

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 RHODE ISLAND HISTORICAL PRESERVATION & HERITAGE COMMISSION, a Rhode Island State Agency qualified to accept charitable gifts and whose purposes include the preservation of buildings, structures or sites of historical, architectural or cultural significance (hereinafter "Grantee").

W I T N E S S E T H:

WHEREAS the Grantor is the owner of land in fee simple and holds title under the document recorded with land evidence records of the TOWN/CITY of \_\_\_\_\_, as recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, which instrument is not violated by this conveyance, which land (hereinafter called "Land") is described in Exhibit "A" which land is improved with a certified historic structure (hereinafter called the "Building"), more fully described in Exhibit "B" (said land and building together being hereinafter called the "Premises");

WHEREAS the building is one of architectural significance, containing features described in greater detail in Exhibit "B" hereto. Furthermore, the land's physical, scenic, and environmental features contribute to the historic and cultural integrity of the premises. (If applicable:) Furthermore, the land has significant landscape features and has improvements constructed on the land. (If applicable:) Furthermore, the building is located in a high visibility location at which its unique appearance and scale of construction are important assets to the locality (Town or City) and its immediate neighborhood (or other site specific language);

WHEREAS the Grantor desires to preserve the facade and the structure to prevent the destruction of the building and its replacement with a larger structure. The Grantor further desires to preserve the facade, the entire premises, landscape features, (improvements, if applicable) (and interior portions, if applicable) in its present design and condition, subject to appropriate restoration and appropriate necessary maintenance.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and the mutual covenants and restrictions hereinafter set forth and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor hereby does grant, give, convey, bargain and sell unto Grantee, its successors and assigns, irrevocably forever, a Preservation Easement in perpetuity, in and to the premises, for the purposes of preserving the facade and structure and (any landscape features, site improvements, or interior

portions that are being protected).

Grantor and Grantee agree that the grant of this Preservation Easement shall, and hereby does, give rise to a property right immediately vested in Grantee with a fair market value equal to the proportionate value that the Preservation Easement on the date hereof bears to the total value of the premises on the date hereof. The proportionate value determined under the preceding sentence with respect to the property right granted hereunder shall remain constant. If a change in conditions gives rise to the extinguishment of the Preservation Easement, the Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises shall be entitled to a portion of the proceeds therefrom equal to that proportionate value unless the law of Rhode Island provides that the Grantor, as the owner of the Premises, is entitled to the full proceeds from the conversion without regard to the terms of this Preservation Easement. The term "proceeds" as used herein shall mean the value of all consideration paid to Grantor upon sale, exchange or involuntary conversion of the premises, net of the value of any capitol improvements to the premises (exclusive of maintenance or restoration or reconstruction of the Building after the occurrence of a casualty or wear and tear) made by Grantor subsequent to the grant of this Preservation Easement.

The terms of the Preservation Easement are as follows:

- A. Grantor's Covenants. In furtherance of the Preservation Easement herein granted, Grantor covenants:
1. Demolition. That Grantor shall not demolish, remove or raze the building.
  2. 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 partial demolition or removal of any building or structure located on the real property except in connection with the demolition or removal of nonstructural portions of the interior of the building (where an interior easement is not conveyed) and except in connection with interior renovation and exterior alterations described in Exhibit "C"
    - b. no change in the facade or to the landscape features and improvements (or any interior portions that are being protected, if applicable) 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 (and any interior portions, if applicable) except as described in Exhibit "C"
- c. no addition of signs or addition to the facade including fences, or awnings except as described in Exhibit "C"
  - d. no expansion of the building either horizontally or vertically except as described in Exhibit "C"
  - e. no construction of additional buildings on the premises, except as described in Exhibit "C"
  - f. no significant alteration of the topography and no removal or cutting down of specimen trees, except as may be required by good husbandry.
3. 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.
  4. 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).
  5. 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.
  6. 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 [or for a specified dollar amount] 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 Grantee shall have no right to receive insurance proceeds from insurance maintained by Grantor under any circumstances or event and agrees to execute such confirmatory agreement to this effect upon request from any holder of a mortgage on the Premises, provided that nothing herein shall relieve the obligations of the Grantor to preserve the building and facade and otherwise to comply with the terms of this Preservation Easement. 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.

