

PRESERVATION EASEMENT

THIS PRESERVATION EASEMENT is entered into this ____ day of _____, 20____, by and between _____ (“Grantor”) and PRESERVATION NEW JERSEY, INC., a New Jersey not-for-profit corporation (“Grantee”).

W I T N E S S E T H:

WHEREAS, Grantor is the owner of the land (the “Real Property”) commonly known as _____ and legally described in Exhibit A which Real Property is improved with a structure (the “Building”), more fully described in Exhibit B, the Real Property and the Building are hereinafter collectively referred to as the “Premises.”

WHEREAS, Grantee is a New Jersey not-for-profit corporation and a qualifying recipient of qualified conservation contributions under Section 170(b), (f) and (h) of the Internal Revenue Code of 1986 (the “Code”), and is committed to its purposes which include the preservation of buildings, structures and sites of historical, architectural and cultural significance.

WHEREAS, the Building is one of architectural significance, containing features described in greater detail in Exhibit B. The entire exterior of the Building (including the front, sides, rear and height of the Building) as more specifically identified on the attached Exhibit B are referred to herein as the “Protected Elements.” Grantor intends to preserve the Protected Elements in their entirety, to prevent the destruction of the Building, and to prevent the alteration of the size, profile and silhouette of the Building in any manner that would affect the structural soundness or appearance of the Protected Elements or which would otherwise be inconsistent with the historical character of the Protected Elements.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and the mutual covenants and terms, conditions, 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 aforesaid Premises, for the purposes of preserving the Protected Elements and accomplishing the other objectives set forth herein on the following terms and conditions.

1. Demolition. Grantor shall not demolish, remove or raze the Building or any portion of the Protected Elements.
2. Alteration. Without the prior written permission of Grantee, executed by a duly authorized officer, 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 the Building;

(b) no change in the Protected Elements, including (without limitation) any alteration, partial removal, construction, remodeling or physical or structural change, or change in surfacing with respect to the appearance or construction of the Protected Elements;

(c) no addition of signs, fences or awnings to the Protected Elements;

(d) no expansion or reduction of the Building either horizontally or vertically;

and

(e) no chemical cleaning or sandblasting of the Protected Elements.

3. Maintenance. Grantor shall promptly perform all necessary maintenance on the Building and the Protected Elements to preserve their appearance and structural soundness and to prevent their deterioration. Without limiting the foregoing, Grantor shall maintain the Premises in accordance with all applicable building and fire codes and shall keep the Premises free of any violation of such codes. Grantor shall also maintain all mechanical systems in the Building (including electrical, plumbing, heating and air-conditioning) in good repair in order to prevent deterioration of the Building or the Protected Elements.

4. Specification of Materials. In providing its written authorization for all work to be performed by Grantor hereunder, Grantee may reasonably specify all materials, methods, and cleaning substances used in any such work.

5. Casualty Damage or Destruction. In the event that the Building or any part thereof shall be materially damaged or destroyed by casualty, Grantor shall promptly notify Grantee in writing of the damage or destruction, such notification including a description of what, if any, emergency work has already been completed. For purposes of this instrument, the term "casualty" is defined as such sudden damage or loss as would qualify for a loss deduction pursuant to Section 165(c)(3) of the Code (construed without regard to the legal status, trade, or business of Grantor or any applicable dollar limitation). No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval of the work. Within four (4) weeks of the date of damage or destruction, Grantor shall submit to Grantee a written report prepared by a qualified restoration architect and an engineer, if required, acceptable to Grantor and Grantee which shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the feasibility of the restoration of the Protected Elements and/or reconstruction of damaged or destroyed portions of the Premises; and

(c) a report of such restoration or reconstruction work necessary to return the Premises to the condition existing immediately prior to the casualty. If in the opinion of Grantee, after reviewing such report, the purpose and intent of this

Preservation Easement will be served by such restoration/reconstruction, Grantor shall within eighteen (18) months after the date of such change or destruction complete the restoration of the Premises in accordance with plans and specifications consented to by Grantee. Grantee has the right to contribute funds toward the costs of restoration of partially destroyed premises above and beyond the total of the casualty insurance proceeds as may be necessary to restore the appearance of the Premises, and such additional costs shall constitute a lien on the Premises until repaid by Grantor.

