

AGREEMENT

THIS AGREEMENT ("**Agreement**") made and entered into as of the ____ day of _____, 2004, by and between the **CITY OF PITTSBURGH**, a home rule charter municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania (referred to below as "City"), and the **PITTSBURGH PARKS CONSERVANCY**, a non-profit organization duly existing under the laws of the Commonwealth of Pennsylvania (referred to below as "PPC").

WITNESSETH:

WHEREAS, pursuant to a Cooperation Agreement entered into between the City and the Pittsburgh Parks Conservancy (attached hereto as Exhibit "A"), the PPC has agreed to assist the City in augmenting its ability to maintain and enhance the attractiveness of the Regional Parks; and

WHEREAS, as proposed in the Regional Parks Master Plan for the enhancement of Schenley Park developed by the City in partnership with the PPC and the community, the PPC proposes to restore, operate and assist in the maintenance of Schenley Plaza (as hereinafter defined), now a parking lot, for use as a vibrant public space; and

WHEREAS, the PPC requires access to the certain property within Schenley Park on which Schenley Plaza will be situated; and

NOW, THEREFORE, intending to be legally bound, for and in consideration of the mutual premises hereinafter set forth, the parties hereto agree as follows:

ARTICLE I.

TERMS OF AGREEMENT

Section 1.01. Designation of Premises and Access Thereto. City hereby agrees that the PPC shall be granted access and the right to enter onto, under and , upon the terms and conditions hereinafter set forth, the property owned by the City comprising the area outlined in red on the drawing attached hereto as Exhibit "B" and incorporated herein, located in Schenley Park between Forbes Avenue, Pennant Place, Roberto Clemente Drive, and Schenley Drive Extension, Pittsburgh, Pa (the "Premises or Schenley Plaza"), for activities relating to the restoration, operation, and maintenance of Schenley Plaza, together with the additional parcels after exercise of the option(s) below.

City recognizes that the conceptual plan for the Plaza Project included two additional parcels contiguous to the area described in Exhibit B, namely:

- A. The area in front of the Frick Fine Arts Building (as further described on Exhibit "B-1," which is attached hereto and incorporated herein.
- B. The area in front of the Carnegie Library of Pittsburgh, Main Branch (as further described on Exhibit "B-2," which is attached hereto and incorporated herein.)

PPC will have the right and option, at any time during the Term, to extend the dimensions of the Premises to include one or both of the additional parcels for a term commencing six months after written notice to the Director of the Department of City Planning of the PPC's intent to exercise such option and expiring on the last day of the Term of this Agreement. Any such extension of the Premises shall further be accompanied via a written amendment to this Agreement. Any special restrictions on the use of extended areas by the PPC shall be set forth in such Amendment. Otherwise, such extended areas shall be subject to all

terms set forth in this Agreement relating to the original Premises.

Section 1.02. Consideration in Lieu of Rent. PPC shall pay to City the sum of One Dollar (\$1.00) per year and, in lieu of additional compensation, shall restore, operate and maintain the Premises in good repair and in a safe condition during the term of this Agreement.

Section 1.03. Term. The term of this Agreement shall commence on the date first set forth above and run for a period of twenty-nine (29) years and three hundred sixty -four (364) days unless sooner terminated in accordance with the provisions for termination set forth herein. Thereafter, in good faith, the parties will enter into renegotiations regarding any extension of said term. Upon mutual written agreement of the parties, the period of this Agreement may be renewed for an additional term of years to be agreed upon at that time.

ARTICLE II

ADMINISTRATION OF THE PREMISES AND PERMITTED USES

Section 2.01. Administration of the Premises. By entering into this Agreement, the City is neither intending to delegate its duties nor abdicate its constitutional responsibilities for municipal improvements.

Section 2.02. Permitted Use. Use of the Premises as a public park shall mean any use reasonably related to providing information and visitor's services including but not limited to the provision of social/food services, gardens, restrooms, open space for programming, seating and lounging. PPC shall use the Premises at all times in a manner consistent with the purposes set forth in the pertinent documents conveying the Schenley Park property to the City from Mary Schenley, including all pertinent deeds and Ms. Schenley's will (the "Mary Schenley Will") Any questions concerning whether a use is

inconsistent with such documents shall be referred to the City Solicitor for an opinion. Photocopies of all relevant documents are attached hereto as Exhibit "C" and incorporated herein.

