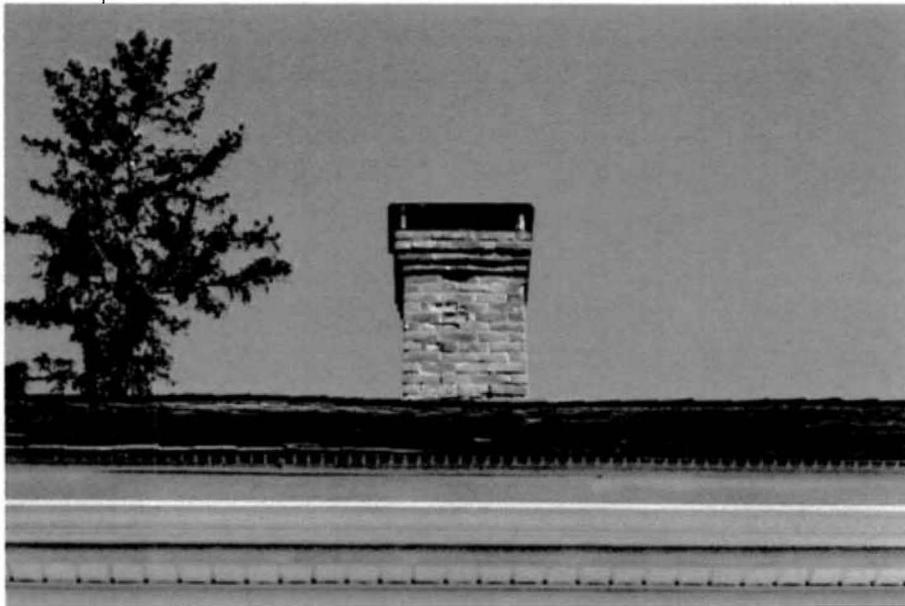
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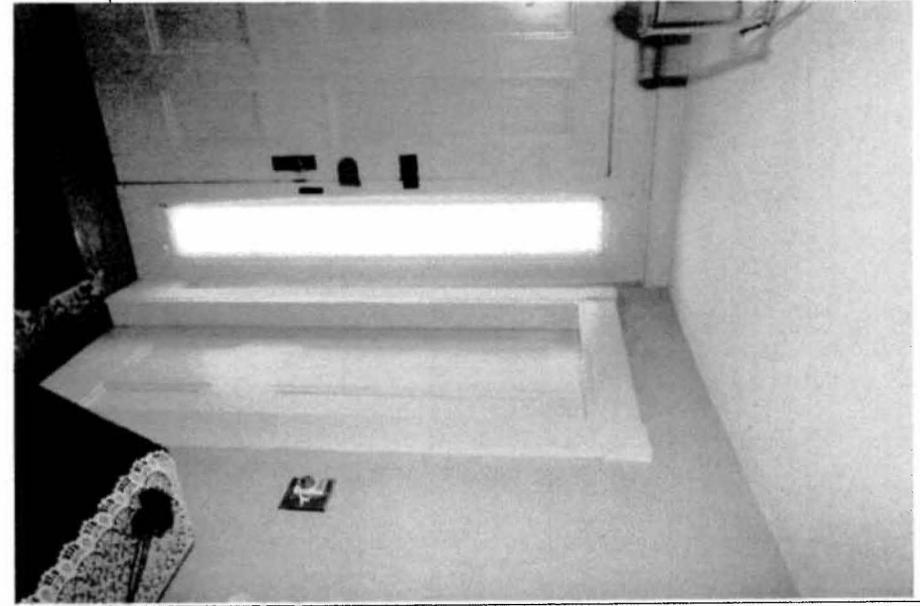
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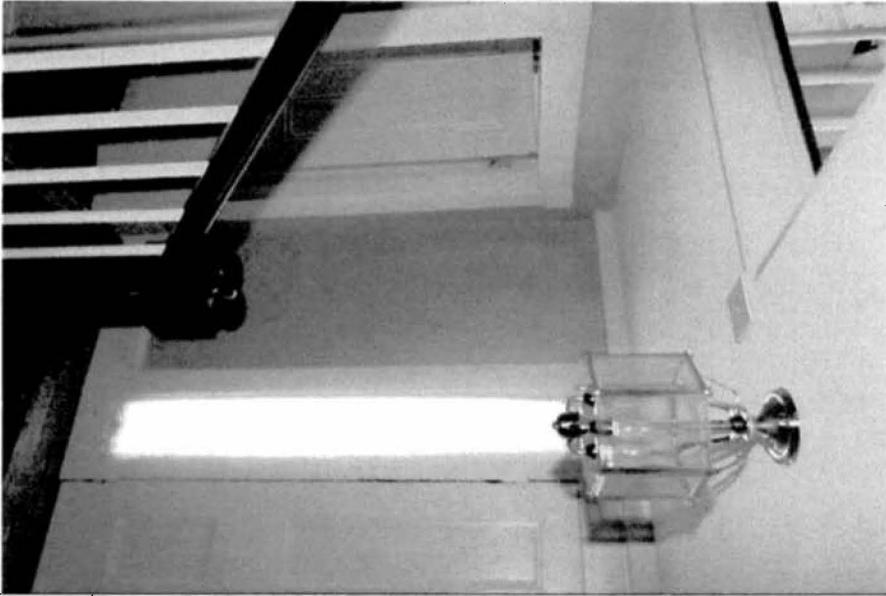
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197 STOW ROAD, MARLBOROUGH, MA - PHOTOGRAPHIC DOCUMENTATION



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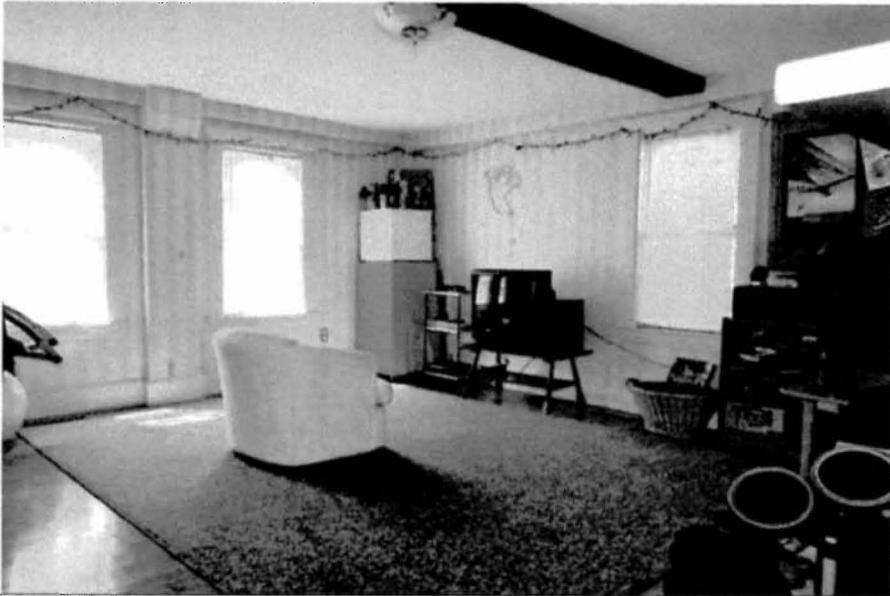


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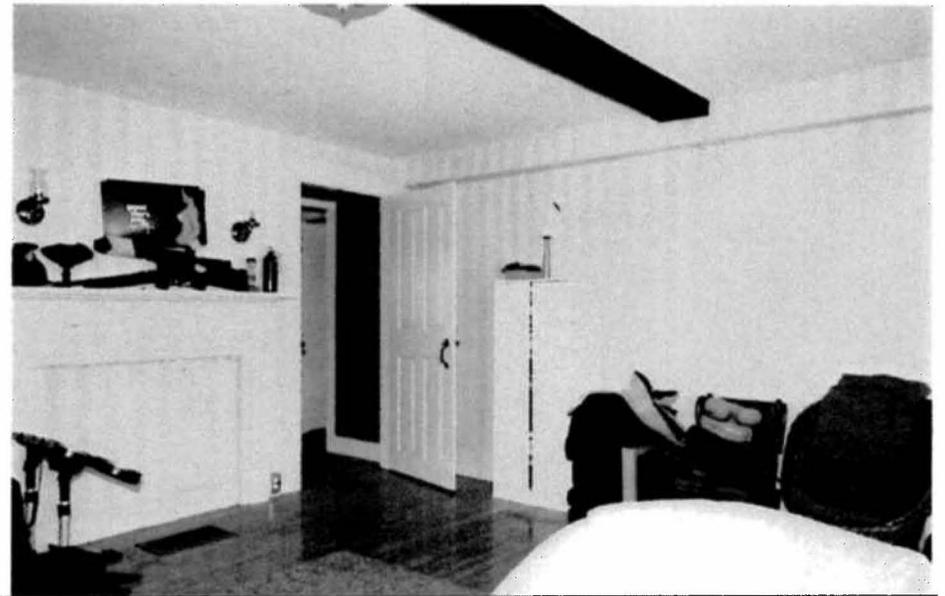


