

## HISTORIC PRESERVATION RESTRICTION

### MITCHELL HOUSE

**THIS HISTORIC PRESERVATION RESTRICTION** is made this \_\_\_ day of \_\_\_\_\_, 2015, by and between **SHERIFF'S MEADOW FOUNDATION, INC.**, a Massachusetts nonprofit corporation, having its principal office in the Wakeman Conservation Center, 57 David Avenue, Vineyard Haven, Massachusetts 02568 (hereinafter "Grantor") and the Town of Chilmark, having a mailing address of P.O. Box 119, Chilmark, MA 02535 (hereinafter "Grantee").

WHEREAS, Grantor is the owner of the Mitchell House, located on Quansoo Road in Chilmark, and more particularly described in a deed to Grantor, dated July 29, 2004 and recorded in the Dukes County Registry of Deeds in Book 1026, Page 272 (the "Mitchell House" or the "Premises"), the Mitchell House being a historically important structure which shall be listed in the Massachusetts State and/or National Register of Historic Places;

WHEREAS, Grantor seeks to preserve the structure of the Mitchell House and is requesting the allocation of Community Preservation Act funds from Grantee to conduct the work;

WHEREAS, Grantor and Grantee recognize the architectural, historic and cultural values and significance of the Mitchell House, and agree that preservation of the Mitchell House will contribute to the preservation and maintenance of the scale and character of this historic part of Chilmark for the enjoyment of the general public;

WHEREAS, the grant of a preservation restriction by the Grantor to Grantee on the Mitchell House will assist in preserving and maintaining the Mitchell House and its architectural, historic and cultural features for the benefit of the people of Chilmark; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation restriction over the exterior of the Mitchell House, pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor does hereby voluntarily grant and convey unto the Grantee this preservation restriction over the exterior of the Mitchell House.

1. **Purpose.** It is the purpose of this restriction to assure that the exterior architectural, historic, and cultural features of the Mitchell House will be retained and maintained substantially in their current condition for conservation and preservation purposes, and to assure that the renovation work supported by Community Preservation funds are consistent with this purpose.

2. **Maintenance of Premises.** The Grantor agrees to maintain, repair and administer the Premises so as to preserve the characteristics which contribute to the architectural, archaeological and historical integrity of the Premises in a manner consistent with the Secretary of the Interior's "Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (36 CFR 67 and 68), as these may be amended from time to time.

3. **Alterations:** The Grantor agrees that no alterations shall be made to the exterior of the Premises unless (a) clearly of minor nature and not affecting the characteristics which contribute to the architectural, archaeological or historical integrity of the Premises, or (b) the Chilmark Historical Commission (the "Commission") has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by the Grantor, or (c) required by casualty or other emergency promptly reported to the Commission. Ordinary maintenance and repair of the Premises may be made without the written permission

4. **Casualty Damage or Destruction.** In the event that the exterior of the Mitchell House or any part thereof shall suffer major damage or destruction by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction or such reasonable time thereafter, depending upon the circumstances of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Mitchell House and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within one hundred and eighty (180) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Mitchell House and/or reconstruction of damaged or destroyed portions of the Mitchell House; and

- (c) a report of such restoration/reconstruction work necessary to return the Mitchell House to the condition existing as of the date hereof.

**5. Review After Casualty Damage or Destruction.** If, after reviewing the report provided in paragraph 2 and assessing the availability of insurance proceeds under paragraph 4, Grantor and Grantee agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Mitchell House in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds under paragraph 4, Grantor and Grantee agree that restoration/reconstruction of the Mitchell House is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of the Grantee, alter, demolish, remove, or raze the Mitchell House, and/or construct new improvements on the Mitchell House property. Grantor and Grantee may then agree to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and paragraph 6 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds under paragraph 4, Grantor and Grantee are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts's arbitration statute then in effect.

**6. Insurance.** Grantor shall cause the Mitchell House to be insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Mitchell House without cost or expense to Grantor or contribution or coinsurance from Grantor.

**7. Runs with the Land.** The obligations imposed by this Restriction shall be effective until the Mitchell House is listed in the Massachusetts State and/or National Register of Historic Places and shall be deemed to run as a binding servitude with the Mitchell House property. This restriction shall extend to and be binding upon the Grantor's successors in interest.

The restrictions, stipulations, and covenants contained in this Restriction shall be inserted by Grantor, by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Mitchell House property or any part hereof.

8. **Extinguishment.** Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Mitchell House in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but are not limited to, partial or total destruction of the Mitchell House resulting from casualty.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands this \_\_\_ day of \_\_\_\_\_, 2015.

GRANTOR:

Sheriff's Meadow Foundation,

By: \_\_\_\_\_  
Christopher P. Alley, President

By: \_\_\_\_\_  
Terry Guylay, Treasurer

GRANTEE:

Town of Chilmark

By:

Board of Selectmen:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

County of Dukes: ss

On this \_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared Christopher P. Alley, proved to me through satisfactory evidence of identification, which was (circle one) personal knowledge of identity of the principal/ passport or drivers license bearing photographic image of principal/ other \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as President of Sheriff's Meadow Foundation.

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Notary Public

My commission expires:

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