Section 2.03. Nondiscrimination. The PPC shall conform with all applicable discrimination provisions of the Pittsburgh Code, specifically those appearing in Title VI, "Conduct", Article V, "Discrimination", and any amendments thereto, and shall incorporate in any subcontracts which may be permitted under the terms of this Agreement a requirement that said subcontractors shall also comply with said provisions. Specifically, the PPC shall not directly or indirectly discriminate in its employment or in the use of the Premises by the general public upon the basis of age, race, sex, color, religion, ancestry, national origin, place of birth, disability, non-job related handicap or sexual orientation.

Section 2.04. Hours of Operation; Open to the Public.

A. PPC agrees that it shall endeavor to keep the Premises open to the public every day all year round. The PPC will operate the Premises as a public park open to the general public during the hours of operation of Schenley Park. In the event that PPC wishes to amend such hours of operation, it shall conform to subsection B herein. PPC shall, in any event, endeavor to maintain hours of operation reasonable to the use of the Premises.

B. The PPC recognizes that any proposed Rules or Regulations for the use of the Premises must conform with existing City Code and other City Regulations. In the event that it wishes to propose that special or additional rules and regulations are promulgated by City for the use of Schenley Plaza or the Premises, the PPC will present them to the City in writing for approval and implementation. The City will endeavor to respond to such proposal within ninety (90) days.

C. The PPC shall not establish any charge for admission to or use of the Premises

without the written approval from the City as set forth in the Cooperation Agreement. Notwithstanding the foregoing, PPC shall have the right to establish market fees for programming, including, but not limited to those for concerts, walking tours and carriage rides of the Park, subject to approval of City as set forth in the Cooperation Agreement. Use of the Premises by third parties as addressed in Section 2.09 herein shall be considered "Event Fees" and the setting of those fees shall be governed by that Section.

In the event that PPC wishes to temporarily close off a portion of the Premises to the public due to construction, pruning, or for any other reason to provide for the safety and health of the public or discharge duties required of PPC hereunder (except the issuance of use or Special Event permits as otherwise set forth in Section 2.09 B herein), PPC shall notify the Director of the Department of Public Works in writing. Other than for cordoning off temporary Special Events, the PPC shall not place any physical barriers or any other restrictions on the Premises, other than any already in place, that would prevent or limit the accessibility of the public to Schenley Plaza, excepting those which will be necessary during the restoration period and those which will be reasonably necessary from time to time for repair, maintenance, alterations, additions or improvements, or to protect the public from unsafe conditions. As further detailed herein, the PPC will ensure that all renovations to the Premises are made in accordance with all applicable federal, state, and local laws, including the Americans with Disabilities Act.

Section 2.05. Right to Use Name; Naming Rights. The City consents to the use by the PPC of the name "Schenley Plaza" in connection with the operation of or any advertisement of the Premises or any fund-raising events pertaining to Premises. The PPC shall have no right to change the name of the Premises, which is currently known as "Schenley Plaza." Additionally, the PPC shall have no right to designate or re-name any

portion of the thereof without the prior written consent of the City Solicitor. PPC may confer naming rights with respect to fixtures or other permanent improvements as set forth on the plan attached hereto as Exhibit "D."

Section 2.06. First Amendment Rights. Because the use of publicly-held property may give rise to First Amendment entitlements, any policy of the PPC regarding the rights of individuals or groups to hold public assemblies, demonstrations, or meetings in or around Premises shall be subject to prior review and approval of the City Solicitor.

Section 2.07. Abandonment. The PPC further represents that it intends to occupy the Premises at all times during the Term of this Agreement and shall not abandon the Premises without the prior written approval of the City.

Section 2.08. Revenues, Budgets, and Reports.

A. Revenues: In recognition of the fact that PPC will be relieving City of certain obligations involved with operation and maintaining Schenley Plaza during the term of this Agreement and that the PPC will be operating as a non-profit corporation ultimately relying on public and private contributions for its operating revenues, any operating revenues of any kind whatsoever generated from the operation of Schenley Plaza during the term of this Agreement (except as set forth with respect to City Cost recovery for Special Events as set forth in Section 2.09A herein) shall be revenues of the PPC.