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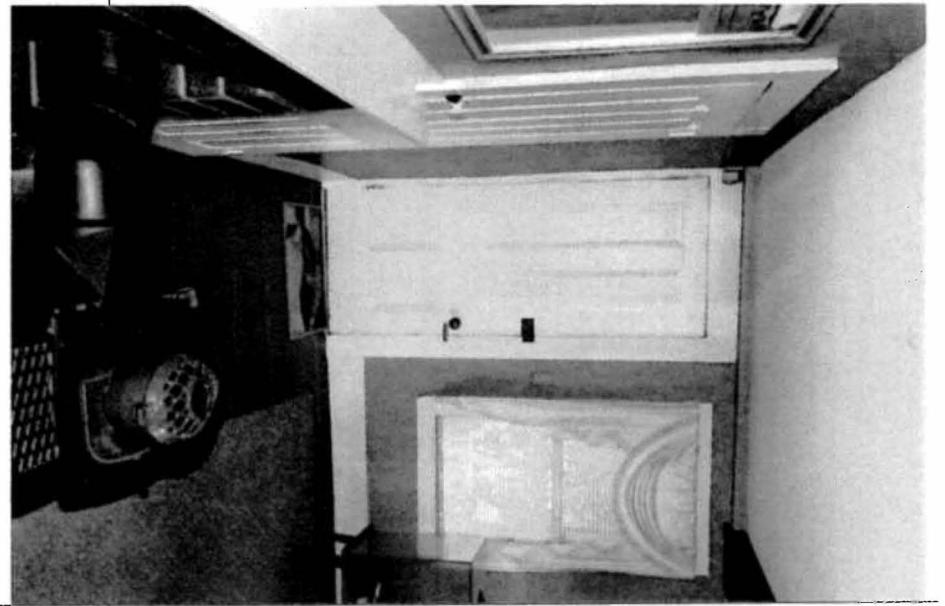
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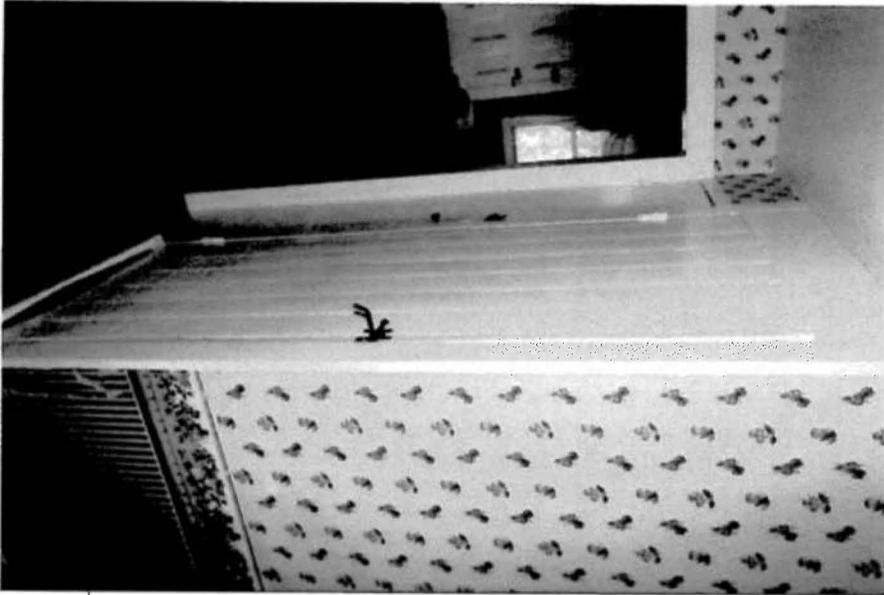


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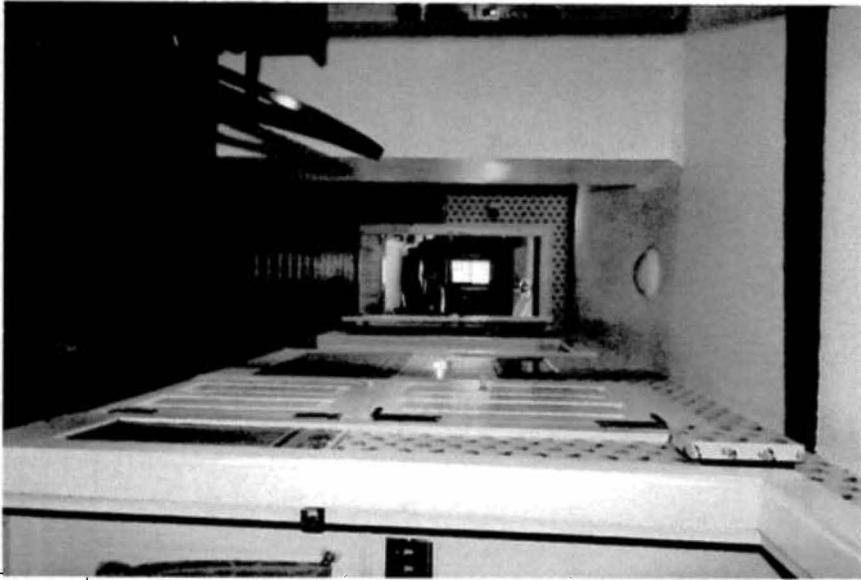
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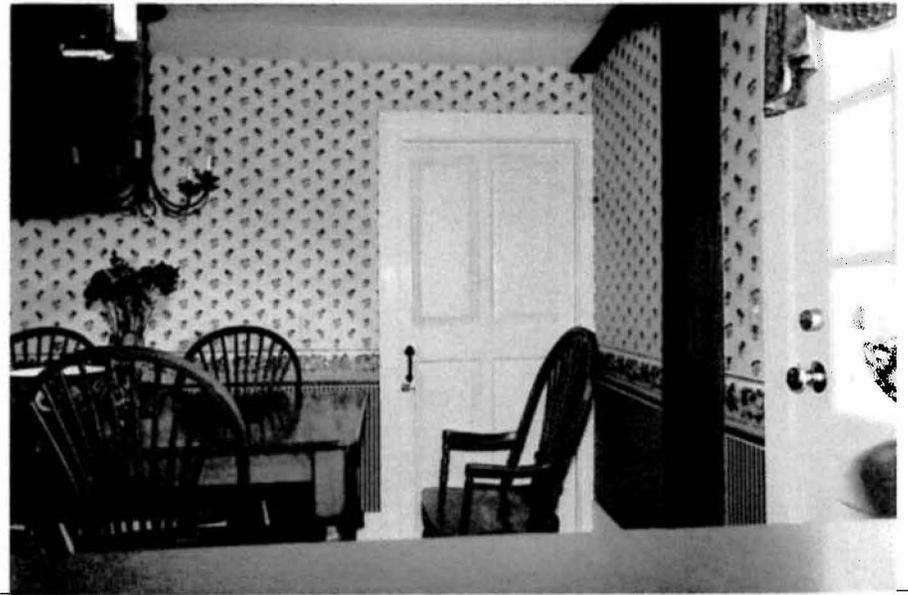
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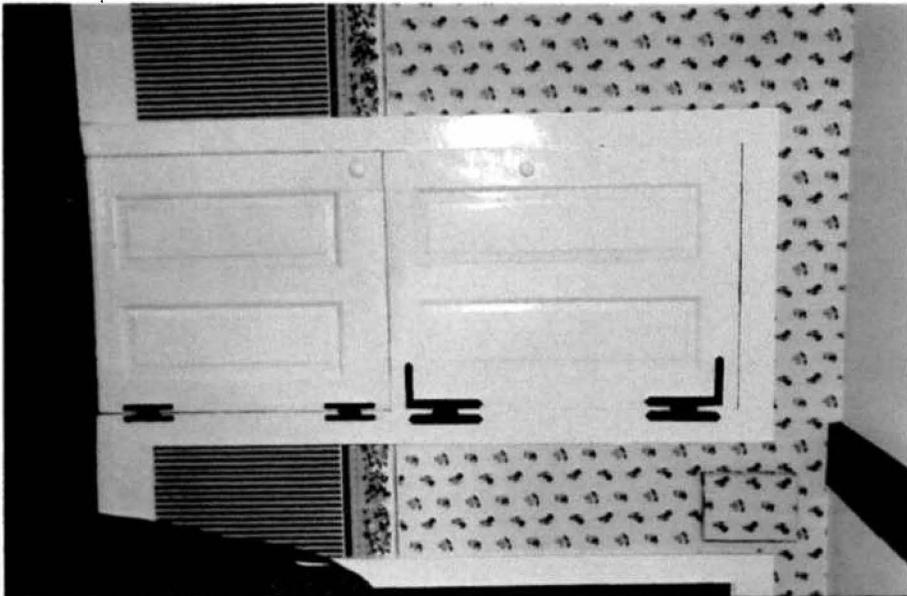
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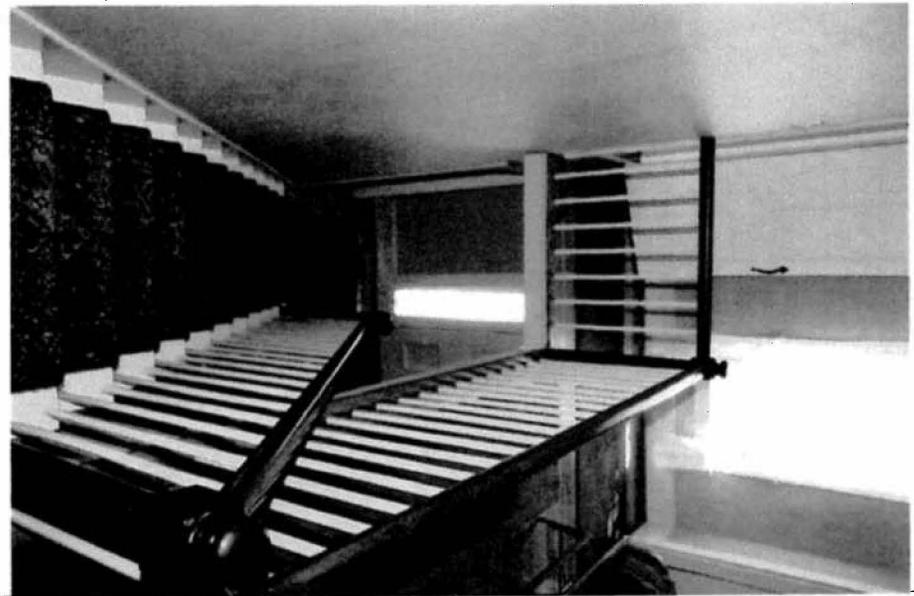
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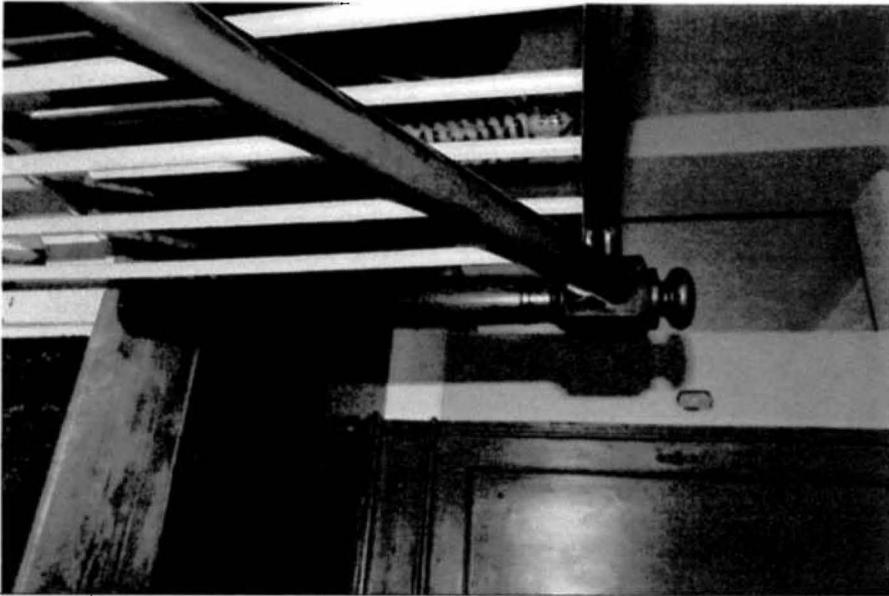
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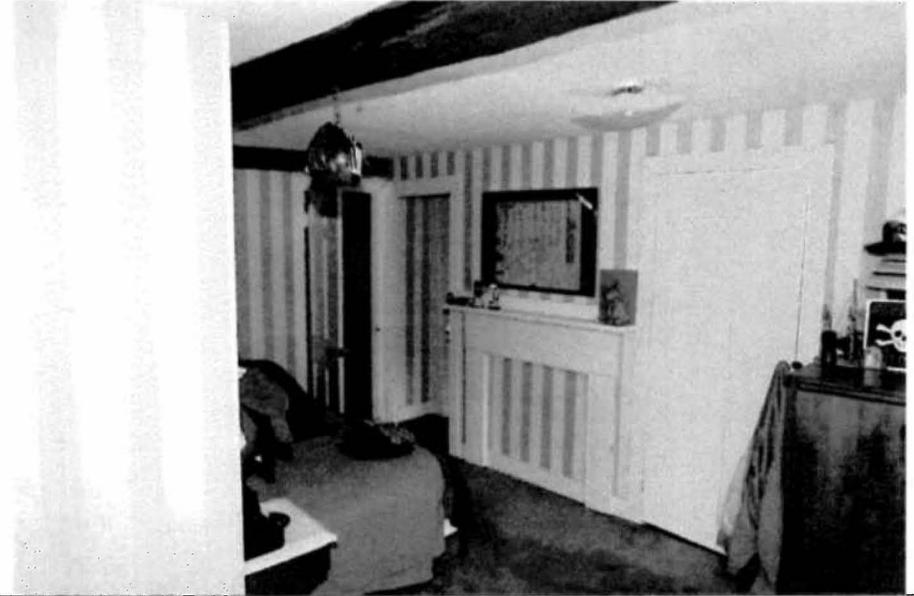
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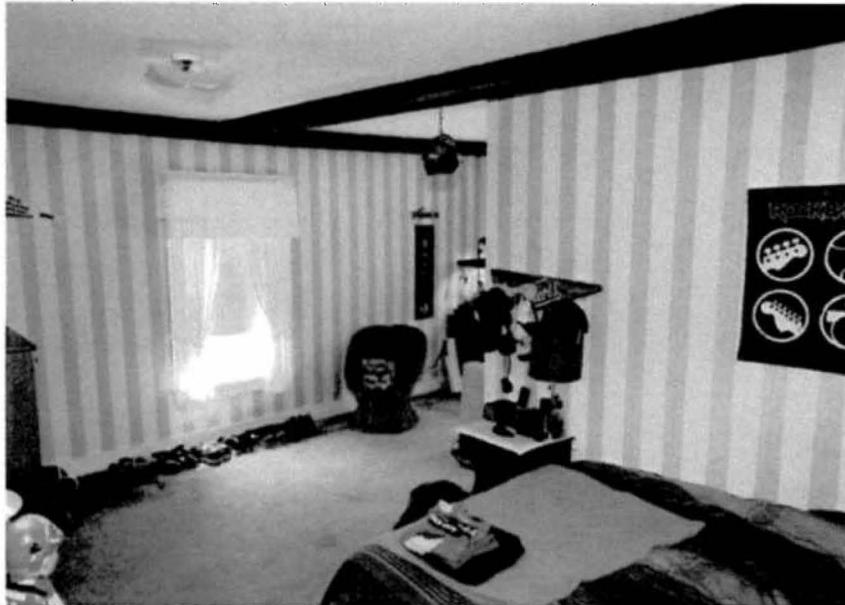


