

HISTORIC PRESERVATION EASEMENT

This grant of an historic preservation easement is made this ____ day of _____, 19____, by and between _____, ("Grantor" herein) and the STATE OF WASHINGTON, through the Washington State Department of Community Development Office of Archaeology and Historic Preservation ("Grantee" herein).

WITNESSETH

WHEREAS Grantor is the owner in fee simple of the entire exterior facade of the building commonly known as the _____, located at _____, in the city of _____, State of Washington, as more fully described in Exhibit A attached hereto and incorporated by this reference herein (the "Property" herein); and

WHEREAS Grantor is the owner of the unused development rights in the Property; and

WHEREAS the Property has substantial and important historic, aesthetic, architectural, scenic, and cultural character and has been placed on the National Register of Historic Places by the United States Department of the Interior; and

WHEREAS the Grantor desires to preserve and maintain the historic, aesthetic, and cultural character of the Property, and the Grantee, as a branch of the State of Washington, is authorized by State law to accept easements and other grants of rights in property, in order to preserve and maintain the historic, aesthetic, and cultural character of such property;

NOW THEREFORE, in recognition of the foregoing and as a gift to Grantee, Grantor hereby grants to Grantee a perpetual easement in the Property and a grant of development rights (jointly referred to as a "Historic Preservation

Easement"). This gift is made to the Grantee for the purpose of preserving the historic, open space, and scenic values of the Property in perpetuity. The terms and conditions under which such grant is made are as follows:

1. Grant of Easement. This Easement conveys to Grantee an interest in the Property consisting of the benefit of the following affirmative and negative covenants on the part of the grantor and Grantor's successors and assigns:

(a) Without the express written permission of the Grantee, its successors or assigns, signed by a duly authorized representative thereof, no construction, alteration or remodeling or any other thing shall be undertaken or permitted to be undertaken which would affect either the exterior surfaces or increase the height or alter the exterior facade (including without limitation exterior walls and roofs) or the appearance of the Property as depicted in the photographs attached hereto and incorporated by this reference herein as Exhibits B through _____, or which would adversely affect the structural soundness of the Property; provided, however, that the reconstruction, repair, repainting or refinishing of presently existing parts or elements of the Property subject to the Historic Preservation Easement, damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted without the prior approval of the Grantee, provided that such reconstruction, repair, repainting or refinishing is performed in a manner which will not alter the appearance of those elements of the Property subject to this Easement as they are as of this date. Exterior changes which shall require the consent of Grantee shall include, but not be limited to, any substantial structural change or any change in design, color or materials.

(b) The Property shall not be demolished without the prior written consent of Grantee.

(c) Grantor agrees at all times to maintain the Property and the exterior appearance of the Property (including without limitation the exterior walls and roofs of the Property) in a good and sound state of repair so that no more than minimal deterioration in its present exterior appearance, as depicted in Exhibits B through _____ hereto, shall take place, subject to the casualty provisions set forth in Paragraph 7 herein.

2. Grant of Development Rights. The grantor hereby grants to the Grantee on behalf of Grantor and Grantor's successors and assigns the Grantor's unused development rights in the property. The term "development rights" shall be understood to refer to those unused development, open space or air rights above or around the real property to the extent permitted by the local zoning classification applied to the real property and shall be understood by the parties not to include any planned rehabilitation work on the Property as laid out in the plans and specifications prepared by _____ and dated _____, as modified from time to time, so long as such planned rehabilitation work does not substantially alter the appearance of those areas protected by the grant of this Historic Preservation Easement in Paragraph 1(a).

3. Value. Grantor agrees that this Historic Preservation Easement gives Grantee a property right immediately vested in Grantee with a fair market value that is 9.2857% of the fair market of the Property. In the event a change in conditions gives rise to extinguishment of this Historic Preservation Easement in accordance with Paragraph 7 herein, Grantee, on a subsequent sale, exchange or involuntary conversion of the Property is entitled to 9.2857% of the proceeds therefrom, subject to the conditions set forth in Paragraph 7 herein; provided, however, that in the event the Grantor, its successors or assigns are entitled under Washington law to the full proceeds from involuntary conversion without

regard to the terms of this Easement, Grantee shall not be entitled to a proportion of the proceeds from such involuntary conversion.

4. Right to Alter the Interior of the Property. It is understood and agreed between the parties that it is the Grantor's intent to alter the interior of the Property for professional office use and retail use. Nothing in this Agreement shall be deemed to restrict the Grantor's right to make such alterations or modifications as long as such alterations or modifications do not substantially alter the appearance of those areas protected by this Historic Preservation Easement, as listed in Paragraph 1(a) herein.

5. Maintenance and Repair of the Property. Grantor and/or assigns shall be responsible for maintenance, repair, repainting, and refinishing of the Property as necessary to comply with Paragraph 1(c) herein, Grantor shall provide maintenance, repair, repainting, and refinishing of the Property because of wear and tear.

6. Waste. The Grantor agrees not to commit or permit waste (i.e., abuse, unreasonable or improper use or deterioration of the Property) of the Property.

