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January 17, 2018

In Hand

Sarah White, Chair  
Historic Commission  
60 Pleasant Street  
Newburyport MA 01950

RE: Towle Preservation Restriction

Dear Chair and Members of the Commission;

Reference is made to the above captioned matter. In that connection, I am attaching a draft Preservation Restriction for your review and then our discussion at your January 24, 2018 meeting.

Please let me know if you have any questions before that time.

Regards,

A handwritten signature in cursive script that reads 'Lisa Mead' followed by a slanted line and the initials 'lhw'.

Lisa L. Mead

cc: Client

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*Millis Office*

730 Main Street, Suite 1F  
Millis, MA 02054  
Phone 508.376.8400



# **PRESERVATION RESTRICTION AGREEMENT**

**Between**

**Newburyport Landing LLC  
and the**

**CITY OF NEWBURYPORT, MASSACHUSETTS**

**BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION**

THIS PRESERVATION RESTRICTION is made this \_\_\_\_\_ day of \_\_\_\_\_ 2017 (this “Restriction”) by and between FRCA of Newburyport c/o First Republic Corporation of America, located at 40 East 69<sup>th</sup> Street, New York, New York, 10021 (“Grantor”), and the CITY OF NEWBURYPORT (“Grantee”), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, to be managed and enforced by its agent, the NEWBURYPORT HISTORICAL COMMISSION (the “Commission”), located at 60 Pleasant Street, Newburyport, Massachusetts, 01950.

WHEREAS, the Grantor is the owner in fee simple of certain real property located at 260 Merrimac Street, Newburyport, Massachusetts (hereinafter referred to as “the Property”), being a portion of that same Property conveyed by First Republic Corporation of America in a deed recorded with the Essex South Registry of Deeds on June, 15, 2006 in Book 25802 and Page 266, and being described in Exhibit A, attached hereto and incorporated herein by reference, and as shown as Lot 3 on a plan of land titled “Plan of Land at 260-276 Merrimac Street, Newburyport, MA” by Port Engineering Associates, Inc., dated February 23, 2009 and recorded in the Essex South Registry of Deeds in Plan Book 420 Plan 50 and then adjusted on “Plan of Land in Newburyport, MA Showing Lot Line Adjustment at 260 & 266 Merrimac Street” by Millennium Engineering, Inc., dated March 15, 2016 and shown as Lot 3A and recorded at the Essex County Registry of Deeds at Plan Book 452, Plan 68. . Said Property is improved by two (2) principal buildings thereon. This Restriction shall not apply to the garage on the Property constructed circa 1930. This Restriction shall apply to the exterior only of the building referred to as the “Towle Silver Manufacturing Building” and grounds which ~~is~~are adjacent to Merrimac Street, referred to hereinafter as “the Building”, described as follows:

A four story Italianate style industrial complex originally constructed in 1866. The predominantly red brick complex features multiple additions constructed overtime. The complex includes historic brick detailing including decorative panels, segmental arched window openings, dentil detail and corbelling. Additionally the complex includes a prominent five-story tower with mansard roof along its façade. The key architectural features of the complex are described and shown in further detail in the Baseline Documentation.

WHEREAS, the Building and the Property are a contributing resource to the Newburyport Historic District listed in the State and National Registers of Historic Places on August 2, 1984, are historically significant for their architecture, associations, and/or archeology, and qualify for the protections of perpetual preservation restrictions under Massachusetts General Laws, Chapter 184, sections 31, 32 and 33; and

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

WHEREAS, the preservation values of the Building values are documented in a series of photographs and documents (hereinafter, “Baseline Documentation”) incorporated herein and attached hereto as Exhibits A (Legal Property Description), B-1 (Recorded Plans of Property), B-2 (Detail of Plan of Property), C (Massachusetts Historical Commission Inventory Form B), D (Baseline Photographic Documentation), and E (Key Architectural Features) which Baseline Documentation the parties agree provides an accurate representation of the Building as of the date hereof.

WHEREAS, the Baseline Photographic Documentation (Exhibit D) of the Building and Property shall consist of the following Thirteen (13) exterior photographs taken in December 2017. Digital and archival photographic print copies of the Baseline Photographs shall be maintained by the Grantee with an address of:

City of Newburyport  
c/o Newburyport Historical Commission  
Newburyport City Hall,  
60 Pleasant Street  
Newburyport, MA 01950

WHEREAS, the Grantor agrees ~~and desires~~ to impose certain restrictions, obligations and duties upon itself, its successors and assigns, so as to maintain, protect and preserve the architectural and historical integrity of the Building; and

WHEREAS, the preservation of the Building is important to the public for the enjoyment and appreciation of its architectural and historical heritage and serves the public interest in a manner consistent with the purposes of Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 (“Act”); and

WHEREAS, the Commission is authorized to accept preservation restrictions in the name of the City of Newburyport and the Commission is a governmental body duly organized under the laws of the Commonwealth of Massachusetts, including the General Laws, Chapter 40, Section 8D, authorized and directed by the Grantee to manage the Property and Building burdened by such restrictions and to administer and enforce this restriction;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby irrevocably grant and convey to the Grantee in gross this Restriction over the Property and the exterior of the Building to be administered, managed and enforced by the Commission during the Term of this Restriction.