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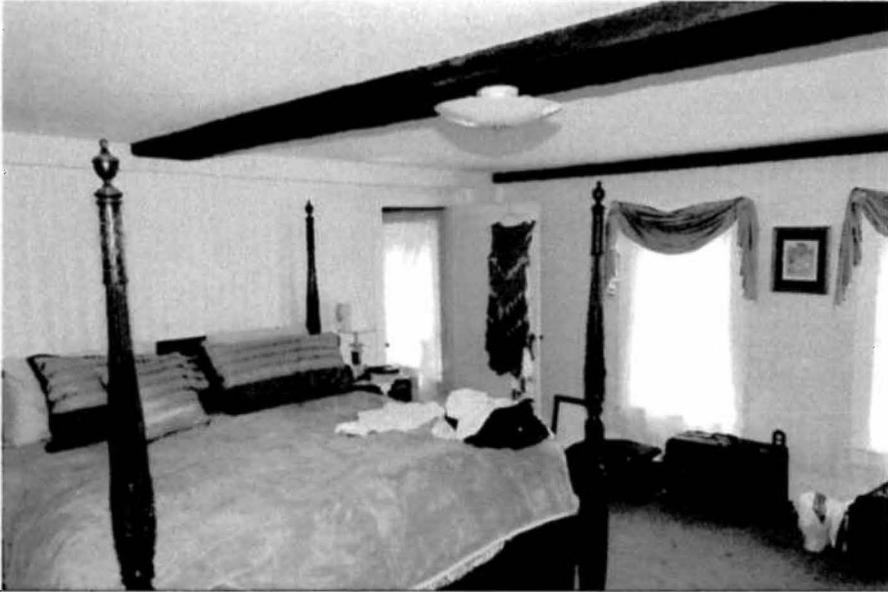


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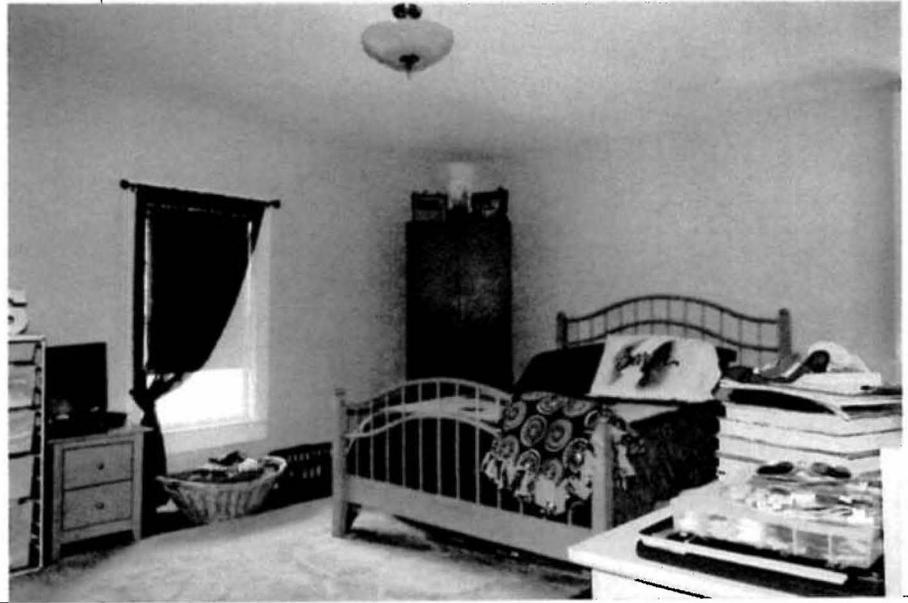
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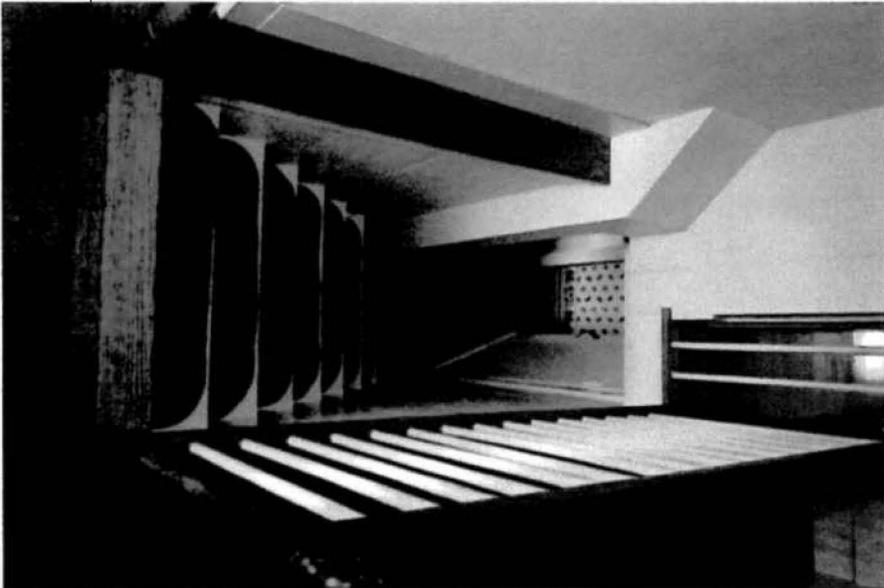


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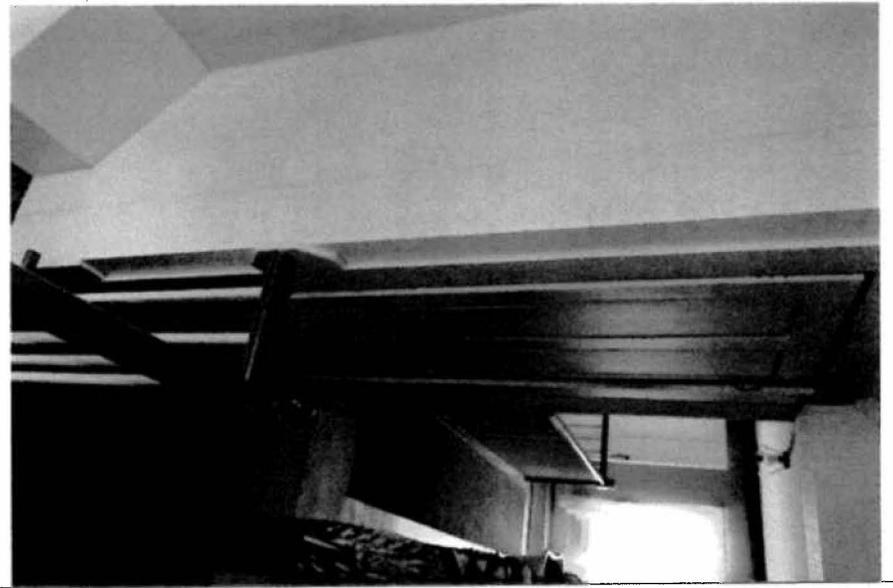


