



Cambridge Historical Commission

831 Massachusetts Avenue, Cambridge, Massachusetts 02139

Telephone: 617 349 4683 Fax: 617 349 3116 TTY: 617 349 6112

E-mail: histcomm@ci.cambridge.ma.us URL: <http://www.ci.cambridge.ma.us/~Historic>



William B. King, *Chair*, Allison M. Crump, *Vice Chair*, Charles M. Sullivan, *Executive Director*
M. Wyllis Bibbins, Suzanne R. Green, Helen F. Moulton, Frank Shirley, Jo M. Solet, *Members*
Jacob D. Albert, Bruce A. Irving, Jennifer Jones, *Alternates*

September 27, 2001

To: Robert W. Healy, City Manager

From: Charles Sullivan, Executive Director *CMS*

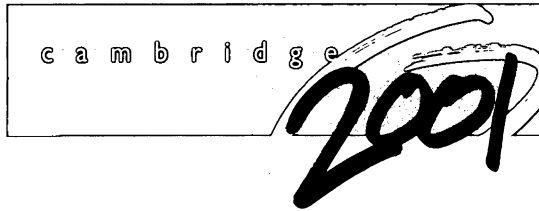
Re: Fly Club Easement

The Fly Club, located at 2 Holyoke Place on the corner of Mount Auburn Street, has granted a preservation easement on its property to Historic Massachusetts, Inc. The effect of this easement is to protect the club building from redevelopment or inappropriate alterations. City Council approval of the easement is required under M.G.L. Chapter 184.

The Fly Club and numerous other undergraduate clubs and societies located on the Gold Coast, along Mount Auburn Street near Harvard Square, are not affiliated with the University and are considered commercial enterprises for local property tax purposes. All of the buildings are considered historically or architecturally significant, and have been listed on the National Register of Historic Places since at least 1986.

The Cambridge Historical Commission holds preservation easements on seven club buildings in Harvard Square. The easements were offered by the clubs in the mid 1980s when they began to be assessed at the commercial rate; they were accepted because of the threat of redevelopment posed by the permissive zoning then in effect.

The Fly Club contracted with Historic Massachusetts in 1987 to accept its easement because HMI was able to act as a conduit for tax-deductible contributions which the club needed to restore its building. This work has now been completed, and the club needs City Council approval to allow its donors to claim deductions for their gifts.



16.

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager Richard C. Rossi, Deputy City Manager

October 1, 2001

To The Honorable, The City Council:

Please find attached additional information requested relative to Calendar Item No. 3, concerning a preservation easement for 2 Holyoke Place (Fly Club).

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert W. Healy
City Manager

RWH/mec
Attachment



Consent Agenda #16

Additional information
requested relative to
Calendar Item #2 of
October 1, 2001, concerning
a preservation easement for 2
Holyoke Place (Fly Club).

In City Council October 1, 2001

*Referred to
Calendar Item #2*



City of Cambridge

Calendar Item #2

IN CITY COUNCIL

October 1, 2001

ORDERED: That the City Council go on record approving a Historic Preservation Easement by the Fly Club located at 2 Holyoke Place, Cambridge, MA 02138 to the Historic Massachusetts, Inc. a not for profit corporation, as outlined in attached easement.

In City Council October 1, 2001.

Adopted by a ye and nay vote.

Yeas 8; Nays 1; Absent 0.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:- 

D. Margaret Drury
City Clerk

City of Cambridge

MASSACHUSETTS

On the Table

In City Council Oct 1, 2001

Preservation Easement for 2 Holyoke Place

YEA	NAY	ABSENT	PRESENT	
✓				Ms. Kathleen L. Born
✓				Mr. James Braude
✓				Ms. Henrietta Davis
✓				Ms. Marjorie C. Decker
✓				Vice Mayor David P. Maher
✓				Mr. Kenneth E. Reeves
✓				Mr. Michael A. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
✓				Mayor Anthony D. Galluccio

8 1 0 0

Cal #2 order

Ordered: That the CC go on record granting ~~the~~ a
Historic Preservation Easement by the
Fly Club / ^{located at 2 Holyoke ~~St~~ Place, Camb. MA 02138} to the Historic Massachusetts, Inc a
not for profit Corp. as outlined in attached
~~document~~ easement. ~~the~~

Attached
complete easement.

8-1-0

City of Cambridge

MASSACHUSETTS

On the Table

In City Council Oct 1, 2001

Preservation Easement for 2 Holyoke Place

YEA	NAY	ABSENT	PRESENT	
✓				Ms. Kathleen L. Born
✓				Mr. James Braude
✓				Ms. Henrietta Davis
✓				Ms. Marjorie C. Decker
✓				Vice Mayor David P. Maher
✓				Mr. Kenneth E. Reeves
✓				Mr. Michael A. Sullivan
	✓			Mr. Timothy J. Toomey, Jr.
✓				Mayor Anthony D. Galluccio

8 1 0 0



CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 349-4280 • FAX: (617) 349-4287

TTY/TDD (617) 349-4242 • Email: jbraude@ci.cambridge.ma.us

Jim Braude
City Councillor

To: The Honorable, The City Council

From: Jim Braude

Re: Fly Club easement

Date: September 25, 2001

I am writing to alert you to my intention to take Item 3, relating to a Preservation Easement for 2 Holyoke Place (the Fly Club), off the table at Monday's meeting and urge a decision on the matter.

On September 11 of last year, I moved to place the matter on the table. The reason I did so was because of the Fly Club's historic refusal to admit women.

Several meetings ago, in a discussion with Councillor Sullivan (who said he had not taken a position on the underlying issue, but felt should work to clear up old business), I agreed to take the matter off the table for action by the end of September. While off by a day, that's what will happen on October 1, even though I do not yet know how I will vote, either.

I have talked to the chair of the Fly Club's alumni group, as well as an alumnus of the club who lives in Cambridge. I have also spoken with critics of the plan – and have invited both to make their case during public comment next Monday.

Attached is a memo from Charles Sullivan concerning this issue.



Cambridge Historical Commission

831 Massachusetts Avenue, Cambridge, Massachusetts 02139

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E-mail: [histcomm@ci.cambridge.ma.us](mailto:hstcomm@ci.cambridge.ma.us) URL: <http://www.ci.cambridge.ma.us/~Historic>



William B. King, *Chair*, Allison M. Crump, *Vice Chair*, Charles M. Sullivan, *Executive Director*
M. Wyllis Bibbins, Suzanne R. Green, Helen F. Moulton, Frank Shirley, Jo M. Solet, *Members*
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September 27, 2001

To: Robert W. Healy, City Manager

From: Charles Sullivan, Executive Director *CMS*

Re: Fly Club Easement

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The Fly Club contracted with Historic Massachusetts in 1987 to accept its easement because HMI was able to act as a conduit for tax-deductible contributions which the club needed to restore its building. This work has now been completed, and the club needs City Council approval to allow its donors to claim deductions for their gifts.

Consent Agenda #17

Relative to a Preservation Easement
for 2 Holyoke Place (Fly Club).

In City Council September 11, 2000

*Tabled on motion of
Councillor Braude*



CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager

Richard C. Rossi, Deputy City Manager

September 11, 2000

To The Honorable, The City Council:

Please find attached for your consideration, a Preservation Easement for 2 Holyoke Place (Fly Club), received from Historical Commission Director Charles Sullivan.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert W. Healy
City Manager

RWH:mec
Attachment



2000 Things 2 Do in 2000



February 29, 2000

Mr. Charles M. Sullivan
Executive Director
Cambridge Historical Commission
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

Re: The Fly Club
2 Holyoke Place

Dear Mr. Sullivan:

Reference is made to that certain Deed of Historic Preservation Easement dated December 22, 1997 (the "Easement") executed between the Fly Club and Historic Massachusetts, pursuant to which the Fly Club granted to Historic Massachusetts an easement in gross in, on and to the Facade of the Property for a term of thirty years. The Easement has been included on the List of Designated Properties of the Cambridge Historical Commission; a copy of the recorded deed is included with this letter.

By means of this letter I wish to confirm our request that the Cambridge Historical Commission submit a copy of the Easement to the Cambridge City Council for their review and approval, as contemplated in Mass. General Laws Chapter 184 Section 32. Once approved, please return to us a certificate indicating such action for our files.

Thank you for your attention to this request. I can be reached at (617) 723-3383 if you have any questions.

Very truly yours,

Marilyn M. Fenollosa
Community Preservation Program Manager

Enclosure



Fly Club

FILE COPY

January 21, 1998

City of Cambridge
Assessing Department
795 Mass Avenue
Cambridge, MA

RE: The Fly Club
2 Holyoke Place
Cambridge, MA 02138

Dear Sir:

In December of 1997, we donated an Historic Preservation Easement to Historic Massachusetts, Inc., a Massachusetts not-for-profit corporation located at 45 School Street, Boston, Massachusetts. I understand that this façade easement reduces the commercial value of The Fly Club by restricting its development rights. Accordingly, the assessed real estate taxes should also be reduced.

With this letter, I am formally requesting a reassessment of the tax base and a reduction of real estate taxes levied on The Fly Club. Enclosed with this letter is a copy of the Deed of Historic Preservation Easement for your review. I would be happy to provide such other documentation that you may require. I can be reached at my office at 617-234-5119.

Sincerely,

Eric E. Vogt
Graduate President
The Fly Club

Enclosure

cc: Historical Comm. 2/18/97 1/fo

DEED OF HISTORIC PRESERVATION EASEMENT

THIS IS A DEED of an Historic Preservation Easement (this "Easement") made on the 22nd day of December, 1997, by The Fly Club, a Massachusetts corporation, with its principal offices at 2 Holyoke Place, Cambridge, Massachusetts 02138 ("Fly Club") to Historic Massachusetts, Inc., a Massachusetts not-for-profit corporation, with its principal offices at 45 School Street, Boston, Massachusetts 02108 (the "Recipient").

Background

A. The Recipient is a Massachusetts not-for-profit corporation organized to promote preservation of historically significant buildings in The Commonwealth of Massachusetts, and is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

B. The Recipient is authorized to accept easements for historic preservation purposes in furtherance of its public purposes.

C. Fly Club is the owner in fee simple of improved real property known as the Fly Club, located at 2 Holyoke Place, Cambridge, Massachusetts, and more fully described as:

The land and buildings now numbered 2 Holyoke Place, Cambridge, Massachusetts, Middlesex County, Massachusetts.

(the "Property"). Fly Club is hereafter referred to as the "Owner".

D. Both the Property and the neighborhood in which it is located have been proposed for historic designation.

E. The grant of the easement set forth in this instrument will assist the Recipient in preserving a structure of aesthetic and historic importance.

F. Owner desires to grant to Recipient, and Recipient desires to accept, a "preservation restriction" on the Property, as such term is defined in Chapter 184, Section 31 of the Massachusetts General Laws.

Terms and Conditions

1. Grant. Owner does hereby grant and convey to Recipient, TO HAVE AND TO HOLD, an easement in gross, in, on, and to the Facade of the Property, for the preservation of historic and architectural value, all as further set forth and defined below, for a term of thirty years from the date of this Agreement. For purposes of this Easement, "Facade" shall be defined as all exterior surfaces of the improvements on the Property along Mount Auburn Street and Holyoke Place or any surface visible from those streets, including all exterior walls, windows, window frames, moldings, gutters, roofs, chimneys, and doors. No other portions of the premises are hereby restricted, and the interior of the Property is expressly excluded.

