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Akin House: Letter from Daniel Perry on DHPT's application for CPA Funds

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September 15, 2008

Community Preservation Committee
Town of Dartmouth
400 Slocum Road
Dartmouth, MA 02747

*Re: CPA Application of Dartmouth Historic Preservation
for Restoration of the Akin House*

Dear Committee Members:

I regret that I will not be able to attend your committee's public hearing on the DHPT's application for CPA funds for completion of the restoration of the Akin House on September 24. Diane Gilbert has shared with me Buddy Baker's letter of September 14 concerning the application. I am also aware that some committee members have expressed skepticism as to the merits of the project, as well as frustration with the amount already expended on the project. I would like to respond to some of those concerns here.

I am no longer involved with WHALE, and do not speak for it. However, I was involved in the original application for CPA funds for this project. Those funds were applied exclusively to acquisition of the property, and none were used in the restoration of the property. In return, WHALE promised (1) to complete a historically faithful restoration of the project to the extent it was able to raise funds to do so, (2) to use its best efforts to raise money for the restoration, and (3) to return the property to the Town By March 3, 2007. (The latter date was extended by the selectmen.) WHALE kept all those promises.

Akin does need substantial additional work. But unexpected expenses and problems come with the territory when one restores an eighteenth century structure. It is always more expensive faithfully to restore a deteriorated historic structure than it would be to simply rebuild a similar structure from scratch. The return for these expenditures comes not just from the recovery of the building's function, but from the preservation of the Community's character by its link to the past.

There can be no argument about the historical and architectural significance of the Akin House, one of few remaining "first period" structures in the Town. I will not attempt to summarize here the case for its historic significance; Peggi Medeiros has assembled those materials and presented them with the application. However, I think it is important to note that the Town's 2007 Master Plan specifically identifies the Akin House at page 5-32 as a resource that should be protected "to maintain the history and character of the Town." It is worth keeping in mind that the Master Plan, which was prepared as "a guide to decision making for Town Meeting, Town Boards, the various Commissions and Departments" identifies preservation of these structures as one of the Plan's goals and objectives. Section 8-1's statement of community values includes the following:

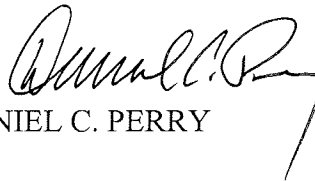
Our heritage includes buildings and significant natural features that link us across time and enrich our community. Preservation of our historic built and natural landscapes should be pursued.

The community has supported the Akin project with its wallet as well as its effort. WHALE raised over \$180,000 of private gifts and contributions, all of which was expended on the restoration efforts that have already taken place. I am aware of no other historic preservation project in Dartmouth that has received private financial support of this magnitude.

Despite the public and private expenditures to date, Akin is still at risk. More financial support is needed to achieve the goal of creating a cultural resource center. Failure to do the necessary structural work now will create a real danger of "demolition by neglect," and thereby squander the substantial public and private resources that have been devoted to the project to date. The Town has a certified balance of \$307,333.00 that must be spent on historic preservation, and thus can be applied to this project without any effect on open space or housing projects. There is certainly no other historic preservation project on the horizon that equals the Akin restoration in significance.

For all the foregoing reasons, I respectfully urge you to make a favorable recommendation on the Akin project to Town Meeting

Very truly yours,

A handwritten signature in dark ink, appearing to read "Daniel C. Perry", with a long, sweeping flourish extending from the bottom right.