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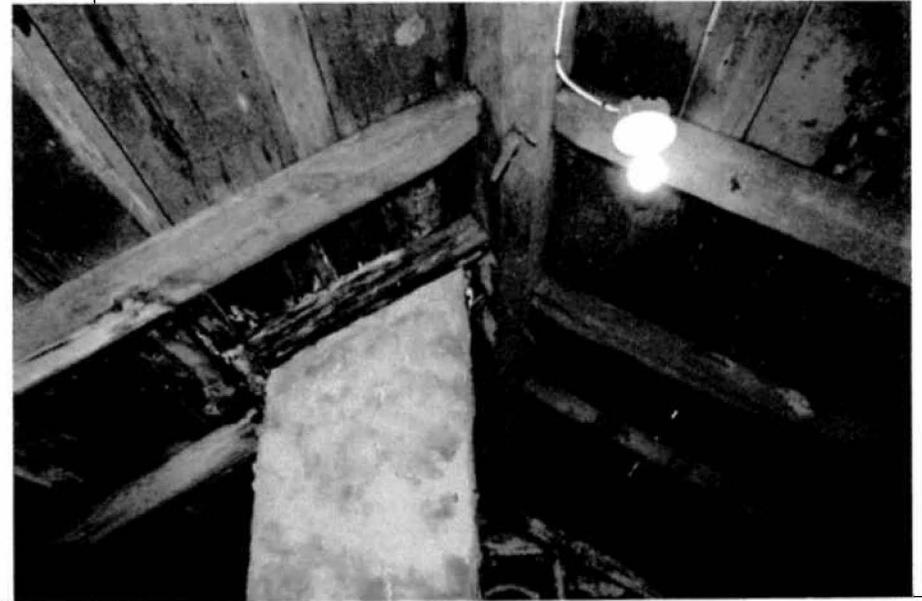
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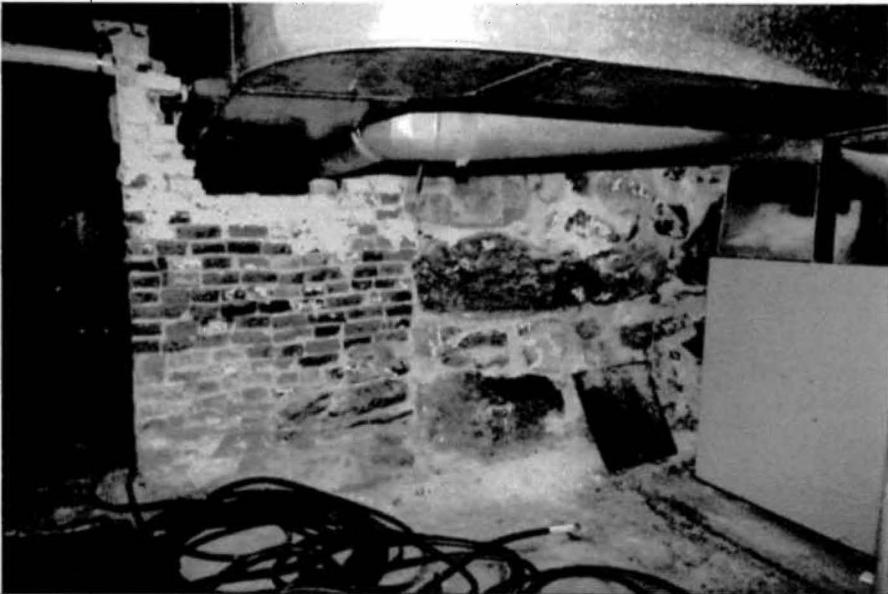
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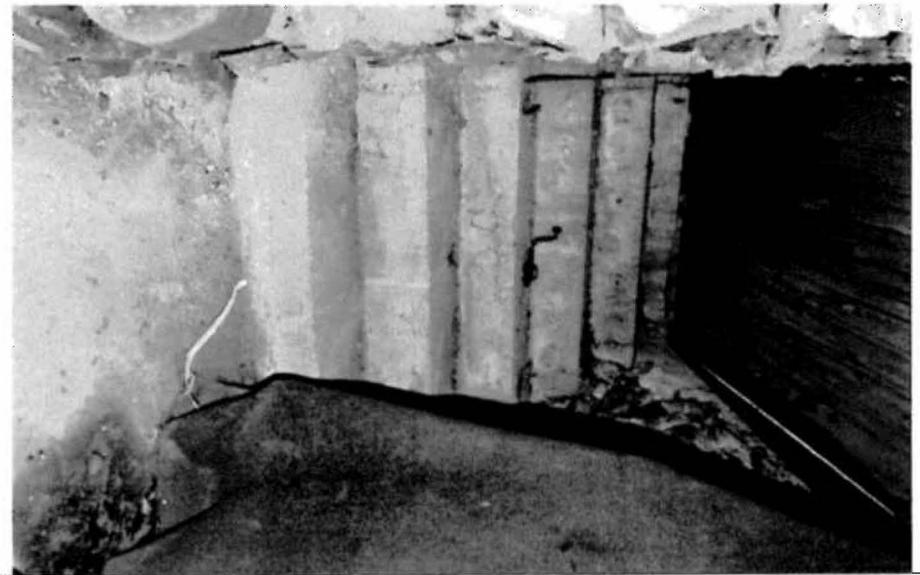
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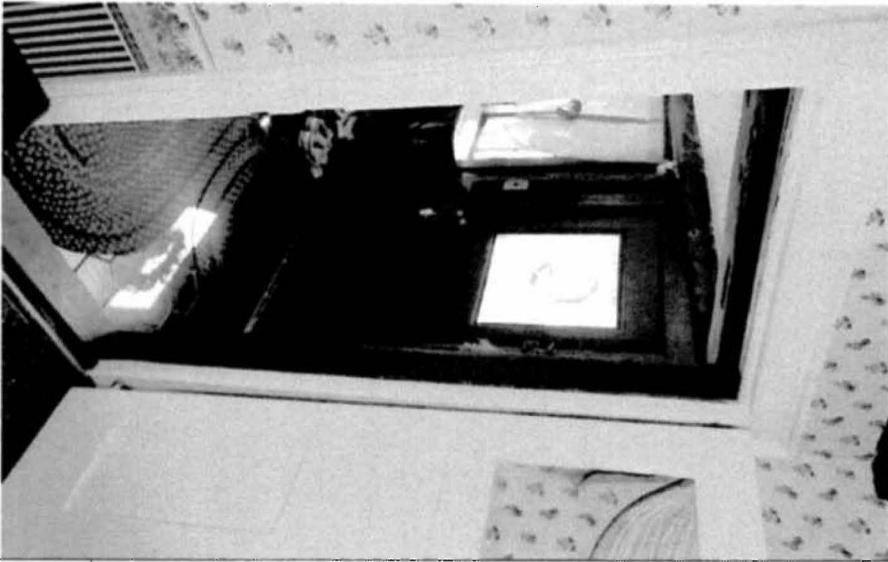


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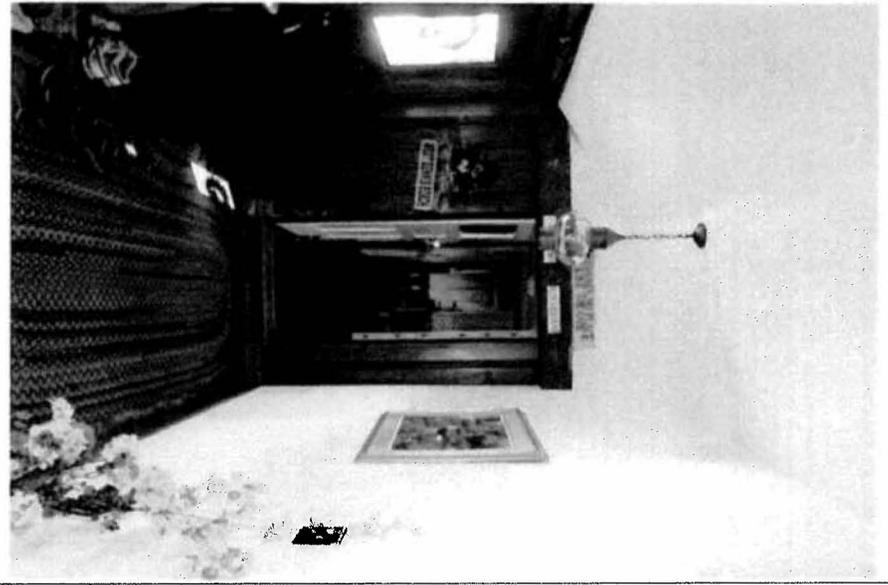