2. Scope of Recipient's Estate, Interest and Easement. This Easement conveys to Recipient an interest in the Property consisting of the benefits of the following covenants and undertakings by Owner:

a. Without the prior written consent of Recipient, which shall not unreasonably be withheld, Owner shall not cause, permit or suffer any construction, alteration, remodeling, decoration, dismantling, relocation, destruction, or other activity which would affect or alter in any way the appearance of the Facade as viewed from any location on any street on or off the Property.

b. Without the prior written consent of Recipient, which shall not be unreasonably withheld, Owner shall not cause, suffer, or permit the placement on the Facade of signs or markers which would materially alter or change the appearance of the Facade.

c. Without the express written consent of Recipient, Owner shall not cause, permit, or suffer to be undertaken the exterior extension of existing improvements on the Property, or the erection of additional improvements on the Property or in the open space above the Property.

d. In deciding whether to approve a proposed alteration, addition or new structure, Recipient shall consider, among other things, the architectural and historical value of the restricted facades, and the general design, arrangement, texture, material, and color of the features involved, technical and physical requirements of necessary building equipment and applicable government regulations, and the operational needs of the Property for the Owner's purposes.

e. Written notice in recordable form of approval or denial by Recipient of the proposed alteration, addition or new structure shall be given within 45 days of its receipt of the Owner's request, and the failure to timely deliver such notice shall be deemed an approval. In the case of a denial, the reason or reasons shall be stated in the notice. In the event of actual or constructive approval, the Owner may record with the Middlesex South Registry of Deeds an Affidavit of Approval signed and acknowledged by the Owner, describing the approved alteration, addition or new construction, stating the date of Recipient's action or failure to act timely, and referring to the Book and Page numbers of this Easement in the Registry. The Affidavit of Approval shall be conclusive evidence in favor of every person dealing with the Premises as to the facts set forth therein.

f. Owner shall maintain the Facade at all times and shall keep the Facade in a state of good repair and insure that the appearance of the Facade, as viewed from any location on any street on or off the Property, shall not be permitted to deteriorate in any material way, and to this end Owner agrees that it shall comply with the Minimum Maintenance Program set forth in Exhibit A to this Easement.

g. Owner shall permit Recipient access to the Property at such reasonable times as Recipient may request, for the purpose of examination and testing of the Facade.

h. Owner shall permit Recipient to display on the Property a small marker or sign evidencing its ownership of the easement granted herein.

i. Nothing in this Easement shall be construed to prevent (i) the ordinary maintenance, repair, or replacement of any exterior architectural feature of the Building, including the Facade; (ii) any alteration or addition to the Building or any new structure on the Premises which is not incongruous with the design, texture, material, or color of the Facade; (iii) any landscaping of the Premises with plants, trees or shrubs; or (iv) any activities, alterations, or additional certified by a duly authorized public officer as necessary to correct an unsafe or dangerous condition on the Premises. In the event Owner permits a tenant to occupy a portion of the Building, Owner may also permit a tenant of the Building to maintain a small (with dimensions not more than two feet x three feet) sign on or in front of the Facade advising of the services or goods provided by said tenant, subject to approval by Recipient of design, shape, color and location of the sign.

3. Initial Level of Preservation.

a. Owner has begun to carry out and agrees to complete the restoration program set forth in Exhibit B, Restoration Program.

b. Certain descriptions, photographs, and drawings which shall be appropriately identified and attached as Exhibit C to the executed counterparts of this Easement to be held by Owner and Recipient, but which shall not be recorded, shall constitute the aesthetic, architectural and historic condition in which the appearance of the Facade, as viewed from any street on or off the Property, is to be maintained.

c. In the event of any discrepancy between the photographs and the descriptions or drawings, the photographs shall control.

4. Rights of Recipient if Property Destroyed.

a. In the event that the Facade and the Property is, by reason of fire, flood, earthquake or other disaster of any kind whatsoever partially destroyed to such an extent or of such nature that the appearance of the Facade as seen from any street on or off the Property is altered from the Facade's appearance set forth in Exhibit B, then Owner shall, to the extent of insurance or other proceeds actually collected, use its best efforts to restore the Property including the Facade, to the condition set forth in Exhibit B. Owner shall obtain Recipient written consent for any plans, specifications, and/or construction methods to be used for such restoration, which consent shall not be unreasonably withheld. In the event that such restoration is not financially feasible within the available proceeds, Owner and Recipient shall mutually agree upon a method of restoration which preserves or restores as many of the historic and architectural features of the Facade as possible within the available insurance proceeds. In the event that no such restoration is feasible within the existing insurance proceeds or allowed as a result of local ordinance or law, Owner may demolish the Property and shall be subject to the provisions of the succeeding subsection (b).

b. In the event that the Facade and the Property are totally destroyed, or are demolished pursuant to subsection (a) above, Owner agrees that any new buildings constructed on the site shall be generally consistent with the surrounding buildings in the District, and the plans of any such building shall be subject to the approval of Recipient, which approval shall not be unreasonably withheld. This subsection shall not be construed to require Owner to rebuild any structure on the Premises, to give Recipient any detailed design review with respect to any new building, or to require Owner to rebuild or imitate any historic aspect of the buildings, but is for the sole purpose of insuring that, so long as a substantial portion of the now existing neighboring buildings in the District remain, any new building is of a size and scope compatible with the district and such neighboring buildings.

5. Remedies of Recipient. In the event of a material violation of this Easement, and after reasonable written notice to Owners, Recipient shall have: (i) the right to institute legal proceedings to enjoin such violation by ex parte, temporary, and/or permanent injunction, to require the restoration of the Property or Facade to its prior condition, to be reimbursed for all reasonable costs, including reasonable attorneys' fees and court costs, and to avail itself of all other legal and equitable remedies, including without limitation specific performance and damages; (ii) the right to enter upon the Property and improvements thereon in order to correct such violation and hold Owner responsible for the cost thereof; (iii) the right to place a lien against the Property to secure the payment by Owner of any of Owner's obligations arising hereunder; (iv) the right to require arbitration of disputes limited solely to the appropriate method of maintaining, repairing, or replacing a particular physical characteristic of the Facade, with such arbitration to be conducted in accordance with the rules of the American Arbitration Association before an arbitrator chosen by mutual consent of the parties,

or lacking such consent, with one arbitrator to be chosen by each party and a third chosen by the first two, and with the costs at the arbitration to be borne as determined by the arbitrator(s); and (v) in addition to actual out-of-pocket expenses, and because actual damages will be difficult to ascertain in the event that Recipient is required to file an action to enforce its rights hereunder, the right to liquidated damages in the amount at one-half the actual attorney's fees and court costs awarded to Recipient in any such action.

6. Assignment, Successors and Assigns.

a. This Easement shall run with and bind the Property for a term on thirty (30) years from the date of the Deed, shall extend to and be binding upon Owner and all persons hereafter claiming by, under or through Owner, and the word "Owner" when used herein shall include all such persons whether or not such persons have signed this instrument or had any interest in the Property at the time it was signed. Anything contained herein notwithstanding, a person shall have no obligation pursuant to this Easement if and when such person shall cease to have any interest (present, partial, contingent, collateral or future) in the Property or any portion thereof by reason of a bona fide transfer for value.

b. Recipient agrees that it will hold this Easement exclusively for preservation purposes, and that it will not transfer this Easement for money, other property or services. If for any reason Recipient no longer desires to hold this Easement, Recipient may assign or transfer it to Owner on condition that Owner make a new donation of this Easement to an agency or organization designated by Recipient from the following list: any agency of the City of Cambridge, The Commonwealth of Massachusetts or the United States of America; or to one or more organizations whose purposes include, inter alia, the preservation of historically important structures and land areas,

provided such organization has the ability to properly enforce this Easement and further provided, that such organization is operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Code). Subject to the foregoing provisions of this Section 6, the terms and conditions of this Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

7. Reservation.

a. Owner reserves the free right and privilege to the use of the Property for all purposes not inconsistent with the grant made herein. Nothing herein shall be construed to grant unto the general public or any other persons, other than Recipient and its agents, the right to enter upon the Property for the purposes set forth herein or to institute actions for the enforcement hereof.

b. Nothing contained in this Easement shall be interpreted to authorize, require or permit Owner to violate any ordinance relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance and the terms hereof, Owner shall promptly notify Recipient of such conflict and Owner and Recipient shall agree upon such modifications to the Facade consistent with law and with sound preservation practices.

c. No provisions of the Easement shall be constructed as providing the necessary written consent needed for the Massachusetts Historical Commission to certify the Property or any part thereof as a historic landmark pursuant to Massachusetts General Laws, Chapter 9, Section 27.

8. Acceptance. Recipient hereby accepts the rights, obligations and interest granted to it in this Easement. Owner agrees to responsibility enforce its rights hereunder; provided, however,

that the decision to take any action hereunder shall be made by Recipient in Recipient's sole discretion, in light of the facts and circumstances which exist at that time.

9. Owner's Insurance; Taxes. Owner shall maintain, at its own cost, insurance 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 in such amounts as would normally be carried on a property such as the Property. Owner agrees to provide, upon request, certificates evidencing such insurance to Recipient and further agree that such certificates shall provide that such insurance may not be canceled, terminated, or reduced in amount without 30 days written notice to Recipient. Owner further agrees to pay all real estate taxes or other assessments with respect to the Property in a timely fashion.

10. Release and Indemnification. Owner shall be responsible for and will and does hereby release and relieve Recipient, its agents or employees, and shall hold and defend harmless Recipient, its agents or employees, of, from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses which may be imposed upon or incurred by Recipient by reason of loss of life, personal injury and/or damages to property occurring in or around the Property occasioned in whole or in part by the negligence of Owners, its agents or employees or by reason of owner's violation of this Agreement.

11. Estoppel Certificates. Recipient agrees at any time and from time to time, within twenty (20) days after Owners' written request, to execute, acknowledge and deliver to Owner a written instrument stating that Owner is in compliance with the terms and conditions of the Easement, or if Owner is not in compliance with this Easement, stating specifically what violations of this Easement exist. Owner agrees to make such a request only for reasonable cause. If this Easement

lapses, Owner and Recipient shall execute and acknowledge a written instrument to that effect which Owner shall cause to be recorded.

12. Condemnation. In the event of a total condemnation of the Property, the Easement shall lapse. In the event of a partial condemnation of the Property where the portion of the Property not taken is capable of continued reasonable use, then this Easement shall remain on those facades and/or portions of facades not taken by condemnation. In such event, the provisions of paragraph 4 shall govern Owner's obligation to rebuild, with "condemnation proceeds" to replace "insurance proceeds" as used therein. Recipient shall assert no claim for compensation for its interest in the event of condemnation proceedings.

13. Financial Arrangements. Owner and Recipient agree that, concurrent with the execution of this instrument, Owner and Recipient shall enter in the Agreement attached as Exhibit E hereto pursuant to which Recipient will retain 5% of funds made available to it for restoration of the Facade to be used by the Recipient for such purposes as it may determine, including the purpose of administering, monitoring, and enforcing its rights hereunder. Owner shall have no obligation to make any further or similar payments hereunder, and shall have no further obligation or liability to Recipient for any expenses related to the administration, monitoring, or enforcing of Recipient's rights hereunder, except as specifically provided herein and therein.