6. Grantee's Remedies Following Casualty Damage. The foregoing notwithstanding, in the event of damage resulting from casualty, as defined in Section 5, which is of such magnitude and extent as to render restoration of the Premises impossible using all applicable insurance proceeds and other funds available to Grantor (including any funds which Grantee may elect to contribute), as determined by Grantee by reference to bona fide cost estimates, then:

(a) Grantee may elect to reconstruct the Building using insurance proceeds, donations, or other funds received by Grantor or Grantee on account of such casualty, but otherwise at its own expense (such expense of Grantee to constitute a lien on the Premises until repaid in full); or

(b) Grantee may choose any salvageable portions of the Building and remove them from the Premises, and petition for extinguishment of this Preservation Easement pursuant to Section 21 hereof. Upon such extinguishment, this instrument shall lapse and be of no further force and effect, and Grantee shall execute and deliver to Grantor acknowledged evidence of such fact suitable for recording in the land records of _____ County, New Jersey, and Grantor shall deliver to Grantee a good and sufficient bill of sale for portions of the Buildings as may have been chosen by Grantee for salvage.

7. Inspection. Representatives of Grantee may enter the Premises with Grantor or Grantor's agent and inspect the Building at reasonable times upon reasonable notice for the purpose of determining Grantor's compliance with this Preservation Easement.

8. Delivery to Condominium Purchasers. Grantor shall deliver a copy of this Preservation Easement to each purchaser of any condominium within the Building, should a declaration of condominium ownership ever be filed for the Premises.

9. Insurance. Grantor shall keep the Premises insured by an insurance company rated "A" 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 of a type and in such amounts as would, in the opinion of Grantee, normally be carried on a structure such as the Building. Such insurance shall include Grantee's interest and name Grantee as an additional insured and shall provide for at least thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, Grantor shall deliver to Grantee fully executed copies of such insurance policies evidencing the aforesaid insurance coverage at the commencement of this grant and

copies of new or renewed policies at least ten (10) days prior to the expiration of such policy. Grantee shall have the right to provide insurance at Grantor's cost and expense, should Grantor fail to obtain same. In the event Grantee obtains such insurance, the cost of such insurance shall be a lien on the Premises until repaid by Grantor.

10. Real Estate Taxes. Grantor shall promptly pay before delinquency all real estate taxes and special assessments assessed and levied against the Premises on or prior to the due date, provided, however, that Grantor may challenge any proposed levy of real estate taxes or special assessments if Grantor complies with all requirements of law necessary to prevent the sale of the Premises during the pendency of such challenge. Grantee shall have the right to pay such real estate taxes and special assessments at any time that such taxes and assessments may be delinquent. In the event Grantee makes such payment, there shall be a lien in Grantee's favor on the Premises in the amount thereof until such amount is repaid by Grantor.

11. Indemnity. Grantor shall defend, indemnify and hold Grantee harmless from any liability, costs, attorneys' fees, judgments or expenses to Grantee or any officer, employee, agent or independent contractor of Grantee resulting or caused in any way by reason of Grantee's acceptance of this Preservation Easement, including, without limitation, from actions or claims of any nature by third parties arising from defaults under this Preservation Easement by Grantor, or arising out of the ownership, possession, or exercise of rights under this Preservation Easement (including any such costs and expenses incurred by Grantee in connection with preserving the validity or priority of this Preservation Easement), excepting any such matters arising solely from the negligence of Grantee. In the event that Grantor is obligated to indemnify Grantee hereunder, the amount of such indemnity, until satisfied, shall constitute a lien on the Premises. Notwithstanding the foregoing, Grantor's obligation to indemnify Grantee shall expire upon the initial sale and conveyance of the Property to a third-party purchaser for value (specifically excluding any transfer by Grantor for estate planning purposes). The expiration of Grantor's indemnity obligation shall not serve to extinguish, restrict or otherwise limit Grantor's indemnity of Grantee to the extent

(a) a matter in which Grantor is entitled to indemnification hereunder has arisen and Grantee has notified Grantor of the same prior to the sale and conveyance of the Property, or

(b) Grantor is then currently indemnifying Grantee.

