

**PRESERVATION RESTRICTION AGREEMENT**  
between  
**THE TOWN OF ACTON**  
and  
**EXCHANGE HALL, LLC**

THIS PRESERVATION RESTRICTION AGREEMENT (this "Restriction") is made as of this \_\_\_ day of \_\_\_\_\_, 2011, by and between EXCHANGE HALL, LLC, a Massachusetts limited liability company, having an address of 2 School Street, Acton, Massachusetts 01720 ("Grantor") and THE TOWN OF ACTON, a municipality of the Commonwealth of Massachusetts acting by and through its Board of Selectmen, having an address of 472 Main Street, Acton, Massachusetts 01720 (the "Town").

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of certain real property and the improvements thereon located at 2 School Street in the Town of Acton, Middlesex County, Massachusetts (hereinafter the "Premises") described on Exhibit A attached hereto and incorporated herein, being the same premises conveyed to Grantor in a deed dated November 9, 2010 from Glenn Berger, as Trustee of Bluebird Realty Trust under Declaration of Trust dated August 8, 1994, to Grantor recorded in the Middlesex South Registry of Deeds (the "Registry") in Book 55882, Page 285 (the "Deed").

WHEREAS, the Premises is located in the South Acton Local Historic District and includes a building originally constructed in 1860 that was formerly used as a general store and is commonly known as "Exchange Hall" (the "Building").

WHEREAS, the Premises are currently used by the Grantor as general commercial office space, retail uses and function hall.

WHEREAS, the Premises and the Building are listed in the National Register of Historic Places and the State Register of Historic Places as part of the South Acton Local Historic District and are architecturally, historically and culturally significant properties meriting the protections of a perpetual preservation restriction under M.G.L. c. 184, §§ 31, 32 and 33.

WHEREAS, the Building's preservation values are documented in a series of reports, drawings and photographs (hereinafter, the "Baseline Documentation") incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Building as of the date of this Preservation Restriction.

WHEREAS, the Baseline Documentation consists of the following:

- A) The legal description of the Premises attached hereto as Exhibit A;
- B) The Deed;
- C) Acton GIS/Assessor's map showing the Premises;
- D) Photographs of the Premises and the Building showing the condition of both the Premises and the Building as of the date hereof (attached hereto as Exhibit B); and
- E) Grantor's Project Application Form dated November 5, 2007 on file with the Town of Acton Planning Board and consisting of fifty six (56) pages, with supplements dated December 10, 2007 (27 pages) and February 12, 2008 (57 pages), and meeting presentation documents dated December 20, 2007 (on CD) and which includes Items (C) and (D) above.

All of the foregoing Baseline Documentation is on file with the Planning Department of the Town. A schedule of certain baseline photographs showing the elevation of the Building is attached hereto as Exhibit C (which includes certain of the photographs contained in Exhibit B), and the inventory form on file with the Massachusetts Historical Commission ("MHC") with respect to the Premises is attached hereto as Exhibit D.

WHEREAS, the Town is interested in the preservation and conservation of sites, buildings, and objects of local, state and national significance in the Town and is authorized to accept and hold preservation restrictions as defined under M.G.L. c. 184, § 31.

WHEREAS, the Town has appropriated a grant to Grantor under the Community Preservation Act, M.G.L. c. 44B, §§ 1-17, for the restoration of historic elements of the Building.

WHEREAS, as a condition to such grant, Grantor is required to grant to the Town this Restriction.

WHEREAS, as further condition to such grant, Grantor is required to demonstrate to the Town that it has obtained a certificate of approval from the United States National Park Service

that the Improvements (as hereinafter defined) qualify as a historic rehabilitation project eligible for a twenty percent (20%) federal preservation tax credit.

WHEREAS, Grantor has provided to the Town sufficient evidence of such certificate of approval.

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Town this Restriction, which shall apply in perpetuity to the Premises subject to the terms hereof.

1. Purpose. It is the purpose of this Restriction to protect the public investment in the restoration of the historically significant Building by ensuring that the exterior architectural, historic, and cultural features of the Building will be retained and maintained forever substantially in their current condition for preservation purposes and to prevent any use or change to the exterior of the Building that will materially impair or interfere with the Building's preservation values, subject to the construction of the Improvements (as hereinafter defined).

2. Grantor's Covenant to Maintain. Grantor agrees at all times to maintain the exterior of the Building in at least the same structural condition and state of repair as that existing on the date of this Restriction (subject to the last sentence of this Section) in accordance with applicable local, state and federal laws, rules, bylaws and regulations (collectively, "Legal Requirements"), including without limitation applicable policies, procedures and guidelines of the Acton Historic District Commission, as they may be amended from time to time (the "HDC Guidelines"), and in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as they may be amended from time to time (the "Secretary's Standards"). If the Secretary's Standards or the HDC Guidelines are revoked, then the most recent version of the Secretary's Standards or the HDC Guidelines, as the case may be, shall apply to this Restriction as if such version had not been revoked unless the revoked HDC Guidelines or Secretary's Standards are replaced by successor guidelines or standards, in which event such successor guidelines or standards shall apply. The Town does not assume any obligation for maintaining, repairing or administering the Premises. Once the improvements (the "Improvements") described on Exhibit E attached hereto and contemplated by that certain Grant Agreement between the Town and Grantor have been completed to the satisfaction of the Town (the "Project Completion Date") and pursuant to the requirements of this Restriction, including, without limitation, Section 4 hereof, Grantor agrees at all times to maintain the exterior of the Building in at least the same structural condition and state of repair as that existing on the Project Completion Date and in accordance with all Legal Requirements, which include, without limitation, the HDC Guidelines and the Secretary's Standards.

3. Prohibited Activities. Except as provided in Section 9, demolition, removal or razing of the Building or any portion thereof is expressly forbidden. In addition, the following activities are also expressly forbidden:

- (a) The dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Premises, except as reasonably required on a

temporary basis for proper maintenance and repair of the Building and the Premises;

- (b) No camping accommodations, mobile homes or cell towers shall be erected or placed on the Premises. Any other building structures shall be constructed in accordance with all applicable laws, including, without limitation, zoning by-laws and the approval of the Town of Acton Historic District Commission;
- (c) No above ground utility transmission lines, except those reasonably necessary for the existing building, may be created on the Premises, subject to utility easements already recorded; and
- (d) No barrier shall be constructed, erected or allowed to grow on the Premises which would impair the visibility from the street of the Premises or the Building without the prior written approval of Town, to be granted or withheld in its sole and absolute discretion.

