

**THIS PRESERVATION AND CONSERVATION EASEMENT DEED**, made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (“Grantor”) and Preservation Buffalo Niagara (“Grantee”), a nonprofit corporation of the State of New York.

**WITNESSETH:**

**WHEREAS**, Grantor is owner in fee simple of certain real property located in the [town, county, and state], more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter “the Property”), said Property including the following structures (hereinafter “the Buildings”):

the principal Structure constructed of [brief description] dating from [year] (hereinafter “the Structure”); and additional ancillary structures [describe] (hereinafter “the Ancillary Structures”).

**WHEREAS**, Grantee is authorized to accept preservation and conservation easements to protect property significant in national, state, or local history and culture under the provisions of [state easement legislation] (hereinafter “the Act”);

**WHEREAS**, Grantee is a publicly supported, tax-exempt, nonprofit organization whose purposes include the preservation and conservation of sites, buildings, and objects of historic 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 (hereinafter, “the Code”);

**WHEREAS**, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter “conservation and preservation values”) and significance of the Property, and have the common purpose of conserving and preserving the aforesaid conservation and preservation values and significance of the Property;

**WHEREAS**, the Property’s conservation and preservation values are documented in a set of reports, drawings, and photographs (hereinafter, 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 Grantee shall control;

**WHEREAS**, the Baseline Documentation shall consist of the following: [list documents and materials]

**WHEREAS**, the grant of a preservation and conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and its architectural, historic, and cultural features for the benefit of the people of the Town [County] of \_\_\_\_\_, the State of New York, and the United States of America;

**WHEREAS**, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation and conservation easement (hereinafter, the “Easement”) in gross in perpetuity on the Property pursuant to the Act.

**NOW, THEREFORE**, pursuant to Section 170(h) of the Code and [give full citation to the state easement legislation], Grantor does hereby voluntarily grant and convey unto the Grantee a preservation and conservation easement in gross in perpetuity over the Property described in Exhibit A.

## **PURPOSE**

1. **Purpose.** It is the Purpose of this Easement to assure that the architectural, historic, cultural, and associated open space features of the Property will be retained and maintained forever substantially in their current or better condition for conservation and preservation purposes and to prevent any use or change of the Property that will significantly impair or interfere with the Property's conservation and preservation values.

## **GRANTOR'S COVENANTS**

### **2.1 Grantor's Covenants: Covenant to Maintain.**

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

(b) Subject to the casualty provisions of Paragraphs 7 and 8, the obligation to maintain shall require replacement, repair, and/or reconstruction whenever necessary in accordance with the standards stated in Paragraph 4.

**2.2 Grantor's Covenants: Prohibited Activities.** The following acts or uses are expressly forbidden on, over, or under the Property:

(a) The Buildings 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 Property and the Buildings from the street level or other public rights of way without the express approval of the Grantee.

(c) The Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit without the express approval of the Grantee. For the purposes of this Easement the term "subdivision" shall include a long term lease or other use of any portion of the Property that creates the characteristics of a subdivision of the property, as determined in the sole discretion of the Grantee. The term "subdivision" shall also include division into condominium or cooperative interests or the partition of undivided interests in the property.

(d) The dumping of trash, rubbish, ashes, or any other unsightly or offensive materials is prohibited on the Property.

## **GRANTOR'S CONDITIONAL RIGHTS SUBJECT TO APPROVAL**

**3.1 Conditional Rights Requiring Approval by Grantee.** The following acts are prohibited except with the prior express written approval of the Grantee, which approval may be withheld or conditioned in the sole discretion of Grantee:

(a) Grantor shall not increase or decrease the height of, make additions to, change the exterior construction materials or colors of, or move, improve, alter, reconstruct, or change the facades (including fenestration) and roofs of the Buildings.

(b) Grantor shall not shall not remove, demolish, or alter the following interior features located in the Residence [or Buildings/Ancillary Structures]:

[Specific interior features that are to be protected are described here, if applicable]

(c) Grantor shall not erect or place on the Property any additional buildings or structures, including but not limited to, sheds, barns, similar ancillary structures, and non-building structures such as utility transmission lines (subject to utility easements already recorded), satellite receiving dishes, antennas, cellular communications transmitters, or similar electronic frequency receiving or emitting devices, flagpoles, fences, walls, wind turbines, solar panels or other similar devices, tents of longer duration than 30 days, mobile homes or trailers, dumpsters, storage containers, camping accommodations, or other similar temporary structures

(d) Grantor shall not erect or allow to be erected any external signs or external advertisements except: (i) such plaque permitted under Paragraph 19 of this Easement; (ii) a sign stating solely the name and/or address of the Property and owner; and (iii) a temporary sign to advertise the sale or rental of the Property.