1. Purpose: It is the purpose of this Restriction to assure that the architectural, historic, and cultural features of the exterior of the Building, as described and documented in the Baseline Documentation and Exhibit F (Restriction Guidelines) and, will be retained and maintained forever substantially in their historically-appropriate condition for preservation purposes and to prevent any use or change to the exterior of the Building or the Property that will significantly impair or interfere with the Building’s Preservation Values (the “Purpose of this Restriction”). Characteristics that contribute to the architectural and historical integrity of the Property including include, but are not limited to, the

setting and location of the Building; and architectural features, materials, appearance, and workmanship of the Building. All Exhibits shall be attached to and recorded with this Restriction.

2. Preservation Restriction: The Grantor grants the grantee the right to forbid or limit:
  - a. Any alteration to the appearance, materials, workmanship, condition or structural stability of the Building unless (i) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the Building and the Property, or (ii) the Grantee has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by Grantor in accordance with the requirements of paragraph 7, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency promptly reported to Grantee in accordance with requirements in paragraph 9. For the purposes of this Agreement, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines, which are attached hereto as Exhibit F.
  - b. Any alteration to the appearance, materials, workmanship, condition or structural stability of the Building governed by the Newburyport Historical Commission as listed and attached hereto as Exhibit F.
  - c. Any other act or use that may be harmful to the historic preservation of the Building or the Property.
  - d. Notwithstanding anything to the contrary in this section 2, in the event the Grantor is required by law to make improvements to the Building or Property or is required in writing by its insurance carrier to make improvements to the Building or Property in order to avoid revocation of insurance and the Grantor has exhausted all methods of variance or appeal process related to either applicable law or insurance qualifications, the Grantee and the Grantor agree that the Grantee may not forbid or limit the Grantor's ability to make the improvements. Said changes or improvements shall comply with the Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (36CFR 67 and 68) (hereinafter the "Secretary's Standards"), and shall be designed in consultation with and subject to reasonable review by Grantee.
  - e. Grantor agrees at all times to maintain the exterior of the Building and the Property, the form, and massing of the original 1866, 1870, and 1940 Italianate four-story façade along Merrimac Street including windows and window openings; the form, and massing of other original 1866, 1870, and 1940 elevations; the, form, and massing of the prominent front five-story stair tower with entrance off Merrimac Street with mansard roof; the four-story side elevations of front stair tower; the form, massing of the two additional towers and smoke stack; historic exterior materials including red brick with decorative segmental arched lintels, corbelling and dentil detail as well as steel tie backs; historic wood features on front stair tower including cornice and trim, as well as copper elements and roof shingles; the roof line, and form of the building as shown in the baseline documentation and in accordance with this Restriction and in compliance with all Federal, state and local laws, codes and ordinances applicable to the Property and/or the Building. Grantor's obligation to maintain shall require repair, reconstruction and, where necessary, replacement in kind whenever necessary to preserve the Building in a good, sound condition and state of repair.
3. Grantor's Covenants: Covenant to Maintain: Subject to paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the Building in the same structural condition and state of repair existing as of the date of this Restriction, and thereafter. Grantor's obligation to maintain shall require replacement, repair, and

reconstruction by Grantor whenever necessary to preserve the exterior of the Building and Property. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Building whenever necessary in accordance with the policies and procedures of the Commission and in accordance with the Secretary's Standards.

4. Grantor's Covenants: Prohibited Activities: The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:
  - a. The Building shall not be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
  - b. The dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;
  - c. No above-ground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded;
  - d. No additions and/or outbuildings may be attached to the Building without prior approval of the Commission; and
  - e. Moving the Building to another location shall be forbidden without prior approval of the Commission.
5. Conditional Rights Requiring Grantee Approval: Subject to Paragraphs 3 and 4, and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter the Building without prior express written approval of the Commission. Without said approval Grantor shall not make any changes to the Building, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, and any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the Building. Grantor shall similarly not make any alterations to the surrounding Property that would obscure the current view of the Building, such as the installation of permanent signage without approval of the Commission.

Activities by Grantor to maintain the Building and the Property, which are intended to be performed in accordance with the provisions of paragraph 3, and which are of a minor nature, shall not require the prior approval of the Commission. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by Restriction Guidelines (Exhibit F), which are attached to this Agreement and hereby incorporated by reference.

6. Grantor's Reserved Rights Not Requiring Further Approval by the Grantee: Subject to the provisions of paragraphs 2 and 4, the following rights, uses and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by the Commission without further approval by the Commission:
  - a. The right to engage in all those acts and uses that:
    - i. Are permitted by governmental statute or regulation;
    - ii. Do not substantially impair the preservation values of the Building and Property; and
    - iii. Are not inconsistent with the Purpose of this Restriction;

- iv. Without further approval, are in conformance with the Restriction Guidelines attached as Exhibit F.
  - b. Pursuant to the provisions of paragraph 3, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the exterior of the Building. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the Commission in accordance with the provisions of paragraph 5.
7. Review of Grantor's Requests for Approval: Grantor shall submit to the Commission for the Commission's approval of those conditional rights set out at paragraphs 2 and 5 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity sufficient to permit the Commission to monitor such activity. Within forty-five (45) days of the Commission's receipt of any plan or written request for approval hereunder, the Commission shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Commission shall provide Grantor with written suggestions for modification or a written explanation for the Commission's disapproval. Any failure by the Commission to act within forty-five (45) days or receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Commission of the plan or request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time, provided nothing herein shall be construed to permit Grantor to undertake any of the activities prohibited hereunder.
8. Standards for Review: In exercising any authority created by this Restriction to inspect the Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the Commission shall apply the Secretary's Standards.
9. Casualty Damage or Destruction: In the event the Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of damage or destruction, such notification including what, if any, temporary emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and Property and to protect public safety, shall be undertaken by Grantor without the Commission's prior written approval of the work. Within one hundred twenty (120) days of the date of damage or destruction, if required by the Commission, Grantor at its expense shall submit to the Commission a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Commission, which Commission approval shall not be unreasonably withheld, which report shall include the following:
- a. An assessment of the nature and extent of damage;
  - b. A determination of the feasibility of the restoration of the Building and/or reconstruction of damaged or destroyed portions of the Building; and

- c. A report of such restoration/reconstruction work necessary to return the Building to the condition existing at the date hereof or the condition subsequently approved by the Commission.

