

Historic Preservation Façade Easement Pittsburgh History & Landmarks Foundation

This document is provided for draft discussion and general information only and is provided with the understanding that Landmarks is not engaged in rendering legal advice. Prospective grantors of easements should consult their attorney for legal advice regarding the contents of this easement agreement and the legal consequences of granting a preservation façade easement. It is not intended to represent a final easement agreement. This easement can be amended to include historic interiors or historic landscapes if agreeable to all parties. This document may be updated for changes in Federal and Pennsylvania law not reflected within.

THIS PRESERVATION AND CONSERVATION EASEMENT DEED, is made this _____ day of [month], [year], by and between _____ ("Grantor") and Pittsburgh History & Landmarks Foundation ("LANDMARKS"), a nonprofit corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

RECITALS:

A. Grantor is owner in fee simple of certain real property located in the City of Pittsburgh, in the County of Allegheny of the Commonwealth of Pennsylvania, more particularly described in Exhibit A attached hereto and incorporated within.

[Exhibit A]

Located on the Property is the following structure [describe building] (the "Building"), the exterior walls, elevations, roof lines, color, building materials, fenestration, windows, doors and roof of which (the "Building's Façade") contribute to the architectural value and significance of the Property.

B. LANDMARKS is authorized to accept preservation and conservation easements to protect property significant in national and Pennsylvania history and culture under the provisions of the Conservation and Preservation Easement Act of June 22, 2001, Pennsylvania Act Number 29 (the "Act"), Codified at 32 P.S. § 5051 et seq. of Pennsylvania Statutes.

C. LANDMARKS is a publicly supported, tax-exempt, nonprofit organization whose primary purposes include the preservation and conservation of sites, buildings, and objects of national significance and is a qualifying recipient of qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder ("the Code");

D. The Building stands as a significant example of _____ style architecture in Pennsylvania, illustrates aesthetics of design and setting, and possesses integrity of materials and workmanship;

Because of the architectural significance of the Building, the Property was listed in the National Register of Historic Places on [date] and is a certified historic structure under Section 170(h)(4)(B) of the Code;

F. Grantor and LANDMARKS recognize the architectural value and significance of the Building, and have the common purpose of conserving and preserving the architectural value and significance of the Building's Façade;

G. The architectural value of the Building's Façade is documented in a set of reports, drawings, and photographs ("Baseline Documentation") incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Property as of the effective date of this grant. In the event of any discrepancy between the two counterparts produced, the counterpart retained by LANDMARKS shall control;

The Baseline Documentation shall consist of the following:
[list documents and materials];

H. The grant of a preservation and conservation easement by Grantor to LANDMARKS on the Building's Façade will assist in preserving and maintaining the Property and its architectural features for the benefit of the people of the City of Pittsburgh of the County of Allegheny of the Commonwealth of Pennsylvania and the United States of America.

To that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation and conservation easement ("Easement") in gross in perpetuity on the Building's Façade pursuant to the Act.

IN CONSIDERATION of Ten Dollars (\$10.00), the mutual promises contained in this Deed, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and pursuant to Section 170(h) of the Code and Pennsylvania Act Number 29, Grantor and Landmarks, intending to be legally bound, agree as follows:

1. GRANT, PURPOSE AND EXTENT OF EASEMENT

1.1 Grant of Easement

Grantor hereby grants and donates to LANDMARKS, and LANDMARKS hereby accepts from Grantor, the easement in gross and perpetuity on the Building's Façade.

1.2 Purpose

It is the Purpose of this Easement to assure that the exterior architectural features of the Building will be retained and maintained forever substantially in their current condition for conservation and preservation purposes and to prevent any use or change to the Building's Façade that will significantly impair or interfere with the Building's exterior architectural value.

1.3 Extent of Easement

The grant of this easement is specifically limited to the Building’s Façade; LANDMARKS shall not be deemed to possess any easement over or interest in any other portion of the Property, except as specifically set forth in this Deed.

2. RIGHTS OF PITTSBURGH HISTORY AND LANDMARKS FOUNDATION

In accordance with the stated purpose, this Easement conveys the following rights to LANDMARKS:

- (a) To preserve and protect the architectural value of the Building’s Façade;
- (b) To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 11.3;
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Building’s Façade that may be damaged by inconsistent activity or use, pursuant to the remedies set forth in Section 12; and
- (d) To provide and maintain a plaque on the Property, which plaque shall not exceed 24 by 24 inches in size, giving notice of the significance of this Property and the existence of this Easement.