14. Subsequent Deeds; Mortgages. Owner agrees that the restrictions in this Easement will be inserted or referenced by them in any subsequent deed, lease, or other legal instrument by which they divest themselves of either the fee simple title to, or their possessory interest in the Property.

15. Recording. The Owner will promptly record this instrument.

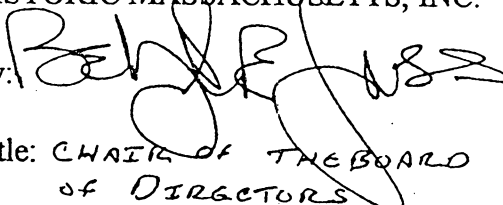
16. Notice and Consent. Any notice permitted or required pursuant to this instrument shall be deemed given when delivered by a delivery service which obtains acknowledgment of delivery, or, if mailed, when deposited in the U.S. mail, postage prepaid, registered or certified, return receipt requested, addressed to the addresses set forth in the preamble to this Easement, or such other addresses as may be designated from time to time by the parties. Except as otherwise provided herein, Owner and Recipient agree that a response to any request for consent shall be given within 30 days of the date of the request, and if no such response is given, such consent shall be deemed given and may not later be revoked, revised, or conditioned. In such event, Owner may record an affidavit reciting that notice was given in the manner provided herein and that no response was received, and such instrument shall be conclusive that consent is deemed given pursuant hereto. Any refusal to give consent shall state specifically the reason therefor. If so requested, any consent shall be in recordable form.

EXECUTED AND SEALED ON THE DATE FIRST WRITTEN ABOVE.

FLY CLUB

By: 
Title: GRADUATE PRESIDENT

HISTORIC MASSACHUSETTS, INC.

By: 
Title: CHAIR OF THE BOARD
OF DIRECTORS

COMMONWEALTH OF MASSACHUSETTS

ss.

December 27, 1997

Then personally appeared the above named ERIC EVETT who made oath that he is the same person who signed the foregoing instrument as President of the Fly Club, and that the same is his free act and deed on behalf of such corporation and the free act and deed of the corporation..

Before me,

Valerie L. Bourneau

Notary Public

My Commission Expires: Aug 23, 2002

LIST OF EXHIBITS

- Exhibit A MINIMUM MAINTENANCE PROGRAM
- Exhibit B RESTORATION PLAN
- Exhibit C CONDITION OF EXISTING FACADE
 (description and photographs)
- Exhibit D DRAWINGS OF FACADE RENOVATIONS
- Exhibit E FINANCIAL AGREEMENT

The Exhibits to this Deed of Historic Preservation Easement are not attached to the recorded copy of this Easement, but are attached to the executed copies kept in the files of Owner and Recipient.

EXHIBIT A

MINIMUM MAINTENANCE PROGRAM

Owner shall adhere to a maintenance schedule with respect to the Property at least as stringent as that set forth below. Owner shall keep reasonable records with respect to inspection and replacement and shall make such records available for inspection by Recipient during normal working hours, upon written notice from Recipient.

1. BRICK MASONRY

INSPECTION SCHEDULE: Once a year, Spring or Fall, after a rainstorm

OPERATION:

- a. Check for moist areas, cracks, crumbling material, loose pieces, missing mortar, efflorescence (white discoloration).
- b. Check where moisture is entering masonry and repair and leaks in roofing, cornice, flashing, downspouts, joints between masonry and other materials.
- c. Repair or provide additional support to door or window heads which are unstable.
- d. Reflash, recaulk leaking joints as required.
- e. Masonry shall be inspected once a year, and cleaned as needed. Masonry shall not be cleaned except in accord with a proposal submitted to and approved by Recipient prior to start of work.. Any cleaning shall be done with materials and techniques which will not damage the masonry. Sandblasting, wire brushes, grinders, sanding discs, or other abrasive methods shall not be used. Nor shall any harsh, chemical which weakens the masonry be applied., Materials and techniques shall be selected based on results of test patch samples. Any chemical cleaner shall be chemically neutralized and thoroughly rinsed off in order to remove residues that could damage masonry or interior finishes.
- f. Snow removal materials which might damage masonry, e.g. salt, shall not be used on stoop or adjacent to walls.

2. METAL GRILLES, RAILINGS, FENCES

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check for deteriorated paint, rust, moisture damage, wear.
- b. Repair any loose joints, attachments or hardware.
- c. Prime and paint per Paragraph 14 below.

3. SHEET METAL ROOFING, CORNICES, DORMERS AND FLASHING

INSPECTION SCHEDULE: Twice a year, late Spring and early Fall, and after winds higher than 40 m.p.h.

OPERATION:

- a. Check for cracks, warps, distortions or weak areas, loose or damaged seams, loose attachments.
- b. Check for loose, damaged or missing sections. Check masonry or woodwork underneath for moisture damage, especially at attachment points.
- c. Reattach to repaired masonry or wood or iron substrate.
- d. Paint colors for flashings shall match adjacent construction.

4. GUTTERS AND DOWNSPOUTS

INSPECTION SCHEDULE: Twice a year, Spring and Fall.

REPLACEMENT SCHEDULE: As required, about every 20 years

OPERATION:

- a. Check for leaks and loose or clogged gutters or downspouts.
- b. Reattach loose gutters or downspouts, clean clogged gutters and downspouts, repair leaks.

- c. Any downspout replacement sections shall be instilled with seam turned out away from wall or in such other manner that downspout leaks will not cause hidden masonry damage.
- d. Any downspout replacement shall be of simple cylindrical form.

5. CAULKING COMPOUND

INSPECTION SCHEDULE: Once a year, Spring or Fall

REPLACEMENT SCHEDULE: As required, about every 6 years

OPERATION:

- a. Check caulk for brittle, cracked or missing pieces.
- b. Remove any damaged area, clean, prime or seal per manufacturer's specifications, provide backer rods and bond-breaker tape as required, replace caulk.

6. WOODWORK: CORNICES, DOORS, WINDOWS, TRIM, AND SPANDREL PANELS

INSPECTION SCHEDULE: Twice a year, Spring and Fall

OPERATION:

- a. Check for moisture damage, warping, splitting, unsound joints.
- b. If wood is decayed, determine source of moisture, stop leaks, and replace decayed wood and damaged flashing.
- c. Repair unsound joints.
- d. In natural finish wood work repair holes and damaged areas using wood which matches the existing in species, grain pattern and color.
- e. In painted woodwork seal fine cracks with wood filler.
- f. Check putty for cracks or missing pieces. Reglaze where necessary.
- g. Coat all bare wood with preservative and refinish in accord with Paragraphs 14 and 15 below.

- h. Prime and paint any new flashing, putty or other glazing materials.

7. GLASS

INSPECTION SCHEDULE: Twice a year

OPERATION:

- a. Replace cracked lights with glass to match.

8. PAINT

INSPECTION SCHEDULE: Twice a year

REPLACEMENT SCHEDULE: Every 5 to 8 years

OPERATION:

- a. Check for worn, bare spots, blistering, peeling, mildew.
- b. Check where moisture is entering wood and stop leaks.
- c. Wash mildew with fungicide.
- d. Split blisters, scrape peeling areas, remove rust and sand rough spots.
- e. Coat bare wood with preservative.
- f. Prime and paint wood using materials compatible with the preservative.
- g. Scrape and wirebrush deteriorated paint and rust from metal.
- h. Prime and paint bare metal using materials designed for the type of metal.

9. VARNISH

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check for crackling, white water stains, discolorations of varnish.

- b. Restore varnished finish as follows: first, try to restore existing varnish by softening with methylene chloride, taking appropriate safety precautions while using this solvent, and buffing with fine steel wool and a finishing oil to a new smooth finish. If that procedure is unworkable, remove existing varnish using materials and methods which will not damage the wood. Apply a non-staining preservative, such as a mix of proportions three (3) cups exterior varnish, one ounce (1 oz.) paraffin wax, and enough mineral spirits, paint thinner or turpentine to make one (1) gallon. If wood had been stained, restrain to original color. Revarnish.

10. TERMITES

INSPECTION SCHEDULE: Once a year, Spring or Fall

OPERATION:

- a. Have exterminator check and treat once a year if necessary.

11. STRUCTURAL CHECKPOINTS

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check exposed exterior and interior surfaces of walls and foundations, with particular attention to areas of stairway, floor openings, wall openings and changes in wall masonry material. Check for cracks, collapsing, leaning or bulging areas or other signs of uneven settlement or movement.
- b. Check interior wall surfaces at upper levels, with particular attention to joints between party walls and perpendicular front and rear walls, joints between floors and end walls, and joints between partitions and ceilings. Check for cracks, crumbled plaster, gaps between finishes or other signs of movement.
- c. Review structural status of building with an engineer qualified to evaluate its condition in order to ensure that adequate safety standards and precautions are met. A report on the findings and any remedial actions shall be furnished to the Recipient. For any remedial action which will affect the exterior appearance, of those portions included in this easement, Owner shall make a proposal for Recipient review and cause works to be performed in accord with proposal approved by Recipient prior to start of work. In cases where hazardous conditions require immediate remedies, Owner may proceed without prior Recipient approval but shall make every reasonable effort to

notify and to comply with any Recipient suggestions of ways to make remedial actions compatible with the historic appearance of the property.

EXHIBIT B

RESTORATION PROGRAM

WORK DONE AS OF THE EXECUTION HEREOF:

NEW LANGUAGE NEEDED HERE.

EXHIBIT D

FINANCIAL AGREEMENT

Historic Massachusetts, Inc. ("Recipient"), Old City Hall, 45 School Street, Boston, MA 02118, and the Fly Club ("Fly Club"), 2 Holyoke Place, Cambridge, MA 02138, agree that:

- 1.) Fly Club will donate an historic facade easement on its building at 2 Holyoke Place, Cambridge, MA to Recipient by a Deed of Historic Preservation Easement in form attached hereto.
- 2.) Fly Club will, at its sole effort and expense, seek donations to Recipient for the specific purpose of restoring and preserving the facade of 2 Holyoke Place (the "Project"). Fly Club will be responsible for every aspect of the fund-raising effort, including solicitation, collecting the donations, depositing them in a bank account set up and designated by Recipient for this purpose (the "Special Account"), preparing acknowledgments to the donors for signature by an authorized signatory at Recipient, and thanking the donors. Contributions are expected to include both cash and marketable securities.
- 3.) Recipient will make available 95% of the funds so raised to this restoration project, retaining the balance of 5% as unrestricted funds which it may invest or spend as it sees fit, in its sole discretion.
- 4.) The restoration and preservation effort will cover only the "skin" of the building, that is, the public aspect of the building, and will not include any interior work. The scope of the restoration is expected to include: rebuilding and stabilizing the underpinnings and foundation of the exterior walls, repointing and repairing the exterior walls, restoring all exterior windows and doors, restoring all exterior wood trim such as fascia boards, lintels, columns, the front steps, cornice and dental mouldings, and roof, flashing, and gutter replacement and restoration.
- 5.) Fly Club will be responsible for managing the Project, assisted by an architect and general contractor. Once a month, a requisition may be presented to Recipient, which Recipient will pay out to the Fly Club or its designee from funds available to it in the Special Account. Recipient will have no obligation to pay out any funds except what are available in the Special Account. In the unlikely event that a requisition exceeds the funds available in that account at any given moment, it will be the Fly Club's sole responsibility either to make appropriate arrangements with the contractor and/or to advance the necessary funds to Recipient.
- 6.) Fly Club will carry appropriate insurance covering the entire project, and will require certificates of insurance from each contractor on the job.
- 7.) Starting on the twenty-fifth anniversary of the agreement, Fly Club shall have the right, but not the obligation, to re-purchase the facade easement upon payment to the Recipient of \$50,000 in cash or marketable securities, with the price of such re-purchase declining at \$10,000 per year, until

the Easement expires 30 years after the date of this Agreement, at which time the Easement shall revert to the Owner, with no further consideration payable. Upon such re-purchase, the Owner shall deliver within 15 days of receipt of such payment, a duly executed and authorized notice of termination with respect to the Deed of Historic Preservation Easement to Owner which it shall record in the applicable registry of deeds. Such notice shall be conclusive evidence in favor of every person dealing with the Property as to the termination of this Easement.