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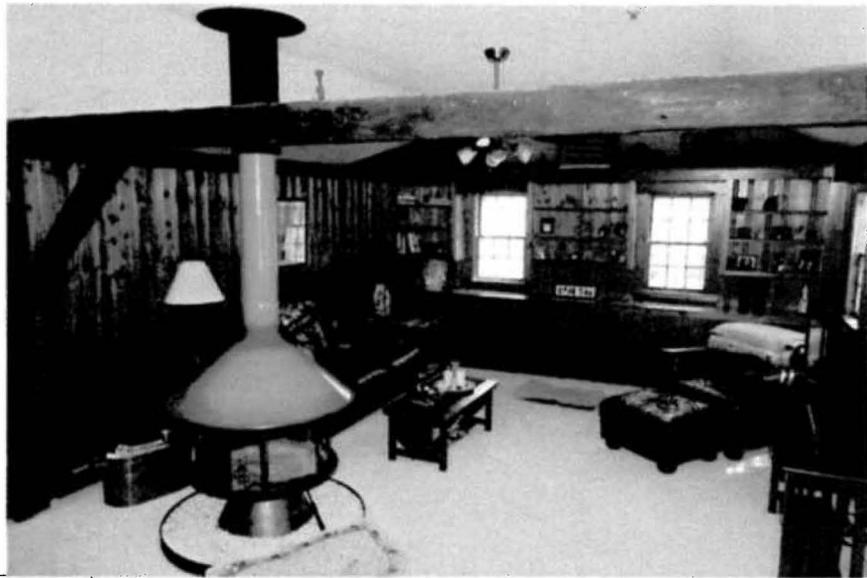
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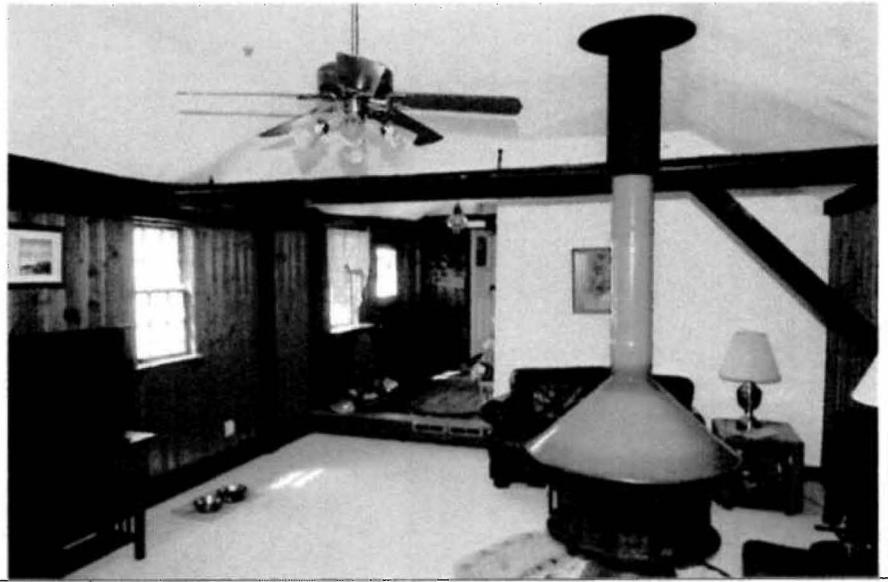
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EXHIBIT D

SKETCH OF FLOOR PLANS AND PARCEL SUMMARY

# 197 STOW RD



Click to enlarge

MBLU : 46/ 32/ 111

Location: 197 STOW RD

Owner Name: PURCELL PHILIP E TR

Account Number: 87094224



## Parcel Value

Item	Assessed Value
Buildings	248,400
Extra Building Features	3,800
Outbuildings	7,400
Land	125,800
<b>Total:</b>	<b>385,400</b>



## Owner of Record

PURCELL PHILIP E TR  
 JULIE A PURCELL TR



## Ownership History

Owner Name	Book/Page	Sale Date	Sale Price
PURCELL PHILIP E TR	28031/ 239	12/30/1997	



## Land Line Valuation

Size	Zone	Assessed Value
0.65 AC	A1	125,800



## Construction Detail

Item	Value
STYLE	Conventional
Grade:	Average +20
Stories:	2 Stories
Occupancy	1
Exterior Wall 1	Vinyl Siding

Roof Structure:	Gable or Hip
Roof Cover	Asphalt
Heat Fuel	Oil or Gas
Heat Type:	Forced Hot Air
AC Type:	None
Total Bedrooms:	04
Total Bthrms:	2
Total Half Baths:	0
Total Rooms:	9
Bath Style:	Average
Kitchen Style:	Standard



### Building Valuation

Item	Value
Living Area	3,218 square feet
Replacement Cost	370,793
Year Built	1742
Replacement Cost Less Depreciation	248,400



### Outbuildings [\(click here for a list of codes and descriptions\)](#)

Code	Description	Units
FGR4	GARAGE W/LOFT	396 S.F.
FGR1	GARAGE	396 S.F.
FCP	CARPORT	450 S.F.



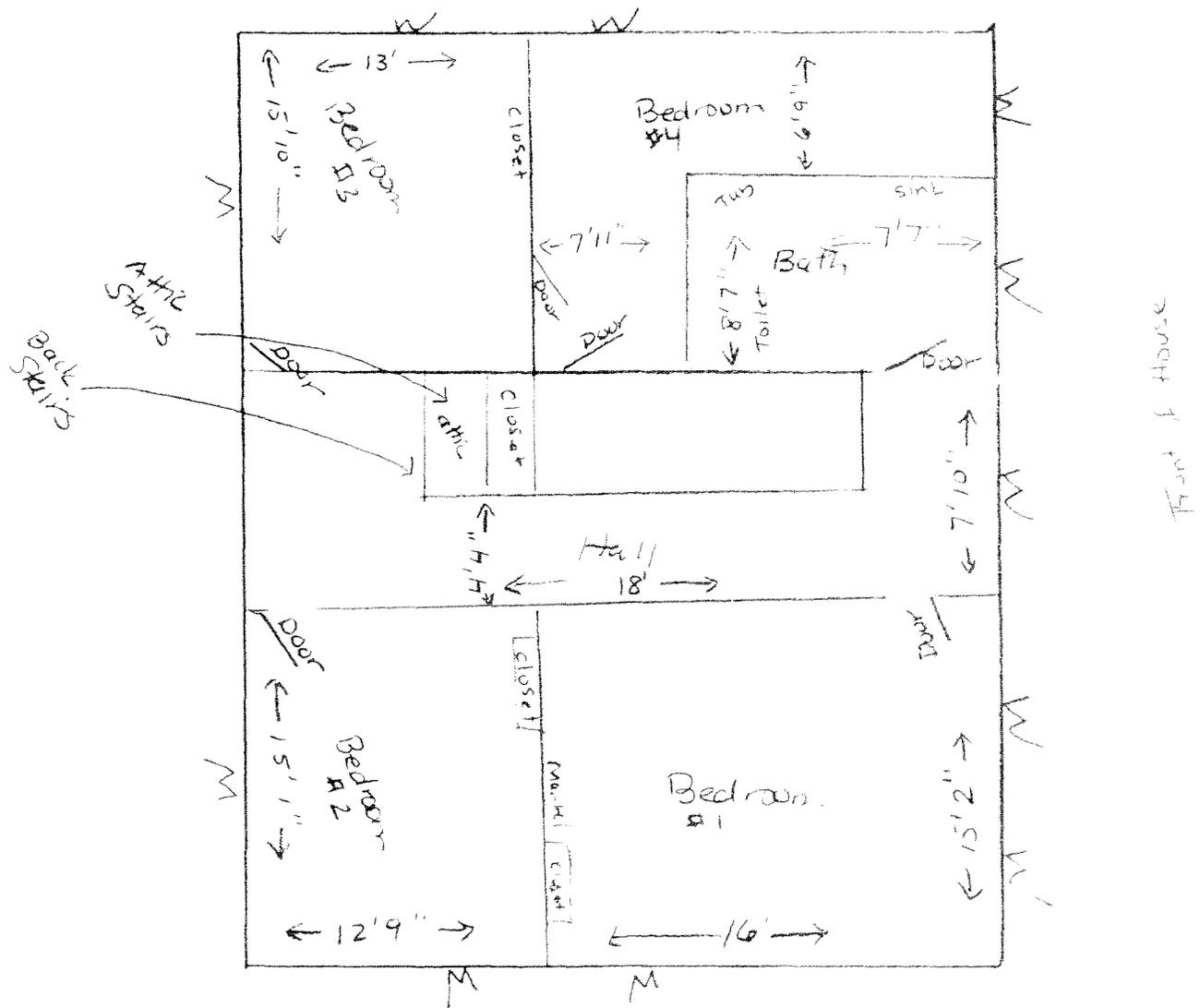
### Extra Features [\(click here for a list of codes and descriptions\)](#)