4. Conditional Rights Requiring Approval of the Town.

(a) Except as otherwise provided in this Section 4, changes to the exterior (including fenestration and trim) of the Building, including without limitation, any change to the footprint, size, massing, appearance, materials, ridgeline, windows, doors, exterior cladding, foundation, roof, chimneys, or other decorative or structural exterior features of the Building or any elements attached thereto, and any permanent substantial topographic changes to the Premises are expressly forbidden on, over or under the Premises without the prior express written approval of the Town, which may be withheld or conditioned in the Town's sole and absolute discretion.

(b) Notwithstanding anything in Section 4(a) to the contrary, the following changes to the exterior of the Building and the Premises may be made by Grantor without the Town's prior approval:

- (i) alterations listed as "Minor" in the Restriction Guidelines attached hereto as Exhibit F, which are considered part of ordinary maintenance and repair;
- (ii) any changes to the exterior of the Building or the Premises for which Grantor receives a written certificate from the Town of Acton Historic District Commission ("AHDC") authorizing such changes pursuant to the Town's Local Historic District Bylaw (the "Historic Bylaw" as the same may be amended from time to time) (or a binding, nonappealed determination of an arbitrator appointed pursuant to Section 12.1 of the Historic Bylaw authorizing such changes, or, if such arbitration decision is appealed pursuant to MGL c. 40C, § 12A, a final, nonappealable decision of a court of competent jurisdiction authorizing such changes); or

- (iii) any changes to the exterior of the Building or the Premises that are specified as an exclusion under the Historic Bylaw for which AHDC's approval is not required.

Notwithstanding anything in subparagraphs (ii) and (iii) of this Section 4(b) to the contrary, if (A) the AHDC ceases to exist, or (B) the Town repeals the Historic Bylaw or amends the Historic Bylaw so that exterior renovations to properties within an historic district are no longer governed by such Historic Bylaw or (C) all or any portion of the Building or the Premises ceases to be included within an historic district within the Town of Acton so that the AHDC does not have jurisdiction over the Premises, then subparagraphs (ii) and (iii) of this Section 4(b) shall be null and void and without any force and effect, and the terms and provisions of Section 4(a) shall control.

In addition to the foregoing, the erection of any external signs or external advertisements on the Building or the Premises shall be subject to all zoning by-laws now or hereafter existing and approval of the AHDC.

(c) Should Grantor wish to exercise the conditional rights set out or referred to in Section 4(a) above (and for which an exclusion does not exist under Section 4(b) above), Grantor shall submit to the Town, for the Town's approval, five (5) copies of a written request that includes a description of the proposed activity (including without limitation plans, specifications and designs where appropriate) with reasonable specificity and a timetable for the proposed activity sufficient to permit the Town to monitor such activity. Within forty-five (45) days of the Town's receipt of any such request for approval hereunder, the Town shall certify in writing that (i) it approves the plan or request, or (ii) it disapproves the plan or request as submitted, in which case the Town shall provide Grantor with written suggestions for modification or a written explanation for the Town's disapproval.

(d) If the Town, pursuant to the immediately foregoing paragraph (c), issues a certificate of disapproval to Grantor that is not acceptable to Grantor, and if Grantor reasonably believes that, notwithstanding such certificate of disapproval, the exterior change proposed by Grantor is consistent with the historic use and historic appearance of the Premises and the Building (such reasonable belief of Grantor to be based on historic photographs or other historic documents of the Premises or the Building or in the form of a written opinion of a licensed Massachusetts architect with experience in historic preservation matters, copies of which shall be provided to the Town in connection with Grantor's application for approval of such exterior change), then Grantor shall have the right to submit such dispute to binding arbitration. Specifically, Grantor shall request that the Metropolitan Area Planning Council ("MPAC") designate an arbitrator with competence and experience in historic preservation matters to arbitrate the dispute, such arbitrator to be reasonably acceptable to both Grantor and the Town. The arbitrator shall hear Grantor's appeal within thirty (30) days after the Town and Grantor mutually agree on the arbitrator, and such arbitrator shall issue his opinion within forty-five (45) days after conclusion of the hearing, which shall be binding upon the parties. The sole authority of the arbitrator is to determine whether Grantor's proposed exterior change is consistent with the historical use and historical appearance of the Premises and the Building. The parties shall share equally in the costs of the arbitrator. Any fees of any counsel or experts engaged directly by Grantor or the Town, however, shall be borne by the party retaining such counsel or expert.

If MPAC ceases to exist, then any dispute pursuant to this paragraph (d) shall be submitted to the American Arbitration Association, to be arbitrated in accordance with terms and conditions set forth herein.

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

6. Standards for Review. The Town shall apply the Secretary's Standards and the HDC Guidelines whenever exercising any authority, right or privilege created by this Restriction. If the Secretary's Standards or the HDC Guidelines are revoked, then the most recent version of the Secretary's Standards or the HDC Guidelines, as the case may be, shall apply to this Restriction as if such version had not been revoked unless the revoked HDC Guidelines or Secretary's Standards are replaced by successor guidelines or standards, in which event such successor guidelines or standards shall apply.

7. Grantor's Rights Not Requiring Further Approval of Town. Subject at all times to the terms and provisions of Sections 3 and 4 of this Restriction, this Restriction does not prohibit, and does not require the Town's approval of, the following rights, uses, and activities of or by Grantor on, over, or under the Premises:

- (a) the right to engage in all those activities and uses that are permitted by all applicable laws, codes and regulations and are not otherwise inconsistent with the terms and provisions of this Restriction;
- (b) the right to maintain and repair the Building strictly in accordance with the Secretary's Standards and the HDC Guidelines; and
- (c) the right to make changes of any kind to the interior of the Building that do not affect (i) the structural integrity of the Building, (ii) the characteristics that contribute to the architectural, archeological, or historical integrity of the exterior of the Building and (iii) the Town's use and occupancy of the Function Space (as hereinafter defined).

8. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be damaged or destroyed by fire or other casualty, Grantor shall promptly notify the Town in writing (but in no event later than seven (7) days after such casualty), such notification including what, if any, emergency work has been completed. No repairs or reconstruction of any type other than temporary emergency work to prevent further damage to the Building or to protect public safety shall be undertaken by Grantor without the Town's prior written approval. Within ninety (90) days of the date of damage or destruction, Grantor at Grantor's expense shall submit to the Town a written report prepared by a qualified restoration architect or an engineer or other qualified construction professional with experience in the restoration of historic buildings, all of whom shall be acceptable to the Town, which report shall include the following:

- (a) an assessment of the nature and extent of the damage to the exterior and interior of the Building;
- (b) a determination of the feasibility of the repair and restoration of the exterior of the Building (or the damaged or destroyed exterior portions thereof); and
- (c) a detailed description of the repair and restoration work necessary to return the exterior of the Building to the condition existing at the date of this Restriction.

9. Review After Casualty Damage or Destruction. If, after reviewing the report required in Section 8, the Town determines that it is economically feasible for Grantor to repair or restore the Building to the condition that it is in on the Project Completion Date (or if the Project Completion Date has not yet occurred, then to the condition that the Building is in as of the date of this Restriction), Grantor shall do so in accordance with the terms of this Restriction. Grantor shall submit to the Town, within ninety (90) days of Grantor's receipt of the Town's determination that the Building should be repaired or restored, for the Town's prior written approval, plans and specifications for the repair or restoration of the Building along with a construction schedule for such repair and restoration work. The Town shall have sixty (60) days to review such plans, specifications and schedule, and the parties shall proceed under Section 4(c) of this Restriction. If the Town determines, in its sole and absolute discretion, by written notice to Grantor, that it is not economically feasible to repair or reconstruct the Building or that the purpose of this Restriction would not be served by such repair or restoration, Grantor may alter, demolish, remove or raze the Building or construct new improvements on the Premises all in accordance with all applicable laws and regulations. In such event, Grantor and the Town may agree to extinguish this Restriction in accordance with applicable laws, and upon such extinguishment, Grantor shall repay the full amount of the grant made by the Town to Grantor under the Community Preservation Act, together with compound interest at the rate of four percent (4%) per annum accruing from the date of this Restriction, subject to a credit for the depreciated value of the Improvements assuming a useful life of forty (40) years from the date of this Restriction and calculated on a straight line basis, as reasonably determined by the Town. Grantor will use its best efforts to maximize the insurance proceeds available for repair or rebuilding of the Building. Notwithstanding anything in this Section 9 to the contrary, if Grantor has maintained the insurance on the Building that it is required to maintain pursuant to Section 10 below, but Grantor's mortgagee refuses to release insurance proceeds to Grantor for such repair or restoration in an amount sufficient to fund at least seventy-five percent (75%) of the estimated cost thereof, then the Town will consider such set of facts in making its determination of economic feasibility as aforesaid; otherwise, the Town shall not consider whether or not Grantor or its mortgage lender is holding sufficient insurance proceeds to repair or restore the Building as a factor in determining whether it is economically feasible to do so, and the Town, at Grantor's expense, may retain an insurance adjuster or similar consultants to assist the Town in making the determination of economic feasibility, as aforesaid.

10. Insurance. Grantor shall keep the Building insured by an insurance company rated "A" or better by A.M. Best for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and

amount sufficient to fully replace the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Town upon the execution and recording hereof, certificates of such insurance coverage naming the Town as loss payee and additional insured and requiring not less than thirty (30) days prior written notice to the Town before expiration or termination of any such policy. Grantor shall provide to the Town replacement certificates of insurance satisfying the terms and conditions of this Section 10 at least fifteen (15) days prior to the expiration or termination of any such policy or as otherwise required by the Town. Notwithstanding the foregoing, whenever the Premises is encumbered with a mortgage nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee to such insurance proceeds, less any amounts owed to the Town pursuant to Section 9 above in the case of a casualty in which the Building is not repair or restored, which such amounts shall be senior to any such mortgage.

11. Condemnation. If all or any part of the Premises is taken under the power of eminent domain by a public authority or is otherwise acquired by such authority through a purchase in lieu of a taking, Grantor may commence appropriate proceedings at the time of such taking to recover the full value of Grantor's interest in the Premises, subject to such taking and all incidental and direct damages resulting therefrom. The Town may, but shall not be required to, join in any proceedings relating to a taking of all or any part of the Premises, and the Town shall be entitled to receive as part of any takings award or damages the full amount of the grant made by the Town to Grantor under the Community Preservation Act together with interest at the rate of four percent (4%) per annum accruing from the date of this Restriction, subject to a credit for the depreciated value of the Improvements assuming a useful life of forty (40) years from the date of this Restriction.

12. Written Notice. Any notice which either Grantor or the Town may desire to give or be required to give to the other party shall be in writing and shall be delivered by overnight courier postage prepaid, registered or certified mail with return receipt requested, or hand delivery as follows:

To Grantor:  
Exchange Hall, LLC  
2 School Street  
Acton, MA 01720  
Attn: Glenn Berger

To Town:  
Town Manager  
Town of Acton  
472 Main Street  
Acton, MA 01720

with a copy to:  
Steven R. Graham, Esq.  
Graham & Graham, P.C.  
6 School Street  
Acton, MA 01720

with a copy to:  
Stephen D. Anderson, Esq.  
Anderson & Kreiger LLP  
One Canal Park  
Cambridge, MA 02141

Each party may change its address set forth herein by written notice to the other party given pursuant to this section.

