

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

HISTORICAL PRESERVATION & HERITAGE COMMISSION

HISTORICAL EASEMENT

THIS HISTORIC PRESERVATION EASEMENT is made this ____ day of _____ by and between _____ meaning and intending to include therein their successors and assigns (hereinafter Grantor), and the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS through its Historical Preservation & Heritage Commission (hereinafter sometimes called Grantee).

WITNESSETH:

WHEREAS the Grantor is the owner of land in fee simple located at _____, and holds title under the document recorded with the land evidence records of the Town/City of _____ as recorded in Book____, Page _____, which instrument is not violated by this conveyance, which land (hereinafter "land") is described in Exhibit "A" attached hereto which land is improved with historic structure(s) (said structure sometimes hereinafter called the building), more fully described in Exhibit "B" attached hereto (said land and structures together being hereinafter called the "Premises") which premises have been registered on the National Register of Historic Places by the United States Department of the Interior;

WHEREAS the State of Rhode Island, through its Historical Preservation and Heritage Commission, wishes to preclude any activity at the premises which would destroy or impair the value of the premises as a registered place on the National Register of Historic Places; and

WHEREAS the Grantor is willing to grant to the State of Rhode Island the easement as hereinafter expressed for the purpose of insuring that the value of the premises for such purpose will not be destroyed or impaired;

NOW, THEREFORE, in consideration of the sum of One Dollar, and other valuable consideration paid to the Grantor, the receipt whereof is hereby acknowledged, and Grantor does hereby give, grant, bargain, sell, and convey unto the State of Rhode Island and Providence Plantations an easement in the following described premises of the Grantor, of the nature and character and to the extent hereinafter expressed as a covenant running with the land, to be binding upon the parties hereto and their respective successors and assigns, and to that end and for the purpose of accomplishing the intent of the parties hereto to preserve, protect, and maintain the value of the premises of the Grantor as a registered place on the State Register of Historic Places, the Grantor does hereby covenant on behalf of itself, its successors and assigns, with the Grantee, its

successors and assigns, to refrain from doing, and to permit the Grantee to do upon the premises of the Grantor, the various acts hereinafter mentioned.

THE EASEMENTS AND RESTRICTIONS shall be effective for a term of ____ years

and are as follows:

- A. Grantor's Covenants. In furtherance of the Preservation Easement herein granted, Grantor covenants:
1. Preserve and Maintain. That GRANTOR shall preserve and maintain the premises in good order. The GRANTOR agrees to assume the cost of the continued maintenance and repair of said property so as to preserve the architectural, historical, or archaeological integrity of the same in order to protect and enhance those qualities that made the Property eligible for listing in the National Register of Historic Places.
 2. Demolition. That Grantor shall not demolish, remove or raze the building.
 3. Alterations. That without the written permission of Grantee, executed by a duly authorized officer under its corporate seal, which written permission or refusal to grant such permission, including a statement of reasons for refusal, shall be delivered to Grantor by Grantee within thirty (30) days of receipt of Grantor's written request for such approval, there shall be:
 - a. no demolition or partial demolition or removal of any building or structure located on the real property
 - b. no change in the facade or to the landscape features and improvements **or interior portions** that are being protected, as set forth in Exhibit "B" subject to the Preservation Easement, including no alteration, partial removal, construction, remodeling or physical or structural change, or change in color or surfacing with respect to the appearance or construction of the facade or the landscape features and improvements or interior portions,
 - c. no addition of signs or addition to the facade including fences, or awnings
 - d. no expansion of the building either horizontally or vertically
 - e. no construction of additional buildings on the premises,
 - f. no significant alteration of the topography, and no removal or cutting down of specimen trees, except as may be required by good husbandry.
 4. Specification of Materials. Grantor covenants that Grantee in providing its written authorizations for work may specify all materials, methods, cleaning substances and colors to be used in any such work, provided, nevertheless, that repair or replacement of surface materials will be with materials of the same or similar

texture and quality as currently existing and reasonably available.