8.) In the event that Fly Club raises more than the cost of the restoration (currently estimated to be between \$800,000 and \$1,000,000), the surplus funds may be retained by the Recipient in a special account as part of the Recipient's endowment, with 95% of any distributions of either principal or income from this account available for the purpose of maintaining and preserving 2 Holyoke Place. These proceeds would be invested in mutual funds selected by the Recipient and Fly Club.

**Communications & Reports From
City Officers #1**

A communication was received
from Councillor Jim Braude,
regarding Calendar Item #2 of
October 1, 2001 on the
Preservation Easement for 2
Holyoke Place (Fly Club).

In City Council October 1, 2001

*Referred to
Calendar Item #2*

8-1-508-335-4776

DEED OF HISTORIC PRESERVATION EASEMENT

THIS IS A DEED of an Historic Preservation Easement (this "Easement") made on the 22nd day of December, 1997, by The Fly Club, a Massachusetts corporation, with its principal offices at 2 Holyoke Place, Cambridge, Massachusetts 02138 ("Fly Club") to Historic Massachusetts, Inc., a Massachusetts not-for-profit corporation, with its principal offices at 45 School Street, Boston, Massachusetts 02108 (the "Recipient").

Background

A. The Recipient is a Massachusetts not-for-profit corporation organized to promote preservation of historically significant buildings in The Commonwealth of Massachusetts, and is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

B. The Recipient is authorized to accept easements for historic preservation purposes in furtherance of its public purposes.

C. Fly Club is the owner in fee simple of improved real property known as the Fly Club, located at 2 Holyoke Place, Cambridge, Massachusetts, and more fully described as:

The land and buildings now numbered 2 Holyoke Place, Cambridge, Massachusetts, Middlesex County, Massachusetts.

(the "Property"). Fly Club is hereafter referred to as the "Owner".

D. Both the Property and the neighborhood in which it is located have been proposed for historic designation.

E. The grant of the easement set forth in this instrument will assist the Recipient in preserving a structure of aesthetic and historic importance.

F. Owner desires to grant to Recipient, and Recipient desires to accept, a "preservation restriction" on the Property, as such term is defined in Chapter 184, Section 31 of the Massachusetts General Laws.

Terms and Conditions

1. Grant. Owner does hereby grant and convey to Recipient, TO HAVE AND TO HOLD, an easement in gross, in, on, and to the Facade of the Property, for the preservation of historic and architectural value, all as further set forth and defined below, for a term of thirty years from the date of this Agreement. For purposes of this Easement, "Facade" shall be defined as all exterior surfaces of the improvements on the Property along Mount Auburn Street and Holyoke Place or any surface visible from those streets, including all exterior walls, windows, window frames, moldings, gutters, roofs, chimneys, and doors. No other portions of the premises are hereby restricted, and the interior of the Property is expressly excluded.

2. Scope of Recipient's Estate, Interest and Easement. This Easement conveys to Recipient an interest in the Property consisting of the benefits of the following covenants and undertakings by Owner:

a. Without the prior written consent of Recipient, which shall not unreasonably be withheld, Owner shall not cause, permit or suffer any construction, alteration, remodeling, decoration, dismantling, relocation, destruction, or other activity which would affect or alter in any way the appearance of the Facade as viewed from any location on any street on or off the Property.

b. Without the prior written consent of Recipient, which shall not be unreasonably withheld, Owner shall not cause, suffer, or permit the placement on the Facade of signs or markers which would materially alter or change the appearance of the Facade.

c. Without the express written consent of Recipient, Owner shall not cause, permit, or suffer to be undertaken the exterior extension of existing improvements on the Property, or the erection of additional improvements on the Property or in the open space above the Property.

d. In deciding whether to approve a proposed alteration, addition or new structure, Recipient shall consider, among other things, the architectural and historical value of the restricted facades, and the general design, arrangement, texture, material, and color of the features involved, technical and physical requirements of necessary building equipment and applicable government regulations, and the operational needs of the Property for the Owner's purposes.

e. Written notice in recordable form of approval or denial by Recipient of the proposed alteration, addition or new structure shall be given within 45 days of its receipt of the Owner's request, and the failure to timely deliver such notice shall be deemed an approval. In the case of a denial, the reason or reasons shall be stated in the notice. In the event of actual or constructive approval, the Owner may record with the Middlesex South Registry of Deeds an Affidavit of Approval signed and acknowledged by the Owner, describing the approved alteration, addition or new construction, stating the date of Recipient's action or failure to act timely, and referring to the Book and Page numbers of this Easement in the Registry. The Affidavit of Approval shall be conclusive evidence in favor of every person dealing with the Premises as to the facts set forth therein.

f. Owner shall maintain the Facade at all times and shall keep the Facade in a state of good repair and insure that the appearance of the Facade, as viewed from any location on any street on or off the Property, shall not be permitted to deteriorate in any material way, and to this end Owner agrees that it shall comply with the Minimum Maintenance Program set forth in Exhibit A to this Easement.

g. Owner shall permit Recipient access to the Property at such reasonable times as Recipient may request, for the purpose of examination and testing of the Facade.

h. Owner shall permit Recipient to display on the Property a small marker or sign evidencing its ownership of the easement granted herein.

i. Nothing in this Easement shall be construed to prevent (i) the ordinary maintenance, repair, or replacement of any exterior architectural feature of the Building, including the Facade; (ii) any alteration or addition to the Building or any new structure on the Premises which is not incongruous with the design, texture, material, or color of the Facade; (iii) any landscaping of the Premises with plants, trees or shrubs; or (iv) any activities, alterations, or additional certified by a duly authorized public officer as necessary to correct an unsafe or dangerous condition on the Premises. In the event Owner permits a tenant to occupy a portion of the Building, Owner may also permit a tenant of the Building to maintain a small (with dimensions not more than two feet x three feet) sign on or in front of the Facade advising of the services or goods provided by said tenant, subject to approval by Recipient of design, shape, color and location of the sign.

3. Initial Level of Preservation.

a. Owner has begun to carry out and agrees to complete the restoration program set forth in Exhibit B, Restoration Program.

b. Certain descriptions, photographs, and drawings which shall be appropriately identified and attached as Exhibit C to the executed counterparts of this Easement to be held by Owner and Recipient, but which shall not be recorded, shall constitute the aesthetic, architectural and historic condition in which the appearance of the Facade, as viewed from any street on or off the Property, is to be maintained.

c. In the event of any discrepancy between the photographs and the descriptions or drawings, the photographs shall control.

4. Rights of Recipient if Property Destroyed.

a. In the event that the Facade and the Property is, by reason of fire, flood, earthquake or other disaster of any kind whatsoever partially destroyed to such an extent or of such nature that the appearance of the Facade as seen from any street on or off the Property is altered from the Facade's appearance set forth in Exhibit B, then Owner shall, to the extent of insurance or other proceeds actually collected, use its best efforts to restore the Property including the Facade, to the condition set forth in Exhibit B. Owner shall obtain Recipient written consent for any plans, specifications, and/or construction methods to be used for such restoration, which consent shall not be unreasonably withheld. In the event that such restoration is not financially feasible within the available proceeds, Owner and Recipient shall mutually agree upon a method of restoration which preserves or restores as many of the historic and architectural features of the Facade as possible within the available insurance proceeds. In the event that no such restoration is feasible within the existing insurance proceeds or allowed as a result of local ordinance or law, Owner may demolish the Property and shall be subject to the provisions of the succeeding subsection (b).

b. In the event that the Facade and the Property are totally destroyed, or are demolished pursuant to subsection (a) above, Owner agrees that any new buildings constructed on the site shall be generally consistent with the surrounding buildings in the District, and the plans of any such building shall be subject to the approval of Recipient, which approval shall not be unreasonably withheld. This subsection shall not be constructed to require Owner to rebuild any structure on the Premises, to give Recipient any detailed design review with respect to any new building, or to require Owner to rebuild or imitate any historic aspect of the buildings, but is for the sole purpose of insuring that, so long as a substantial portion of the now existing neighboring buildings in the District remain, any new building is of a size and scope compatible with the district and such neighboring buildings.

5. Remedies of Recipient. In the event of a material violation of this Easement, and after reasonable written notice to Owners, Recipient shall have: (i) the right to institute legal proceedings to enjoin such violation by ex parte, temporary, and/or permanent injunction, to require the restoration of the Property or Facade to its prior condition, to be reimbursed for all reasonable costs, including reasonable attorneys' fees and court costs, and to avail itself of all other legal and equitable remedies, including without limitation specific performance and damages; (ii) the right to enter upon the Property and improvements thereon in order to correct such violation and hold Owner responsible for the cost thereof; (iii) the right to place a lien against the Property to secure the payment by Owner of any of Owner's obligations arising hereunder; (iv) the right to require arbitration of disputes limited solely to the appropriate method of maintaining, repairing, or replacing a particular physical characteristic of the Facade, with such arbitration to be conducted in accordance with the rules of the American Arbitration Association before an arbitrator chosen by mutual consent of the parties,

or lacking such consent, with one arbitrator to be chosen by each party and a third chosen by the first two, and with the costs at the arbitration to be borne as determined by the arbitrator(s); and (v) in addition to actual out-of-pocket expenses, and because actual damages will be difficult to ascertain in the event that Recipient is required to file an action to enforce its rights hereunder, the right to liquidated damages in the amount at one-half the actual attorney's fees and court costs awarded to Recipient in any such action.