13. Use of Premises by the Town. Commencing on the first Tuesday of the first month following the Project Completion Date (the "Initial Meeting Date") and on one Tuesday per month thereafter for fifteen (15) years following the Initial Meeting Date, Grantor shall make available to the Town, and the Town shall have a license to use, the function space at the Building (the "Function Space"), as more particularly described on Exhibit G attached hereto, for functions, meetings, conferences, banquets and other events. The right to use the Function Space under this Section 13 includes, without limitation, the right to use the parking lot at the Premises and access to and use of restrooms, common corridors and lobbies. The Town shall be permitted to use (but shall be under no obligation to do so) the Function Space from 6:00 pm to 12:00 am on the dates allotted for its use hereunder. The Town may request Grantor's approval for additional use of the Function Space, on two (2) additional evenings per calendar year, to be agreed upon by the Town and Grantor. The Town shall not be required to pay any rent or any other fees or charges, including without limitation utilities, on account of its use of the Function Space (including the parking lot and other common areas) pursuant to this Section 13. If requested in writing by Grantor (but not more than one (1) time per calendar year), the Town shall provide to Grantor a certificate of general liability insurance naming Grantor as additional insured with respect to the Town's use of the Building and the Premises as aforesaid with liability coverage of \$1,000,000 per occurrence and \$3,000,000 in the aggregate. The Town shall be responsible for the set-up and break-down of any equipment used in the Function Space and shall comply with rules of general applicability adopted, from time to time, for the general use of the Function Space and applied by the Grantor in a nondiscriminatory manner. The Town may use tables and chairs owned by the Grantor and located in the Function Space at no charge.

14. Inspection. The Town shall be permitted at reasonable times and upon reasonable notice to Grantor to enter on and inspect the Premises and the Building to determine whether Grantor is in compliance with the terms of this Restriction.

15. Town's Remedies. The Town may, following prior written notice to Grantor, institute suits to enjoin any violation of the terms of this Restriction by *ex parte*, temporary, preliminary or permanent injunction, including without limitation prohibitory and/or mandatory injunctive relief, and to require the restoration of the exterior of the Building to the condition and appearance required under this Restriction. The Town shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder. In the event any civil action is commenced and Grantor is found to have violated any of Grantor's obligations or is otherwise liable under this Restriction, Grantor shall reimburse the Town for any costs or expenses incurred in connection with the Town's enforcement of the term of this Restriction, including without limitation all reasonable court costs, and attorney, architectural, engineering and expert witness fees.

16. Runs with the Land.

(a) This Restriction and all of the covenants, agreements and restrictions contained herein shall be deemed to be a preservation restriction as that term is defined in M.G.L. c. 184, § 31 and as that term is used in M.G.L. c. 184, §§ 26, 31, 32 and 33. Grantor shall fully cooperate with the Town in its efforts to obtain any government approvals necessary for the perpetual enforcement of this Restriction, including but not limited to the approval of the

Commissioner of the MHC as provided under M.G.L. c. 184, § 32. In the event that this Restriction in its current form is not acceptable to MHC for purposes of said approval, Grantor shall cooperate with the Town in making any and all modifications that are necessary to obtain said approval. The term of this Restriction shall be perpetual, subject to the provisions of Section 9. To the extent required by applicable law, the Town is authorized to record or file any notices or instruments appropriate to assure the perpetual enforceability of this Restriction.

(b) Grantor intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Restriction and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Premises for the term of this Restriction, and are binding upon Grantor's successors in title, (ii) are not merely personal covenants of Grantor, and (iii) shall bind Grantor, its successors and assigns and inure to the benefit of the Town and its successors and assigns for the term of the Restriction.

17. Title: Authority. Grantor hereby represents, covenants and warrants as follows:

(a) The execution and performance of this Restriction by Grantor (i) will not violate any provision of law, rule or regulation or any order of any court or other agency or governmental body, and (ii) will not violate any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which Grantor is a party or by which it or the Premises is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(b) Grantor will, at the time of execution and delivery of this Restriction, have good and marketable title to the Premises free and clear of any lien or encumbrance except those matters set forth on Exhibit H attached hereto. Grantor represents and warrants that it has obtained the consent of all existing mortgagees of the Premises to the execution and recording of this Restriction and to the terms and conditions hereof and the subordination of all existing mortgages to this Restriction.

18. Submissions and Notices to the Town. Any submission or notice required under this Agreement to be made to the Town shall be made in writing to the Town Manager as set forth in Section 12. If the Town does not respond to any such submission or notice within the timeframes prescribed above, it shall be deemed not approved.

19. Assignment. The Town may, at its discretion without prior notice to Grantor, convey, assign or transfer this Restriction to a unit of federal, state or local government or to a similar local, state or national organization that is a "qualified organization" under Section 170(h) of the Internal Revenue Code, as amended, whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural or architectural resources, provided that any such conveyance, assignment or transfer requires that the purpose for which the Restriction was granted will continue to be carried out

20. Recording. Grantor shall do and perform at its own cost all acts necessary for the prompt recording of this Restriction in the Registry, and shall transmit evidence of such recording or filing, including the date and instrument number and book and page or registration number of this Restriction, to the Town.

21. Amendment. This Restriction may only be amended by mutual agreement of the parties, in a written instrument recorded in the Registry.

22. Entire Agreement. This Restriction reflects the entire agreement between the parties. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this Restriction.

23. Governing Law. This Restriction shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

24. Invalidity of Particular Provisions. If any term or provision of this Restriction, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Restriction, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Restriction shall be valid and be enforceable to the fullest extent permitted by law.

25. Counterparts. This Restriction may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

*[Remainder of page intentionally left blank]*

## EXHIBIT A

### Legal Description of Premises

#### Exhibit A

A certain parcel of land, with the buildings thereon, located in Acton, Middlesex County, Massachusetts, and being shown as "Exchange Hall, Wilbur J. Tolman" on a plan of land entitled "Plan of Land in Acton, Mass. Owned by: Estate of Sarah A. Greenough, Scale: 1 inch = 40 feet" dated December 3, 1974, prepared by Acton Survey & Engineering, Inc., 277 Central Street, Acton, Massachusetts, recorded with the Middlesex South District Registry of Deeds as Plan No. 87 of 1975 in Book 12757, Page 204.

Said premises are also as "Exchange Hall, Wilbur J. Tolman" on a plan of land entitled "Plan of Land in Acton, Mass. Owned by: Estate of Sarah A. Greenough, Scale: 1 inch = 40 feet" dated June 2, 1975, prepared by Acton Survey & Engineering, Inc., 277 Central Street, Acton, Massachusetts, recorded with the Middlesex South District Registry of Deeds as Plan No. 712 of 1986 in Book 17052, Page 494.

Said premises are conveyed with the benefit of certain rights of way as shown on said plan and which are more particularly described in deeds recorded with said Registry of Deeds in Book 3514, Page 534 and Book 10203, Page 64.