5. Casualty Damage. In the event of casualty damage, no repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the real property and to protect public safety, shall be undertaken by Grantor without the prior written approval of the work by Grantee (which written approval shall be given as provided in paragraph (2) above).
6. Inspection. Grantor covenants that representatives of Grantee shall be permitted to inspect the building at reasonable times upon reasonable notice for the purpose of determining conformance to this Preservation Easement.
7. Insurance. Grantor covenants that it will maintain in force standard property and liability insurance policies. The property insurance policy shall be adequate to provide for reconstruction of the building and the liability policy shall provide coverage in the amount of at least One Million Dollars (\$1,000,000). The liability policy shall name the Grantee as a named additional insured. The amount of property and liability insurance maintained by Grantor shall be adjustable, upon the request of Grantee, to reflect proportionate increases in the cost of construction and the cost of living, respectively, provided that such a request may not be made more frequently than once every three (3) years.
8. Real Estate Taxes. The Grantor shall promptly pay all real estate taxes assessed and levied against the building on or prior to the due date, regardless of the status of protests or appeals.
9. Public Access. Grantor agrees not to obstruct the substantial and regular opportunity of the public to view the exterior architectural features of any building, structure, or improvements of the premises from adjacent publicly accessible areas such as public streets.
10. Publication. The Grantee may make photographs, drawings or other representations documenting the significant historical, cultural, or architectural character and features of the property and distribute them to magazines, newsletters, or other publicly available publications, or use them in any of its efforts or activities for the preservation and conservation of Rhode Island's heritage.
11. Indemnity. The Grantor covenants that it shall indemnify and hold Grantee harmless for any liability, costs, attorney's fees, judgments or expenses to the Grantee or any officer, employee, agent or independent contractor of the Grantee resulting from actions or claims of any nature by third parties arising from defaults under this Preservation Easement by the Grantor, or arising out of the conveyance of, possession of, or exercise of rights under this Preservation Easement, excepting any such matters arising solely from the negligence of the Grantee.

- B. Grantee's Remedies. In the event of a violation of any provision of this Preservation Easement, in addition to any remedies now or hereafter provided by law, (i) Grantee may, following reasonable notice to Grantor, institute a suit for injunctive relief, specific performance or damages, or (ii) representatives of Grantee may enter upon the real property to correct any such violation, and hold Grantor and Grantor's successors, heirs and assigns in title responsible for the cost thereof, and such cost, until repaid, shall constitute a lien on the real property. In the event Grantor is adjudicated to have violated any of Grantor's obligations herein, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with the enforcement of its rights, including court costs and attorney's fees. The exercise by Grantee of one remedy hereunder shall not have the effect of waiving any other remedy, and the failure to exercise any remedy shall not have the effect of waiving the use of such remedy at any other time.
- C. Standards for Review. In exercising any authority created by the Easement to inspect the premises, the buildings, or the facades; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the buildings following casualty damage, Grantee shall apply the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, issued and as may be amended from time to time by the Secretary of the United States Department of the Interior. In the event that the Standards are abandoned or materially altered or otherwise become, in the sole judgment of the Grantee, inappropriate for the purposes set forth above, the Grantee may apply reasonable alternative standards, and notify the Grantor of the substituted standards.
- D. Assignability. Grantor agrees that Grantee may, in its discretion, and without prior notice to Grantor, convey and assign this Preservation Easement to any agency of the State of Rhode Island, to a unit of local government, or not-for-profit corporation or trust provided that the mandated purpose of such assignee includes the preservation of properties of historical, architectural, or cultural significance. Such conveyance, assignment, or transfer shall require that the preservation and conservation purposes for which the Easement was granted will continue to be carried out.
- E. Duration. This Preservation Easement shall be effective for a period of ____ years. Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the premises may make impossible the continued ownership or use of the premises for preservation and conservation purposes and necessitate extinguishment of the Easement. Such a change in conditions includes, but is not limited to, partial or total destruction of the building resulting from a casualty of such magnitude that in the opinion of Grantee the building and premises have lost their historical and architectural significance, or condemnation or loss of title through an eminent domain proceeding. Grantor agrees that this Easement shall not be released to the Grantor or its successors or assigns without the consent of the Grantee, which consent shall be appended to such release.
- F. Runs with the Land. The obligations imposed by this Preservation Easement shall be deemed

to run as a binding servitude with the land. This instrument shall extend to and be binding upon Grantor and all persons hereafter claiming under or through Grantor, and the word "Grantor" when used herein shall include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligations pursuant to this instrument after such person shall cease to have any interest in the Premises by reasons of a bona fide transfer for full value.