3. GRANTOR'S COVENANTS AND PROHIBITED USES

3.1 Grantor's Covenants: Covenant to Maintain.

(a) Grantor agrees at all times to maintain the Building’s Façade in the same structural condition and state of repair to that existing on the effective date of this Easement. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the Building’s Façade in substantially the same structural condition and state of repair as that existing on the date of this Easement.

3.2 Grantor's Covenants: Prohibited Activities.

The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this paragraph:

- (a) the Building shall not be demolished, removed, or razed except as provided in paragraphs 7 and 8;
- (b) nothing shall be erected or allowed to grow on the Property which would impair the visibility of the Building’s Façade from street level. Notwithstanding the foregoing, Grantor shall be permitted to plant trees in the sidewalk area around the Building;

(c) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials (other than in the ordinary course of business and in containers normally provided for such purposes) is prohibited on the Property;

(d) the creation on the Property of above-ground utility transmission lines, except those reasonably necessary for the existing Buildings, subject to utility easements already recorded;

4. GRANTOR'S CONDITIONAL RIGHTS

4.1 Conditional Rights Requiring Approval by LANDMARKS.

Without the prior express written approval of the Grantee, which approval may be withheld or conditioned in the sole discretion of LANDMARKS, Grantor shall not undertake any of the following actions:

(a) Construct any lateral addition to the Building (as opposed to any addition within the air rights space over the Property) or further develop the Property in a manner contrary to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (36 C.F.R. § 67) as these may be amended from time to time (the "Secretary's Standards");

(b) Alter, reconstruct, or change the appearance of the Building's Façade, if such changes are contrary to the Secretary's Standards;

(c) Make changes in the material or workmanship of the Building's Façade, if such changes are contrary to the Secretary's Standards;

(d) Erect any external signs or external advertisements except: (i) such plaque permitted under paragraph 2 of this easement; (ii) a sign stating solely the address of the Property; and (iii) a temporary sign to advertise the sale or rental of the Property and (iv) a sign to identify the ownership and use of the Property;

(e) Change the use of the Property, except to a use not prohibited by the Secretary's Standards.

4.2 Review of Grantor's Requests for Approval.

(a) Grantor shall submit to LANDMARKS for Landmarks' approval of those conditional rights set out at Paragraphs 3.2 and 4.1 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to LANDMARKS a timetable for the proposed activity sufficient to permit LANDMARKS to monitor such activity. Within 45 (forty-five) days of Landmarks' receipt of any plan or written request for approval hereunder, LANDMARKS 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 LANDMARKS shall provide Grantor with written suggestions for modification or a written explanation for Landmarks' disapproval. Any failure by LANDMARKS to act within 45 (forty-five) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by LANDMARKS of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted.

(b) In exercising any authority created by the Easement to review and approve any addition, construction, alteration, repair, or maintenance; or to review casualty damage or to approve reconstruction following casualty damage to or implicating the exterior of the Building, LANDMARKS shall apply the Secretary's Standards.

5. PUBLIC ACCESS

Grantor shall make the Buildings accessible to the public on a minimum of _____ days per year, which requirement shall be deemed satisfied if the Building's Façade is visible from a public street. At other times deemed reasonable by Grantor persons affiliated with educational organizations, professional architectural associations, and historical societies shall be admitted to study the property. LANDMARKS may make photographs, drawings, or other representations documenting the significant architectural character and features of the property and distribute them to magazines, newsletters, or other publicly available publications, or use them to fulfill its charitable and educational purposes.

6. GRANTOR'S RESERVED RIGHTS

6.1 Grantor's Reserved Rights Not Requiring Further Approval by LANDMARKS.

Subject to the provisions of paragraphs 3.1, 3.2, and 4.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval by Grantee:

(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 architectural value of the Property; and (iii) are not inconsistent with the Purpose of this Easement;

(b) pursuant to the provisions of paragraph 3.1, the right to maintain and repair the Building strictly according to the Secretary's Standards. As used in this subparagraph, the right to maintain and repair shall mean the use by 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 Buildings. The right to maintain and repair as used in this subparagraph shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of paragraphs 3.1 and 3.2;

(c) the right to continue all manner of existing use and enjoyment of the Property's Buildings, including but not limited to the maintenance, repair, and restoration of existing fences; the right to maintain existing driveways, roads, and paths with the use of same or similar surface materials; the right to maintain existing utility lines, gardening and building walkways, steps, and garden fences; the right to cut, remove, and clear grass or other vegetation and to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Easement; and;

(d) the right to conduct at or on the Property educational and nonprofit activities that are not inconsistent with the protection of the architectural value of the Property.