For title, see Deed from Glenn Berger, Trustee of Bluebird Realty Trust dated November 19, 2010, recorded with said Deeds in Book 55882, Page 286.

EXHIBIT B

Photographs

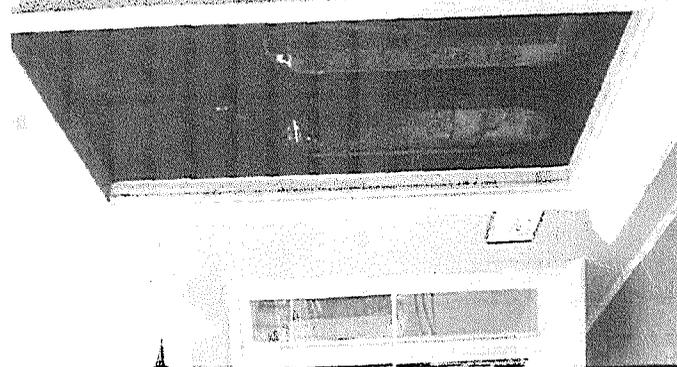
(see attached)

# Exchange Hall Restoration 2010

3. Facade (south elevation) detail at 1st floor new balustrade to match original

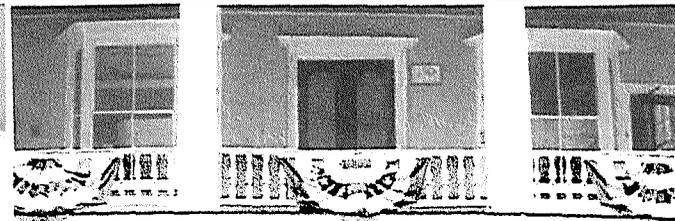
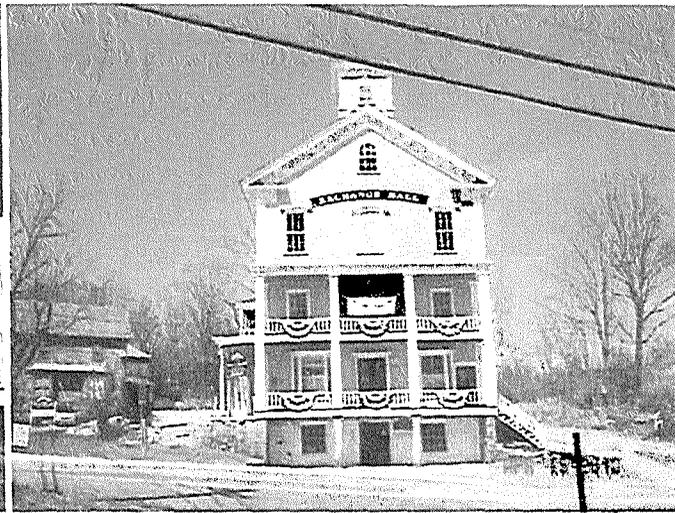


APR 15 2010



4. Facade (south elevation) central entry

1. Facade (south elevation)



APR 15 2010

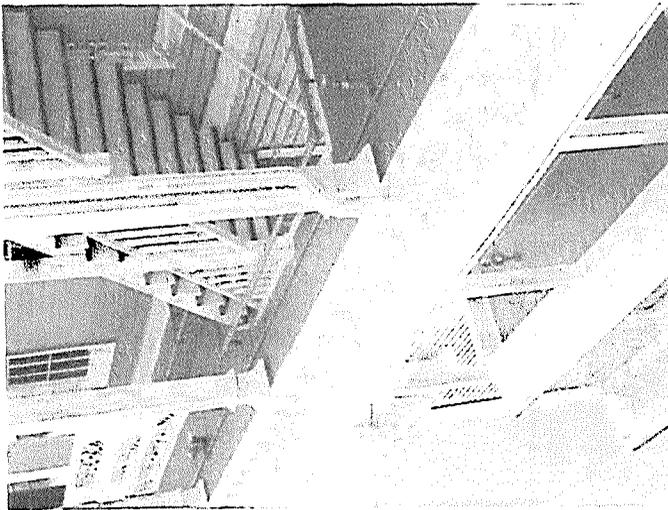
2. Facade (south elevation) lower level replacement doors

# Exchange Hall Restoration 2010

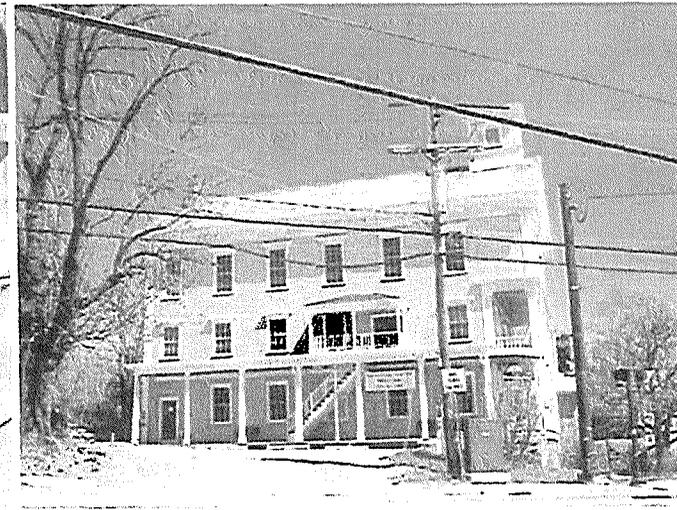
7. West elevation detail of added door at the north end