10. Review After Casualty Damage or Destruction: If, after reviewing the report provided in paragraph 9 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and the Commission shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building 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 after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that restoration/reconstruction of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction and Grantor may, with prior written consent of the Commission, alter, demolish, remove or raze the Building, and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts and paragraph 23 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission 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 arbitration statute then in effect, and all other applicable laws, rules, regulations, and ordinances. Arbitrator shall have experience in historic preservation matters.

11. Insurance: Grantor shall keep the Building insured by an insurance company rated "A-1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Commission, within ten (10) business days of the Commission's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

12. Indemnification: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend, at its own cost and expense, Grantee, its boards, commissions, appointees, agents, directors, employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Building; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the Building; unless such injury, death, or damage is caused by Grantee or its boards, commission, appointees, agents, directors, employees, or independent contractors. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.



13. Written Notice: Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing;

Grantor: Newburyport Landing LLC  
c/o The First Republic Corporation of America  
40 East 69<sup>th</sup> Street  
New York, New York, 10021

Grantee: City of Newburyport  
c/o Newburyport Historical Commission  
Newburyport City Hall  
60 Pleasant Street  
Newburyport, MA 01950

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

14. Evidence of Compliance: Upon reasonable request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidence the status of this Restriction to the extent of Grantee's knowledge thereof.
15. Inspection: With the consent of Grantor, Grantee or its representatives shall be permitted at reasonable times to inspect the exterior of the Buildings and the Property on an annual basis. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.
16. Grantee's Remedies: The Grantor, for itself, its assigns and successors, expressly acknowledges that a violation of this Preservation Restriction Agreement may result in the Commission exercising its right to enforce the terms and conditions of the Restriction by seeking appropriate legal and equitable relief, including, but not limited to, restoration of the Building and such other legal and equitable remedies as may be available to the Commission to effectuate the purposes of this Restriction and to enforce the Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including all court costs, and attorneys', architectural, engineering, and expert-witness fees. Grantor shall, at its own expense and with approval of Commission, reverse any actions or activities which violated this restriction and altered the Building.

Nothing in this Restriction shall impose upon the Commission any duty to maintain or require that the Building be maintained in any particular state or condition; notwithstanding the Commission's acceptance hereof Enforcement of the terms of this Preservation Restriction shall be at the discretion of the Commission. Any election by the Commission as to the manner and timing of exercising of its right to enforce this Preservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. By its acceptance of this Preservation Restriction, the Commission does not assume any liability or obligation relating to the condition of the Building or the Property, including compliance with hazardous materials or other environmental laws and regulations.

17. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Buildings or Property received by Grantor from any government

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

18. Notice of Proposed Sale: Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Restriction to potential new Grantors prior to sale closing.
19. Runs with the Land: Except as provided in paragraphs 9 and 10, the restrictions, obligations and duties set forth in this Restriction shall run with the Property and shall inure to the benefit of the Commission and all parties claiming by, through or under the Commission and shall bind the Grantor and all parties claiming by, through or under the Grantor. The rights hereby granted to the Commission constitute the perpetual right of the Commission to enforce this Preservation Restriction Agreement. The Grantor hereby covenants for itself to stand seized and hold title to the Property subject to the terms of respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor", "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns. Anything contained herein to the contrary notwithstanding, Grantor of the Property shall have no obligation pursuant to this instrument where such Grantor shall cease to have any Grantorship interest in the Premises by reason of bona fide transfer. The restrictions, stipulations and covenants contained in this Restriction shall be inserted by Grantor, verbatim or by express reference, in any deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property.
20. Assignment: Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government, to a local, state, or national charitable corporation or trust that qualifies under the Act, and whose purposes, inter alia, are to promote preservation of historical, cultural, or architectural resources. Conveyance, assignation, or transfer of this Restriction requires that the Purpose for which the Restriction was granted will continue to be carried out. Grantee shall seek Grantor's approval of said conveyance, assignment or transfer and Grantor shall give prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.
21. Alternate Designee: Grantee may, at its discretion, remove and replace the Commission as its designee to administer, manage, and enforce this Restriction, provided that any new designee is qualified as such under the Act and other applicable law. In the event Grantee does so remove, the Grantee shall provide notice of same to the Grantor and shall forthwith provide the Grantor with the name, address and further contact information of the designee.
22. Recording and Effective Date: Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction which shall become effective upon its being duly executed by the Grantor, the City of Newburyport, its being accepted and approved by the Massachusetts Historical Commission, and its being recorded with the Southern Essex District Registry of Deeds.
23. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in conditions surrounding the Property may make impossible the continued Grantorship or use of the Property for the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such a change in conditions may include, but is not limited to, partial or total destruction of the Building resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including approvals by the City of Newburyport and the Massachusetts Historical Commission

following public hearings to determine that such extinguishment is in the public interest. In the event of a sale of the Property, net proceeds of sale shall be paid to Grantor.