6. Assignment, Successors and Assigns.

a. This Easement shall run with and bind the Property for a term on thirty (30) years from the date of the Deed, shall extend to and be binding upon Owner and all persons hereafter claiming by, under or through Owner, and the word "Owner" when used herein shall include all such persons whether or not such persons have signed this instrument or had any interest in the Property at the time it was signed. Anything contained herein notwithstanding, a person shall have no obligation pursuant to this Easement if and when such person shall cease to have any interest (present, partial, contingent, collateral or future) in the Property or any portion thereof by reason of a bona fide transfer for value.

b. Recipient agrees that it will hold this Easement exclusively for preservation purposes, and that it will not transfer this Easement for money, other property or services. If for any reason Recipient no longer desires to hold this Easement, Recipient may assign or transfer it to Owner on condition that Owner make a new donation of this Easement to an agency or organization designated by Recipient from the following list: any agency of the City of Cambridge, The Commonwealth of Massachusetts or the United States of America; or to one or more organizations whose purposes include, inter alia, the preservation of historically important structures and land areas,

provided such organization has the ability to properly enforce this Easement and further provided, that such organization is operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Code). Subject to the foregoing provisions of this Section 6, the terms and conditions of this Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

7. Reservation.

a. Owner reserves the free right and privilege to the use of the Property for all purposes not inconsistent with the grant made herein. Nothing herein shall be construed to grant unto the general public or any other persons, other than Recipient and its agents, the right to enter upon the Property for the purposes set forth herein or to institute actions for the enforcement hereof.

b. Nothing contained in this Easement shall be interpreted to authorize, require or permit Owner to violate any ordinance relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance and the terms hereof, Owner shall promptly notify Recipient of such conflict and Owner and Recipient shall agree upon such modifications to the Facade consistent with law and with sound preservation practices.

c. No provisions of the Easement shall be constructed as providing the necessary written consent needed for the Massachusetts Historical Commission to certify the Property or any part thereof as a historic landmark pursuant to Massachusetts General Laws, Chapter 9, Section 27.

8. Acceptance. Recipient hereby accepts the rights, obligations and interest granted to it in this Easement. Owner agrees to responsibility enforce its rights hereunder; provided, however,

that the decision to take any action hereunder shall be made by Recipient in Recipient's sole discretion, in light of the facts and circumstances which exist at that time.

9. Owner's Insurance; Taxes. Owner shall maintain, at its own cost, insurance 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 in such amounts as would normally be carried on a property such as the Property. Owner agrees to provide, upon request, certificates evidencing such insurance to Recipient and further agree that such certificates shall provide that such insurance may not be canceled, terminated, or reduced in amount without 30 days written notice to Recipient. Owner further agrees to pay all real estate taxes or other assessments with respect to the Property in a timely fashion.

10. Release and Indemnification. Owner shall be responsible for and will and does hereby release and relieve Recipient, its agents or employees, and shall hold and defend harmless Recipient, its agents or employees, of, from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses which may be imposed upon or incurred by Recipient by reason of loss of life, personal injury and/or damages to property occurring in or around the Property occasioned in whole or in part by the negligence of Owners, its agents or employees or by reason of owner's violation of this Agreement.

11. Estoppel Certificates. Recipient agrees at any time and from time to time, within twenty (20) days after Owners' written request, to execute, acknowledge and deliver to Owner a written instrument stating that Owner is in compliance with the terms and conditions of the Easement, or if Owner is not in compliance with this Easement, stating specifically what violations of this Easement exist. Owner agrees to make such a request only for reasonable cause. If this Easement

lapses, Owner and Recipient shall execute and acknowledge a written instrument to that effect which Owner shall cause to be recorded.

12. Condemnation. In the event of a total condemnation of the Property, the Easement shall lapse. In the event of a partial condemnation of the Property where the portion of the Property not taken is capable of continued reasonable use, then this Easement shall remain on those facades and/or portions of facades not taken by condemnation. In such event, the provisions of paragraph 4 shall govern Owner's obligation to rebuild, with "condemnation proceeds" to replace "insurance proceeds" as used therein. Recipient shall assert no claim for compensation for its interest in the event of condemnation proceedings.

13. Financial Arrangements. Owner and Recipient agree that, concurrent with the execution of this instrument, Owner and Recipient shall enter in the Agreement attached as Exhibit E hereto pursuant to which Recipient will retain 5% of funds made available to it for restoration of the Facade to be used by the Recipient for such purposes as it may determine, including the purpose of administering, monitoring, and enforcing its rights hereunder. Owner shall have no obligation to make any further or similar payments hereunder, and shall have no further obligation or liability to Recipient for any expenses related to the administration, monitoring, or enforcing of Recipient's rights hereunder, except as specifically provided herein and therein.

14. Subsequent Deeds; Mortgages. Owner agrees that the restrictions in this Easement will be inserted or referenced by them in any subsequent deed, lease, or other legal instrument by which they divest themselves of either the fee simple title to, or their possessory interest in the Property.

15. Recording. The Owner will promptly record this instrument.

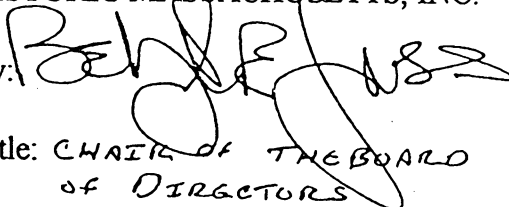
16. Notice and Consent. Any notice permitted or required pursuant to this instrument shall be deemed given when delivered by a delivery service which obtains acknowledgment of delivery, or, if mailed, when deposited in the U.S. mail, postage prepaid, registered or certified, return receipt requested, addressed to the addresses set forth in the preamble to this Easement, or such other addresses as may be designated from time to time by the parties. Except as otherwise provided herein, Owner and Recipient agree that a response to any request for consent shall be given within 30 days of the date of the request, and if no such response is given, such consent shall be deemed given and may not later be revoked, revised, or conditioned. In such event, Owner may record an affidavit reciting that notice was given in the manner provided herein and that no response was received, and such instrument shall be conclusive that consent is deemed given pursuant hereto. Any refusal to give consent shall state specifically the reason therefor. If so requested, any consent shall be in recordable form.

EXECUTED AND SEALED ON THE DATE FIRST WRITTEN ABOVE.

FLY CLUB

By: 
Title: GRADUATE PRESIDENT

HISTORIC MASSACHUSETTS, INC.

By: 
Title: CHAIR OF THE BOARD
OF DIRECTORS

COMMONWEALTH OF MASSACHUSETTS

ss.

December 27, 1997

Then personally appeared the above named ERIC E VOGT who made oath that he is the same person who signed the foregoing instrument as President of the Fly Club, and that the same is his free act and deed on behalf of such corporation and the free act and deed of the corporation..

Before me,

Valerie L. Bourneau

Notary Public

My Commission Expires: Aug 23, 2002

LIST OF EXHIBITS

- Exhibit A MINIMUM MAINTENANCE PROGRAM
- Exhibit B RESTORATION PLAN
- Exhibit C CONDITION OF EXISTING FACADE
 (description and photographs)
- Exhibit D DRAWINGS OF FACADE RENOVATIONS
- Exhibit E FINANCIAL AGREEMENT

The Exhibits to this Deed of Historic Preservation Easement are not attached to the recorded copy of this Easement, but are attached to the executed copies kept in the files of Owner and Recipient.

EXHIBIT A

MINIMUM MAINTENANCE PROGRAM

Owner shall adhere to a maintenance schedule with respect to the Property at least as stringent as that set forth below. Owner shall keep reasonable records with respect to inspection and replacement and shall make such records available for inspection by Recipient during normal working hours, upon written notice from Recipient.

1. BRICK MASONRY

INSPECTION SCHEDULE: Once a year, Spring or Fall, after a rainstorm

OPERATION:

- a. Check for moist areas, cracks, crumbling material, loose pieces, missing mortar, efflorescence (white discoloration).
- b. Check where moisture is entering masonry and repair and leaks in roofing, cornice, flashing, downspouts, joints between masonry and other materials.
- c. Repair or provide additional support to door or window heads which are unstable.
- d. Reflash, recaulk leaking joints as required.
- e. Masonry shall be inspected once a year, and cleaned as needed. Masonry shall not be cleaned except in accord with a proposal submitted to and approved by Recipient prior to start of work. Any cleaning shall be done with materials and techniques which will not damage the masonry. Sandblasting, wire brushes, grinders, sanding discs, or other abrasive methods shall not be used. Nor shall any harsh, chemical which weakens the masonry be applied. Materials and techniques shall be selected based on results of test patch samples. Any chemical cleaner shall be chemically neutralized and thoroughly rinsed off in order to remove residues that could damage masonry or interior finishes.
- f. Snow removal materials which might damage masonry, e.g. salt, shall not be used on stoop or adjacent to walls.

2. METAL GRILLES, RAILINGS, FENCES

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check for deteriorated paint, rust, moisture damage, wear.
- b. Repair any loose joints, attachments or hardware.
- c. Prime and paint per Paragraph 14 below.

3. SHEET METAL ROOFING, CORNICES, DORMERS AND FLASHING

INSPECTION SCHEDULE: Twice a year, late Spring and early Fall, and after winds higher than 40 m.p.h.

OPERATION:

- a. Check for cracks, warps, distortions or weak areas, loose or damaged seams, loose attachments.
- b. Check for loose, damaged or missing sections. Check masonry or woodwork underneath for moisture damage, especially at attachment points.
- c. Reattach to repaired masonry or wood or iron substrate.
- d. Paint colors for flashings shall match adjacent construction.

4. GUTTERS AND DOWNSPOUTS

INSPECTION SCHEDULE: Twice a year, Spring and Fall.

REPLACEMENT SCHEDULE: As required, about every 20 years

OPERATION:

- a. Check for leaks and loose or clogged gutters or downspouts.
- b. Reattach loose gutters or downspouts, clean clogged gutters and downspouts, repair leaks.

- c. Any downspout replacement sections shall be instilled with seam turned out away from wall or in such other manner that downspout leaks will not cause hidden masonry damage.
- d. Any downspout replacement shall be of simple cylindrical form.

5. CAULKING COMPOUND

INSPECTION SCHEDULE: Once a year, Spring or Fall

REPLACEMENT SCHEDULE: As required, about every 6 years

OPERATION:

- a. Check caulk for brittle, cracked or missing pieces.
- b. Remove any damaged area, clean, prime or seal per manufacturer's specifications, provide backer rods and bond-breaker tape as required, replace caulk.

6. WOODWORK: CORNICES, DOORS, WINDOWS, TRIM, AND SPANDREL PANELS

INSPECTION SCHEDULE: Twice a year, Spring and Fall

OPERATION:

- a. Check for moisture damage, warping, splitting, unsound joints.
- b. If wood is decayed, determine source of moisture, stop leaks, and replace decayed wood and damaged flashing.
- c. Repair unsound joints.
- d. In natural finish wood work repair holes and damaged areas using wood which matches the existing in species, grain pattern and color.
- e. In painted woodwork seal fine cracks with wood filler.
- f. Check putty for cracks or missing pieces. Reglaze where necessary.
- g. Coat all bare wood with preservative and refinish in accord with Paragraphs 14 and 15 below.

- h. Prime and paint any new flashing, putty or other glazing materials.

7. GLASS

INSPECTION SCHEDULE: Twice a year

OPERATION:

- a. Replace cracked lights with glass to match.

8. PAINT

INSPECTION SCHEDULE: Twice a year

REPLACEMENT SCHEDULE: Every 5 to 8 years

OPERATION:

- a. Check for worn, bare spots, blistering, peeling, mildew.
- b. Check where moisture is entering wood and stop leaks.
- c. Wash mildew with fungicide.
- d. Split blisters, scrape peeling areas, remove rust and sand rough spots.
- e. Coat bare wood with preservative.
- f. Prime and paint wood using materials compatible with the preservative.
- g. Scrape and wirebrush deteriorated paint and rust from metal.
- h. Prime and paint bare metal using materials designed for the type of metal.

9. VARNISH

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check for crackling, white water stains, discolorations of varnish.