12. Mechanics Liens. Grantor shall keep the Premises free from any mechanics liens. If any such liens are placed against the Premises, Grantor shall promptly cause them to be released or, in the alternative, shall provide Grantee with title insurance reasonably acceptable to Grantee insuring over said liens. Grantee shall have the right to pay any lien if Grantor fails to provide Grantee with title insurance over the lien. Grantee shall have a lien on the Premises in the amount of any funds paid by Grantee to discharge such mechanic's lien until such amount has been repaid by Grantor.

13. Grantee's Covenants. In furtherance of this Preservation Easement herein granted, Grantee covenants the following:

(a) Grantee has the resources to manage and enforce the terms and restrictions contained herein and in connection therewith shall periodically inspect the Protected Elements and the entire Building in accordance with Section 7 hereof.

(b) Grantee may, prior to the fortieth anniversary of the date of this Preservation Easement and at such other times as Grantee deems necessary, record a claim for the purpose of preserving the lien of this Preservation Easement in perpetuity. Nothing contained in this paragraph shall be deemed to constitute an acknowledgment that any such recording is necessary, however, and Grantor and Grantee expressly acknowledge that no such recording is necessary in order to perpetuate the validity or enforceability of this Preservation Easement.

(c) Grantee shall apply the *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, issued by and as may be amended from time to time by the Secretary of the United States Department of the Interior (hereinafter the "Standards") and such other standards (including but not limited to state and local standards) as may be considered appropriate by Grantee for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally, or culturally significant areas in connection with exercising any authority created by this Preservation Easement to inspect the Premises, the Building or the Protected Elements in reviewing any Grantor requested construction, alteration, repair or maintenance or in reviewing casualty damage and any reconstruction of the Building following casualty damage. Grantor agrees to abide by the *Standards* in performing all ordinary repairs and maintenance work and the minimum maintenance program described in Section 3. In the event the Standards are abandoned or materially altered or otherwise become, in the sole judgment of Grantee, inappropriate for the purposes set forth above, Grantee may apply reasonable alternative standards and notify Grantor of the substituted standards.

14. Remedies.

(a) In the event of a violation of any representation, warranty, covenant or other provision of this Preservation Easement, in addition to any remedies now or hereafter provided by law Grantee may, following reasonable notice to Grantor, institute a suit for injunctive relief, specific performance or damages, enter upon the Premises to correct any such violation, and hold Grantor and Grantor's successors, heirs and assigns in title responsible for the cost thereof, or expend such sums as may be necessary to satisfy any lien prohibited hereunder or to pay and discharge any delinquent taxes or assessments, or to redeem from any tax sale, and all funds so paid or expended by Grantee shall, until repaid, constitute a lien on the Premises. Without limiting the generality of the foregoing, in the event that Grantor fails to perform its obligation to maintain the Premises or the Protected Elements, Grantee shall be entitled to damages in the amount estimated by an architect licensed in the State of New Jersey as selected by Grantee as the cost of restoring or repairing the Premises. 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 attorneys' 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. All damages, costs, and expenses awarded to Grantee hereunder shall constitute a lien against the Premises until repaid by Grantor. Grantee shall have the right, but not the obligation, to record a notice of any lien which Grantee may claim to have against the Premises.

(b) Grantor's sole remedy in the event of a failure by Grantee to perform any of its covenants herein contained shall be, if such failure shall continue for ten (10) days after written notice thereof to Grantee, to institute a suit for injunctive relief or specific performance. Grantor hereby waives any claim for damages resulting from such failure, and expressly acknowledges that any such failure by Grantee shall in no way affect the validity of this Preservation Easement or any of the other covenants contained herein and shall not serve as a defense against the exercise of any rights of Grantor hereunder or provide a set-off against any claim by Grantor hereunder.

15. Assignability. Grantor agrees that Grantee may, in its discretion, and without prior notice to Grantor, convey and assign this Preservation Easement to an agency of the State of New Jersey, to a unit of local government, or a not-for-profit corporation, trust or other entity whose primary purposes include the preservation of buildings of historical, architectural or cultural significance, which is an eligible donee under Section 170 of the Internal Revenue Code. Subject to the provisions of Section 21 hereof, the parties further agree that this Preservation Easement shall not be released to Grantor or its successors or assigns without the consent of the New Jersey Attorney General, which consent shall be appended to such release.

16. Duration. This Preservation Easement shall be effective in perpetuity.

17. 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 obligation 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, except that such a transfer shall not relieve any person from liability arising from acts or omissions committed prior to such transfer.