24. Condemnation: If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interest in the Property that are subject to the taking and all incidental and direct damages resulting from taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to Grantor.
25. Interpretation: The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction:
  - a. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Property shall not apply in the construction or interpretation of this Restriction and this instrument shall be interpreted broadly to affect ~~its~~ Purpose and the transfer of rights and the restrictions on use contained herein.
  - b. This instrument may be executed in two counterparts, one of which is to be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall constitute the entire Restriction of the parties.
  - c. This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private Restriction either in existence now or at any time subsequent hereto.
  - d. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been incorporated herein automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event any provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted from this Preservation Restriction as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

26. Amendment: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Restriction or the status of Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private inurement to any

person or entity; and shall not adversely impact the overall architectural and historic values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the Southern Essex District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

27. Release: This Preservation Restriction is intended to be a restriction in gross in perpetuity and may only be released, in whole or in part, by the Grantee pursuant to the procedures for release established by the Act and otherwise by law, including approvals following public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such a release is in the public interest.

28. Archeological Activities: The conduct of archaeological activities on the Property, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor approved in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (M.G.L. C. 9, Sec. 27C, 950 C.M.R. 70.00).

IN WITNESS WHEREOF, the Grantor sets its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

By:

**GRANTOR:**

FRCA OF NEWBURYPORT LLC

By: The First Republic Corporation of America, its sole member

By:

David J. Koepfel, its President, Newburyport Landing LLC

\_\_\_\_\_  
Its Authorized Agent

David J. Koepfel, President

**New York**

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared David J. Koepfel, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION**

\_\_\_\_\_  
Sarah White, duly authorized  
Chair, Newburyport Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared Sarah White, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**ACCEPTANCE AND APPROVAL BY THE CITY OF NEWBURYPORT**

I, the undersigned City Clerk of the City of Newburyport, Massachusetts, hereby certify that at a meeting duly held on \_\_\_\_\_, 2017, the City Council voted to approve and accept the foregoing Preservation Restriction Agreement for the preservation of the historic resources of said City and being the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

CITY OF NEWBURYPORT

By its Clerk

\_\_\_\_\_  
Richard B. Jones

The undersigned hereby certifies that the foregoing preservation restrictions have been approved and accepted by the City of Newburyport

CITY OF NEWBURYPORT

\_\_\_\_\_  
Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared Richard B. Jones, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared Donna D. Holaday, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION**

**COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Massachusetts General Law, chapter 184, section 32.

MASSACHUSETTS HISTORICAL  
COMMISSION

By: \_\_\_\_\_  
Brona Simon  
Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned notary public, personally appeared Brona Simon, as aforesaid, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed above, and acknowledged the foregoing to be signed by him voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



**List of Exhibits/Attachments**

Exhibit A: Legal Property Description

Exhibit B-1: Recorded Plan of Property

Exhibit B-2: Detail of Plan of Property

Exhibit C: Massachusetts Historical Commission Inventory Form B

Exhibit D: Baseline Photographic Documentation

Exhibit E: Key Architectural Features

Exhibit F: Restriction Guidelines

**Exhibit A**  
**Legal Property Description**  
**Lot 3A**

A certain lot or parcel of land on the easterly side of Merrimac Street, Newburyport, Massachusetts as shown on a plan entitled as shown as Lot 3 on a plan of land titled "Plan of Land at 260-276 Merrimac Street, Newburyport, MA" by Port Engineering Associates, Inc., dated February 23, 2009 and recorded in the Essex South Registry of Deeds in Plan Book 420 Plan 50 and then adjusted on "Plan of Land in Newburyport, MA Showing Lot Line Adjustment at 260 & 266 Merrimac Street" by Millennium Engineering, Inc., dated March 15, 2016 and shown as Lot 3A and recorded at the Essex County Registry of Deeds at Plan Book 452, Plan 68.

Beginning at a point at the intersection of the easterly sideline of Merrimac Street and the northerly sideline of Sally Snyder Way, said point being the most southwesterly corner of the parcel, thence,  
N19°11' 03" W            246.45'            by the easterly sideline of Merrimac Street to a point, thence,  
N18° 51' 00" W            92.21'            by the easterly sideline of Merrimac Street to a point at other  
land of FRCA of Newburyport, LLC, thence,  
N71°05' 04" E            175.48'            by other land of FRCA of Newburyport, LLC to a point, thence,  
N19°10' 11" W            115.50'            by other land of FRCA of Newburyport, LLC to a point, thence,  
S61°53' 54" W            47.78'            by other land of FRCA of Newburyport, LLC to a point, thence,  
S64° 26' 33" W            79.12'            by other land of FRCA of Newburyport, LLC to a point, thence,  
S61° 28' 33" W            49.81'            by other land of FRCA of Newburyport, LLC to a point on the  
easterly sideline of Merrimac Street, thence,  
N16° 38' 48" W            35.67'            by the easterly sideline of Merrimac Street to a point at other  
land of FRCA of Newburyport, LLC, thence,  
N67°12' 40" E            109.14'            by other land of FRCA of Newburyport, LLC to a point, thence,  
N27° 00' 51" W            78.83'            by other land of FRCA of Newburyport, LLC to a point at land  
of Maines and Mundry, thence,  
N61° 43' 10" E            57.84'            by land of Maines and Mundry to a point at land of North End  
Boat Club, thence,  
N61°53' 54" E            500'            by land of North End Boat Club to a point at the mean high  
water mark at the Merrimack River, thence,  
Southeasterly by the mean high water mark at the Merrimack River to a point at land of the City of  
Newburyport, thence,  
S58°54' 35" W by land of the City of Newburyport to a point at Lot 4A, thence,  
N20°23' 38" W            291.29'            by Lot 4A to a point, thence,  
S60° 55' 11" W            198.36'            by Lot 4A to a point, thence  
S27° 00' 06" E            44.15'            by Lot 4A to a point, thence  
S21° 02' 59" E            139.19'            by Lot 4A to a point, thence on a curve to the right of  
R=48.00'            L=24.54'            by Lot 4A to a point, thence,  
S25°49' 49" W            20.88'            by Lot 4A to a point, thence,  
S19° 10' 11" E            95.84'            by Lot 4A to a point, thence,  
S31° 05' 24" E            23.16'            by Lot 4A to a point at land of the City of Newburyport, thence,  
S58° 54' 35" W            144.87'            by land of the City of Newburyport, thence,  
S33° 03' 05" E            10.01'            by land of the City of Newburyport to a point, thence,  
S58°57' 42" W            16.70'            by land of the City of Newburyport to a point, thence,  
S67° 17' 56" W            22.24'            by land of the City of Newburyport to a point, thence,  
S30°36' 04" E            33.44'            by land of the City of Newburyport to a point on the northerly  
sideline of Sally Snyder Way, thence,  
S59° 58' 00" W            121.33'            by the northerly sideline of Sally Snyder Way to a point, thence,