- b. Restore varnished finish as follows: first, try to restore existing varnish by softening with methylene chloride, taking appropriate safety precautions while using this solvent, and buffing with fine steel wool and a finishing oil to a new smooth finish. If that procedure is unworkable, remove existing varnish using materials and methods which will not damage the wood. Apply a non-staining preservative, such as a mix of proportions three (3) cups exterior varnish, one ounce (1 oz.) paraffin wax, and enough mineral spirits, paint thinner or turpentine to make one (1) gallon. If wood had been stained, restrain to original color. Revarnish.

10. TERMITES

INSPECTION SCHEDULE: Once a year, Spring or Fall

OPERATION:

- a. Have exterminator check and treat once a year if necessary.

11. STRUCTURAL CHECKPOINTS

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check exposed exterior and interior surfaces of walls and foundations, with particular attention to areas of stairway, floor openings, wall openings and changes in wall masonry material. Check for cracks, collapsing, leaning or bulging areas or other signs of uneven settlement or movement.
- b. Check interior wall surfaces at upper levels, with particular attention to joints between party walls and perpendicular front and rear walls, joints between floors and end walls, and joints between partitions and ceilings. Check for cracks, crumbled plaster, gaps between finishes or other signs of movement.
- c. Review structural status of building with an engineer qualified to evaluate its condition in order to ensure that adequate safety standards and precautions are met. A report on the findings and any remedial actions shall be furnished to the Recipient. For any remedial action which will affect the exterior appearance, of those portions included in this easement, Owner shall make a proposal for Recipient review and cause works to be performed in accord with proposal approved by Recipient prior to start of work. In cases where hazardous conditions require immediate remedies, Owner may proceed without prior Recipient approval but shall make every reasonable effort to

notify and to comply with any Recipient suggestions of ways to make remedial actions compatible with the historic appearance of the property.

EXHIBIT B

RESTORATION PROGRAM

WORK DONE AS OF THE EXECUTION HEREOF:

NEW LANGUAGE NEEDED HERE.

EXHIBIT C

CONDITION AND DRAWINGS OF EXISTING FACADE

DRAWINGS OF FACADE RENOVATIONS

EXHIBIT C

CONDITION AND DRAWINGS OF EXISTING FACADE

DRAWINGS OF FACADE RENOVATIONS

EXHIBIT D

FINANCIAL AGREEMENT

Historic Massachusetts, Inc. ("Recipient"), Old City Hall, 45 School Street, Boston, MA 02118, and the Fly Club ("Fly Club"), 2 Holyoke Place, Cambridge, MA 02138, agree that:

- 1.) Fly Club will donate an historic facade easement on its building at 2 Holyoke Place, Cambridge, MA to Recipient by a Deed of Historic Preservation Easement in form attached hereto.
- 2.) Fly Club will, at its sole effort and expense, seek donations to Recipient for the specific purpose of restoring and preserving the facade of 2 Holyoke Place (the "Project"). Fly Club will be responsible for every aspect of the fund-raising effort, including solicitation, collecting the donations, depositing them in a bank account set up and designated by Recipient for this purpose (the "Special Account"), preparing acknowledgments to the donors for signature by an authorized signatory at Recipient, and thanking the donors. Contributions are expected to include both cash and marketable securities.
- 3.) Recipient will make available 95% of the funds so raised to this restoration project, retaining the balance of 5% as unrestricted funds which it may invest or spend as it sees fit, in its sole discretion.
- 4.) The restoration and preservation effort will cover only the "skin" of the building, that is, the public aspect of the building, and will not include any interior work. The scope of the restoration is expected to include: rebuilding and stabilizing the underpinnings and foundation of the exterior walls, repointing and repairing the exterior walls, restoring all exterior windows and doors, restoring all exterior wood trim such as fascia boards, lintels, columns, the front steps, cornice and dental mouldings, and roof, flashing, and gutter replacement and restoration.
- 5.) Fly Club will be responsible for managing the Project, assisted by an architect and general contractor. Once a month, a requisition may be presented to Recipient, which Recipient will pay out to the Fly Club or its designee from funds available to it in the Special Account. Recipient will have no obligation to pay out any funds except what are available in the Special Account. In the unlikely event that a requisition exceeds the funds available in that account at any given moment, it will be the Fly Club's sole responsibility either to make appropriate arrangements with the contractor and/or to advance the necessary funds to Recipient.
- 6.) Fly Club will carry appropriate insurance covering the entire project, and will require certificates of insurance from each contractor on the job.
- 7.) Starting on the twenty-fifth anniversary of the agreement, Fly Club shall have the right, but not the obligation, to re-purchase the facade easement upon payment to the Recipient of \$50,000 in cash or marketable securities, with the price of such re-purchase declining at \$10,000 per year, until

the Easement expires 30 years after the date of this Agreement, at which time the Easement shall revert to the Owner, with no further consideration payable. Upon such re-purchase, the Owner shall deliver within 15 days of receipt of such payment, a duly executed and authorized notice of termination with respect to the Deed of Historic Preservation Easement to Owner which it shall record in the applicable registry of deeds. Such notice shall be conclusive evidence in favor of every person dealing with the Property as to the termination of this Easement.

8.) In the event that Fly Club raises more than the cost of the restoration (currently estimated to be between \$800,000 and \$1,000,000), the surplus funds may be retained by the Recipient in a special account as part of the Recipient's endowment, with 95% of any distributions of either principal or income from this account available for the purpose of maintaining and preserving 2 Holyoke Place. These proceeds would be invested in mutual funds selected by the Recipient and Fly Club.



February 29, 2000

Mr. Charles M. Sullivan
Executive Director
Cambridge Historical Commission
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

Re: The Fly Club
2 Holyoke Place

Dear Mr. Sullivan:

Reference is made to that certain Deed of Historic Preservation Easement dated December 22, 1997 (the "Easement") executed between the Fly Club and Historic Massachusetts, pursuant to which the Fly Club granted to Historic Massachusetts an easement in gross in, on and to the Facade of the Property for a term of thirty years. The Easement has been included on the List of Designated Properties of the Cambridge Historical Commission; a copy of the recorded deed is included with this letter.

By means of this letter I wish to confirm our request that the Cambridge Historical Commission submit a copy of the Easement to the Cambridge City Council for their review and approval, as contemplated in Mass. General Laws Chapter 184 Section 32. Once approved, please return to us a certificate indicating such action for our files.

Thank you for your attention to this request. I can be reached at (617) 723-3383 if you have any questions.

Very truly yours,

Marilyn M. Fenollosa
Community Preservation Program Manager

Enclosure





Fly Club

FILE COPY

January 21, 1998

City of Cambridge
Assessing Department
795 Mass Avenue
Cambridge, MA

**RE: The Fly Club
2 Holyoke Place
Cambridge, MA 02138**

Dear Sir:

In December of 1997, we donated an Historic Preservation Easement to Historic Massachusetts, Inc., a Massachusetts not-for-profit corporation located at 45 School Street, Boston, Massachusetts. I understand that this façade easement reduces the commercial value of The Fly Club by restricting its development rights. Accordingly, the assessed real estate taxes should also be reduced.

With this letter, I am formally requesting a reassessment of the tax base and a reduction of real estate taxes levied on The Fly Club. Enclosed with this letter is a copy of the Deed of Historic Preservation Easement for your review. I would be happy to provide such other documentation that you may require. I can be reached at my office at 617-234-5119.

Sincerely,

Eric E. Vogt
Graduate President
The Fly Club

Enclosure

cc: Historical Comm. 2/18/97 L
Fo

DEED OF HISTORIC PRESERVATION EASEMENT

THIS IS A DEED of an Historic Preservation Easement (this "Easement") made on the 22nd day of December, 1997, by The Fly Club, a Massachusetts corporation, with its principal offices at 2 Holyoke Place, Cambridge, Massachusetts 02138 ("Fly Club") to Historic Massachusetts, Inc., a Massachusetts not-for-profit corporation, with its principal offices at 45 School Street, Boston, Massachusetts 02108 (the "Recipient").

Background

A. The Recipient is a Massachusetts not-for-profit corporation organized to promote preservation of historically significant buildings in The Commonwealth of Massachusetts, and is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

B. The Recipient is authorized to accept easements for historic preservation purposes in furtherance of its public purposes.

C. Fly Club is the owner in fee simple of improved real property known as the Fly Club, located at 2 Holyoke Place, Cambridge, Massachusetts, and more fully described as:

The land and buildings now numbered 2 Holyoke Place, Cambridge, Massachusetts, Middlesex County, Massachusetts.

(the "Property"). Fly Club is hereafter referred to as the "Owner".

D. Both the Property and the neighborhood in which it is located have been proposed for historic designation.

E. The grant of the easement set forth in this instrument will assist the Recipient in preserving a structure of aesthetic and historic importance.

F. Owner desires to grant to Recipient, and Recipient desires to accept, a "preservation restriction" on the Property, as such term is defined in Chapter 184, Section 31 of the Massachusetts General Laws.

Terms and Conditions

1. Grant. Owner does hereby grant and convey to Recipient, TO HAVE AND TO HOLD, an easement in gross, in, on, and to the Facade of the Property, for the preservation of historic and architectural value, all as further set forth and defined below, for a term of thirty years from the date of this Agreement. For purposes of this Easement, "Facade" shall be defined as all exterior surfaces of the improvements on the Property along Mount Auburn Street and Holyoke Place or any surface visible from those streets, including all exterior walls, windows, window frames, moldings, gutters, roofs, chimneys, and doors. No other portions of the premises are hereby restricted, and the interior of the Property is expressly excluded.

2. Scope of Recipient's Estate, Interest and Easement. This Easement conveys to Recipient an interest in the Property consisting of the benefits of the following covenants and undertakings by Owner:

a. Without the prior written consent of Recipient, which shall not unreasonably be withheld, Owner shall not cause, permit or suffer any construction, alteration, remodeling, decoration, dismantling, relocation, destruction, or other activity which would affect or alter in any way the appearance of the Facade as viewed from any location on any street on or off the Property.

b. Without the prior written consent of Recipient, which shall not be unreasonably withheld, Owner shall not cause, suffer, or permit the placement on the Facade of signs or markers which would materially alter or change the appearance of the Facade.

c. Without the express written consent of Recipient, Owner shall not cause, permit, or suffer to be undertaken the exterior extension of existing improvements on the Property, or the erection of additional improvements on the Property or in the open space above the Property.

d. In deciding whether to approve a proposed alteration, addition or new structure, Recipient shall consider, among other things, the architectural and historical value of the restricted facades, and the general design, arrangement, texture, material, and color of the features involved, technical and physical requirements of necessary building equipment and applicable government regulations, and the operational needs of the Property for the Owner's purposes.

e. Written notice in recordable form of approval or denial by Recipient of the proposed alteration, addition or new structure shall be given within 45 days of its receipt of the Owner's request, and the failure to timely deliver such notice shall be deemed an approval. In the case of a denial, the reason or reasons shall be stated in the notice. In the event of actual or constructive approval, the Owner may record with the Middlesex South Registry of Deeds an Affidavit of Approval signed and acknowledged by the Owner, describing the approved alteration, addition or new construction, stating the date of Recipient's action or failure to act timely, and referring to the Book and Page numbers of this Easement in the Registry. The Affidavit of Approval shall be conclusive evidence in favor of every person dealing with the Premises as to the facts set forth therein.

f. Owner shall maintain the Facade at all times and shall keep the Facade in a state of good repair and insure that the appearance of the Facade, as viewed from any location on any street on or off the Property, shall not be permitted to deteriorate in any material way, and to this end Owner agrees that it shall comply with the Minimum Maintenance Program set forth in Exhibit A to this Easement.

g. Owner shall permit Recipient access to the Property at such reasonable times as Recipient may request, for the purpose of examination and testing of the Facade.

h. Owner shall permit Recipient to display on the Property a small marker or sign evidencing its ownership of the easement granted herein.

i. Nothing in this Easement shall be construed to prevent (i) the ordinary maintenance, repair, or replacement of any exterior architectural feature of the Building, including the Facade; (ii) any alteration or addition to the Building or any new structure on the Premises which is not incongruous with the design, texture, material, or color of the Facade; (iii) any landscaping of the Premises with plants, trees or shrubs; or (iv) any activities, alterations, or additional certified by a duly authorized public officer as necessary to correct an unsafe or dangerous condition on the Premises. In the event Owner permits a tenant to occupy a portion of the Building, Owner may also permit a tenant of the Building to maintain a small (with dimensions not more than two feet x three feet) sign on or in front of the Facade advising of the services or goods provided by said tenant, subject to approval by Recipient of design, shape, color and location of the sign.