18. Eminent Domain. In the event that an eminent domain proceeding is filed against a portion of or all of the Premises, Grantor and Grantee agree that Grantee may appear as an additional party in the eminent domain proceeding and may participate fully in the litigation for the purposes of proving and recovering the damages caused to Grantee by the eminent domain action. In the event that an award is entered which assumes that this Preservation Easement is not in effect, Grantee shall be entitled to share in the award to the extent provided in Section 19 hereof.

19. Stipulated Value of Grantee's Interest. Grantor acknowledges that upon execution

and recording of this Preservation Easement, Grantee shall be immediately vested with a real property interest in the Premises. For purposes of allocating net proceeds in an extinguishment of this Preservation Easement pursuant to Section 21 below, Grantee shall be entitled to a percentage of said net proceeds in an amount equal to the fair market value of the Preservation Easement (which is equal to the difference between the fair market value of the Premises prior to considering the impact of the Preservation Easement and the fair market value of the Premises after encumbering the same with the granting of this Preservation Easement) divided by the fair market value of the Premises prior to considering the impact of the Preservation Easement (hereinafter the "Preservation Easement Percentage") as determined in the Qualified Appraisal provided to Grantee pursuant to Section 20. Based upon the Qualified Appraisal, the Preservation Easement Percentage is _____ percent.

20. Qualified Appraisal. In the event Grantor claims a federal income tax deduction for donation of a "qualified real property interest" as that term is defined in Section 170(h) of the Internal Revenue Code, Grantor shall provide Grantee with a copy of all appraisals (hereinafter, the "Qualified Appraisal" as that term is defined in Section 1.170A-13(c)(3) of the Treasury Regulations) of the fair market value of this Preservation Easement. Upon receipt of the Qualified Appraisal, this fully executed Preservation Easement, and any endowment requested hereunder by Grantee, Grantee shall sign any appraisal summary form prepared by the Internal Revenue Service and submitted to Grantee by Grantor. In addition, if Grantor claims a federal income tax deduction in connection herewith Grantor covenants to comply with Code Section 170(h)(4)(B)(iii) by including with the Grantor's tax return

(a) a copy of the Qualified Appraisal,

(b) photographs of the entire Building and Protected Elements and (c) a description of all restrictions on the development of the Building.

21. Extinguishment. 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 the preservation and conservation purposes and necessitate extinguishment of the Preservation Easement. Such a change in conditions includes, but is not limited to, partial or total destruction of the Building or the Protected Elements resulting from a casualty of such magnitude that Grantee approves demolition as provided in Sections 5 and 6. Such an extinguishment must comply with the following requirements:

(i) The extinguishment must be the result of a final, non-appealable judicial proceeding.

(ii) Grantee shall be entitled to share in any net proceeds resulting from or related to the extinguishment in an amount equal to the Preservation Easement Percentage determined pursuant to Section 19 multiplied by the net proceeds.

(iii) Grantee agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other buildings, structures, or sites having historical, architectural, cultural, or aesthetic value and significance to the people

of the State of New Jersey.

(iv) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale, financing or exchange by Grantor of any portion of the Premises after the extinguishment, but shall specifically exclude any preferential claim of a Mortgagee under Section 22.

22. Subordination of Mortgages. Grantor and Grantee agree that all mortgages and rights in the Premises of all mortgagees and holders of other liens and encumbrances (collectively "lienholders") are subject and subordinate at all times to the rights of Grantee to enforce the purposes of this Preservation Easement. Grantor represents and warrants that it has provided a copy of this instrument to all lienholders as of the date hereof, and the agreement of each lienholder to subordinate its mortgage to this Preservation Easement is attached hereto. The following provisions apply to all Mortgagees (as hereinafter defined) now existing or hereafter holding a mortgage on the Premises:

(a) Except for the liens to Grantee pursuant to Sections 10 and 12 respecting the payment of real estate taxes and mechanics' liens, respectively, any lien granted to Grantee hereunder shall be subordinate to the lien of a Mortgagee.

(b) The provisions of this Section 22 shall not be modified or amended without the express written consent of the Mortgagee.

(c) If a mortgage grants to a Mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the Premises or the right to receive insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Premises, the Mortgagee shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to this Preservation Easement.