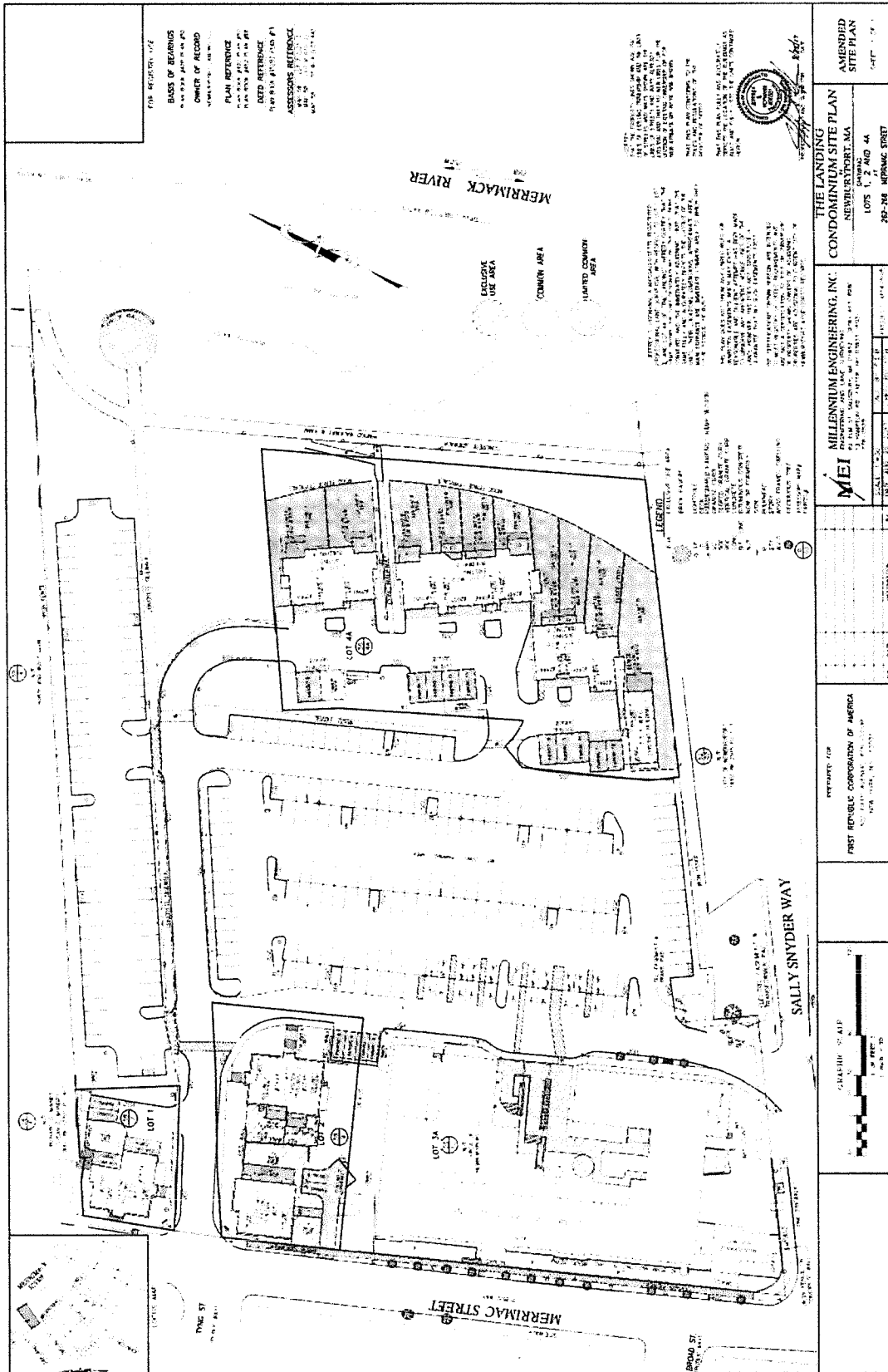
S59° 33' 33" W            91.00'            by the northerly sideline of Sally Snyder Way to the point of beginning.