5. Facade (south elevation)-detail of east entry



8 West elevation detail of fire exit



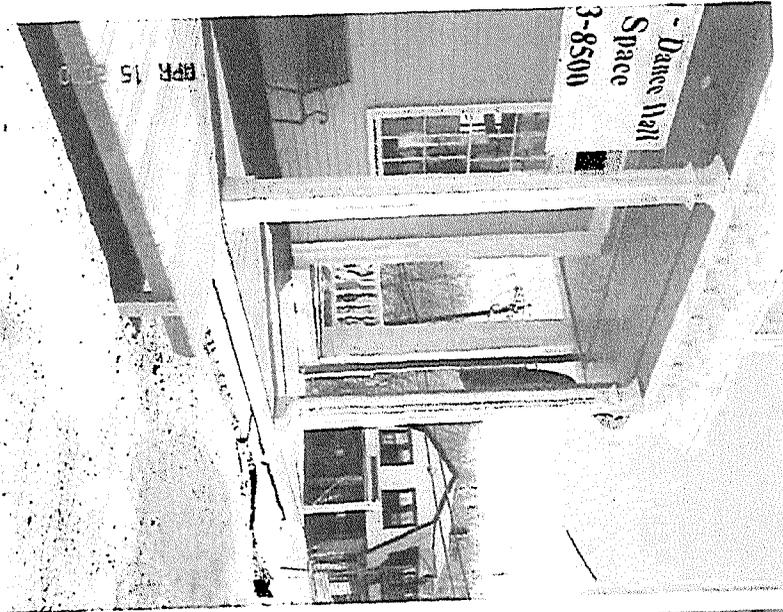
6. West entry

Exchange Hall Restoration 2010

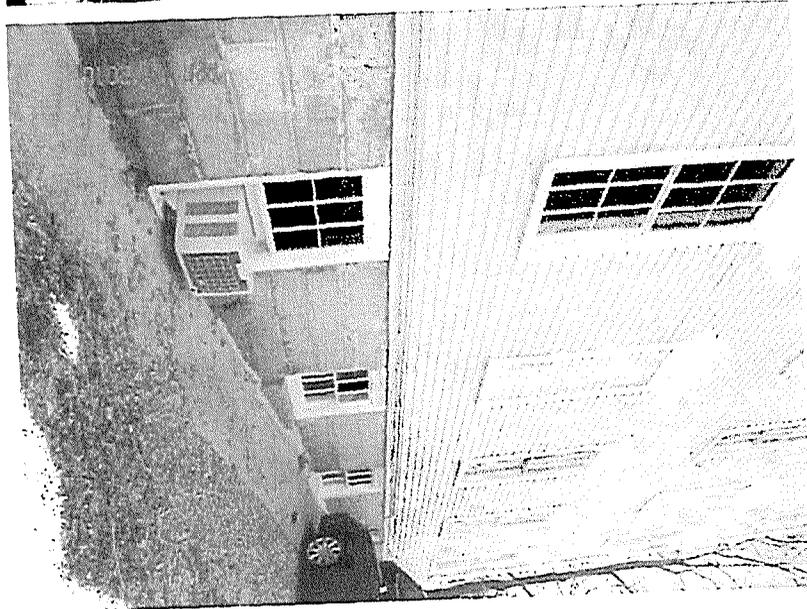
11. East elevation



9. West elevation- detail granite remain from stair



12. East elevation at lower level



10. West elevation- detail of roof line of soffit



Part II: Technical Information - Description

1. Site Characteristics:

A. Exchange Hall stands on gently sloping land near the base of Great (formerly Prospect) Hill. In front of it, near the southeast corner, is a stone watering trough erected in 1896 by the Reform Club.

B. The building is set back an average of 15 ft. from the northern line of School Street and an average of 50 ft. from the east line of the part of Main Street running north from Quimby Square.

C. Exchange Hall faces Quimby Square (formerly called Exchange Square and South Acton square) and until the location of Main Street was altered in 1906, formed the architectural termination of the approach to the Square from the railroad to the south. It is surrounded by a mixture of 18th through 20th century residential and commercial buildings: To the east it is flanked by the house built for Varnum Tuttle, one of the partners of Tuttle, Jones and Wetherbee Co. (12 School Street, 1856); To the north, the Jones cider mill (127 Main St., originally c. 1750, altered to a house c. 1910) and the Abram H. Jones house (129 Main Street, c. 1865); to the west, across Main St., Jones Tavern (128 Main Street, 1732 et seq.) and the bracketted Central Hall, formerly the tailor shop of Tuttle, Jones and Wetherbee (124 Main St., c. 1856); to the south, across School Street, a small memorial park, the former South Acton Fire House, built in 1926 in the old Main St. roadway, and the former grocery store of Tuttle, Jones and Wetherbee (5-7 School St., 1866, on site of an earlier grocery of 1850).

D. Not applicable

2. Exterior Features

A. Plan: The overall plan is rectangular, 38 ft. by 70 ft.

B. Height: The building is 3 1/2 stories and owing to the slope of the land and the basement is expressed as an additional full story on the south.

C. Roof: It has a pitched roof with south and north gable ends. A two-stage, hipped-roof cupola is at the south end. The chimney is at the north end of the west slope, and the east slope has a roof hatch leading from the attic. The roof is covered with slates, presumably original.

D. Wall Fabric: The building has its original exterior covering, principally clapboards, but with flush boarding on the recessed portion of the south front and on the cupola.

E. Foundation: The foundation is original, brick on the south side and elsewhere dressed stone above grade and rubble stone where it does not (or was not intended to) show.

F. Decorative Features: All decorative detail is a rich interpretation of the Bracketted-Italianate mode. The cornices at portico, piazza and roofs are composed of scrolled and panelled brackets, each with a turned drop. Corner pilasters, square piers and columns have recessed, arched-top Italianate panels let into and columns have recessed, arched-top Italianate panels let into the sides. Window surrounds are plain architraves with crown cornices, except beneath the front portico and west piazza, and in the gables and cupola, where, as around the doors, a simple moulded architrave is used. See section G for details.

G. Elevations: South - The front is a three bay composition. The balconied portico effect formed by the recessed plane of the basement, 1st and 2nd stories is crowned by a cornice at 3rd floor level and its four square piers are linked at 1st and 2nd story levels by panelled pilasters and bracketted cornice returns and barges. The wide central basement door is flanked by a large window at each side. At first story level, the main entrance, a two leaf door, has large display bay windows at either side and at the east corner, the entrance to the hall stairs. (Latter door is a recent replacement.) In the second story, the central door is flanked by 6 over 6 light windows. At the centre of the third story, a segmental-headed blank mock window is likewise flanked by 6 over 6 windows, taller than those below, and above it is a round-headed window in the gable. The two-stage cupola surmounting the peak of the gable has a louvered round-headed opening in each side of the second stage, which has corner pilasters and bracketted cornice.