B. Budgets: On or before September 1 of each Term year beginning after the commencement of this Agreement, the PPC shall provide the following to the City:

- a. A proposed annual Operating Budget and Operating Plan (including a provisional schedule of events); each Operating Budget and Plan shall include an estimate for all revenues and expenses predicted in the upcoming year as well as a plan for maintenance and operation of the Plaza.

- b. A proposed Capital Budget; each Capital budget shall include funding amounts by project slated for the upcoming year.

For purposes of this subparagraph B, "Revenues " shall include all revenues anticipated to be received by the PPC from the following:

- a. Visitor Services and Special Events;
- b. Regional Asset District Funds;
- c. Concessions;
- d. Private grants, donations, bequests, contributions or other monies received by the PPC that are eligible for use in the Plaza and for which PPC has received a legal binding commitment as of September 1 of the applicable year;
- e. Any monies received from City for use in Schenley Plaza;
- f. The restaurant operator in the event that monies are received from a future Agreement.

"Revenues" shall not include funds received for capital improvements or capital projects within the Plaza or for funds obtained by PPC for projects not included in the Approved Operating Budget for such upcoming Term Year. All Budgets shall be presented in line-item format. The City shall review the above-referenced budgets within thirty (30) days of receipt and shall provide to PPC a written approval or request for modifications. The City also reserves the right to request additional supporting documentation. A budget shall be deemed approved if no response is received by PPC at the expiration of thirty (30) days after submission.

C. Reports: PPC shall provide to City an annual report on the operations of Schenley Plaza, including financial statements, fund-raising efforts, and staffing. Such report shall be provided to City within 120 days after the end of PPC's fiscal year.

2.09 Special Events and Third Party Use.

A. Cooperation for Special Events. PPC agrees that it will cooperate with City when scheduling any special events or meetings at the Premises. All Special Events fitting within the parameters of the City's Special Events Permit Ordinance shall be scheduled by the City except those events described in subsection B of this Section 2.09. Cost recovery for City Services associated with any such Special Events shall be paid to the City. PPC shall refer interested parties to the Mayor's Office to obtain Special Event Permits as needed. PPC recognizes that City regularly sponsors large public events in Schenley Park and agrees that it will make every effort to arrange to coordinate these events, as appropriate, with those of Schenley Plaza during any such dates and times as may be requested in advance by City. A schedule of City-sponsored events shall be presented to PPC on an annual basis by City so that coordination of the scheduling of activities can occur on a timely basis to ensure adequate parking, etc. is available for attendees at such events. In conjunction with a designated representative of the Mayor's Office dealing with Special Events, the PPC shall maintain an annual master calendar of events and activities for the Premises and will develop protocol for periodic updates and for notice to City of such changes.

B. The PPC may also directly rent portions of the Premises on a temporary event basis to third parties for PPC-sponsored or other private events, such as parties and receptions. For these events, the PPC may keep such rental fees in order to offset some of the costs of operating it. The schedule of Event Fees for such uses may be set at market rates and a list of such fees must be made available to the general public or the City upon request. Any such agreement entered into between PPC and a third party must : (1) contain language requiring compliance with the City's nondiscrimination clause, (2) not substantially interfere with normal operations on the portion of Schenley Plaza not used for

such event, (3) and provide indemnification and insurance to the City for personal injuries or property damage relating to the use of the Premises as would be required for other Special Events per City ordinance or Regulations. A boilerplate form of such agreement shall be provided to the City for prior approval. PPC acknowledges that the general public shall have full access to that portion of the Premises that is not rented. The rented area should be clearly cordoned off to indicate the areas into which the public may still travel during such events. It is also contemplated that up to fifteen (15) times a year, the PPC may rent the entire Plaza at market rates to private parties for private events to last no longer than one day per event.

C. Temporary exhibits, festivals and art exhibits: Prior to holding any temporary exhibits, festivals, or art exhibits on the Premises, the PPC shall inform the City's Director of City Planning to discuss their duration, location, and type. The PPC acknowledges that Schenley Plaza is a public forum and that it is responsible for ensuring that any temporary art installations comply with applicable law. Permanent art installations must be approved by the City's Art Commission, and, if applicable, the Historic Review Commission.

Section 2.10. Vending and Concessions.