7. CASUALTY DAMAGE OR DESTRUCTION

In the event that the Buildings or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify LANDMARKS in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Buildings and to protect public safety, shall be undertaken by Grantor without Landmarks' prior written approval.

Within thirty (30) days of the date of damage or destruction, if required by LANDMARKS, Grantor at its expense shall submit to LANDMARKS a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and LANDMARKS, which report 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 Buildings and/or reconstruction of damaged or destroyed portions of the Buildings; and
- (c) a report of such restoration/reconstruction work necessary to return the Buildings to the condition existing at the date hereof.

8. REVIEW AFTER CASUALTY DAMAGE OR DESTRUCTION

If, after reviewing the report provided in paragraph 7 and assessing the availability of insurance proceeds, Grantor and LANDMARKS agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and LANDMARKS shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Buildings 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, Grantor and LANDMARKS agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Easement would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of LANDMARKS, alter, demolish, remove, or raze one or more of the Buildings, and/or construct new improvements on the Property.

If, after reviewing the report and assessing the availability of insurance proceeds, Grantor and LANDMARKS are unable to agree that the Purpose of the Easement 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 Pennsylvania arbitration statute then in effect.

9. INSURANCE

Grantor shall keep the Property insured by an insurance company rated "A1" 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 Property and Buildings without cost or expense to Grantor or contribution or coinsurance from Grantor. Such insurance shall include Landmarks' interest and name LANDMARKS as an additional insured. Grantor shall deliver to LANDMARKS, within ten (10) business days of Landmarks' written request therefore, certificates of such insurance coverage.

10. COSTS, INDEMNIFICATION AND TAXES

10.1 Costs

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity shall be undertaken in accordance with all applicable federal, state, and local laws and regulations.

10.2 Indemnification

Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, LANDMARKS, its agents, directors and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; 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 Property, unless such injury or damage is caused by LANDMARKS or any agent, trustee, employee, or contractor of LANDMARKS. In the event that Grantor is required to indemnify LANDMARKS 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. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

10.3 Taxes

Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal

thereof, in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, LANDMARKS is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. LANDMARKS may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by LANDMARKS shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

11. ADMINISTRATION AND ENFORCEMENT

11.1 Written Notice.

Any notice which either Grantor or LANDMARKS may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods by overnight courier postage prepaid, facsimile transmission, registered or certified mail with return receipt requested, or hand delivery addressed as follows:

If to Grantor: NAME
 ADDRESS

If to LANDMARKS: Pittsburgh History & Landmarks Foundation
 100 West Station Square Drive, Suite 450
 Pittsburgh, Pennsylvania 15219-1134

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

11.2 Evidence of Compliance.

Upon request by LANDMARKS, Grantor shall promptly furnish LANDMARKS with certification that, to the best of Grantor's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidences the status of this Easement to the extent of Grantor's knowledge thereof.

11.3 Inspection.

(a) After notice to and with the consent of Grantor, representatives of LANDMARKS shall be permitted at all reasonable times to inspect the Building's Facade. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections and LANDMARKS covenants not to unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

(b) In cases where LANDMARKS determines that immediate entry is required to prevent, terminate or mitigate a violation of this Easement, LANDMARKS need not provide the prior notice to or obtain the prior consent of the Grantor prior to inspecting the Building's Facade.

12. REMEIDES OF PITTSBURGH HISTORY & LANDMARKS FOUNDATION

12.1 Notice of Violation; Corrective Action

If LANDMARKS determines that a violation of the terms of this Easement has occurred or is threatened, LANDMARKS shall give written notice to the Grantor of such violation and demand corrective action sufficient to cure the violation, and where the violation involves injury to the Building's Facade resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Building's Facade so injured to its prior condition in accordance with a plan approved by LANDMARKS. Written notice shall be delivered by one of the following methods: overnight courier postage prepaid, certified mail, or hand delivery.

12.2 Injunctive Relief

If Grantor fails to cure a violation within forty-five (45) days after Grantor's receipt of notice thereof from LANDMARKS, or under circumstances where the violation cannot reasonably be cured within a 45-day period, fails to continue diligently to cure such violation until finally cured, LANDMARKS may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this Easement by instituting proceedings for ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Buildings to the condition and appearance that existed prior to the violation complained of. LANDMARKS shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

[Supplementary arbitration provision may be added here or elsewhere.]