The segment cartouche above the third story windows formerly contained the words EXCHANGE HALL in gilded wooden letters. (Until c. 1867 a rectangular cartouche below the windows contained the original name of the company - JAMES TUTTLE AND CO.; and the otherwise bland frieze between the piers at second story level formerly had gilded letters naming the goods sold within.)

Originally, access to the main entrance was by flights of steps projecting forward from either end of the portico, a straight flight at the east, while that at the west curved to the northwest following the line of the piazza.

East and West - The sides are both six bays of similar disposition, with the third story windows taller than those below, all having 6 over 6 lights, and framed within panelled pilasters and bracketted roof cornice. Extending the length of the west side is a one story piazza whose southern end curves in a quarter circle to join the portico.

North - The back is three bays wide, framed by panelled pilasters and bracketted cornice returns and gable barges. Loading doors are in the centre of first and second stories and a round-headed window in the gable. All windows are 6 over 6.

### 3. Interior Features

The original interior arrangement consisted of open retail store space in the first and second stories, with small rooms adjoining to the north end, those in the first story for offices and those in the second for sleeping rooms for the night guards. The third story is an open hall, also with small adjoining rooms and stairs to the attic at the north. The principal stairway to the hall is at the east side, commencing at the south front first story and terminating toward the north end of the third story.

The bulk of the interior finish is evidently original. The most notable features occur in the third story hall: The moulded plaster ceiling rosettes (now obscured by a building code-ordered suspended ceiling) and the spring dance floor, the latter installed, apparently, c. 1900, and one of two remaining in New England.

#### 4. Alterations

Flights of internal and external stairs for a fire escape were added in the west side of the building in the 1940's, necessitating changing one second-story window to a double door, and minor alterations to the hall and piazza. The northern-most first story window in the west side was altered to a door in the 1960's.

#### 5. Sub-Surface Features

The location of Exchange Hall was earlier the site of the Jones Cooperage (built c. 1760, removed to the rear of 34 School Street in 1860 and demolished in 1954).

### Part II: Technical Information - Significance

#### 1. Criteria

A. Exchange Hall is part of a complex of buildings that illustrates 19th century changes in commerce from small local businesses to larger, departmentalised centres. Architecturally, it possesses integrity of location, setting and materials as well as exceptional qualities of design and workmanship, thus meeting criteria A and C of the National Register of Historic Places.

#### 2. Historical Statement

A. Exchange Hall was built in 1860 at a cost of \$10,000 for James Tuttle and Co. (later Tuttle, Jones, and Wetherbee Co.), which was the direct successor to the Jones Tavern store (established in 1750). In the prosperity following the construction of the Fitchburg Railroad, the partners James and Varnum Tuttle and Elnathan Jones, Jr. greatly expanded the existing business, erecting store buildings to accommodate different branches of it. Their resulting establishment, a forerunner of the department store idea, was, from c. 1850 to c. 1900, the most extensive of its kind in Middlesex County, west of Waltham. Exchange Hall was built to provide a focal point for their group of stores, as well as retail and storage space for their dry goods and clothing, and furniture and home furnishings departments of which Jones was in charge. The third-story hall was intended for the community use of South Acton Universalist Church from 1860 to 1878, and from the beginning into the 20th century it was used for dances, concerts, lectures, campaign meetings, caucuses, conventions, local theatrical productions, travelling shows, etc. It is still occasionally used for dances.

B. The rich and exuberant architectural detail of Exchange Hall reflects the prosperity and optimism of the Railroad Era which was a leading factor behind the success of the company that built it; and in providing a meeting house for South Acton's first religious society and a central community meeting place, it reflects 19th century trends of interest in social improvement.

C. The property relates to the locally prominent members of the firm that built it: James Tuttle (1818-1898) who opened a store in South Acton in 1839 and in 1845 assumed the Jones Tavern business from his father-in-law, Elnathan Jones; his brother, Varnum Tuttle (1823-1904); Elnathan Jones, Jr. (1829-1904) who worked in his father's store until 1845, making fancy goods his specialty, and then for James Tuttle and Co., of which he was made a partner in 1852. Jonathan K. W. Wetherbee, admitted a partner in 1867, was Acton's town treasurer 31 years and postmaster 15 years. Two noted lecturers who used the hall were Henry D. Thoreau in the 1860's and Henry Ward Beecher in the 1870's.

D. As noted, a cooperage occupied the location in the 18th century; it is not known how severely the ground was disturbed in building the present structure.

E. In 1899, when the Tuttle, Jones, and Wetherbee Co. was dissolved and its property divided in severalty, Elnathan Jones, Jr. took title to Exchange Hall, which then descended to his daughter, Mrs. Carrie Evelyn Kimball, who sold it to the Tolman family in the 1950's.

Mr. Jones continued the dry goods and furniture business until his death, after which, until 1933, it was operated by the firm of Finney and Hoyt. From 1933 to 1950, when the business was finally closed, it was carried on under the name of South Acton Department Store by Mrs. Kimball's son-in-law, Otis J. Reed. The South Acton branch of the Acton Memorial Library was located in the building for part of the latter period. It is currently occupied by a number of small businesses.

### 3. Architectural Statement

A. The building illustrates the use of bracketed and Italianate forms of decorative detail, a popular and significant trend in American architecture of the mid-19th century. In its siting (in terms of the former layout of the Square) it shows an emerging awareness, in a then rural situation, of the use of architecture as an element in community planning.

B. With the exception of the loss of the entrance steps, and the removal of the window blinds, the exterior retains virtually all of its original material. The most significant external alteration was the addition of the fire escape on the west side, which was consciously planned to be as little disruptive as possible.

C. Exchange Hall is the most richly detailed interpretation of the Bracketed-Italianate style in Acton; other local buildings of its type and period are more restrained in their use of the decorative vocabulary of the style (e.g., Acton Town Hall, 1863) use few of its elements or are utilitarian in detail (Tuttles, Jones and Wetherbee Grocery Store, 1866).

D. The bulk of the Tuttle, Jones and Wetherbee's Company's records, which would possibly give craftsmen's names, are currently inaccessible and unsorted. Tradition says that the company's partners planned the building collaboratively and suggests that Elnathan Jones, Jr., the architecturally minded one of them, had the guiding hand in designing it.