Said lot contains 245,353 +/- square feet or 5.632 +/- acres of land area (to mean high water) and is shown as Lot 3A on said plan as recorded.

Said lot is subject to and with the benefits of an access easement, a drainage easement, and a Tyng Street view corridor all as shown on said plan as recorded.



**Exhibit B-2 Detail of Plan of Property**



**Exhibit C**  
**Massachusetts Historical Commission Inventory Form B**

**FORM B – BUILDING**

MASSACHUSETTS HISTORICAL COMMISSION  
 MASSACHUSETTS ARCHIVES BUILDING  
 220 MORRISSEY BOULEVARD  
 BOSTON, MASSACHUSETTS 02125

Assessor's Number    USGS Quad    Area(s)    Form Number

55/10    Newburyport West    NWB L    NWB 2955  
 NR DIS 1984    NWB 255

**Town/City:** Newburyport

**Place:** *(neighborhood or village):*

**Address:** 260 Merrimac Street

**Historic Name:** Towle Manufacturing Company

**Uses:** Present: Office

Original: Factory

**Date of Construction:** 1866

**Source:** MACRIS

**Style/Form:** Italianate

**Architect/Builder:** Unknown

**Exterior Material:**

Foundation: Brick/Stone

Wall/Trim: Brick

Roof: Composite Membrane

**Outbuildings/Secondary Structures:**

Store house / garage, circa 1930

**Major Alterations (with dates):**

1870, 1940 additions to the building

Removal of original mansard roof

**Condition:** Good

**Moved:** no     yes     **Date:**

**Acreage:** 3.70 acres

**Setting:** Located on the eastern side of Merrimac Street along western side of the Merrimack River within a residential and commercial neighborhood.

**Photograph**



**Locus Map**



**Recorded by:** Brielly Allen

**Organization:** Epsilon Associates

**Date (month / year):** December / 2017

**INVENTORY FORM B CONTINUATION SHEET**

NEWBURYPORT

260 MERRIMAC STREET

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

Area(s) Form No.

NWB.L

NWB.2955  
NWB.255 Listed in the National Register of Historic Places.

Use as much space as necessary to complete the following entries, allowing text to flow onto additional continuation sheets.

**ARCHITECTURAL DESCRIPTION:**

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

The Towle Building is located on a 3.70 acre parcel of land located on the eastern side of Merrimac Street in the City of Newburyport. The site is bound by Merrimac Street to the west; the Merrimack River and 266 Merrimac Street to the east; Sally Snyder Way to the south; 262-264 Merrimac Street, 268 Merrimac Street and 280 Merrimac Street to the north. In addition to the Towle Building, the property contains a paved surface parking lot at the eastern and southern ends of the property and a brick storehouse / garage constructed circa 1930. The Towle Building fronts on Merrimac Street to the west, and can be accessed at the rear via Sally Snyder Way to the south and a drive way entrance to the north.

The original Towle Building was constructed in 1866 with subsequent additions constructed to form the building's present configuration. The building was originally constructed as a three-story building with a mansard roof; the mansard roof was later removed and replaced with the existing fourth floor and flat roof. The four-story brick Italianate factory building rests on a brick foundation and extends to a flat roof defined by a brick header course and dentil molding. The 35-by-7 bay wide façade (west elevation) features the retained original 1866 portion of the building at the center of the facade. The original portion of the building features a red brick exterior laid in a common bond with Flemish headers. The façade contains regularly spaced bays of 18-light divided replacement fixed sash windows with brick segmental arch lintels and rectangular wood sills. The façade's defining feature is the 5-story, 2-by-1 bay wide stair tower projecting from the center of the original building block. The tower is capped by a mansard roof defined by brick modillions and segmental arched dormers. The tower connects the building to the sidewalk of Merrimac Street at the second floor level. A modern aluminum glazed panel double door is located at the center of the tower's east elevation, accessed at street level.

A 2-bay wide brick addition extends north from the original building's north elevation. Projecting slightly from the original plane of the building, the addition's façade is framed by projecting brick piers and capped by a simple brick stepped cornice. The windows of this addition are consistent with the fenestration of original façade; divided single replacement sash windows with brick segmental arched lintels. This northern block extends two bays to the east; laid in common bond with Flemish headers, the elevation features bays of large divided fixed sash windows set on cast stone sills divided by brick piers resting on a concrete base. A subsequent 3-story 5-bay wide addition extends the elevation further to the east. Continuing the fenestration and brick detailing of the western bays, the elevation follows the slope of the parcel to the rear surface parking lot. A 2-bay wide 1-story wood frame roof addition is located at the western end of the 3-story addition. Recessed from the plane of the brick elevation the addition features 4 paired single fixed replacement sash window with no trim. The eastern end of the elevation contains 3 levels of large divided fixed sash windows set on cast stone sills. The elevation is framed by brick piers set on a concrete base. A wood frame dormer projects from the southeast corner of the roof and contains paired fixed sash windows with transom sash.