3. Initial Level of Preservation.

a. Owner has begun to carry out and agrees to complete the restoration program set forth in Exhibit B, Restoration Program.

b. Certain descriptions, photographs, and drawings which shall be appropriately identified and attached as Exhibit C to the executed counterparts of this Easement to be held by Owner and Recipient, but which shall not be recorded, shall constitute the aesthetic, architectural and historic condition in which the appearance of the Facade, as viewed from any street on or off the Property, is to be maintained.

c. In the event of any discrepancy between the photographs and the descriptions or drawings, the photographs shall control.

4. Rights of Recipient if Property Destroyed.

a. In the event that the Facade and the Property is, by reason of fire, flood, earthquake or other disaster of any kind whatsoever partially destroyed to such an extent or of such nature that the appearance of the Facade as seen from any street on or off the Property is altered from the Facade's appearance set forth in Exhibit B, then Owner shall, to the extent of insurance or other proceeds actually collected, use its best efforts to restore the Property including the Facade, to the condition set forth in Exhibit B. Owner shall obtain Recipient written consent for any plans, specifications, and/or construction methods to be used for such restoration, which consent shall not be unreasonably withheld. In the event that such restoration is not financially feasible within the available proceeds, Owner and Recipient shall mutually agree upon a method of restoration which preserves or restores as many of the historic and architectural features of the Facade as possible within the available insurance proceeds. In the event that no such restoration is feasible within the existing insurance proceeds or allowed as a result of local ordinance or law, Owner may demolish the Property and shall be subject to the provisions of the succeeding subsection (b).

b. In the event that the Facade and the Property are totally destroyed, or are demolished pursuant to subsection (a) above, Owner agrees that any new buildings constructed on the site shall be generally consistent with the surrounding buildings in the District, and the plans of any such building shall be subject to the approval of Recipient, which approval shall not be unreasonably withheld. This subsection shall not be constructed to require Owner to rebuild any structure on the Premises, to give Recipient any detailed design review with respect to any new building, or to require Owner to rebuild or imitate any historic aspect of the buildings, but is for the sole purpose of insuring that, so long as a substantial portion of the now existing neighboring buildings in the District remain, any new building is of a size and scope compatible with the district and such neighboring buildings.

5. Remedies of Recipient. In the event of a material violation of this Easement, and after reasonable written notice to Owners, Recipient shall have: (i) the right to institute legal proceedings to enjoin such violation by ex parte, temporary, and/or permanent injunction, to require the restoration of the Property or Facade to its prior condition, to be reimbursed for all reasonable costs, including reasonable attorneys' fees and court costs, and to avail itself of all other legal and equitable remedies, including without limitation specific performance and damages; (ii) the right to enter upon the Property and improvements thereon in order to correct such violation and hold Owner responsible for the cost thereof; (iii) the right to place a lien against the Property to secure the payment by Owner of any of Owner's obligations arising hereunder; (iv) the right to require arbitration of disputes limited solely to the appropriate method of maintaining, repairing, or replacing a particular physical characteristic of the Facade, with such arbitration to be conducted in accordance with the rules of the American Arbitration Association before an arbitrator chosen by mutual consent of the parties,

or lacking such consent, with one arbitrator to be chosen by each party and a third chosen by the first two, and with the costs at the arbitration to be borne as determined by the arbitrator(s); and (v) in addition to actual out-of-pocket expenses, and because actual damages will be difficult to ascertain in the event that Recipient is required to file an action to enforce its rights hereunder, the right to liquidated damages in the amount at one-half the actual attorney's fees and court costs awarded to Recipient in any such action.

6. Assignment, Successors and Assigns.

a. This Easement shall run with and bind the Property for a term on thirty (30) years from the date of the Deed, shall extend to and be binding upon Owner and all persons hereafter claiming by, under or through Owner, and the word "Owner" when used herein shall include all such persons whether or not such persons have signed this instrument or had any interest in the Property at the time it was signed. Anything contained herein notwithstanding, a person shall have no obligation pursuant to this Easement if and when such person shall cease to have any interest (present, partial, contingent, collateral or future) in the Property or any portion thereof by reason of a bona fide transfer for value.

b. Recipient agrees that it will hold this Easement exclusively for preservation purposes, and that it will not transfer this Easement for money, other property or services. If for any reason Recipient no longer desires to hold this Easement, Recipient may assign or transfer it to Owner on condition that Owner make a new donation of this Easement to an agency or organization designated by Recipient from the following list: any agency of the City of Cambridge, The Commonwealth of Massachusetts or the United States of America; or to one or more organizations whose purposes include, inter alia, the preservation of historically important structures and land areas,

provided such organization has the ability to properly enforce this Easement and further provided, that such organization is operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Code). Subject to the foregoing provisions of this Section 6, the terms and conditions of this Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

7. Reservation.

a. Owner reserves the free right and privilege to the use of the Property for all purposes not inconsistent with the grant made herein. Nothing herein shall be construed to grant unto the general public or any other persons, other than Recipient and its agents, the right to enter upon the Property for the purposes set forth herein or to institute actions for the enforcement hereof.

b. Nothing contained in this Easement shall be interpreted to authorize, require or permit Owner to violate any ordinance relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance and the terms hereof, Owner shall promptly notify Recipient of such conflict and Owner and Recipient shall agree upon such modifications to the Facade consistent with law and with sound preservation practices.

c. No provisions of the Easement shall be constructed as providing the necessary written consent needed for the Massachusetts Historical Commission to certify the Property or any part thereof as a historic landmark pursuant to Massachusetts General Laws, Chapter 9, Section 27.

8. Acceptance. Recipient hereby accepts the rights, obligations and interest granted to it in this Easement. Owner agrees to responsibility enforce its rights hereunder; provided, however,

that the decision to take any action hereunder shall be made by Recipient in Recipient's sole discretion, in light of the facts and circumstances which exist at that time.

9. Owner's Insurance; Taxes. Owner shall maintain, at its own cost, insurance 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 in such amounts as would normally be carried on a property such as the Property. Owner agrees to provide, upon request, certificates evidencing such insurance to Recipient and further agree that such certificates shall provide that such insurance may not be canceled, terminated, or reduced in amount without 30 days written notice to Recipient. Owner further agrees to pay all real estate taxes or other assessments with respect to the Property in a timely fashion.

10. Release and Indemnification. Owner shall be responsible for and will and does hereby release and relieve Recipient, its agents or employees, and shall hold and defend harmless Recipient, its agents or employees, of, from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses which may be imposed upon or incurred by Recipient by reason of loss of life, personal injury and/or damages to property occurring in or around the Property occasioned in whole or in part by the negligence of Owners, its agents or employees or by reason of owner's violation of this Agreement.

11. Estoppel Certificates. Recipient agrees at any time and from time to time, within twenty (20) days after Owners' written request, to execute, acknowledge and deliver to Owner a written instrument stating that Owner is in compliance with the terms and conditions of the Easement, or if Owner is not in compliance with this Easement, stating specifically what violations of this Easement exist. Owner agrees to make such a request only for reasonable cause. If this Easement

lapses, Owner and Recipient shall execute and acknowledge a written instrument to that effect which Owner shall cause to be recorded.

12. Condemnation. In the event of a total condemnation of the Property, the Easement shall lapse. In the event of a partial condemnation of the Property where the portion of the Property not taken is capable of continued reasonable use, then this Easement shall remain on those facades and/or portions of facades not taken by condemnation. In such event, the provisions of paragraph 4 shall govern Owner's obligation to rebuild, with "condemnation proceeds" to replace "insurance proceeds" as used therein. Recipient shall assert no claim for compensation for its interest in the event of condemnation proceedings.

13. Financial Arrangements. Owner and Recipient agree that, concurrent with the execution of this instrument, Owner and Recipient shall enter in the Agreement attached as Exhibit E hereto pursuant to which Recipient will retain 5% of funds made available to it for restoration of the Facade to be used by the Recipient for such purposes as it may determine, including the purpose of administering, monitoring, and enforcing its rights hereunder. Owner shall have no obligation to make any further or similar payments hereunder, and shall have no further obligation or liability to Recipient for any expenses related to the administration, monitoring, or enforcing of Recipient's rights hereunder, except as specifically provided herein and therein.

14. Subsequent Deeds; Mortgages. Owner agrees that the restrictions in this Easement will be inserted or referenced by them in any subsequent deed, lease, or other legal instrument by which they divest themselves of either the fee simple title to, or their possessory interest in the Property.

15. Recording. The Owner will promptly record this instrument.

16. Notice and Consent. Any notice permitted or required pursuant to this instrument shall be deemed given when delivered by a delivery service which obtains acknowledgment of delivery, or, if mailed, when deposited in the U.S. mail, postage prepaid, registered or certified, return receipt requested, addressed to the addresses set forth in the preamble to this Easement, or such other addresses as may be designated from time to time by the parties. Except as otherwise provided herein, Owner and Recipient agree that a response to any request for consent shall be given within 30 days of the date of the request, and if no such response is given, such consent shall be deemed given and may not later be revoked, revised, or conditioned. In such event, Owner may record an affidavit reciting that notice was given in the manner provided herein and that no response was received, and such instrument shall be conclusive that consent is deemed given pursuant hereto. Any refusal to give consent shall state specifically the reason therefor. If so requested, any consent shall be in recordable form.

EXECUTED AND SEALED ON THE DATE FIRST WRITTEN ABOVE.

FLY CLUB

By:


Title: GRADUATE PRESIDENT

HISTORIC MASSACHUSETTS, INC.

By:


Title: CHAIR OF THE BOARD
OF DIRECTORS

COMMONWEALTH OF MASSACHUSETTS

ss.

December 27, 1997

Then personally appeared the above named ERIC E VOGT who made oath that he is the same person who signed the foregoing instrument as President of the Fly Club, and that the same is his free act and deed on behalf of such corporation and the free act and deed of the corporation..

Before me,

Valerie L. Souderman

Notary Public

My Commission Expires: Aug 23, 2002

LIST OF EXHIBITS

- Exhibit A MINIMUM MAINTENANCE PROGRAM
- Exhibit B RESTORATION PLAN
- Exhibit C CONDITION OF EXISTING FACADE
 (description and photographs)
- Exhibit D DRAWINGS OF FACADE RENOVATIONS
- Exhibit E FINANCIAL AGREEMENT

The Exhibits to this Deed of Historic Preservation Easement are not attached to the recorded copy of this Easement, but are attached to the executed copies kept in the files of Owner and Recipient.