Tradition also says that a joiner named Fletcher, from Stow, made the window sashes and frames.

## EXHIBIT E

### Improvements

The Improvements consist of:

1. Slate roof restoration and/or replacement work, including the cupola roof and copper flashing;
2. Window restoration and/or replacement;
3. Rebuilding the lower porch and deck of the Building;
4. Scaffolding the entire Building;
5. Exterior painting; and
6. Siding restoration and/or replacement work.

## EXHIBIT F

### Restriction Guidelines

The purpose of the Restriction Guidelines is to clarify Section 4 of the terms of the Restriction, which addresses exterior alterations to 2 School Street, Acton, Massachusetts. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require the consent of the Town. Any alterations to the Premises, including without limitation, minor alterations, are subject to the jurisdiction of the Town of Acton Historic District Commission.

In an effort to explain what constitutes a minor alteration, the following list has been developed. This is not a comprehensive list, and it is provided for illustrative purposes only. It is only a sampling of some of the more common alterations which may be contemplated by building owners. In the event of a conflict between these Guidelines and the Restriction, the Restriction shall control.

#### PAINT

Minor - Hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

#### WINDOWS AND DOORS

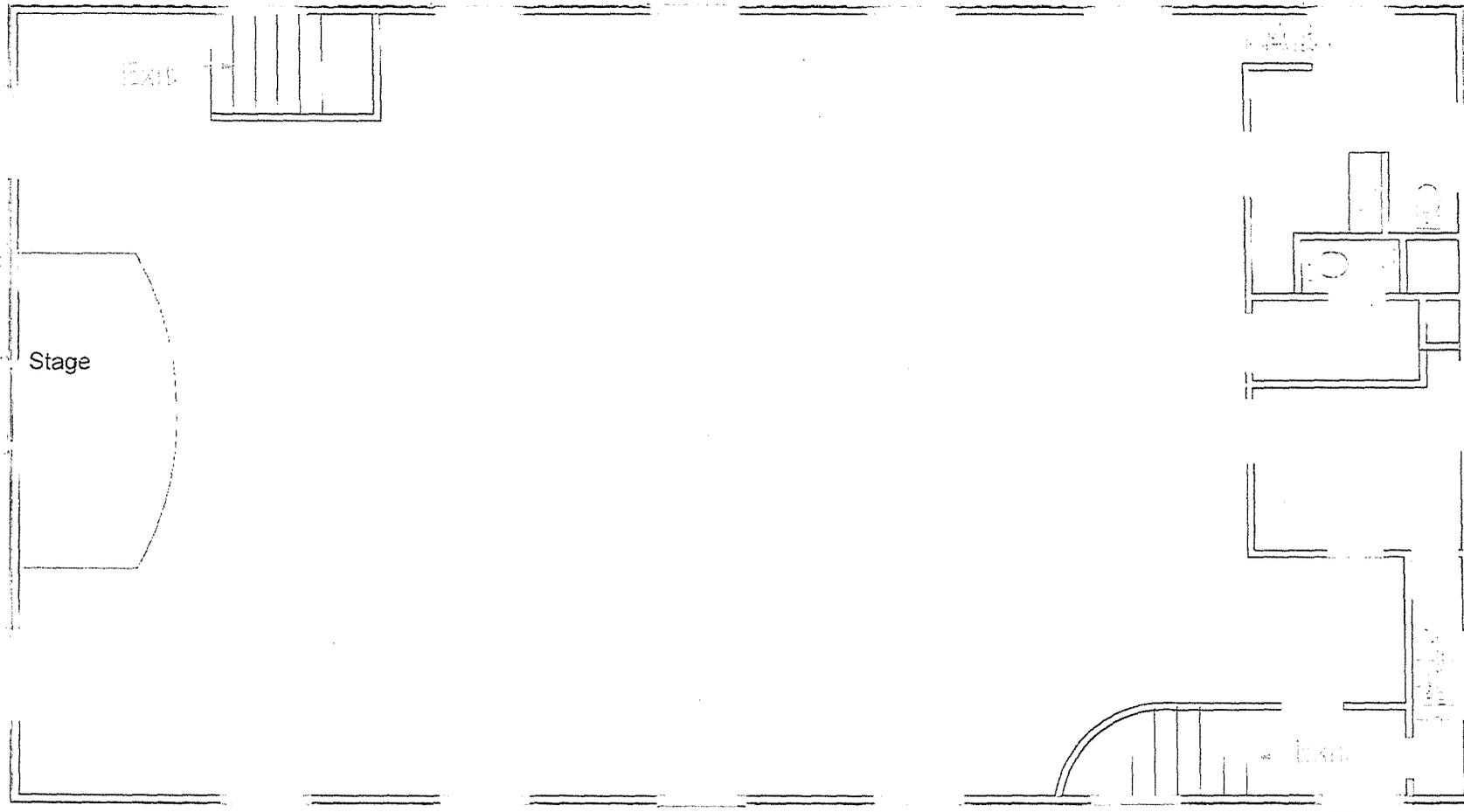
Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of individual decayed window parts of the type existing as of the Project Completion Date.

#### EXTERIOR

Minor - Spot repair of cladding and roofing including in-kind replacement of clapboards, shingles, etc. of the type existing as of the Project Completion Date

#### HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems and/or replacement of internal portions of the same.



EXCHANGE HALL BALLROOM FLOOR PLAN

## EXHIBIT H

### Permitted Encumbrances

Grantor represents and warrants that there are no liens or encumbrances encumbering or otherwise affecting the Premises as of the date of this Restriction, except for: 1) a Construction Mortgage from Grantor to Enterprise Bank and Trust Company dated November 19, 2010, recorded with the Middlesex South District Registry of Deeds in Book 55882, Page 288; 2) an Assignment of Rents from Grantor to Enterprise Bank and Trust Company dated November 19, 2010, recorded with said Deeds in Book 55882, Page 302; and 3) an Assignment of Plans, Specifications and Approvals from Grantor to Enterprise Bank and Trust Company dated November 19, 2010, recorded with said Deeds in Book 55882, Page 336, each of which are subordinate to this Restriction pursuant to a Consent and Subordination Agreement dated as of \_\_\_\_\_, 2011 and recorded simultaneously herewith.