Constructed in 1947, a six-bay wide brick addition extends from the south elevation of the original 1866 building. The fenestration and brick detailing of the addition matches that of the original building; regularly spaced bays of 18-light divided replacement fixed sash windows with brick segmental arch lintels and rectangular wood aluminum clad sills. The matching brick header course and dentil molding forming the cornice of the building is set in line with the matching cornice of the original building. The south elevation of the addition extends 7-bays to the east and features similar fenestration to the building's north elevation; regularly set large rectangular window of modern vertically divided sash with transoms. Resting on a concrete foundation, the 4-story elevation has a red brick exterior laid in common bond and extends to a cornice of a brick header course and brick dentil molding. A 1-story 2-bay brick loading dock extends from the eastern end of the south elevation. The brick exterior is laid in common bond. Set on a concrete foundation, the south elevation of the addition features a vehicle loading bay with an overhead garage door and an aluminum replacement door accessed by a wood set of stairs. The south and east elevations contain brick infilled former window openings. The 3-bay wide east elevation of the southern addition is set on a raised concrete foundation; pierced by two fixed sash rectangular windows. A single glazed aluminum paneled door is located within the northernmost bay of the addition, set at grade the entrance is accessed by a concrete path extending from a concrete sidewalk. The southern bay of the elevation contains large vertical divided rectangular fixed replacement sash windows capped by transoms. The two northern bays contain narrow

Continuation sheet 1

**INVENTORY FORM B CONTINUATION SHEET** NEWBURYPORT

260 MERRIMAC STREET

MASSACHUSETTS HISTORICAL COMMISSION  
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single and divided fixed replacement sash windows with transoms. The cornice of the south elevation continues onto the east elevation of the building. A one-story brick stair tower extends from the north end of the building.

The east elevation is extended to the north by a four-story 9-bay brick addition. The brick exterior is laid in common bond with Flemish headers. Resting on a brick foundation two basement level window headers are partially visible at grade. The addition's fourth floor appears to be an addition to the building, set above a brick and cast stone cornice line resting above the third floor. The exterior brick of the fourth floor is laid in a stretcher bond, further differentiating it from the lower levels. The regularly set fenestration of the overall elevation features single fixed replacement sash window with brick segmental arch lintels and rectangular sills. The elevation's cornice is formed by a simple brick header course. The brickwork and fenestration of the addition's east elevation continues onto the north and west elevations. An entrance is located within the first floor of the southernmost bay of the addition's west elevation. The replacement glazed aluminum frame door is sheltered within a metal and glass arched saw-tooth roof portico supported by concrete piers.

Located to the west of this block is a courtyard formed by the south and east additions and the original 1866 building. The rear (east) elevation of the original building is laid in common bond with Flemish headers and single fixed replacement sash window with brick segmental arch lintels. At the courtyard's southern end, the 4-story north elevation of the south addition features a brick exterior laid in common bond with 2-bays of rectangular vertical divided replacement sash with transoms. A four story brick stair tower forms the southwest corner of the courtyard. The brick exterior is laid in a stretcher bond and contains three narrow single fixed sash windows within the north elevation.

At the center of the original building a 6-story brick tower extends from the east elevation. The square tower is laid in a common brick bond and features four vertical recessed panels capped by brick segmental arches. The two central recessed bays contain narrow fixed sash windows at the fifth and sixth floors. A 4-story modern EFIS addition encloses the tower obscuring the first through fourth floors from view. Void of detailing, the east elevation of the EFIS addition contains a single bay of single fixed sash windows. The southeast corner of the EFIS addition is formed by a former free standing brick smokestack, projecting above the 4-story addition. The brick of the smokestack is laid in a common bond with Flemish headers. An aluminum glazed double door is located within the northernmost bay of the EFIS addition. Currently functioning as the building's main entrance the entry is accessed by a set of concrete stairs and a brick and concrete handicap ramp. The entrance and ramp is covered by a modern portico formed by concrete piers supporting a metal and glass arched saw-tooth roof.

A modern 4-story brick and EFIS addition extends from the north elevation of the EFIS addition and runs north along the east elevation of the original building. The 3-bay wide south elevation of the addition features vertical EFIS bays of single fixed sash windows divided by projecting brick piers. The EFIS east elevation of the addition contains regularly set rectangular vertically divided fixed replacement sash windows. The southernmost bay of the elevation is framed by brick piers and features a segmental arched window opening. The four bays of the northern portion of the elevation contain triple attached single fixed replacement sash windows with no visible trim. A 5-story brick tower extends from the western side of the EFIS addition at the eastern elevation of the original building. The tower features narrow segmental arched windows at the fifth floor and is capped by a flat roof defined by brick dentil molding.

A modern 1-story brick and EFIS addition extends from the east elevation of the 4-story EFIS addition. The addition is set on a brick foundation and extends to a low pitched roof. The brick exterior of the east elevation is laid in common bond with Flemish headers. A large glazed aluminum frame opening is located at the center of the elevation and contains a single glazed door. The entrance is flanked by fixed sash vertical divided replacement windows. The three openings feature segmental arches enhanced with brick dentil molding and two brick header courses. The south elevation of the building is sheltered within the saw tooth roof of the entrance portico. The low half of the elevation is covered in EFIS while the upper half retains a brick exterior laid in a common bond with Flemish headers. Within the EFIS elevation two window openings hold vertical divided sash with segmental arch transoms. A single glazed aluminum frame door is located at the eastern end of the elevation. A set of concrete stairs is located to the north of the one-story addition accessing an entrance within the east elevation of the 4-story EFIS addition.

The property contains a 1-story brick garage located at the southwest corner of the property at the intersection of Merrimac Street and Sally Snyder Way. Resting on a concrete foundation the T-shaped one-story building is capped by intersecting hip roofs covered with asphalt shingles. The east elevation contains a vehicle overhead garage door set within a brick arched opening. Set into the slope of the property the south and west elevations feature simple fenestration of fixed sash divided windows set within brick arched openings.