DANIEL C. PERRY

DCP/tmf

PRESERVATION RESTRICTION AGREEMENT
between the TOWN OF DARTMOUTH and the WATERFRONT HISTORIC AREA LEAGUE, INC,

The parties in this Preservation Restriction Agreement ("Restriction") are the TOWN OF DARTMOUTH located at 400 Slocum Road, North Dartmouth, MA 02747, hereinafter referred to as Dartmouth and/or Grantee and the WATERFRONT HISTORIC AREA LEAGUE OF NEW BEDFORD, INC. 62 North Water Street, New Bedford, Massachusetts 02740 hereinafter referred to as "WHALE" and/or Grantor,

WHEREAS, WHALE has purchased the Elihu Akin House located at 762 Dartmouth Street, South Dartmouth, MA as described in a deed dated May 12, 2003 and recorded in the Bristol County [S.D.] Registry of Deeds at book 6202 page 0217 on which is located the Elihu Akin House ("Premises"), as described more particularly in Schedule A which is attached hereto and made a part hereof.

WHEREAS, Dartmouth wishes to impose certain restriction, obligations, and duties upon WHALE as the recipient of funds appropriated by Dartmouth from Community Preservation Act revenues to WHALE pursuant to a Town Meeting vote of May 2003 in Article 35 of the warrant with respect to reconstruction, repair maintenance, protection and preservation and conveyance to Dartmouth of the Premises in order to protect the architectural, archaeological and historical integrity thereof,

WHEREAS, the Premises, believed to date from ca. 1762, is included in the Inventory of Historic and Archaeological Assets of the Commonwealth, is eligible for listing on the National Register of Historic Places, and is significant for its associations with early Dartmouth history, for its long associations with the Akin family, and as a surviving local example of an early, central chimney Cape, with intact, character-defining, historic exterior and interior architectural features;

WHEREAS, the rehabilitation, restoration and preservation of the Premises is important to the public for the enjoyment and appreciation of the Premises architectural, archaeological and historical heritage and will serve the public interest in a manner consistent with the purposes of MGL chapter 184 §§31-33, hereinafter referred to as the "Act";

See pages 3 and 5.

WHEREAS, Dartmouth, is a government body organized under the laws of the Commonwealth of Massachusetts and is authorized to accept preservation restrictions under the Act;

WHEREAS, the Premises is in disrepair, and WHALE has proposed to promote and undertake the restoration of this significant historic building as part of its efforts to promote historic preservation and cultural activities in the region;

WHEREAS, the significant character-defining architectural features of the Premises are documented in a set of reports and photographs, the Baseline Documentation, maintained on file with Dartmouth and with WHALE, at its principal place of business, and herein attached as Schedule "B" including the WHALE "Historic Narrative," "Architectural Narrative," "Bibliography" and "Photo List January 2004";

WHEREAS, WHALE will generate additional Baseline Information to be used to support the goals and intents of this Restriction.

NOW THEREFORE, in consideration of the receipt of \$185,000 paid by Dartmouth to WHALE, WHALE grants to Dartmouth the following Preservation Restrictions and covenants, which shall apply in perpetuity to the Premises, and shall run with the land, thus binding WHALE's, heirs, successors and assigns. The terms of the Preservation Restriction are as follows:

1. Restoration and Rehabilitation of Premises: WHALE agrees to assume the total costs of rehabilitation, restoration, and preservation of the Premises so as to revive and preserve the characteristics, in a manner that complies with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstruction of Historical Buildings* (36 CFR 67 and 68) as these may be amended from time to time, hereinafter referred to as "Secretary of Interior Standards", so as to preserve the architectural, archaeological and historical integrity of the Premises and in a manner satisfactory to Dartmouth. WHALE will prepare a Historic Structure Report and a National Register of Historic Places nomination for the building as part of its initial efforts to rehabilitate the Premises, which documents shall be used to support the goals and intents of this Restriction. WHALE shall keep the property insured for casualty (full replacement

value) property and liability insurance sufficient to cover such risks, WHALE may seek financial assistance from any source available to it, Dartmouth does not assume any obligation for repairing, restoring, maintaining or preserving of the Premises.

A. WHALE shall exercise its best efforts to raise funds necessary to complete this restoration, including seeking available government grants, and coordinating an appeal for such funds to its membership and residents of Dartmouth. WHALE's obligation under this paragraph shall be limited to the funds raised for such purpose, and WHALE shall not be obligated to utilize its operating funds or endowment for such purposes. All funds raised for the said restoration shall be kept in a separate account and Dartmouth may inspect the account upon reasonable notice.