12.3 Emergency Enforcement

If LANDMARKS, in its sole discretion reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the Architectural Value of the Property, LANDMARKS may pursue its remedies under this section 12 with notice to the Grantor but without waiting for any cure period to expire.

12.4 Costs of Enforcement

In the event Grantor is found by a court of competent jurisdiction to have violated any of its obligations, Grantor shall reimburse LANDMARKS for any costs or expenses incurred in connection with Landmarks' enforcement of the terms of this Easement, including all reasonable court costs, and attorney's, architectural, engineering, and expert witness fees.

12.5 Other Remedies Available

Exercise by LANDMARKS of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

12.6 Forbearance

Forbearance by LANDMARKS to exercise its rights under this Easement in the event of any breach by Grantor of any term of this Easement shall not be deemed or construed to be a waiver by LANDMARKS of such term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by LANDMARKS in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

12.7 Acts Beyond Grantor's Control

Nothing contained in this Easement shall be construed to entitle LANDMARKS to bring any action against Grantor for any injury or change to the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement.

13. NOTICE FROM GOVERNMENT AUTHORITIES

Grantor shall deliver to LANDMARKS copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by LANDMARKS, Grantor shall promptly furnish LANDMARKS with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

[Notification time may be increased]

14. NOTICE OF PROPOSED SALE; RIGHT OF FIRST REFUSAL

Grantor shall notify LANDMARKS in writing thirty days (30) prior to any proposed sale of any or all of the parcels comprising the Property and provide the opportunity for LANDMARKS:

- (a) to purchase said Parcel(s) at the price currently being offered in writing by a third party in an arm's-length transaction; and
- (b) to explain the terms of the Easement to potential new owners prior to sale closing.

15. JUDGMENTS; LIENS

Grantor, for himself, his heirs, successors and assigns and on behalf of any future owner of the Property, covenants and acknowledges that any judgment entered by a court of competent jurisdiction in enforcing Landmarks' rights under this Easement may be entered by a court as a lien against the property (*in rem*) and personally (*in*

personam) against Grantor or the current owner of the Property at the time the judgment is entered. Any lien on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by LANDMARKS in the same manner as a mechanic's lien, except that no lien created pursuant to this Easement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

16. BINDING EFFECT; ASSIGNMENT

16.1 Runs With The Land

Except as provided in paragraphs 18.2 and 18.3, the obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and LANDMARKS, their respective successors in interest and all persons hereafter claiming under or through Grantor and LANDMARKS, and the words "Grantor" and "LANDMARKS" when used herein shall include all such persons. Any right, title, or interest herein granted to LANDMARKS also shall be deemed granted to each successor and assign of LANDMARKS and each such following successor and assign thereof, and the word "LANDMARKS" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a *bona fide* transfer. The restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent 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.

16.2. Assignment

Upon thirty (30) days written notice, LANDMARKS may convey, assign, or transfer this Easement to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" under Section 170(h) of the Code whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Easement was granted will continue to be carried out.

17. INTERPRETATION; EFFECTIVE DATE

17.1 Interpretation

The following provisions shall govern the effectiveness, interpretation, and duration of the Easement:

- (a) 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 Easement, and this instrument shall be interpreted broadly to effect its purpose and the transfer of rights and the restrictions on use herein contained.

(b) This instrument may be executed in two counterparts, one of which may be retained by Grantor and the other, after recording, to be retained by LANDMARKS. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern.

(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 Easement 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 agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(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 LANDMARKS of such conflict and shall cooperate with LANDMARKS and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(e) Entire Understanding.

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

(f) 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 Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property is devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised, if such exercise or transfer would interfere with the Purpose of the Easement.

17.2 Recording and Effective Date.

LANDMARKS shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of Allegheny County, Pennsylvania. Grantor and LANDMARKS intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the land records of Allegheny County, Pennsylvania.

18. PERCENTAGE INTERESTS; EXTINGUISHMENT

18.1 Percentage Interests.

For purposes of allocating proceeds pursuant to paragraphs 18.2 and 18.3, Grantor and LANDMARKS stipulate that as of the date of this Easement, Grantor and LANDMARKS are each vested with real property interests in the Property and that such interests have a stipulated percentage interest in the fair market value of the Property.

