

THE PRESERVATION ALLIANCE FOR GREATER PHILADELPHIA

DEED OF PRESERVATION EASEMENT

This Deed of Preservation Easement (the “Easement”) is made this ____ day of _____ 2011, by [insert name of property owner]_____, (“Grantor”), and the PRESERVATION ALLIANCE FOR GREATER PHILADELPHIA, a not-for-profit corporation organized under the laws of the Commonwealth of Pennsylvania (“Grantee”).

BACKGROUND

Grantor has legal and equitable fee simple title to the parcel of land and improvements known as [insert address]_____, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the “Property”).

The Property [was individually listed on the National Register of Historic Places by the United States Department of Interior] [was listed as a contributing property in the [insert name of district]_____ approved by the United States Department of Interior] on [insert date]_____ and continues to be so listed.

The building located on the Property, including all facades of the building and any improvements, the entirety of the roof of the building and any improvements, and the interior of the building and any improvements, (herein after the “Building”) and the open space on the Property (herein after the “Open Space”) contribute/s to the historic aspects of the City of Philadelphia and particularly the [insert name of district]_____. Grantee considers the Building to represent a valuable example of a historic architectural style worthy of preservation and benefiting the adjacent properties in the District.

Grantee is a qualified conservation organization having as its primary purpose the preservation of historic sites and structures and the conservation of historic and significant open space. Grantee is authorized to acquire historic sites and structures and to acquire historic and significant open space.

Grantee is a conservation organization qualified under applicable law as an eligible donee for, inter alia, the donation of easements for the preservation of historically important structures.

The donation of the within Easement to Grantee will further Grantee’s goal of fostering the conservation of the region’s heritage of historically significant structures with aesthetic, architectural, scenic and/or open space values.

Grantor and Grantee understand that Grantee has been or will be the recipient of preservation easements and open space easements in addition to the easement contained in this Easement on other properties in Pennsylvania and New Jersey.

The grant of this Easement will impose restrictions on the development and maintenance of the Building and Open Space in perpetuity (unless indicated otherwise below) and will impose on Grantor and subsequent owners certain continuing maintenance obligations affecting the Building and Open Space on the Property. The grant of the Easement will give Grantee and any subsequent holder of the Easement the right to enforce the terms and conditions of this Easement forever.

Grantor desires to grant to Grantee, and Grantee desires to accept, the Easement on terms and conditions set forth below.

TERMS AND CONDITIONS

Intending to be legally bound hereby, in consideration of the mutual promises herein contained, and in further consideration of other good and valuable consideration paid by Grantor to Grantee, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee grant, convey, assign, agree and declare as follows:

TERM AND GRANT

Grantor hereby grants and conveys to Grantee an estate, interest and easement in the Building and Open Space as shown in Exhibit C, for the preservation of historic, architectural, and scenic values of the nature and character and to the extent set forth in this Easement, to constitute a servitude and covenant upon the Property, running with the land for the benefit of and enforceable by Grantee, to have and to hold the said estate, interest and easement subject to and limited by the provisions of this Easement, to and for Grantee's proper uses forever.

SCOPE OF GRANTEE'S ESTATE, INTEREST AND EASEMENT

The Easement herein granted conveys to Grantee an interest in the Property consisting of the benefits of the following covenants and undertakings by Grantor. Without the prior written consent of Grantee, Grantor shall not cause, permit or suffer any construction, alteration, remodeling, decoration, dismantling, destruction, or other activity which would affect or alter in any material way the appearance of the Building or the Open Space, as shown in Exhibit C, except as specifically required herein pursuant to Exhibit B and/or authorized pursuant to Paragraph 7(b) hereof.

Grantor, at Grantor's expense, shall maintain the Building and Open Space at all times and shall keep the Building and Open Space in a state of good repair and shall make sure that the appearance of the Building and Open Space, as viewed from any location on any street on or off the Property shall not be permitted to deteriorate in any material way, and to this end, Grantor

agrees that it shall comply with the Restoration Program and the Minimum Maintenance Program set forth in Exhibit B to this Easement.