Code	Description	Units
FPL3	FIREPLACE 2 ST	2 UNITS



### Building Sketch [\(click here for a list of codes and descriptions\)](#)

Second Floor  
197 Stow Road  
Marlborough



First Floor  
 197 Stow Road  
 Marlborough

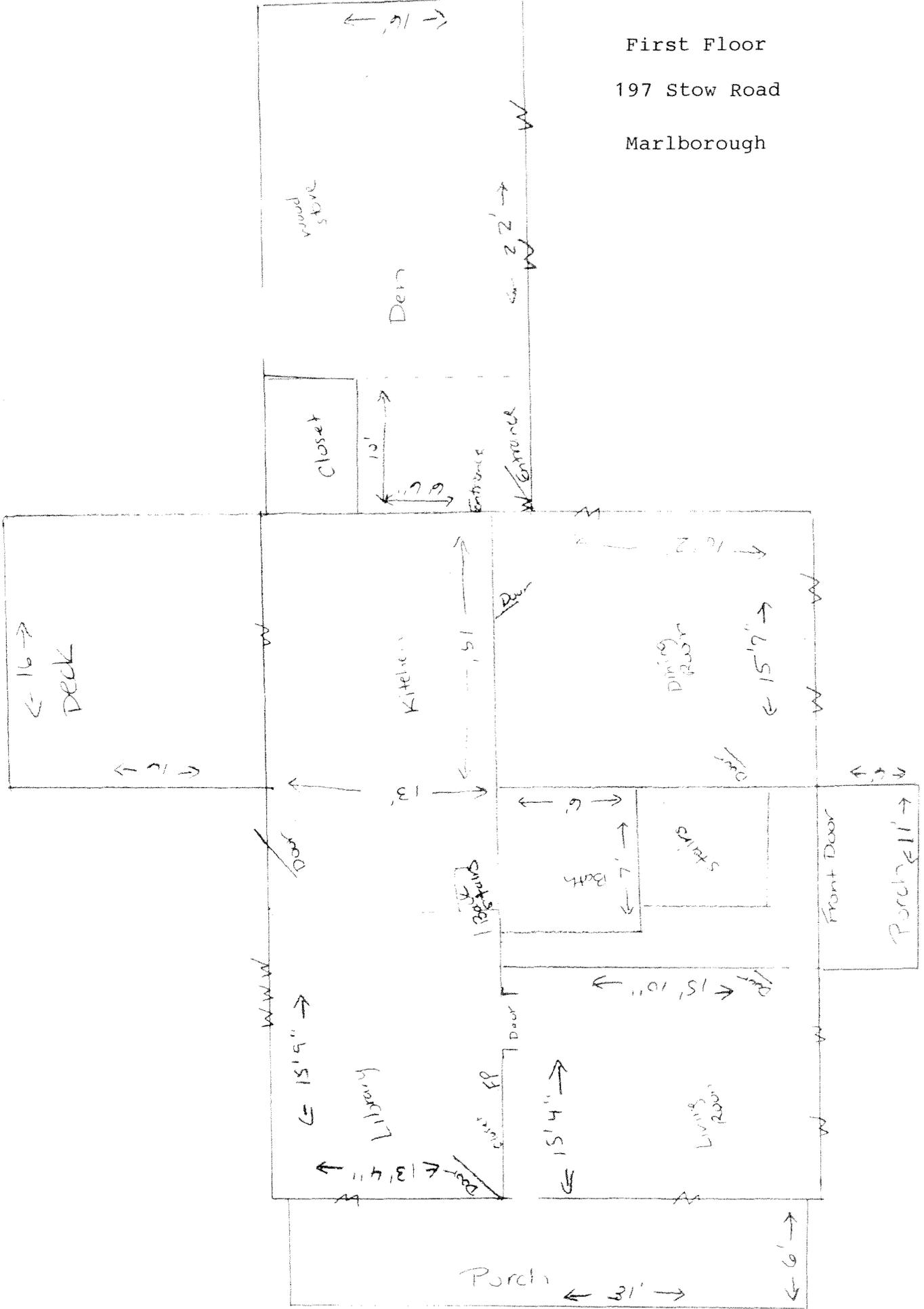


EXHIBIT E

INVENTORY FORM B

Massachusetts Historical Commission  
80 Boylston Street  
Boston, Massachusetts 02116

46.32    Marlborough       7



Marlborough

neighborhood or village)

197 Stow Road

Name Uriah Fager House

Present dwelling

Original dwelling

Construction late 18th century

maps; visual assessment

Form late Georgian vernacular with  
Greek Revival and Queen Anne accents

Architect/Builder unknown

Exterior Material:

Foundation fieldstone and granite

Siding/Trim synthetic siding

Roof asphalt shingle

Buildings/Secondary Structures small

gable-end barn w. modern garage doors; long  
wagon shed.

Major Alterations (with dates)

none since ca. 1900 (see p. 2)

Condition fair

Moved [X] no [ ] yes Date N/A

Acreage 4.73 acres

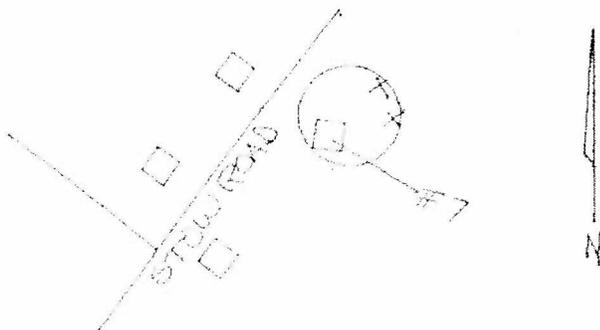
Setting faces south, side to street, sewer open

Lawn with small orchard. Large development  
of new wood-frame houses under construction  
across Stow Road.

Recorded by Anne Forbes

Organization for Marlboro Hist. Comm.

Date 6/22/95



## BUILDING FORM

### ARCHITECTURAL DESCRIPTION [ ] *see continuation sheet*

*Describe architectural features. Evaluate the characteristics of this building in terms of other buildings within the community.*

In spite of its synthetic siding and its nineteenth-century updating, this house is one of Marlborough's few intact examples of a large "double-pile", side-gabled farmhouse of the late eighteenth century. The twin ridge chimneys, (which may have been rebuilt at some point to a narrower profile), indicate the arrival in that era of the central through-hall, four-room plan. A long one-story ell of uncertain date extends to the east. Much of the house's detailing is the result of a series of updates during the nineteenth century. The earliest visible renovations, dating to the Greek Revival period, were probably done under Moses Barnes' ownership in the 1830's-to '40's. They appear to include the 6-over-6-sash windows with molded pediments, the wide corner pilasters with molded caps, and the wide frieze, with architrave, under the molded, boxed cornice. The house is five- by two bays, and the center entry has a four-panel door with the full-length sidelights typical of the Greek Revival. Additions of the Queen Anne period, probably made during the 1890's, include the wide door hood at the main entry, and the porch along the west end. Both are supported on lathe-turned posts, with square-doweled frieze screens and small, sawcut brackets.

Some outbuildings on the property, including a huge barn that once stood directly across the street, have been demolished. A large gable-end barn was standing just east of the house as late as 1927.

### HISTORICAL NARRATIVE [ ] *see continuation sheet*

*Explain history of the building. Explain its associations with local (or state) history. Include uses of the building, and the role(s) the owners/occupants played within the community.*

Visual evidence indicates that this house dates to the end of the eighteenth century. If that is the case, it probably would have been built for farmer **Uriah Eager, II**, who lived from 1740 to 1813. He married **Triphosa Bush** in 1764. One of Marlborough's Revolutionary soldiers, he saw action in Rhode Island, and was probably the **Uriah Eager** who, as an Ensign with Capt. Howe's company, marched to Cambridge on April 19, 1775.

In 1803, as was typical of that time, this farm is shown under the ownership of both **Uriah** and his son, **Moses Eager**. Born in 1772, he married **Sarah Stratton** in 1793. They eventually moved to Weston, possibly shortly after **Uriah's** death in 1813. The next owners of the house may have been **Moses's** older sister, **Rebecca**, and her husband, **Lovewell (Lovell) Barnes**, (1764-1831), whom she married in 1786. He was one of the more successful businessmen in Marlborough in his day, and rose to the rank of Colonel in one of the local militias of the early nineteenth century. Among their thirteen children, their eldest son, **Moses Barnes** (b. 1789), was the next owner. He married **Hepzibeth Hapgood** in 1818.

By 1875 the property belonged to **J.S. Ingraham**, who owned it into the 1890's. **Edmund Sowerby** acquired the farm in about 1897, and lived here for at least thirty years.

### BIBLIOGRAPHY and/or REFERENCES [ ] *see continuation sheet*

Maps and atlases: 1803, 1830, 1835, 1856/57, 1875, 1889, 1900.

Bigelow, Ella. Historical Reminiscences of Marlborough, Mass. 1910.

Bigelow, James. "Photographs and Descriptions of Some Old Houses in Marlborough". 1927.

Hudson.

Marlborough Vital Records.

Marlborough Directories and Real Estate valuations.

[ ] Recommended for listing in the National Register of Historic Places. *If checked, a completed National Register Criteria Statement form is attached.*

EXHIBIT F  
RESTRICTION GUIDELINES

197 Stow Rd Marlborough  
Historic Preservation Restriction Agreement

RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify paragraph 3 of the terms of the preservation restriction, which deals with alterations to the Premises. Under this section permission from the GRANTEE is required for any alterations to the interior and exterior features of the structures, and changes in appearance or condition of the lot. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require GRANTEE review.

In an effort to explain what constitutes a minor alteration and what constitutes an alteration that must be reviewed by the GRANTEE, the following list has been developed. By no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by the Premises owner.

PAINT

Minor - Exterior or interior 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, masonry, decorative or significant original stucco or plaster.

WINDOWS AND DOORS

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

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

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

Major - Large-scale repair or replacement of cladding. Change involving inappropriate removal or addition of materials or building elements that are architectural features of the buildings (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 repointing of masonry. Structural stabilization of the Premises is also considered a major alteration.

LANDSCAPE/OUTBUILDINGS

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

Major - Moving or subdividing buildings or Premises; altering or removing significant landscape features such as vistas, walks, walls, fences.

197 Stow Rd Marlborough  
Historic Preservation Restriction Agreement

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems and upgrade of systems that do not affect appearance of the structure.

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

Changes classified as major alterations are not necessarily unacceptable. Under the preservation restriction such changes must be reviewed by the GRANTEE and their impact on the historic integrity of the premise assessed.

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

The intent of the preservation restriction is to enable the GRANTEE to review proposed alterations and assess their impact on the integrity of the structure, not to preclude future change. GRANTEE will attempt to work with Premises owner to develop mutually satisfactory solutions, which are in the best interests of the Premises.

EXHIBIT G

SPECIAL PERMIT

9  
B

GRANTING OF SPECIAL PERMIT  
Limited Development Subdivision

DECISION



Bk: 49251 Pg: 99 Doc: DECIS  
Page: 1 of 9 04/06/2007 10:12 AM

NAME OF APPLICANT: Nobel Construction  
PO BOX 225  
Southborough, MA 01772

NAME OF OWNER(S): Philip and Julie Purcell ✓  
197 Stow Road  
Marlborough, MA 01752

NAME OF SURVEYOR: Timothy D. Paris  
10 Southwest Cutoff  
Northborough, MA 01532

LOCATION OF PROPERTY: a 4.73 acre parcel located at 197 Stow Road and said  
property is identified as Parcel 32 on Assessors' Map 46.

VOTE: In Favor: 6  
In Opposition: 1  
Absent: 0

DECISION FILED WITH  
CITY CLERK \_\_\_\_\_  
March 14, 2007

APPEALS

Appeals, if any, shall be made pursuant to M.G.L. Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the Filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough.

*Barbara V. Embry*

Marlborough, Planning Board

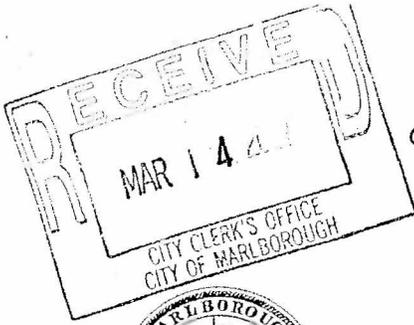
This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal thereto has been filed with this office.  
Given at Marlborough this 4th day of April, 2007.

Given under Chapter 40A Sec. 11 of the General Laws.