(d) If a Mortgagee has received an assignment of the leases, rents, and profits of the Premises as security or additional security for a loan, then the Mortgagee shall have a prior claim to the leases, rents, and profits of the Premises and shall be entitled to receive same in preference to Grantee until said Mortgagee's debt is paid off, notwithstanding that the Mortgage is subordinate to the Preservation Easement.

(e) Until a Mortgagee or purchaser at foreclosure obtains ownership of the Premises following foreclosure of its Mortgage or deed in lieu of foreclosure, the Mortgagee or purchaser shall have no obligation, debt, or liability under this Preservation Easement.

(f) Before exercising any right or remedy due to breach of this Preservation Easement, except the right to enjoin a violation hereof, Grantee shall give all Mortgagees of record written notice describing the default, and the Mortgagees

shall have sixty (60) days thereafter to cure or cause to cure of the default, except where such default poses an imminent threat to the Building or the Protected Elements.

(g) Nothing contained in the above paragraphs or in this Preservation Easement shall be construed to give any Mortgagee the right to extinguish this Preservation Easement by taking title to the Premises by foreclosure or otherwise.

(h) For purposes of this instrument, the term "Mortgagee" shall include only the holder of a bona fide indebtedness secured by a mortgage or trust deed, provided that such holder is an institutional lender or other third party unrelated to Grantor.

23. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice, demand, letter, or bill relating to the Premises received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice, demand, letter, or bill, where compliance is required by law.

24. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Premises and provide the opportunity for Grantee to explain the terms of this Preservation Easement to potential new owners prior to sale closing.

25. [Intentionally left blank]

26. Notices. Any notice called for herein shall be in writing and shall be mailed postage prepaid by personal delivery or 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 Preservation New Jersey, 310 W. State St., Trenton, NJ 08608, Attn: Executive Director. Each party may change its address set forth herein by a notice to such effect to the other party. The failure to serve a change of address notice shall not waive the notice requirement. For purposes of this section, delivery by commercial messenger service or overnight courier shall be deemed personal delivery.

27. Compliance with Applicable Ordinances. 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 any such ordinance and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the City of _____, New Jersey or other appropriate authority to accommodate the purposes of both this instrument and such ordinance.

28. Recording. A copy of this Preservation Easement shall be recorded with the _____ County Recorder of Deeds and copies shall be furnished by Grantor to the New Jersey Historic Preservation Office, Department of Environmental Protection.

29. No Further Alienation. Grantor acknowledges that the subject matter of this

conveyance is a perpetual donation to charity which can no longer be transferred, hypothecated or subjected to liens or encumbrances by Grantor.

30. Reimbursement of Grantee's Expenses. Grantor shall reimburse Grantee for such reasonable costs and expenses of processing or responding to any and all requests by Grantor for modifications or amendments of this Preservation Easement, waivers of any provision contained herein, or approval of any action required by this instrument to be approved by Grantee (to the extent third party experts need to be engaged in connection with such approval). Such reimbursement shall include, without limitation, reasonable fees of attorneys, architects, engineers, and other professionals retained by Grantee, and compensation at reasonable levels for staff time of employees of Grantee. Such reimbursement shall not include expenses related to the preparation, negotiation and entering into this Preservation Easement, routine inspections and follow-up inspections and office record-keeping.

31. Miscellaneous.

(a) In the event that any provision of this Preservation Easement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect any other provision, and the other provisions hereof shall continue in full force and effect.

(b) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this instrument, and this instrument shall be interpreted broadly to effect its preservation and conservation purposes and the transfer of rights and the restrictions on use herein contained as provided in the Act.

(c) Except as expressly provided herein, nothing contained in this instrument grants, nor shall be interpreted to grant, to the public any right to enter on the Premises or into the Building.

(d) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Premises may be developed to a use more intensive (in terms of height, bulk, or other objective criteria regulated by such ordinances) than the Premises are devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Premises during the term hereof, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the preservation and conservation purposes of this Preservation Easement.

(e) For purposes of furthering the preservation of the Protected Elements and Building and of furthering the other purposes of this instrument, 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 the execution thereof by Grantor and Grantee.

(f) The terms and conditions of this Preservation Easement shall be referenced in any transfer of the property by Grantor.

(g) This instrument reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

(h) The captions contained herein are for convenience only and shall not be deemed to be a part of this instrument. The recitals set forth in the beginning of this Preservation Easement are incorporated herein.