Grantor shall not cause, permit or suffer the removal of any of the original or historic building elements from the Building and Open Space, unless consistent with the preservation and conservation objectives of this Easement, and with the prior written permission of Grantee, except when the replacement of those elements is required, in Grantor's reasonable judgment, because of imminent danger to the building or to comply with applicable codes.

Grantor shall permit Grantee access to the Property at such reasonable times and upon reasonable prior notice as Grantee may request for the purpose of examining and testing of all structural portions of the Building, the materials and elements of the Building and such portions of the Building and Open Space as are subject to the Easement.

Grantor acknowledges that the setting in which the Property is located, including the scale, design, massing and materials of existing and new buildings in the nearby area, affects the historic value of the Property and that Grantee's interest in an appropriate setting is as direct, substantial and immediate as Grantor's interest. The Grantor authorizes Grantee to protect Grantee's interest, through advocacy or litigation, in any federal, state or local board, commission, council or agency for appropriate preservation of existing buildings or features and/or for appropriate new development in the nearby area.

Grantor shall permit Grantee to display on the Property, at its discretion, a small marker or sign evidencing its ownership of the Easement granted herein. The location, size, design and material of any such marker or sign shall be mutually acceptable to Grantor and Grantee.

EXISTING CONDITIONS, INITIAL LEVEL OF PRESERVATION, ALTERATIONS AND PRESERVATION OBJECTIVES

Exhibit B.I.A., Initial Restoration, indicates the required work, if any, necessary to be done on the Building and Open Space within fifteen (15) months of execution of this Easement or as otherwise scheduled therein (the "Initial Restoration"). Exhibit B also sets forth permitted future restoration and permitted alterations to the Property and the request for prior approval by Grantee.

Exhibit B.I.A. and certain photographs, plans and specifications, attached hereto as Exhibit C and made a part hereof, shall constitute the aesthetic, architectural, landscape and historic condition in which the appearance of the Building and Open Space is to be maintained and preserved after completion of the work required pursuant to Paragraph 3(a) above.

Except as otherwise provided in this Easement, such photographs, plans and specifications set forth in Exhibit C, as supplemented by Exhibit B.I., shall constitute conclusive evidence of the appearance of the Property and built elements on the Property which are not to be materially affected or altered pursuant to Paragraph 2(a) above and are to be maintained pursuant to Paragraphs 2(b) and 2(c) above.

RIGHTS OF GRANTEE IF PROPERTY DESTROYED

In the event that the Building and/or Open Space located on the Property is, by reason of fire, flood, earthquake or other disaster of any kind whatsoever:

Partially destroyed, to such an extent or of such nature that the appearance of the Building and/or Open Space is altered from the Building's and Open Space's appearance in the photographs, plans and specifications referred to in Paragraph 3 above, but is not totally destroyed in the reasonable judgment of Grantee, then Grantor shall, as promptly as is practicable, restore the Building and Open Space up to at least the total of the casualty insurance recovery to a condition so that the appearance is restored to that shown in such photographs, plans and specifications. In addition, Grantor and Grantee, after consultation with each other, may agree upon such other restoration that is consistent with the architectural character, including height, bulk, mass, materials and colors, and landscape character, of the remainder of the building and of historic commercial / residential buildings and open space located within [name of National Register District]. Grantor need not expend a sum in excess of an amount equal to the sum of such casualty insurance recovery.

Totally destroyed, then Grantor shall not thereafter erect on the Property any building the appearance of which as seen from any street on or off the Property is inconsistent with the architectural character, including height, bulk, mass, materials and colors, of the historic [commercial or residential] buildings in the [insert name of National Register District].

Upon satisfactory completion of such restoration, the appearance of the Building and Open Space to which Paragraphs 2(a), 2(b) and 2(c) above shall apply shall be the restored appearance of the Building and Open Space. If Grantor shall fail to restore the Building and Open Space promptly as required under this Paragraph 4, Grantee shall have all the rights given it under Paragraph 5 below.