The parties agree that the kiosks located on the Premises are intended to provide food and/or concession services at the Plaza. It is agreed by the parties that the PPC shall have the right to lease the kiosks to one or more operators and to collect charges from the kiosk operators at market rates. Such leases shall include a requirement for compliance with all applicable laws, including but not limited to the regulations of the Allegheny County Health Department. In selecting such operators, the PPC shall be required to lease at least 50% of the available space to local operators. All kiosk signage must conform to the

plan previously approved by the Historic Review Commission.

PPC shall also have the right to erect temporary festival-type booths along the pedestrian promenade in the Plaza during its sponsored events. Any such booth operations are subject to all applicable laws. It is agreed by the parties that, pursuant to Section 719.05A(c) of the City Code, the PPC may also present a petition to City Council to create a special Vending District for the Premises to address vending other than at the kiosks. Prior to the presentation to City Council, the parties shall agree upon proposed rules and regulations for such Vending District. All proposed terms shall be agreeable to the Director of the Department of City Planning and the Chief of the Bureau of Building Inspection.

Nothing in this Agreement shall be read to create any relationship or contract of agency between the City and any operator, lessee of PPC, vendor or concessionaire located at the Premises or between any promoters or other caterers providing services at the Premises via a permit or other agreement from the PPC. PPC shall ensure in writing that any third party agrees to this term.

ARTICLE III

CAPITAL IMPROVEMENTS, ALTERATIONS AND ADDITIONS

Section 3.01. Restoration Project. The PPC shall administer the restoration of Schenley Plaza (including the Premises) (the "Project") through a sub-contract with the University of Pittsburgh, attached as Exhibit "E" hereto. Restoration shall include a contract(s) for schematic design, design development, construction documents, bidding, park construction, and furniture, fixtures, and equipment. A further detailed description is attached hereto as Exhibit "F." The Project shall be accomplished in accordance with applicable laws and shall be subject to the prior approval of the City. The City's approval

shall include a review and approval of plans and specifications by the City's Department of City Planning, the Department of Parks and Recreation and the Department of Engineering and Construction and may include review and approval by other City Departments. The City shall approve or object to such plans within 45 days of receipt of complete plans and specifications. Any objections by the City shall be provided in writing and provide detail sufficient for the PPC to respond to its concerns.

Section 3.02. Infrastructure. Roadway and related infrastructure modifications in conjunction with the Project will be performed under the management of the University of Pittsburgh ("Pitt") via a separate Cooperation Agreement entered into between the City, through the Department of Engineering and Construction, and Pitt.

Section 3.03. Future Capital Improvements; Alterations.

A. Any future capital improvement or alteration of the Premises is subject to the prior written approval of the City and shall be accomplished in accordance with applicable laws. For purposes of this Agreement, "Capital Improvements" are those improvements that substantially alter the structure of Schenley Plaza and the Premises on which it is situated and is not intended to include routine repairs or upgrades. "Alteration" shall mean any alteration, improvements, modification, rehabilitation, renovation, construction or other work on any area of the Premises. Alterations shall further include utility line installation, transfer, or removal.

The PPC shall submit its proposal for capital improvements or alterations to the Mayor's Office which shall endeavor to timely respond to the PPC with an explanation of the approval process and the anticipated time line for review. The City's approval shall include the review and approval of plans and specifications by the City's Department of Engineering and Construction, Public Works, and City Planning and may include review by

other City Departments. The City's Department of Engineering and Construction shall approve or object to any such plans within 45 days of receipt of complete plans and specifications. Any objections by Engineering and Construction shall be provided in writing and provide detail sufficient for the PPC to respond to its concerns.

B. "Minor Alteration" shall mean any change to the Premises that will not affect the structural integrity or external appearance of any existing or future building, significant landscaping features, pathways, or facility in on the Premises or will not significantly alter the landscaping or other Plaza improvements. PPC may undertake Minor Alterations without prior written approval of the City. By way of example, seasonal plantings, replacement of movable furniture, and repainting of kiosks shall be considered Minor Alterations.

C. Any agreement entered into by PPC with any contractor, engineer, or architect for Capital Improvements, Alterations or Minor Alterations shall include a provision requiring a copy of all specifications, plans, drawings, and related documents prepared pursuant to such agreement and shall require that PPC receives an original "as built" drawing after completion of the Capital Improvement or Alteration (including but not limited to all subsurface work.) PPC shall ensure that the original "as built" drawing is provided to the City.