2. Inspection: WHALE agrees that Dartmouth may inspect the Premises from time to time upon reasonable notice to determine whether WHALE is in compliance with the terms of this Restriction and it grant application dated March 3, 2003 as is on file with Dartmouth.

3. Alterations: WHALE agrees that no alteration, repair, demolition, or restoration shall be made to the Premises and no structures shall be placed, erected, relocated or demolished on the Premises, unless (a) clearly of a minor nature and not affecting the characteristics which contribute to the architectural, archaeological or historical integrity of the Premises, or (b) Dartmouth, by prior written consent, having reviewed and approved plans and specifications submitted by WHALE for the alteration, repair or restriction of the premises, has determined that these plans will not impair such characteristics after reviewing plans and specifications submitted by WHALE, or (c) required by casualty or other emergency which after such emergency repairs are promptly reported to Dartmouth. Ordinary maintenance and repair of the Premises may be made without the written permission of Dartmouth. For purposes of this Paragraph 3, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines which are attached to this Restriction and hereby incorporated by reference.

4. Use Change/Transfer: WHALE agrees that the use of the Premises shall not be changed, nor shall restrictions or other property rights be granted, sold or transferred, without the prior written consent of Dartmouth. The Premises shall not be deemed fit for human occupancy during the period of restoration and shall not be occupied for any reason other than restoration and repair until Dartmouth issues an occupancy permit.

5. Public Purpose: WHALE agrees that all changes to the property subject to this the Restriction shall be made only to further the use of the Premises by the public and shall be done in conformity with the Secretary of Interior Standards, or as required by local, state, and federal legislation for the public good.

6. Subdivision: WHALE agrees that the Premises, its, building(s), structure(s), and improvements thereon, shall not be subdivided without the prior written consent of Dartmouth, its successors, transferees, or assigns.

7. Continuation: WHALE agrees that, in the event the Premies or any of its component parts is destroyed or substantially damaged through no willful action or negligence of WHALE, and it is determined by Dartmouth that the affected structure(s) or feature(s) are to be preserved and not remove, all obligations in this Restriction shall continue unabated. However, should the Premises or any of its components be damaged to such an extent no longer deemed feasible or necessary to preserve by Dartmouth, Dartmouth shall have the discretion to waive this provision. Notwithstanding the above, pursuant to MGL chapter 184, section 32 , Dartmouth and the Massachusetts Historical Commission must hold public hearings as part of any determination as to whether it is feasible or necessary or in the public interest to maintain the terms of Restriction, following significant damage or destruction to the Premises. In the event that the property is damaged or destroyed through the willful action or negligence of WHALE, Dartmouth shall initiate such administrative or judicial actions as may be legally available and appropriate.

8. Enforcement: This Restriction shall be a binding servitude, and run with the land and be binding upon WHALE, its heirs, successors, transferees, and assigns, in perpetuity. The restrictions, stipulations, and covenants contained herein shall be inserted by WHALE, its heirs, successors, transferees, and assigns, verbatim or by express reference, in any deed or other legal instrument by which it divests itself of either the fee simple title or any lesser estate in the property, or any part thereof.

9. Enforcement (continued): The benefits of this Restriction shall assignable or transferable only to Dartmouth, the Commonwealth of Massachusetts, the United States Government, or any subdivision of either of them, or to any qualified organization within the meaning of the Act, which organization has among its purpose the conservation and preservation of land and water areas are the preservation of historic properties and places, and agrees to and is capable of enforcing the historic preservation purposes of this Restriction. Any such assignee or

transferee shall have like power of assignment or transfer. It is expressly agreed by WHALE that this Restriction shall be enforceable by Dartmouth in the courts of this State; and that, in the event an action is necessary, and successful, to enforce this Restriction, the full cost of enforcement (including reasonable attorneys' fees) shall be borne WHALE, its heirs, successors, transferees, and assigns.