REMEDIES OF GRANTEE

Grantee shall have all remedies available to it at law or equity and Grantor agrees that money damages shall be insufficient compensation to Grantee for any breach by Grantor. It is further understood and agreed that in the event Grantor is found to have materially violated any of its obligations hereunder, Grantor shall reimburse Grantee for any and all actual costs or expenses incurred in connection with enforcing this Easement, including Court costs and reasonable architect's and attorney's fees. It is understood and agreed that one of Grantee's remedies is the right to require Grantor to restore the Building and Open Space to the condition required by this Easement. The exercise by Grantee of one 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. Furthermore, Grantor and Grantee agree that there shall be no personal liability of Grantor for any of the obligations hereunder, and Grantor's liability shall be limited to Grantor's interest in the Building and Open Space.

ASSIGNMENT, SUCCESSORS AND ASSIGNS

This Easement shall extend to and be binding upon Grantor and all persons hereafter claiming by, under or through Grantor, and the word "Grantor" when used herein shall include all such persons whether or not such persons have signed this instrument or had any interest in the Property at the time it was signed. Anything contained herein notwithstanding, a person shall have no obligation, pursuant to this Easement, if and when such person shall cease to have any (present, partial, contingent, collateral or future) interest in the Property or any portion thereof by reason of a bona fide transfer for value.

Grantor acknowledges that in the event of a transfer of all or a portion of the Property, Grantor shall notify Grantee of such transfer within thirty (30) days from the date thereof, in writing by certified or registered mail with postage prepaid and return receipt requested addressed to the Grantee at the address set forth in Paragraph 18 below.

Grantee agrees that it will hold this Easement exclusively for conservation purposes: that is, it will not transfer this Easement for money, other property or services. Grantee may, however, assign or transfer its interest hereunder to any agency of the Commonwealth of Pennsylvania or the United States of America; or to one or more organizations whose purpose includes, inter alia the preservation of historically important structures and land areas, provided such organization has the ability to properly enforce this Easement and, further provided, that such organization is operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Code). In the event of any assignment or transfer of Grantee's interest, Grantee will require the recipient of its interest to enforce this Easement. Subject to the foregoing provisions of this Paragraph 6, the terms and conditions of this easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

RESERVATION

Grantor reserves the free right and privilege to the use of the Property for all purposes not inconsistent with the grant made herein. Nothing herein shall be construed to grant to the general public or any other persons, other than Grantee and its agents, the right to enter upon the Property, pursuant to Paragraph 2(d) above, for the purposes set forth herein.

Nothing contained in this Easement shall be interpreted to authorize, require or permit Grantor to violate any applicable ordinance, code or law ("law") relating to building materials, construction methods or use. In the event of any conflict between any such law and the terms hereof, Grantor shall promptly notify Grantee of such conflict and Grantor and Grantee shall agree upon such modifications to the Building and Open Space consistent with sound preservation practices and consistent with the requirement of such law. In cases where hazardous conditions require immediate remedies, Grantor may proceed without prior Grantee approval but, in Grantor's reasonable judgment, shall make every reasonable effort to notify Grantee and to comply with

any Grantee suggestions of ways to make remedial actions compatible with the historic appearance of the Building and Open Space.

ACCEPTANCE

Grantee hereby accepts the right and interest granted to it in this Easement. Grantee shall administer this Easement for the conservation and preservation of the Building and Open Space and to further Grantee's purposes of fostering the conservation of the region's heritage of historically significant sites and structures with aesthetic, architectural, environmental, historic, scenic and/or open space values.

GRANTOR'S INSURANCE

Grantor shall maintain, at Grantor's own cost, insurance against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance, including contractual liability, to cover Grantor's obligations under the indemnity provisions of this Easement, against claims for personal injury, death and property damage ("property insurance") in such amounts as would normally be carried on a property such as that subject to this Easement. 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 certificates or other such documents evidencing the aforesaid insurance coverage at the commencement of this grant and a new certificate at least thirty (30) days prior to the expiration date of each such policy. It is agreed that Grantor's current coverage of [indicate insurance coverage] dollars is acceptable. All insurance policies required by this section will be primary with respect to any insurance maintained by Grantee.

RELEASE AND INDEMNIFICATION

Grantor shall be responsible for and does hereby release and relieve Grantee, its officers, directors, agents, and employees, and will defend and hold Grantee, its officers, directors, agents and employees, harmless of, from and against any and all liabilities, obligations, damages, penalties, claim, costs, charges and expenses which may be imposed upon or incurred by Grantee by reason of loss of life, personal injury and or damages to property occurring in or around the premises subject to this Easement occasioned in whole or in part by the negligence of Grantor, its agents or employees.