A TRUE COPY  
ATTEST: *David J. Luceri*  
Acting City Clerk

RETURN TO:  
DAVID P. GADBOIS, ESQ.  
27 PROSPECT ST.  
MARLBOROUGH, MA 01752

#116C



*City of Marlborough*  
*Commonwealth of Massachusetts*



**PLANNING BOARD**

- Barbara L. Fenby, Chair
- Steve Kerrigan, Clerk
- Philip J. Hodge
- Edward F. Coveney
- Clyde L. Johnson
- Robert Hanson
- Sean N. Fay

March 14, 2007

Claire Lucier, Acting City Clerk  
City of Marlborough  
140 Main Street  
Marlborough, MA 01752

Carrie Lizotte, Board Secretary  
Phone: (508) 460-3769  
Fax: (508) 460-3736  
Email: CLizotte@marlborough-ma.gov

RE: 197 Stow Road  
Limited Development Subdivision  
Special Permit

Dear Ms. Lucier:

At its regular scheduled meeting on March 12, 2007, The Planning Board took the following action:

On a motion by Mr. Kerrigan, seconded by Mr. Fay, it was duly voted with opposition from Mr. Hodge:

To **approve** the findings and facts and the special permit for a Limited Development Subdivision located 197 Stow Road as allowed under Section 200-30 of the City Code, as the developer has met all of the requirements of that section of the Zoning Ordinance of the City of Marlborough.

Sincerely,

*Barbara L. Fenby*  
Barbara L. Fenby, Chairperson

/cal

Enclosure

cc: City Engineer  
Attorney David Gadbois  
Connorstone Engineering  
file

## DECISION ON A SPECIAL PERMIT APPLICATION

The Planning Board of the City of Marlborough hereby GRANTS the application for a Special Permit to Nobel Construction Co., Inc. having a usual place of business at 24 Constitution Drive, Southborough, MA 01772, its successors or assigns as provided in the Decision and subject to the following Findings of Facts and Conditions:

### FINDINGS OF FACTS

1. Nobel Construction Co., Inc. is a Massachusetts corporation having a usual place of business at 24 Constitution Drive, Southborough, MA 01772 hereinafter referred to as the Applicant/Developer.
2. Philip E. and Julie A. Purcell (Owner) are the owners of the property known as 197 Stow Road, Marlborough, MA, (the Site) as shown on the City of Marlborough Assessors Maps Map 46, Parcel 32.
3. The Applicant, on May 17, 2006 filed with the City Clerk of the City of Marlborough, and the Planning Board a Special Permit Application ("Application"), for a Special Permit under Chapter 200 (Zoning) of the Code of the City of Marlborough, Article V Sections 200-30 to construct a Limited Development Subdivision on land located at 197 Stow Road (the "Project").
4. The Application filed on May 17, 2006 consisted of an original of the following: (a) Special Permit Application; (b) A Plan of Land in Marlborough, showing the proposed Limited Development Subdivision (the Site Plan); (c) Subdivision Sketch of a conforming subdivision; (collectively the "Documents") which Documents are incorporated herein and become a part of this Decision.
5. The Special Permit Application and Site Plan were certified by the Stephen F. Reid, Building Commissioner to be within the limits of work shown on the plan, and that said property conforms to the requirements of Chapter 200, Section 30.

6. The Applicant has paid the required fee for the filing of the Application. The Application is complete and conforms to the Rules and regulations for submission of an Application to the Planning Board for Issuance of a Special Permit for a "Limited Development Subdivision".
7. Subsequent to the filing of the Application the Planning Board referred the matter to the City Engineering Department and the City Solicitor. The City Engineering Department and the City Solicitor opined that the Application is in conformance with the dimensional requirements of section 200-30 of the Zoning Ordinance.
8. Pursuant to applicable statutes of the Commonwealth of Massachusetts, the Planning Board established October 16, 2006 as the date for a Public Hearing for the Special Permit Application and caused to be advertised notice of said date and hearing in the appropriate news paper and sent notice of said hearing to abutters entitled to notice under law. Such notice was published, mailed and posted in accordance with applicable law.
9. The Planning Board pursuant to Massachusetts General Law. C. 40A held a public hearing concerning the Application (the "Public Hearing") on Monday October 16, 2006.
10. The Applicant presented testimony at the Public Hearing detailing the Project, its impact upon municipal services, the neighborhood, traffic, and such other issues as the Planning Board and members of the public deemed appropriate.
11. The Applicant provided oral testimony through its engineer, George Connors of the engineering firm of Connorstone Consulting and Civil Engineers and Land Surveyors of 276 West Main Street, Northborough, MA to the Planning Board regarding the site, traffic impacts, drainage, water and sewer use, other utility improvements, associated with the Project, the use of common driveways and compared the impacts of the development with a traditional subdivision. The engineers indicated that a traditional subdivision would require a substantial amount of earth removal and site work, which is not required by the Project.
12. Atty. David P. Gadbois of 27 Prospect Street, Marlborough, MA, attorney for the owners, explained how the proposed development meets the dimensional criteria for a Limited Development Subdivision as provided for in Chapter 200 section 200.30 of the Zoning Code. He further explained that construction of a Limited Development Subdivision in lieu of a traditional subdivision under subdivision control law would result in a less dense subdivision. He said the proposed subdivision would have three new homes and retain an historic home that was built in the 1700s. He further explained that no city roads would be constructed and that the common driveways

would be maintained by the homeowners. The common driveways would be substantially smaller than a traditional roadway with sidewalks and would allow for more green area within the developed site.

13. Julie Purcell and Philip Purcell, owners of the property, each spoke in favor of the Development. Each explained that one of their intentions is to keep the historic house intact, preserve the farm-like feel and that each felt the development was a much better use of the land than a traditional subdivision. Julie Purcell explained that she intends to move into one of the new homes with her children and that the old home will be sold.
14. Mr. Scott McCabe of 23 Gregoire Drive, Marlborough and Mr. Mark Cappadonna of 1050 Concord Road, Marlborough spoke in favor of the project. Each is a long time resident of the City of Marlborough. Mr. McCabe said that he plans on purchasing one of the lots and to have the Applicant construct a new home on it for him and his family. Mr. Cappadonna said that he is a good friend of Mr. McCabe and that he also plans on purchasing a lot and have the Applicant build a home for him and his family.
15. Mr. Renato Alpizar of 135 Stow Road sent a letter via email to the Planning Board stating he was opposed to the development. He stated the traffic and environmental impact would have a negative impact to the neighborhood. Copy of the letter is enclosed.
16. Ms. Sheryl Traylor of 151 Stow Road stated she was opposed to the Development. She questioned how long the builder would be building. She was concerned about the traffic impacts with the developer's trucks and the flow of traffic. She said that the traffic generated by the construction of the project would be detrimental to the area. She said that Stow Road was in deplorable condition and that the running of construction trucks and equipment over it would render it almost unusable. She said the development would be detrimental to the neighborhood by adding too many houses to an already dense developed neighborhood.
17. Mr. Andrew Calatayud of 223 Stow Road, a direct abutter, initially spoke neither in favor nor in opposition to the project. He explained that he was not familiar enough with the plans to take a position and asked for a continuance of the hearing to review the plans with the Applicant. The Planning Board with the consent of the Applicant agreed to continue the public hearing to give Mr. Calatayud an opportunity to review the plans with the Applicant. He did meet with the Applicant, reviewed the plans and asked questions. Following the review, on October 30, 2006, the public hearing was reconvened and Mr. Calatayud spoke in opposition to the development. He said the Project was detrimental to the neighborhood and to his property. He said the proximity of the house on Lot 2 would lessen the value of his property.

He said that the three homes constructed in the manner planned would create a safety hazard on Stow Road at the driveway entrance. He objected to the turnaround on Lot 2 as being too close to his lot. Following his presentation, the Planning Board closed the Public Hearing. Mr. Calatayud's letter is enclosed.

18. The Site is zoned Residence A1., and the proposed use as a single family residential Limited Development Subdivision is allowed with a special permit from the Planning Board.
19. Lot 1. is an ANR Lot, which conforms to the dimensional requirements of a lot in a Residence A1. zoning district. It has a minimum lot area of 22,500 square feet, minimum lot frontage of 150 feet, minimum side yard of 25 feet, minimum front yard of 30 feet, minimum rear yard of 40 feet and maximum lot coverage is no more than 25%.
20. Lots 2, 3 and 4 as shown on the Site Plan each have a minimum lot area of two and one-half the minimum lot area of the zoning district with which they are situated; each of said lots have at least 40 feet of frontage on Stow Road; each lot has a minimum front, side and rear yard of 50 feet; each lot has an area of land wholly within the interior of the lot meeting a minimum dimension of a rectangle having two sides equal to the frontage requirement of the district and two sides having lengths equal to 75% of the district frontage.
21. The driveway of the Project has a minimum width of 12 feet and a maximum grade of ten (10%) percent and conform the requirements of other provisions of the Zoning Ordinance.
22. According to the City Engineering Department Each lot has: a) adequate access to insure accessibility of public safety and emergency vehicles; b) adequate turnarounds to allow the turning and exiting of public safety and emergency vehicles during all weather conditions; and c) the shared driveway has adequate suitable space for each lot to construct a none shared driveway for access to the particular lot.
23. The Applicant has agreed to designate the shared driveway as a private way and not a public way.

**BASED UPON THE ABOVE, THE PLANNING BOARD OF THE CITY OF MARLBOROUGH MAKES THE FOLLOWING FINDINGS:**

1. The Planning Board finds that it may issue the Special Permit, subject to such terms and conditions, as it deems necessary, to encourage the most appropriate use of the subject property and promote and conserve the health and general welfare of the inhabitants of the City of Marlborough.
2. The Planning Board finds the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough, or General Laws, C.40A, et. seq. The Planning Board also finds that the use of the site for the Project is an appropriate use, and is in harmony with the general purpose of the Zoning Ordinance of the City of Marlborough.
3. The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough Planning Board as they pertain to the Application.
4. Based upon the above findings of facts and the testimony of those who spoke at the public hearing and the reports of the City Engineering Department and the City Solicitor, the Planning Board finds the Development results in sufficient advantage to the City to depart from applicable requirements of the Ordinances of the City of Marlborough, applicable Subdivision Control Law and Rules and Regulations, as may be further amended, of the Planning Board, in that the use of the intended parcel is less intense than would be allowed in a subdivision as defined by the Planning Board.
5. Based upon the above findings of fact, the advice of the City Engineering Department and the City Solicitor's opinion, the Planning Board finds the submitted plan clearly conforms with all of the criteria enumerated in subsection A of section 200-30 of the Zoning Ordinance and the Applicant has demonstrated the access from the frontage to the single family dwellings is sufficient to accommodate all private vehicles and the needs of all public safety and emergency vehicles.