(e) Grantor shall not make substantial topographical changes, such as, by example, excavation for the construction of roads, swimming pools, and recreational facilities. Grantee, at its discretion, may as a condition of granting approval, require Grantor, at Grantor's cost, to perform an archaeological survey to identify and determine the significance of archaeological deposits. If archaeological deposits are identified, then Grantee may deny or conditional approval of topographical changes as appropriate.

[As applicable, additional archaeological protections may be included, such as that Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Property, and that archaeologically significant deposits, sites, or features on the Property shall not be intentionally disturbed or excavated except by or under the supervision of a professionally qualified archaeologist retained by Grantor, and an archaeological plan approved by the Grantee.]

### **3.2 Review of Grantor's Requests for Approval.**

(a) Pursuant to Paragraph 3.1, Grantor shall submit in writing to Grantee for Grantee's approval information (including plans, specifications, and designs where appropriate) together with a specific request identifying the proposed activity. In addition, Grantor shall also submit to Grantee a timetable for the proposed activity which is sufficient to permit Grantee to monitor such activity. Grantor shall not make changes or take any action subject to the approval of Grantee unless expressly authorized in writing by an authorized representative of Grantee.

(b) Grantee reserves the right to consult with governmental agencies, nonprofit preservation and conservation organizations, and/or other advisors deemed appropriate by the Grantee, concerning the appropriateness of any activity proposed under this Easement.

(c) All approval rights of the Grantee shall be exercised in the reasonable discretion of Grantee. [Grantee agrees to use its reasonable efforts to respond to any written request of Grantor not later than forty-five (45) days following receipt by Grantee of Grantor's request. Failure of Grantee to respond to Grantor within the forty-five (45) day period shall not, however, be deemed to constitute approval of Grantor's request.]

(d) In the event that the Grantor does not implement any approval granted pursuant to Paragraphs 3.1 and 3.2, for a period of one (1) year, such approval shall be void. Grantor may resubmit the request for approval; however, such approval may be given or denied in the sole discretion of the Grantee.

### **STANDARDS FOR REVIEW**

4. **Standards for Review.** In exercising any authority created by this Easement to inspect the Property; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction following casualty damage, Grantee shall apply the following standards (hereinafter “the Secretary’s Standards”), as they may be amended from time to time: *The Secretary of the Interior’s Standards for Rehabilitation* (36 C.F.R. § 67.7).

#### **GRANTOR’S RESERVED RIGHTS**

5. **Grantor’s Reserved Rights Not Requiring Further Approval by Grantee.** Subject to the provisions of Paragraphs 2.1, 2.2, and 3.1, 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 conservation and preservation values of the Property; and (iii) are not inconsistent with the Purpose of this Easement;

(b) pursuant to the provisions of Paragraph 2.1, the right to maintain and repair the Buildings strictly according to the Secretary’s Standards, subject to the following qualifications:

(i) 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.

(ii) The right to maintain and repair 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 written approval of Grantee in accordance with the provisions of Paragraphs 3.1 and 3.2.

(iii) The right to maintain and repair shall not include the right to replace historic materials unless such historic materials are significantly deteriorated or damaged.

(c) the right to continue all manner of existing [residential] 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.

#### **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE**

6. **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 Grantee 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 Grantee’s prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified

restoration architect and an engineer who are acceptable to Grantor and Grantee; this 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 effective date of this instrument.

**7. Review After Casualty Damage or Destruction.** If, after reviewing the report provided in Paragraph 6 and assessing the availability of insurance proceeds, Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and Grantee 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 Grantee 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, but only with the prior written consent of Grantee, alter, demolish, remove, or raze one or more of the Buildings, and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of New York and Paragraph 23.2 of this instrument.

## **INDEMNIFICATION AND TAXES**

**8. Indemnification.** Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, trustees, directors, officers 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 Grantee or any agent, trustee, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee 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.

**9. 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 of the charge, in which case the obligation to pay such charges as defined in this paragraph 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, Grantee 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. Grantee 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 Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

#### **ADMINISTRATION AND ENFORCEMENT**

10. **Written Notice.** Any notice which either Grantor or Grantee 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; if to Grantor, then at [address], and if to Grantee, then to [address].

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

11. **Evidence of Compliance.** Upon request by Grantor, Grantee shall promptly furnish Grantor with a certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of this Easement, or that otherwise describes the status of this Easement to the extent of Grantee's knowledge.

12. **Inspection.** With appropriate prior notice to Grantor, Representatives of Grantee shall be permitted at all reasonable times to inspect the Property.

13. **Grantee's Remedies.** Grantee may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this easement by 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 in the suit. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations contained in this instrument.

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Easement, including but not limited to all reasonable court costs, and attorney's, architectural, engineering, and expert witness fees.

Exercise by Grantee 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.

14. **Notice from Government Authorities.** Grantor shall deliver to Grantee 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 Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

15. **Notice of Proposed Sale.** Grantor shall promptly notify Grantee in writing of any proposed offer to sell the Property or of any listing of the Property for sale and provide the opportunity for Grantee to explain the terms of the Easement to the real estate listing agent and potential new owners prior to sale closing.