ESTOPPEL CERTIFICATE

Grantee shall at any time and from time to time, within thirty (30) days after Grantor's written request, execute, acknowledge and deliver to Grantor a written instrument stating that Grantor is in compliance with terms and conditions of this Easement, or if Grantor is not in compliance with this Easement, stating what violations of this Easement exist. If this Easement is

extinguished, Grantor and Grantee shall execute and acknowledge a written instrument to that effect that Grantor will cause to be recorded.

CONDEMNATION AND EXTINGUISHMENT

In the event a subsequent unexpected change in the conditions of or surrounding the Property (including but not limited to a total or partial condemnation) makes impossible or impractical the continued use of the Property for conservation or preservation purposes, or in the event of any extinguishment of this Easement by judicial decree, then this Easement Shall be deemed to have been extinguished, and the parties will cooperate to so extinguish this Easement by judicial proceedings, and all of the Grantee's proceeds (as determined in Subparagraph 12(c) below) from a subsequent sale or exchange of the Property will be used in a manner consistent with the conservation and preservation purposes set forth in this Easement.

In the event of a partial condemnation where the portion of the Property not taken is capable of continued reasonable use, and provided that the portion of the Property not taken contains a material portion of the Building and/or Open Space subject to this Easement, and further provided that the remaining Building and/or Open Space will continue to serve the conservation and preservation purposes of this Easement, then this Easement shall remain on those portions of the Building and/ or Open Space not taken by condemnation. For purposes of determining Grantor's and Grantee's rights with respect to the portion of the Easement extinguished by condemnation, the portion of the Easement extinguished shall be the percentage representing the change in square foot area of the Building and Open Space from that initially subject to the Easement to that remaining subject to the Easement after the condemnation.

Grantor and Grantee agree that the grant of this Easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation and preservation restrictions at the time of the grant bear to the value of the Property as a whole at that time; and that the proportionate value of the Grantee's property rights shall remain constant. If and when any of the change in conditions described in Subparagraph 12(a) above give rise to the extinguishment of a perpetual conservation and/or preservation restriction in this Easement, the Grantee, on a subsequent sale, exchange or involuntary conversion of the Property, or a part thereof, shall be entitled to portion of the proceeds at least equal to that proportionate value of the perpetual conservation or preservation restrictions. Grantor and Grantee shall join in appropriate actions to recover the full value of the Property and all incidental or direct damages resulting therefrom. All expenses incurred by Grantor and Grantee in pursuing this action shall be paid out of the recovered proceeds. The remaining recovered proceeds (including the proceeds from any sale of the Property ever encumbered by the restrictions of this Easement) less any sums lawfully and properly paid to third parties shall be distributed between the Grantor and Grantee as set forth in this subparagraph.

REVIEW, APPROVAL AND ADDITIONAL COSTS

Whenever the consent of the Grantee is required, it shall not be unreasonably withheld or delayed. In any event, Grantee shall respond to requests for consent within sixty (60) days (except under extraordinary circumstances) or such consent shall be deemed to have been given. It is further agreed that whenever the consent of Grantee is required or requested, Grantor shall bear the reasonable costs of Grantee's review, including inspections for purpose of giving estoppel certificates and Grantor agrees that the costs for Grantee's review shall include reasonable architectural fees and Grantee's reasonable administrative expenses in processing Grantor's request.

CHANGE OF BUILDING USE; NO SUBDIVISION OR ASSEMBLAGE INTO LARGER PARCEL

Grantor shall not permit or allow to occur any change in use of the Property without prior written permission of Grantee. Grantor shall not subdivide the Property or act to permit its assemblage into a larger parcel. [optional: however, Grantor retains the right to convert the Property to condominium ownership and to subdivide the Property into condominium units pursuant to a recorded Declaration of Condominium.] Moreover, Grantor shall not convey development rights or permit any open space of the Property to be included in any zoning calculation for the benefit of another property.

ARCHEOLOGICAL EXCAVATION

No archeological investigation or excavation, professional or amateur may be undertaken at the Property without the prior written approval of the Pennsylvania Historical and Museum Commission and the Grantee.