D. PPC shall procure or cause to be procured all permits, approvals, consents, licenses and authorizations of any kind required for work authorized hereunder.

Section 3.04. Funding of Improvements. The PPC has represented that the funding of the Project is initially expected to be approximately as follows (the "Funding

Plan"):

Funding Amount	Funding Source
\$5,000,000	Commonwealth of Pennsylvania
\$3,000,000	Through Oakland Investment Committee of Allegheny Conference
\$8,000,000	Total Funding Plan for Project Construction

PPC represents that it has obtained a written commitment or confirmation from each of the above entities for the above amount of financing, and that, in total, the above commitments are expected to be more than sufficient to fund the entire cost of the construction portion of the Project. A Preliminary Construction Budget is attached hereto as Exhibit "G." Prior to the opening of Schenley Plaza to the public, the PPC shall seek contributions of not less than Two Million Dollars (\$2,000,000) for operation and maintenance. It is agreed that the City shall have no duty whatsoever to finance or make alterations, additions, or improvements or provide maintenance to the Premises (other than otherwise described herein) during the Agreement Term. The availability of funds necessary to complete the Project or any future capital improvement is a condition of the City's approval.

Section 3.05. Ownership of Improvements. Ownership of all alterations, additions or capital improvements constructed and paid for by PPC and other sources at the Premises shall vest in City upon installation, without compensation being paid therefor, and

such structures, improvements, alterations, additions shall be surrendered with the Premises upon termination of this Agreement, whether by expiration of the term, cancellation, forfeiture or otherwise. Personalty may be retained by PPC. Notwithstanding the foregoing, the Carousel and temporary art installations shall not be owned by the City.

Section 3.06. Future Restaurant. The parties acknowledge that there is currently a placeholder site designated to be used for a restaurant on the Premises. PPC agrees to develop and submit to the City a plan for establishment of a restaurant. Although PPC may select the proposed operator, it shall have an affirmative obligation to first seek out local entrepreneurs. The lease of the restaurant is subject to the prior review and approval of City Council. Design of the building shall require City review and approval.

ARTICLE IV

INSURANCE

Section 4.01. Amount and Terms of Insurance. The PPC shall, at its cost, obtain and maintain insurance in connection with the restoration, operation and maintenance of the Premises in the amounts specified in this Section and shall keep the City as an additional insured on all policies for general liability insurance throughout the term of this Agreement. Attached hereto as Exhibit "H" and incorporated herein are the forms of insurance policies which, prior to execution and delivery hereof, will be purchased by the PPC evidencing the following minimum coverage specifically identifying PPC as the insured. Insurance shall be issued on an occurrence basis, non-cancelable, except upon thirty (30) days' prior written notice to the City:

	Individual Occurrence	Aggregate
General Liability		
Bodily injury (including death)	\$1,000,000	\$1,000,000
Real and Personal Property	\$1,000,000	\$1,000,000
Worker's Compensation	Statutory Limits	
Umbrella Liability		\$1,000,000

All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers with a rating reasonably acceptable to City and who are licensed to do business in Pennsylvania. In the event that the term of said insurance shall expire prior to the expiration of the Term of this Agreement or the completion of all services required hereunder, whichever shall occur later, PPC shall renew said insurance in a timely manner and shall promptly cause a certificate of insurance evidencing such renewal, and identifying City as an additional insured as required, to be forwarded to the City.

Section 4.02. Worker's Compensation Insurance. PPC hereby certifies that it has accepted the provisions of the Pennsylvania Worker's Compensation and Occupational Disease Acts, as amended and supplemented, in connection with any work performed at, on or in the Premises, and either that it has insured its liability thereunder in accordance with the terms of said Acts, or that it has duly filed a proper certificate of exemption from insurance with the Pennsylvania Department of Labor and Industry.

Section 4.03. Waiver of Right of Subrogation. PPC hereby waives to the fullest extent permitted by law any right of subrogation that its insurance carriers may have from time to time against City's officers, employees and agents. For the purposes of this Section, PPC will cause to be delivered to City certificates issued by PPC's insurance carriers acknowledging the foregoing waiver of such right of subrogation.