(i) Grantor and the persons executing this instrument on behalf of Grantor represent and warrant that Grantor is the owner in fee simple of the Premises, Grantor and the persons executing on behalf of Grantor are fully authorized and empowered to execute and deliver this instrument, and there is no lien, encumbrance, contract, or governmental prohibition against the execution and delivery of this instrument and the performance by Grantor of all of Grantors' obligations hereunder.

(j) The scope of this Preservation Easement includes certain visible exterior aspects of the Building that may include portions of the façade and roof, as more specifically described in Exhibit B. The general public's ability to view the Protected Elements from the street or sidewalk (or other public right of way) must be maintained in accordance with the provisions promulgated under Treasury Regulation Section 1.170A-14(d)(5)(iv) to view or study the Protected Elements. Since the Protected Elements do not include any interior portions of the Building, visual access of the entire Protected Elements on a regular basis by the general public from a public way (i.e., a public street or sidewalk) should satisfy the requirements of Treasury Regulation Section 1.170A-14(d)(5)(iv). Accordingly, shrubbery and other obstacles to the general public's viewing ability should be maintained to allow visual access to the exterior of the Building to satisfy this requirement. No public access to the interior of the Building is required.

(k) Provided that Grantor complies with the terms of Sections 5 and 6 hereof, nothing contained in this Preservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Premises resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.

(l) In connection with Grantee's lien rights as provided for under Sections 5(c), 6(a), 9, 10, 11, 12 and 14(a) hereof, the repayment of the sums secured thereby (plus reasonable expenses in connection with documenting and recording said lien) shall be a personal obligation of Grantor and repaid to Grantee not later than the next conveyance or refinance of the Premises following the date of the recording of Grantee's lien.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, on the date first shown above, the parties have caused this Preservation Easement to be executed, sealed and delivered by as of the date first above written.

GRANTOR:

(name)

(name)

GRANTEE:

PRESERVATION NEW JERSEY, INC. a New Jersey not-for-profit corporation

By:

_____, Executive Director

LENDER ACKNOWLEDGEMENT – PRESERVATION EASEMENT

_____ (institution name), hereby acknowledges and agrees that it is the mortgagee (“Lender”) under that mortgage dated _____ and recorded on _____ as Document No. _____ (“Mortgage”) in _____ County, New Jersey and the holder of the Note secured thereby, and that it hereby subordinates such mortgage to the rights of Preservation New Jersey (“Grantee”) to enforce the purposes of this Preservation Easement subject to the following conditions and stipulations:

- (a) Except for the liens granted to Grantee pursuant to Sections 10 and 12 of this Preservation Easement respecting the payment of real estate taxes and mechanics’ liens respectively, any lien granted to Grantee shall be subordinate to the lien of the Lender.
- (b) The provision of Section 22 of this Preservation Easement shall not be modified or amended without the express written consent of the Lender.
- (c) If the Mortgage grants to the Lender the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the Premises or the right to receive insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Premises, the Lender shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the mortgage is paid off and discharged, notwithstanding that the Mortgage is subordinate in priority to this Preservation Easement.
- (d) If the Lender has received an assignment of the leases, rents, and profits of the Premises as security or additional security for a loan, then the Lender shall have a prior claim to the leases, rents, and profits of the Premises and shall be entitled to receive same in preference to Grantee until said Lender’s debt is paid off, notwithstanding that the Mortgage is subordinate to the Preservation Easement.
- (e) Until the Lender or purchaser at foreclosure obtains ownership of the Premises following foreclosure of its Mortgage or deed in lieu of foreclosure, the Lender or purchaser shall have no obligation, debt, or liability under this Preservation Easement.
- (f) Before exercising any right or remedy due to breach of this Preservation Easement, except the right to enjoin a violation hereof, Grantee shall give the Lender written notice describing the default, and the Lender shall have sixty (60) days thereafter to cure or cause the cure of the default, except where such default poses an imminent threat to the Building or the Protected Elements.
- (g) Nothing contained in the above paragraphs or in this Preservation Easement shall be construed to give the Lender the right to extinguish this Preservation Easement by taking title to the Premises by foreclosure or otherwise.

LENDER:

By:

Name:

Title:

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

DESCRIPTION OF BUILDING AND PROTECTED ELEMENTS