PROHIBITION AGAINST THE STORAGE, DISPOSAL OR HANDLING OF WASTE

Grantor shall not permit or suffer the use, storage, placement, dumping or disposal of chemicals, solid or liquid waste or hazardous material on the Property. This prohibition shall not preclude:

the use of chemical fertilizers and nutrients necessary or appropriate for the protection and promotion of the vegetation (including any gardens) on the Property, pesticides and poisons normally used on a large urban commercial or residential property for the control of rodents or insects, provided such use and storage of such chemicals is permitted by law and regulation.

the composting of biodegradable garden and household waste generated on the Property.

CERTIFICATION OF GRANTEE'S STATUS

By executing this Easement, Grantor and Grantee certify, under penalty of perjury, that the Grantee is a qualified organization (as defined in Paragraph (3) of §170(h) of the Internal Revenue Code) and has a primary purpose of historic preservation and open space preservation and has the resources to manage and enforce the restrictions created by the Easement and has a commitment to do so.

NOTICES

For all notices other than those pursuant to Paragraph 6(b), notices or other communications hereunder shall be in writing and shall be deemed to have been given:

if hand delivered or sent by express mail or reputable overnight delivery service or by courier, postage prepaid, then, if and when delivered to the respective parties at the below listed addresses (or at such other address as the party may hereafter designate for itself upon ten (10) days prior notice to the other party as required hereby), or

if mailed, then on the next business day following the date on which such communication is deposited in the U.S. mail, by first-class registered or certified mail, return receipt requested, postage prepaid, and addressed to the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself upon ten (10) days prior notice to the other party as requested hereby):

If to Grantor:

[insert name and attorney name]

with a copy to:

If to Grantee:

Preservation Alliance for Greater Philadelphia
1616 Walnut Street, Suite 1620
Philadelphia, PA 19103
Attention: John Andrew Gallery

with a copy to:

Paul Boni, Esquire
Law Offices of Paul Boni, P.C.
325 Chestnut Street, Suite 1109
Philadelphia, PA 19106

In the event notice is required to be given to one or more of the Mortgagee(s) who consented and subordinated to this Easement pursuant to the Mortgagee Consent attached hereto, notice shall be given in the form required and at the address indicated on the Mortgagee Consent.

COUNTERPARTS

This document may be executed in one or more counterparts which when taken together shall be deemed to be the original.

I CERTIFY THAT THE ADDRESS OF ABOVE-NAMED GRANTEE IS:

PRESERVATION ALLIANCE FOR GREATER PHILADELPHIA

1616 Walnut Street

Suite 2110

Philadelphia, Pennsylvania, 19103

215-546-1146

John Andrew Gallery
Executive Director

DRAFT

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF PHILADELPHIA :

On this the ____ day of _____, 2009, before me, a Notary Public of the Commonwealth of Pennsylvania, personally appeared, a general partner of 509 Vine Street TCE, L.P., a party to the foregoing agreement, and acknowledged that, being authorized to do so, he executed the foregoing instrument for the purposes therein contained by signing the name of such entity by himself as such officer.

NOTARY PUBLIC

My Commission Expires:

DRAFT

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF PHILADELPHIA :

On this the ____ day of _____, 2010, before me, a Notary Public of the Commonwealth of Pennsylvania, personally appeared **John Andrew Gallery** who acknowledged himself to be the Executive Director of The Preservation Alliance for Greater Philadelphia, a Pennsylvania not-for-profit corporation, a party to the foregoing agreement, and acknowledged that, being authorized to do so, he executed the foregoing instrument for the purposes therein contained by signing the name of such corporation by himself as such officer.

NOTARY PUBLIC

My Commission Expires:

DRAFT

LIST OF EXHIBITS
for
DEED OF FACADE AND OPEN SPACE EASEMENT
from
[GRANTOR]
to
THE PRESERVATION ALLIANCE FOR GREATER PHILADELPHIA
for
[PROPERTY]

EXHIBIT A

Legal Description of Property

EXHIBIT B

B.I.A. Initial Restoration

B.I.B. Optional Future Restoration

B.I.C. Permitted Future Alterations

B.II. Minimum Maintenance Program

EXHIBIT C

Existing Conditions