10. Exercise of Rights and Remedies: Failure of Dartmouth to exercise any right or remedy granted under this Restriction shall not have the effect of waiving or limiting the exercise by Dartmouth of any other right or remedy, or the limitation of such right or remedy, at any time.

11. Liability: WHALE covenants to indemnify and hold harmless Dartmouth from and against any and all losses suffered by Dartmouth and any and all claims, liabilities, or penalties asserted against Dartmouth by or on behalf of any person on account of, based on, resulting from or arising out of (or which may be claimed to have arisen out of) acts or omissions of WHALE relating to this Restriction. Notwithstanding the foregoing, nothing contained herein shall be construed to be a waiver of the sovereign immunity of Dartmouth.

12. Severability: Any portion or items of this Historic Preservation Restriction found to be contrary to any law shall not invalidate any other portions or items of this Restriction, or the whole of this Restriction. The invalidity of any applicable statute or any part thereof shall not affect the validity and enforceability of this instrument according to its terms, it being the intent of the parties hereto to agree and to bind themselves, their heirs, successors, and assigns, in perpetuity, to each term of this instrument whether this instrument be unenforceable by reason of any statute, common law, or private agreement, either in any time subsequent hereto.

13. Covenant to Convey: For no additional consideration, other than the \$185,000 paid to WHALE, WHALE agrees to complete the restoration and repair of the Premises, as proposed in its March 3, 2003 grant by March 3, 2007, subject to funds raised by paragraph 1(A) herein above, and shall convey to Dartmouth or its designee duly authorized by Town Meeting, the Premises on or before March 3, 2007 12:00 noon at Town hall, 400 Slocum Rd., Dartmouth, MA 02747. At that time and for no additional consideration, other than the \$185,000 paid to WHALE, WHALE agrees to accept the conveyance of and hold in perpetuity a historical preservation restriction that contains restrictive language identical to this document. The parties expressly agree that time is of the essence as to this paragraph 13. WHALE and Dartmouth explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of this Restriction set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest (or of the Restriction) in the Premises by or

to Dartmouth or any successor or assign shall be deemed to eliminate the Restriction, or any portion thereof, granted hereunder pursuant to the doctrine of "merger" or any other legal doctrine. To further the purpose and intent of this paragraph 13, Dartmouth hereby expressly covenants and agrees that in the event Dartmouth takes title to the underlying fee interest in the Premises, Dartmouth shall immediately transfer this Restriction to a qualified organization within the meaning of section 170(h)(3) of the Internal Revenue Code, or shall reserve this Restriction upon its subsequent transfer of the underlying fee interest in the Premises. WHALE hereby represents and warrants that it is a qualified organization (within the meaning of section 170(h)(3) of the Internal Revenue Code) and that it will accept the transfer of the Restriction. In the event that the Premises is not fully restored and certified for occupancy by the Town Building Commissioner at the time of conveyance to Dartmouth, all unexpended funds raised by WHALE for the restoration of the Akin house, shall be paid over to Dartmouth.

14. Right of Entry: Failure of WHALE to perform any of the terms and conditions of this Restriction or the terms and conditions as proposed in its March 3, 2003 grant application shall be grounds for Dartmouth, after written notice to WHALE by certified mail return receipt requested, to make an entry on said Premises. Such entry once recorded shall transfer title in fee simple of the Premises to Dartmouth without additional consideration to WHALE. Exercise of this right of entry by Dartmouth does not merge or extinguish the requirements in this Restriction allowing continued qualification of the premises for additional Community Preservation Fund annual revenue funding.

15. Conditional Rights Requiring Approval of the Massachusetts Historical Commission: The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by WHALE and approved in writing by the State Archaeologist of the Massachusetts Historical Commission (MGL chapter 9, section 27 C, 950 C.M.R. 70.00).