*Continuation sheet 2*



MASSACHUSETTS HISTORICAL COMMISSION  
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**HISTORICAL NARRATIVE**

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

The Towle Building is located in the North End neighborhood of the City of Newburyport and included in the Newburyport National Register Historic District. The Towle Building was originally constructed in 1866 by the Merrimack Arms Manufacturing Company. In 1872, the site was named the Brown Manufacturing Company and in 1883 the property was acquired by the Towle Manufacturing Company, a silversmith manufacturing company.

The company began in 1857 under the partnership of Anthony F. Towle and William P. Jones as "Towle and Jones Silverware". Both Towle and Jones apprenticed with the Newburyport silversmith Joseph Moulton, purchasing his business to form "Towle and Jones Silverware". In 1870, Edward P. Towle joined the company and the name was changed to "Towle, Jones and Company". In 1873 the company was dissolved and Anthony and Edward Towle reestablished the company as "A.F. Towle & Son", becoming the Towle Manufacturing Company in 1882. The company relocated from a former Pleasant Street location to the Merrimac Street factory building in 1883. The company continued operations within the building into the late 20<sup>th</sup> century. Towle Manufacturing Company enlarged the original 1866 mill building with multiple subsequent 20<sup>th</sup> century additions and alterations.

Recognized as a national leader in the production of sterling silver products, Towle Manufacturing specialized in solid silver tableware in colonial, classic and modern styles. The company was a vital contributor to the economy of Newburyport employing over 300 operatives during the late 19<sup>th</sup> and early 20<sup>th</sup> century. The building currently contains office and restaurant space.

**BIBLIOGRAPHY and/or REFERENCES**

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Tilton, George Prescott. *The Colonial Book of the Towle Mfg. Co.: Which is Intended to Delineate and Describe Some Quaint and Historic Places in Newburyport and Vicinity and Show the Origin and Beauty of the Colonial Pattern of Silverware.* Printed for the Towle Mfg. Co., by W. Bradley at the Wayside Press., 1897

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View east, west elevation on left, south elevation on right



West elevation, view southeast

*Continuation sheet 4*

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West elevation, view east at center



West elevation, detail of upper level of center stair tower, view east

*Continuation sheet 5*

**INVENTORY FORM B CONTINUATION SHEET**    NEWBURYPORT

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North elevation on left, west elevation on right, view southeast



East elevation on right, north elevation on right, view southwest

*Continuation sheet 6*

**INVENTORY FORM B CONTINUATION SHEET**

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East elevation on left, north elevation on right, view southwest



East elevation, view west

*Continuation sheet 7*



**Exhibit D**  
**Baseline Photographic Documentation**



**1. West elevation (façade) and south elevation**



**2. West elevation (façade) and north elevation**



**3. Façade, detail of stairtower**



**4. South elevation**





**5. South elevation and east elevation**



**6. East elevation**



**7. East elevation**



**8. East elevation**





9. East Elevation



10. East elevation



11. View northeast of courtyard



12. View south of courtyard



**13. View east of courtyard**

**Exhibit E**  
**Key Architectural Features of the Towle Building**

Any changes which would impact the key architectural features (“Key Features”) of the Building must be reviewed and approved by the Newburyport Historical Commission prior to receiving a building permit. The Commission will give special consideration to changes which will impact the Key Features of the Building including the following:

**Architectural Elements**

1. Style, form, and massing of the original 1866, 1870, and 1940 Italianate four-story façade along Merrimac Street including windows and window openings.
2. Style, form, and massing of other original 1866, 1870, and 1940 elevations.
3. Style, form, and massing of the prominent front five-story stair tower with entrance off Merrimac Street and mansard roof.
4. Four-story side elevations of front stair tower.
5. Style, form, massing of the two additional towers and smoke stack near east side entrance.
6. Exterior materials including red brick with decorative segmental arched lintels, corbelling and dentil detail as well as steel tie backs
7. Wood features on front stair tower including cornice and trim, as well as copper elements and roof shingles.

Changes to modern nonsignificant features will be allowed without review of the Newburyport Historical Commission so long as they are like kind replacements and do not change the existing size, shape, material, and appearance of the existing feature. The following features are modern nonsignificant alterations to the building:

**Modern Nonsignificant Features**

1. All windows and trim except for the Merrimac Street (east) façade.
2. All entrances including pedestrian doors and overhead doors except for on the Merrimac Street (east) façade.
3. Existing HVAC equipment including rooftop equipment.
4. Artificial siding at the fourth story penthouse additions and at the north and east elevations including but not limited to metal cladding, panel systems and concrete parging.
5. Existing membrane roofing, skylights, metal caps, gutters, downspouts, and copping.
6. Modern additions including a four-story exterior insulation and finish system (EFIS) clad addition on the east elevation, rooftop EFIS and metal clad additions and entry portico on the east elevation



## Exhibit F Restriction Guidelines

The purpose of the Restriction Guidelines is to clarify paragraph three of the terms of the preservation restriction, which deals with alterations to the Property. Under this section permission from the GRANTEE is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require GRANTEE review.

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

### PAINT

Minor - Exterior or interior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, ornamental woodwork, stone, masonry, decorative or significant original stucco or plaster.

### WINDOWS AND DOORS

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

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

### EXTERIOR

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

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

### LANDSCAPE/OUTBUILDINGS

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

Major - Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, walls, fences; ground disturbance affecting archaeological resources.

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

Minor - Repair of existing systems.

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

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

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

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