EXHIBIT A

MINIMUM MAINTENANCE PROGRAM

Owner shall adhere to a maintenance schedule with respect to the Property at least as stringent as that set forth below. Owner shall keep reasonable records with respect to inspection and replacement and shall make such records available for inspection by Recipient during normal working hours, upon written notice from Recipient.

1. BRICK MASONRY

INSPECTION SCHEDULE: Once a year, Spring or Fall, after a rainstorm

OPERATION:

- a. Check for moist areas, cracks, crumbling material, loose pieces, missing mortar, efflorescence (white discoloration).
- b. Check where moisture is entering masonry and repair and leaks in roofing, cornice, flashing, downspouts, joints between masonry and other materials.
- c. Repair or provide additional support to door or window heads which are unstable.
- d. Reflash, recaulk leaking joints as required.
- e. Masonry shall be inspected once a year, and cleaned as needed. Masonry shall not be cleaned except in accord with a proposal submitted to and approved by Recipient prior to start of work. Any cleaning shall be done with materials and techniques which will not damage the masonry. Sandblasting, wire brushes, grinders, sanding discs, or other abrasive methods shall not be used. Nor shall any harsh, chemical which weakens the masonry be applied. Materials and techniques shall be selected based on results of test patch samples. Any chemical cleaner shall be chemically neutralized and thoroughly rinsed off in order to remove residues that could damage masonry or interior finishes.
- f. Snow removal materials which might damage masonry, e.g. salt, shall not be used on stoop or adjacent to walls.

2. METAL GRILLES, RAILINGS, FENCES

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check for deteriorated paint, rust,, moisture damage, wear.
- b. Repair any loose joints, attachments or hardware.
- c. Prime and paint per Paragraph 14 below.

3. SHEET METAL ROOFING, CORNICES, DORMERS AND FLASHING

INSPECTION SCHEDULE: Twice a year, late Spring and early Fall, and after winds higher than 40 m.p.h.

OPERATION:

- a. Check for cracks, warps, distortions or weak areas, loose or damaged seams, loose attachments.
- b. Check for loose, damaged or missing sections. Check masonry or woodwork underneath for moisture damage, especially at attachment points.
- c. Reattach to repaired masonry or wood or iron substrate.
- d. Paint colors for flashings shall match adjacent construction.

4. GUTTERS AND DOWNSPOUTS

INSPECTION SCHEDULE: Twice a year, Spring and Fall.

REPLACEMENT SCHEDULE: As required, about every 20 years

OPERATION:

- a. Check for leaks and loose or clogged gutters or downspouts.
- b. Reattach loose gutters or downspouts, clean clogged gutters and downspouts, repair leaks.

- c. Any downspout replacement sections shall be instilled with seam turned out away from wall or in such other manner that downspout leaks will not cause hidden masonry damage.
- d. Any downspout replacement shall be of simple cylindrical form.

5. CAULKING COMPOUND

INSPECTION SCHEDULE: Once a year, Spring or Fall

REPLACEMENT SCHEDULE: As required, about every 6 years

OPERATION:

- a. Check caulk for brittle, cracked or missing pieces.
- b. Remove any damaged area, clean, prime or seal per manufacturer's specifications, provide backer rods and bond-breaker tape as required, replace caulk.

6. WOODWORK: CORNICES, DOORS, WINDOWS, TRIM, AND SPANDREL PANELS

INSPECTION SCHEDULE: Twice a year, Spring and Fall

OPERATION:

- a. Check for moisture damage, warping, splitting, unsound joints.
- b. If wood is decayed, determine source of moisture, stop leaks, and replace decayed wood and damaged flashing.
- c. Repair unsound joints.
- d. In natural finish wood work repair holes and damaged areas using wood which matches the existing in species, grain pattern and color.
- e. In painted woodwork seal fine cracks with wood filler.
- f. Check putty for cracks or missing pieces. Reglaze where necessary.
- g. Coat all bare wood with preservative and refinish in accord with Paragraphs 14 and 15 below.

- h. Prime and paint any new flashing, putty or other glazing materials.

7. GLASS

INSPECTION SCHEDULE: Twice a year

OPERATION:

- a. Replace cracked lights with glass to match.

8. PAINT

INSPECTION SCHEDULE: Twice a year

REPLACEMENT SCHEDULE: Every 5 to 8 years

OPERATION:

- a. Check for worn, bare spots, blistering, peeling, mildew.
- b. Check where moisture is entering wood and stop leaks.
- c. Wash mildew with fungicide.
- d. Split blisters, scrape peeling areas, remove rust and sand rough spots.
- e. Coat bare wood with preservative.
- f. Prime and paint wood using materials compatible with the preservative.
- g. Scrape and wirebrush deteriorated paint and rust from metal.
- h. Prime and paint bare metal using materials designed for the type of metal.

9. VARNISH

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check for crackling, white water stains, discolorations of varnish.

- b. Restore varnished finish as follows: first, try to restore existing varnish by softening with methylene chloride, taking appropriate safety precautions while using this solvent, and buffing with fine steel wool and a finishing oil to a new smooth finish. If that procedure is unworkable, remove existing varnish using materials and methods which will not damage the wood. Apply a non-staining preservative, such as a mix of proportions three (3) cups exterior varnish, one ounce (1 oz.) paraffin wax, and enough mineral spirits, paint thinner or turpentine to make one (1) gallon. If wood had been stained, restain to original color. Revarnish.

10. TERMITES

INSPECTION SCHEDULE: Once a year, Spring or Fall

OPERATION:

- a. Have exterminator check and treat once a year if necessary.

11. STRUCTURAL CHECKPOINTS

INSPECTION SCHEDULE: Once a year

OPERATION:

- a. Check exposed exterior and interior surfaces of walls and foundations, with particular attention to areas of stairway, floor openings, wall openings and changes in wall masonry material. Check for cracks, collapsing, leaning or bulging areas or other signs of uneven settlement or movement.
- b. Check interior wall surfaces at upper levels, with particular attention to joints between party walls and perpendicular front and rear walls, joints between floors and end walls, and joints between partitions and ceilings. Check for cracks, crumbled plaster, gaps between finishes or other signs of movement.
- c. Review structural status of building with an engineer qualified to evaluate its condition in order to ensure that adequate safety standards and precautions are met. A report on the findings and any remedial actions shall be furnished to the Recipient. For any remedial action which will affect the exterior appearance, of those portions included in this easement, Owner shall make a proposal for Recipient review and cause works to be performed in accord with proposal approved by Recipient prior to start of work. In cases where hazardous conditions require immediate remedies, Owner may proceed without prior Recipient approval but shall make every reasonable effort to

notify and to comply with any Recipient suggestions of ways to make remedial actions compatible with the historic appearance of the property.

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NEW LANGUAGE NEEDED HERE.

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DRAWINGS OF FACADE RENOVATIONS

EXHIBIT D

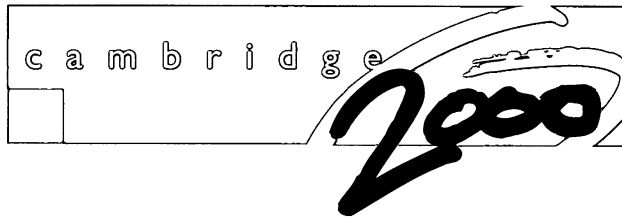
FINANCIAL AGREEMENT

Historic Massachusetts, Inc. ("Recipient"), Old City Hall, 45 School Street, Boston, MA 02118, and the Fly Club ("Fly Club"), 2 Holyoke Place, Cambridge, MA 02138, agree that:

- 1.) Fly Club will donate an historic facade easement on its building at 2 Holyoke Place, Cambridge, MA to Recipient by a Deed of Historic Preservation Easement in form attached hereto.
- 2.) Fly Club will, at its sole effort and expense, seek donations to Recipient for the specific purpose of restoring and preserving the facade of 2 Holyoke Place (the "Project"). Fly Club will be responsible for every aspect of the fund-raising effort, including solicitation, collecting the donations, depositing them in a bank account set up and designated by Recipient for this purpose (the "Special Account"), preparing acknowledgments to the donors for signature by an authorized signatory at Recipient, and thanking the donors. Contributions are expected to include both cash and marketable securities.
- 3.) Recipient will make available 95% of the funds so raised to this restoration project, retaining the balance of 5% as unrestricted funds which it may invest or spend as it sees fit, in its sole discretion.
- 4.) The restoration and preservation effort will cover only the "skin" of the building, that is, the public aspect of the building, and will not include any interior work. The scope of the restoration is expected to include: rebuilding and stabilizing the underpinnings and foundation of the exterior walls, repointing and repairing the exterior walls, restoring all exterior windows and doors, restoring all exterior wood trim such as fascia boards, lintels, columns, the front steps, cornice and dental mouldings, and roof, flashing, and gutter replacement and restoration.
- 5.) Fly Club will be responsible for managing the Project, assisted by an architect and general contractor. Once a month, a requisition may be presented to Recipient, which Recipient will pay out to the Fly Club or its designee from funds available to it in the Special Account. Recipient will have no obligation to pay out any funds except what are available in the Special Account. In the unlikely event that a requisition exceeds the funds available in that account at any given moment, it will be the Fly Club's sole responsibility either to make appropriate arrangements with the contractor and/or to advance the necessary funds to Recipient.
- 6.) Fly Club will carry appropriate insurance covering the entire project, and will require certificates of insurance from each contractor on the job.
- 7.) Starting on the twenty-fifth anniversary of the agreement, Fly Club shall have the right, but not the obligation, to re-purchase the facade easement upon payment to the Recipient of \$50,000 in cash or marketable securities, with the price of such re-purchase declining at \$10,000 per year, until

the Easement expires 30 years after the date of this Agreement, at which time the Easement shall revert to the Owner, with no further consideration payable. Upon such re-purchase, the Owner shall deliver within 15 days of receipt of such payment, a duly executed and authorized notice of termination with respect to the Deed of Historic Preservation Easement to Owner which it shall record in the applicable registry of deeds. Such notice shall be conclusive evidence in favor of every person dealing with the Property as to the termination of this Easement.

8.) In the event that Fly Club raises more than the cost of the restoration (currently estimated to be between \$800,000 and \$1,000,000), the surplus funds may be retained by the Recipient in a special account as part of the Recipient's endowment, with 95% of any distributions of either principal or income from this account available for the purpose of maintaining and preserving 2 Holyoke Place. These proceeds would be invested in mutual funds selected by the Recipient and Fly Club.



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CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager

Richard C. Rossi, Deputy City Manager

September 11, 2000

To The Honorable, The City Council:

Please find attached for your consideration, a Preservation Easement for 2 Holyoke Place (Fly Club), received from Historical Commission Director Charles Sullivan.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy".

Robert W. Healy
City Manager

RWH/mec
Attachment



2000 Things 2 Do in 2000

Consent Agenda #17

Relative to a Preservation Easement
for 2 Holyoke Place (Fly Club).

In City Council September 11, 2000

*Tabled on motion of
Councillor Braude*

*In City Council
October 1, 2001*

ORDER ADOPTED

8-1-0