7. 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.
8. Public View. 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.

--OR--

8. Public Access (If applicable:) Grantor shall make the (restricted area of the premises) accessible to the public not less than \_\_\_\_\_ days (10:00 a.m. to 4:00 p.m.) per calendar year, and at other times by appointment to permit persons affiliated with educational organizations, professional architectural associations and historical societies to study the property. Any such public admission may be subject to restrictions, mutually agreed upon as reasonably designed for the protection and maintenance of the property. Such admission may be subject to a reasonable fee, if any, as may be approved by the Grantee.
9. 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.
10. 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. Grantee's Covenants. In furtherance of the Preservation Easement herein granted, Grantee covenants:

1. (Whereas mortgagees must have a first lien and claim to any condemnation award and the Grantor must be able to obtain a mortgage loan to finance improvements to and maintenance and restoration of the Premises) to assign its right to receive any condemnation award to proceeds to any mortgagee holding a mortgage on the Premises and to execute such document as may be requested by such mortgagee to effect such assignment.
2. If the Preservation Easement is extinguished by judicial proceeding, all of the Grantee's proceeds from a subsequent sale or exchange of the Premises shall be used by the Grantee in a manner consistent with the preservation purposes discussed herein.

D. 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 judgement 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.

E. 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.

- F. Duration. This Preservation Easement shall be effective in perpetuity. 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.
- G. 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 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.
- H. Eminent Domain. Subject to the provisions of paragraph C. above, in the event that an eminent domain proceeding is filed against a portion or all of the Premises, the Grantor and the Grantee agree that the Grantee may appear as an additional party in the eminent domain proceeding and may participate fully in the litigation for purposes of proving and recovering the damages caused to the Grantee by the eminent domain action.
- I. 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 effect 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.

- J. 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 & 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.
- K. 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.
- L. 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 (locality - Town or City) or other appropriate authority to accommodate the purposes of both this instrument and such ordinance.
1. 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 Commission.
  2. 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 Commission.
  3. The Grantor acknowledges that the subject matter of this conveyance is a perpetual donation to charity 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 as provided above.
  4. 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 perpetual duration or interfere with the preservation and conservation purposes of the donation. Such amendment shall become effective upon recording among the land records of TOWN/CITY.

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

ATTEST

GRANTOR:

Accepted by Grantee, Rhode Island Historical Preservation & Heritage Commission, pursuant to Chapter 39, Conservation and Preservation Restriction on Real Property, this                    day of  
200 . ' .

By \_\_\_\_\_  
Edward F. Sanderson, Executive Director  
Rhode Island Historical Preservation  
& Heritage Commission

ATTEST:

\_\_\_\_\_  
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 subscribed to the foregoing instrument appeared before me this day in person, and acknowledge that \_\_\_\_\_ signed, sealed and delivered the said instrument as \_\_\_\_\_ free and voluntary act, for the uses and purposes therein set forth.

Given my hand and official seal, this \_\_\_\_\_ day of 200 .

\_\_\_\_\_  
Notary Public  
My commission expires:  
\_\_\_\_\_

State of Rhode Island) ) SS  
City of Providence )

I, the undersigned, Notary Public, appointed in the City of Providence for the State of Rhode Island, do hereby certify that Edward F. Sanderson, personally known to me to be the same person whose name is, as Executive Director of the Rhode Island Historical Preservation & Heritage Commission, a not-for-profit corporation of the State of Rhode Island, subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that is duly authorized, signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of the corporation and as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200 .

\_\_\_\_\_  
Notary Public  
My commission expires  
\_\_\_\_\_