**GRANT OF SPECIAL PERMIT WITH CONDITIONS**

6. The Planning Board pursuant to its authority under General Laws C.40A and the Chapter 200 of the Code of the City of Marlborough Section 200-30 GRANTS to the Applicant a Special Permit to construct the Limited Lot Subdivision in accordance with the Plan as submitted and modified in accordance with the recommendation of the City Engineering Department subject to the following additional conditions:

a. Construction and Project Plans and Specifications: Construction of all structures on the Site is to be in accordance with the plans as submitted and all building codes and zoning regulations in effect in the City of Marlborough as they pertain to the Limited Development Subdivision.

b. Preservation Restriction: The Owner of the property, before the commencement of construction, shall place a Preservation Restriction in perpetuity on the property shown as Lot 1 on the Plan. The preservation restriction shall preserve the farm house structure and barn now known as 197 Stow Road. The restriction shall limit any or all (i) alterations to the exterior and interior features of the structures, (ii) changes in appearance or condition of the lot and (iv) use of the site to a single family residence, which is historically appropriate to the property. No work to the premises, which changes its current appearance or which requires a building permit shall be allowed without the express written assent of the Marlborough Historic Commission or its successor.

d. Transfer of Restriction: Prior to construction the above Preservation Restriction shall be conveyed to the Marlborough Historic Commission by a document recorded in the Middlesex South District Registry of Deeds.

e. Traffic Mitigation: The Chief of Police or his designee shall be notified prior to the start of any construction to determine the necessity of a police detail on Stow Road during any phase of construction to minimize traffic issues. Any costs associated with these details are the sole responsibility of the applicant.

f. Engineering: Comments made by the Engineering Department of the City of Marlborough with regard to extension of the water main, individual service relocations, relocation of the proposed hydrant must be resolved prior to any construction on the property. Further the approval of the drainage plan for the project is subject to review and comment by the Engineering Department prior to any construction on the property.

g. Site Plan Review: The issuance of the special permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough ordinances, prior to the issuance of the actual Building Permit. The Site Plan Review Approval and all conditions thereof are conditions hereof and made a part hereof. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to the Building Permit, and no Occupancy Permit shall be issued until all conditions are complied with by the Applicant. Site Plan Review shall be consistent with this special permit. Any violation of a condition of Site Plan Approval shall be a violation of this Special Permit.

h. Conservation: No work shall take place within 20 feet of the wetlands that abut Lots 2 & 4 as shown on the plan. Furthermore any work that falls within the 100 foot wetland buffer zone must first be reviewed by the Conservation Commission as required by various ordinance of the City of Marlborough.

j. Common Driveway Easement and Agreement: As part of Site Plan Approval, Applicant shall submit to the Site Plan Review Committee as a Common Driveway Easement and Agreement setting forth the rights and obligations of the property owners to maintain and preserve the common driveways and easements.

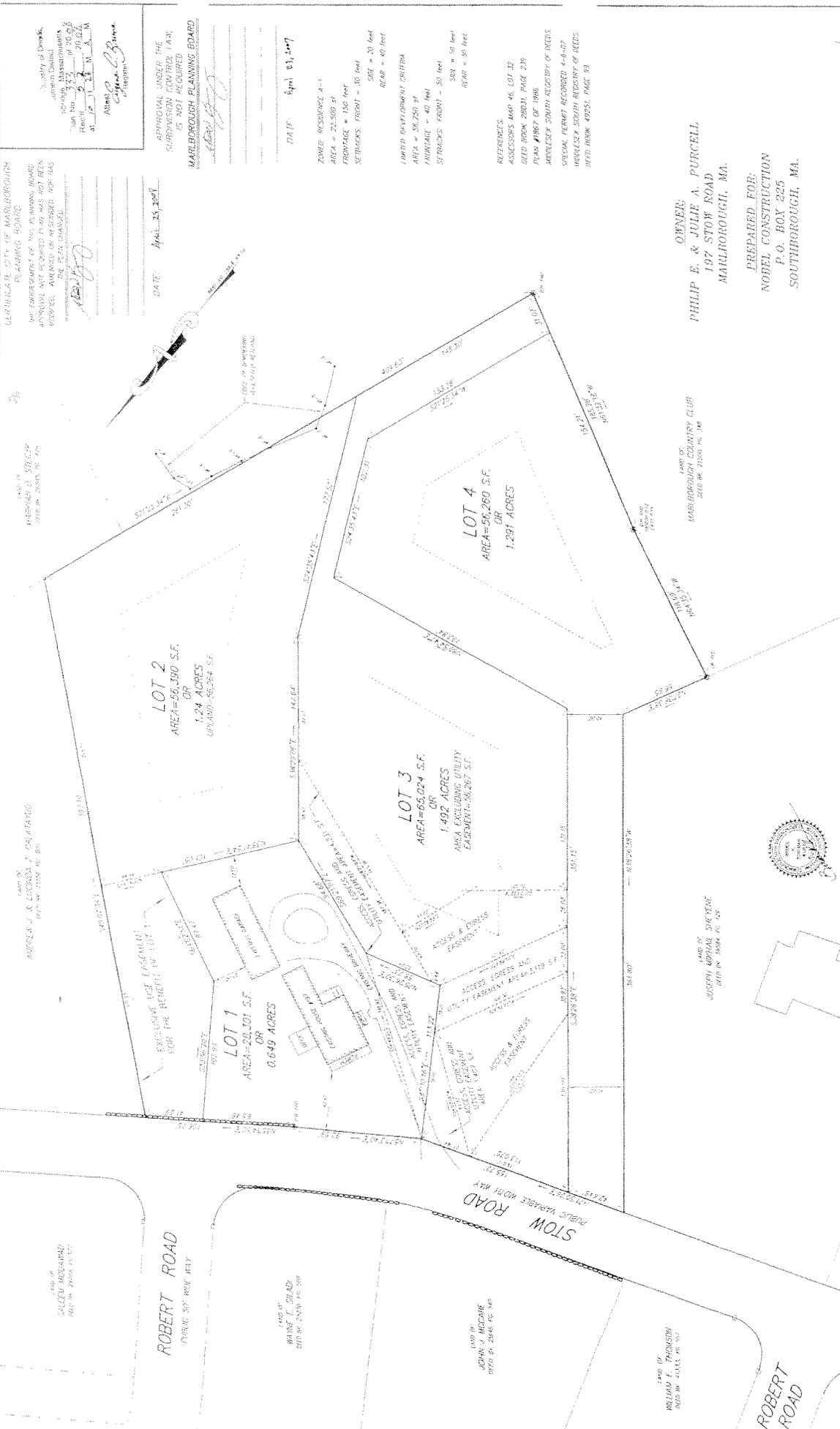
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All Planning Board Members being present and on a motion made and seconded to grant the Application for a Special Permit with conditions as herein specified, it was Voted:

Yea:   6   - Nay:   1   - Absent:       

March   12  , 2007

  
Dana C. Brown  
Asst. Middlesex S. Register



CLERK OF THE CITY OF MARLBOROUGH  
PLANNING BOARD  
FOR EMPLOYMENT OF THIS PLANNING BOARD  
AS THE ENGINEER OF RECORD FOR THIS PLAN  
I HEREBY CERTIFY THAT THE PLAN  
CONFORMS TO THE REQUIREMENTS OF THE  
ZONING ORDINANCE AND THE  
SUBDIVISION MAP ACT.

DATE: April 25, 2007

APPROVAL UNDER THE  
SUBDIVISION MAP ACT,  
IF NOT REQUIRED  
MARLBOROUGH PLANNING BOARD

DATE: April 23, 2007

ZONING ORDINANCE A-1  
AREA = 22,500 S.F.  
FRONTAGE = 150 feet  
SETBACKS: FRONT = 30 feet  
SIDE = 20 feet  
REAR = 40 feet

LIMITED DEVELOPMENT CRITERIA  
AREA = 56,250 S.F.  
FRONTAGE = 40 feet  
SETBACKS: FRONT = 50 feet  
SIDE = 50 feet  
REAR = 50 feet

REFERENCES:  
ASSESSORS MAP 46, LOT 12  
SEE BOOK 28031, PAGE 239  
PLAN 1987 OF 1986  
WORCESTER SOUTH RECORDS OF DEEDS  
VOLUME PERMIT RECORDED A-6-07  
METROPLEX SOUTH RECORDS OF DEEDS  
INFO BOOK 47255, PAGE 93

OWNER:  
PHILIP E. & JULIE A. PURCELL  
197 STOW ROAD  
MARLBOROUGH, MA.

PREPARED FOR:  
NOBEL CONSTRUCTION  
P.O. BOX 225  
SOUTHBOROUGH, MA.

DESIGNED BY: BAK  
CHECKED BY: BAK  
COMPUTED BY: JAS. BEM  
FIELD SURVEY: JAS.  
DRAWN BY: BEM  
SCALE: 1" = 30'  
SHEET 1 OF 1

CONCORSTONE  
CONSULTING CIVIL ENGINEERS  
AND  
LAND SURVEYORS  
276 WEST MAIN STREET  
NORTHBOROUGH, MASSACHUSETTS 01532

PLAN OF LAND  
IN  
MARLBOROUGH, MA.

LAND OF  
HARRINGBROUGH COUNTRY CLUB  
SEE BK 21500 PG. 349

LAND OF  
JOSEPH MARRAS SHREVE  
SEE BK 10804 PG. 129

LAND OF  
WILLIAM F. THOMPSON  
SEE BK 51455 PG. 292

LAND OF  
JOHN J. MCCOBE  
SEE BK 25448 PG. 340

LAND OF  
CALVIN BOURGAIN  
SEE BK 25048 PG. 308

LAND OF  
ANDREW J. & LUCY B. FOLEY  
SEE BK 22304 PG. 621

LAND OF  
MARTIN J. & ANNE M. FOLEY  
SEE BK 22304 PG. 621

LAND OF  
ALBERT J. & ANNE M. FOLEY  
SEE BK 22304 PG. 621

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ALBERT J. & ANNE M. FOLEY  
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