16. **Liens created pursuant to Easement.** Any lien on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien.

#### **BINDING EFFECT AND ASSIGNMENT**

17. **Runs with the Land.** Except as provided in Paragraphs 8 and 23.2, 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 Grantee, their respective successors in interest and all such persons in the future claiming under or through Grantor and Grantee; the words “Grantor” and “Grantee” when used in this instrument shall include all such persons. Any right, title, or interest granted in this instrument to Grantee also shall be deemed granted to each successor and assign of Grantee and each following successor and assign; the word “Grantee” shall include all such successors and assigns.

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.

18.1 **Liens Subordinated.** Grantor represents that as of the date of this grant (and effective through the date of recordation), there are no liens or mortgages outstanding against the Property, except any listed in Exhibit C that are subordinated to Grantee’s rights under this Easement. Grantor has the right to use the Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Grantee’s rights under this Easement. Under no circumstances may Grantee’s rights be extinguished or otherwise affected by the recording, foreclosure, or any other action taken concerning any subsequent lien or other interest in the Property created as a result of the use of the Property as collateral for the repayment of debt..

19. **Assignment.** Grantee 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 purpose, among other things, is 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.

20. **Recording and Effective Date.** Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of [town, county or regional district], [state]. Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the land records of [town, county, or regional district], [state].

## **PERCENTAGE INTERESTS AND EXTINGUISHMENT**

21. **Extinguishment.** Grantor and Grantee hereby recognize that circumstances may arise that may make the continued ownership or use of the Property in a manner consistent with the Purpose of this Easement impossible and that extinguishment of the Easement may be necessary. Such circumstances may include, but are not limited to, partial or total destruction of the Buildings resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction.

## INTERPRETATION

22. **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 contained in this instrument.

(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 Grantee. 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 its subject matter.

(d) Nothing contained in this instrument 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 of this instrument, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or hereafter under any applicable zoning or similar ordinance, that would permit the Property to be developed to a use or uses more intensive (in terms of height, bulk, number of structures, assemblage of lots, subdivision, or other criteria related by such ordinances) than that to which the Property is devoted as of the date of this Easement, 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 or other parcel.

(f) To the extent that any action taken by Grantee pursuant to this Easement gives rise to a claim of breach of contract, Grantor and Grantee agree that the sole remedy on the part of Grantor shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Grantor as a result of such breach and that Grantor shall not have any right to indirect, consequential, or monetary damages in excess of such actual, direct, and reasonable out-of-pocket expenses.

(g) [As applicable.] While it is the mutual intention of Grantor and Grantee that the grant of this Easement shall constitute a qualified conservation contribution under federal and/or state law, Grantor is solely responsible for ensuring that the terms of the Easement and the circumstances of the grant meet the qualifications necessary for Grantor to obtain federal or state benefits applicable to qualified conservation contributions. Grantee makes no representation that the grant of this Easement entitles Grantor to any tax or other benefit under federal, state, or local law, and Grantor's failure to qualify for any such benefit relating to the grant of this Easement shall not constitute grounds for the rescission, termination, extinguishment, or amendment of this Easement, or for any claim of damages.

**AMENDMENT**

23. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee 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 Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of New York. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the Purpose of this Easement; shall not affect its perpetual duration; shall not permit additional residential [and/or commercial] development on the Property other than the residential [and/or commercial] 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 architectural, historic, natural habitat, and open space values protected by this Easement. Any such amendment shall be recorded in the land records of [town, county, or regional district], [state]. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

**THIS EASEMENT** reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution of this agreement, unless set out in this instrument. Grantor acknowledges that this Easement affects important legal rights and obligations of Grantor, including the rights and obligations of Grantor’s successors and assigns, and that Grantor has had the opportunity to consult with knowledgeable legal counsel of Grantor’s own choosing prior to execution of the Easement.

**TO HAVE AND TO HOLD**, the said Preservation and Conservation Easement, unto the said Grantee and its successors and permitted assigns forever. This **DEED OF PRESERVATION AND CONSERVATION EASEMENT** 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.

**IN WITNESS WHEREOF**, Grantor and Grantee have set their hands under seal on the days and year set forth below.

[As applicable for certain tax benefited easements: *Grantor and Grantee expressly acknowledge and understand that, by their execution of this document, the certification under Paragraph 28 is made under penalty of perjury.*]

**WITNESS:**

**GRANTOR:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(date)

**ATTEST:**

**GRANTEE:**

\_\_\_\_\_

\_\_\_\_\_

By:\_\_\_\_\_

By:\_\_\_\_\_ (date)

[Notarizations to follow]



## **SCHEDULE OF EXHIBITS**

- A. Property Description
- B. Baseline Documentation [generally non-recordable]
- C. Subordinated Liens or Mortgages [as applicable]