7. Extinguishment. In the event the Property is destroyed or damaged by fire or other casualty to an extent that the repair or reconstruction of the existing improvements or the facade and exterior surfaces subject to this Historic Preservation Easement is rendered impracticable, in Grantor's reasonable judgment, or in the event a subsequent unexpected change in the conditions surrounding the Property renders it impossible or impractical to continue to use the Property for the purpose of preserving the historic, open space, and scenic value of the Property, the restrictions set forth herein may be extinguished, provided that 9a) such restrictions are extinguished by judicial proceeding and (b) the Grantee shall use its share of the proceeds received from a subsequent sale or exchange or involuntary conversion of the Property (as calculated in

accordance with Paragraph 3 herein) for purposes of preserving historic, open space, and scenic values.

8. Inspection. Grantor hereby agrees that representatives of Grantee, its successors or assigns shall be permitted at all reasonable times to inspect the Property. Inspections will normally take place from the street; however, Grantor agrees that representatives of Grantee, its successors or assigns shall be permitted to enter and inspect the interior of the improvements to the Property to insure maintenance of structural soundness; inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually. Grantor will pay to Grantee a reasonable amount for costs incurred by Grantor in making such annual inspection, which costs are presently estimated to be \$100. Inspection of the interior will be made at a time mutually agreed upon by Grantor and Grantee, its successors or assigns, and Grantor covenants not to withhold consent unreasonably in determining a date and time for such inspection. Other inspections required or permitted by law are in no way limited hereby.

9. Annual Tours of the Property. The Grantors shall permit the Property to be opened to members of the general public up to two (2) times each year. The tour shall be made under the supervision of the Grantee or its designee and a fee not to exceed \$5.00 shall be charged. The fee shall be retained by the Grantee.

10. Consent, Disapproval, and Appeal. Where the terms of this Agreement require the consent of Grantee, such consent shall be requested by written notice, as provided in Paragraph 12 herein, to Grantee and consent shall be deemed to have been given within thirty (30) days after mailing of the notice by Grantor or its successors or assigns unless Grantee gives written notice to the

Grantor specifying reasons for disapproval. Approval or consent by Grantee shall not be unreasonably withheld.

11. Nature and Duration. The covenants expressed herein shall be deemed to run with the Property in perpetuity and be binding upon Grantor and the Grantor's successors and assigns for the benefit of the Grantee.

12. Assignments, Successors, and Assigns. Except as provided in Paragraph 7 herein:

(a) Grantor agrees that these restrictions will be inserted by it in any subsequent deed or in any legal instrument by which it divests itself of either the fee simple title to or its possessory interest in the Property or any part thereof.

(b) Grantee covenants and agrees that it shall not transfer this Easement to another unless (i) the transfer is to a charitable corporation or trust dedicated to the preservation of historic buildings and urban scenic open space which is an "eligible donee" within the meaning of Section 170(h)(3) of the Internal Revenue Code of 1954 as amended and the regulations thereunder; and (ii) as a condition of such transfer the transferee agrees to continue to preserve the historic, open space, and scenic value of the Property in perpetuity.

(c) In the event that the Grantee shall at any time in the future become a fee simple owner of the Property, Grantee covenants and agrees in the event of subsequent conveyances of the Property to another, to create a new easement containing the same restrictions and provisions as are contained herein, and either to retain such easement in itself or to convey such easement to a similar charitable corporation or trust dedicated to the preservation of historic building and urban scenic open space which is an "eligible donee"

within the meaning of Section 170(h)(3) of the Internal Revenue Code of 1954 as amended and the regulations thereunder.

13. Notice. Any notice required hereunder shall be in writing and shall be given by certified or registered mail, with postage prepaid and return receipt requested, addressed to the Grantor, as follows:

Or addressed to the Grantee, as follows:

State Historic Preservation Officer
Washington State Department of Community Development
Office of Archaeology and Historic Preservation
111 West 21st Avenue, KL-11
Olympia, Washington 98504-5411

14. Construction. This Agreement shall be construed to promote the preservation of the historic, cultural, architectural, and aesthetic character of the Property and to conserve its natural, scenic, and open condition for both this generation and future generations, while maintaining the usefulness of the Property to the Grantor or its successors or assigns.

15. Governing Law. The terms of this Agreement shall be construed in accordance with the laws of the State of Washington.

16. Entire Agreement. This constitutes the entire agreement between the parties.

17. Hold Harmless. The Grantor or its successors or assigns shall hold the Grantee harmless from any and all liability and claims which may be asserted against the Grantee as a result of this Historic Preservation Easement or the exercise of the authority granted to Grantee by this Easement.

18. Nonwaiver of Breach Clause. The failure of the Grantee to at anytime enforce any provision of this Agreement shall not be deemed a waiver of its right to later enforce that or any other provision of this Agreement.

19. Legal Remedies. The parties hereto may seek to such interim relief in law and equity as they may deem necessary to enforce the terms of this Agreement. Should it become necessary for either party to institute legal proceedings to enforce the terms of this Agreement, the substantially prevailing party shall be entitled to its costs thereof and reasonable attorneys' fees.

DATED the day and year first above written.

GRANTOR:

By _____

GRANTEE:

Washington State Department of Community Development
Office of Archaeology and Historic Preservation

By _____
Jacob E. Thomas
State Historic Preservation Officer

APPROVED AS TO FORM:

By _____
Assistant Attorney General

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this ____ day of _____, 19___, before me personally appeared _____, to me known to be _____ that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of _____ for the use and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

On this _____ day of _____, 19____, before me personally appeared Jacob E. Thomas, to me known to be the State Historic Preservation Officer of the Washington State Department of Community Development Office of Archaeology and Historic Preservation, an office of the State of Washington, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____