- G. Statutory Authority. This instrument is valid in Rhode Island by virtue of the enactment of Chapter 39 of title 34 of the General Laws of Rhode Island, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this instrument according to its terms, it being the intent of the parties that this instrument constitutes a charitable trust, a preservation restriction, a common law easement in gross and a restrictive covenant.
- H. Notices. Any notice called for herein shall be in writing and shall be mailed postage prepaid by registered or certified mail with return receipt requested, or hand delivered and receipted. If to Grantor, then at _____ and if to Grantee, then at the Rhode Island Historical Preservation and Heritage Commission, 150 Benefit Street, Providence, Rhode Island. Each party may change its address set forth herein by a notice to such effect to the other party. The failure to service a change of address notice shall not waive the notice requirement.

Whenever a change of legal ownership is recorded in the land evidence records, it shall be the obligation of the new owner of record to provide to the Commission the owner's name and address where notices may be sent.

- I. Compliance with Applicable Ordinances. To the extent this easement permits future development of the Premises, such development shall conform with appropriate local, state or federal standards for construction or rehabilitation. Furthermore, nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance relating to building materials, construction methods or use. In the event of any conflict between such ordinance and the terms hereof, the ordinance shall prevail and the Grantor promptly shall notify the Grantee of such conflict and shall cooperate with Grantee and the Town of _____ and the State of Rhode Island or other appropriate authority to accommodate the purposes of both this instrument and such ordinance.
- J. A copy of this Preservation Easement shall be recorded with the City Recorder of Deeds and copies shall be furnished by the Grantor to the Rhode Island Historical Preservation and Heritage Commission.
- K. The Grantee shall have the right to install a plaque of suitable design at a point easily visible by the public, from a public way, which plaque shall name the architect, the date of construction and state that the facade is subject to a Preservation Easement held by the Rhode Island Historical Preservation and Heritage Commission.

L. The Grantor acknowledges that the subject matter of this conveyance is a historic preservation restriction which can no longer be transferred, hypothecated or subordinated to liens or encumbrances by the Grantor except as regards to condemnation awards or insurance proceeds.

M. For purposes of furthering the preservation of the premises and buildings and of furthering the other purposes of this Easement, and to meet changing conditions, Grantor and Grantee are free to amend jointly the terms of this instrument in writing, without notice to any party; provided, however, that no such amendment shall limit the duration or interfere with the preservation and conservation purposes of the donation. Such amendment shall become effective upon recording among the land records of the City or Town.

[The remainder of this page is intentionally left blank.]

IN WITNESS THEREOF, on the date first shown above, the GRANTOR has caused this Preservation Easement to be executed, sealed and delivered by its representative.

ATTEST

GRANTOR: _____

By _____

(Signature)

Title _____

Printed Name _____

Accepted by Rhode Island Historical Preservation and Heritage Commission this ____ day of _____, 20____.

ATTEST

RHODE ISLAND HISTORICAL
PRESERVATION & HERITAGE COMMISSION

By _____

J. Paul Loether, Executive Director

State of Rhode Island

Town/City of

I, the undersigned, a Notary Public in and for said Town/City, in the State aforesaid, do hereby certify that _____ personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that is duly authorized, signed, sealed and delivered the said instrument as his/her own free and voluntary act, for the uses and purposes therein set forth.

Given my hand and official seal, this ____ day of _____, 20____.

Notary Public

My commission expires:

State of Rhode Island

City of Providence