LANDMARKS' percentage interest shall be determined by dividing the value of the Property, without deduction for the value of this Easement, on the effective date of this Easement by the value of this Easement, on the effective date of this Easement. Grantor's percentage interest shall be the difference between 100% and LANDMARKS' percentage interest. The values on the effective date of the Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. The parties shall include their respective percentage interests with the Baseline Documentation (on file with Grantor and LANDMARKS) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction.

For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantor and LANDMARKS in the fair market value of the Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the effective date of this Easement is reserved to Grantor.

Unless amended as the result of a final determination by the Internal Revenue Service or court of competent jurisdiction, the parties stipulate that LANDMARKS' percentage interest is _____ and Grantor's percentage interest is _____.

18.2 Extinguishment.

If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceeding in a court of competent jurisdiction. After such termination or extinguishment, Grantor and LANDMARKS shall share in any proceeds resulting from any sale, exchange or involuntary conversion of all or a portion of the Property subsequent to such termination or extinguishment, in accordance with their respective percentage interests in the fair market value of the Property, as determined under Paragraph 18.1 and only after subtracting from such proceeds the costs or expenses associated with such sale, exchange or involuntary conversion. All such proceeds received by LANDMARKS shall be used by LANDMARKS in a manner consistent with Landmarks' primary purposes. Net proceeds shall also include, without limitation, net insurance proceeds. The parties hereto agree that economic hardship on the part of the Grantor, or his heirs, successors or assigns shall not be sufficient grounds for extinguishment or termination of this Easement.

In the event of extinguishment, the provisions of this paragraph shall survive and Grantor for himself, his heirs, successors and assigns, and on behalf of future owners of the Property, covenant and acknowledge that any judgment entered by a court of competent jurisdiction in enforcing Landmarks' rights under this provision may be entered by a court as a lien against the Property and personally against the Grantor or the owner of the Property at the time the judgment is entered. Said lien shall have the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

18.3 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 LANDMARKS shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. After the satisfaction of any expenses reasonably incurred by Grantor and LANDMARKS in connection with such taking, Grantor and LANDMARKS shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 18.1 and 18.2 unless otherwise provided by law.

19. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and LANDMARKS may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of LANDMARKS under any applicable laws, including sections 170 (h) and 501(c)(3) of the Code and laws of the Commonwealth of Pennsylvania. Any such amendment shall be consistent with the protection of the Architectural Value of the Property and the Purposes of this Easement; shall not affect its perpetual duration; shall not permit additional residential development on the Property other than the residential development permitted by this Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall scenic, architectural, and open space values protected by this Easement. Any such amendment shall be recorded in the land records of Allegheny County, Pennsylvania. Nothing in this paragraph shall require Grantor or LANDMARKS to agree to any amendment or bind them to negotiation.

THIS EASEMENT reflects the entire agreement of Grantor and LANDMARKS. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Preservation and Conservation Easement, unto Pittsburgh History & Landmarks Foundation and its successors and permitted assigns forever. THIS PRESERVATION AND CONSERVATION EASEMENT DEED may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

EXECUTION PAGE

IN WITNESS WHEREOF, Grantor and Pittsburgh History & Landmarks Foundation have set their hands under seal on the days and year set forth below.

NOTICE: THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE GRANTING AND RECORDING OF THE EASEMENT, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THIS EASEMENT MAY IMPAIR THE DEVELOPMENT OF WORKABLE COAL SEAMS OR CERTAIN OTHER COAL AND MINERAL INTERESTS NOT TRANSFERRED TO THIRD PARTIES ON THE DATE HEREOF. This notice is inserted herein to comply with Section 9(d) of the Conservation and Preservations Easements Act of June 22, 2001 (Act No. 29.)

WITNESS:

GRANTOR:

Name:

Date:

ATTEST:

GRANTEE:

Pittsburgh History & Landmarks
Foundation

Arthur P. Ziegler, Jr., President

Date:

EXHIBIT A
PROPERTY DESCRIPTION

All those certain lots or parcels of ground situate in the town of _____, County of _____, Commonwealth of Pennsylvania, being bound and described as follows:

[Property Description]

NOTE: The regulations under Section 170(H) of the Code require any mortgage encumbering the Property to be subordinated to this Easement. If the Property is encumbered by a mortgage, the terms of such subordination agreement must be negotiated and such fact reflected in this Easement.