ARTICLE V

REPAIRS, MAINTENANCE AND EXPENSES FOR THE PREMISES

Section 5.01. Services, Maintenance and Repairs by PPC.

A. The City will provide routine landscape maintenance and refuse collection for the Premises at the same standard as the rest of Schenley Park. To the extent permitted under applicable labor law/contracts, PPC shall furnish at its sole cost and expense all other additional specialized landscaping, services, repairs, and maintenance necessary or related to PPC's use and operation of the Premises, and, subject to the provisions of Article III hereof, shall at its sole cost and expense make any alterations, additions or improvements on or to the Premises which are necessary for the performance of PPC's obligations under this Agreement or which are necessary for the safety of the PPC's employees and the general public. A Maintenance Plan as agreed to by the parties is attached hereto as Exhibit "I." PPC shall at all times insure that the Premises is in a safe condition that is acceptable to City.

B. To the extent that the PPC fails to perform its maintenance obligations in a timely manner, the City reserves the right to come upon the Premises and cure any deficiencies. The City further reserves the right to charge the PPC for all such work performed.

C. With regard to the installation of water and sewer lines at the Premises, the City agrees to use its best efforts to cause the Pittsburgh Water and Sewer Authority ("PWSA") to maintain such lines in the event that repair or replacement is required during the term of this Agreement. However, pending any such agreement by PWSA or in the event that PWSA will not agree to such maintenance responsibility, the PPC shall be responsible for effecting such maintenance, repair, or replacement.

Section 5.02. Replacement of Equipment. PPC shall maintain any original plant material, architectural features, and other furniture, fixtures, and equipment located at the Premises in good operating condition, ordinary wear and tear excepted, and to the extent that the budget permits, shall replace, at its own cost and expense, any plant material, architectural features, and other furniture, fixtures, and equipment that becomes unusable during the Term of the Agreement to the extent that such equipment is necessary for the continued operation of the Premises.

Section 5.03. Utilities and Taxes. To the extent that sufficient Regional Asset District Funds are granted to the City for use in its parks for any particular year, City shall pay for the following utility costs associated with the authorized operation of Schenley Plaza that year: sewage, electricity, and local telecommunication costs. In the event such funding is not received for any particular year, payment of such utilities costs is contingent upon City Council approval. To the extent that the City is charged for water at the Premises by the Pittsburgh Water and Sewer Authority, the payment of such costs by City will be decided at such time. PPC further acknowledges and agrees that it is responsible for costs associated with the maintenance of any new Project connections running from the Premises to the sewer and water main lines. Additionally, to the extent that PPC wishes the City to provide refuse collection over and above its provision of services agreed to by the parties in the Maintenance Plan attached hereto, the PPC shall be required to pay fees as set forth by the Director of the City Department of Public Works. PPC shall be responsible to pay all taxes levied upon the Premises. Such taxes may include applicable taxes on food sales or facility rentals.

ARTICLE VI

PROHIBITION AGAINST LIENS AND ENCUMBRANCES

Section 6.01. Prohibition Against Encumbrances. PPC will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge that might become a lien, encumbrance or charge upon the Premises or any part thereof.

Section 6.02. Waiver of Mechanic's Liens. PPC shall not cause or permit any work to be done upon or any materials or services furnished to any portion of the Premises in connection with the improvement, alteration or repair thereof, except under a contract or contracts which effectively waive to the fullest extent permitted by law any right to file a mechanic's lien or claim against the Premises or any part thereof. PPC shall cause a duly executed no-lien certification to be filed with respect to each such contract in the Office of the Prothonotary, County of Allegheny, Commonwealth of Pennsylvania, prior to the commencement of any work or the delivery of any materials thereunder.

Section 6.03. Zoning and Other Approvals. PPC shall be responsible for complying with all applicable zoning guidelines and laws relative to the Premises, including but not limited to the Historic Review Commission and Art Commission regulations. With the prior approval of the City, PPC shall file for approval of any zoning variances that may be required for the intended use of the Premises.

ARTICLE VII

ENTRY ON PREMISES BY CITY

Section 7.01. Right to Inspect. City or its agents shall have the right to enter the Premises during reasonable hours for the purposes of inspecting the same or determining whether PPC is complying with the terms and conditions hereof.

Section 7.02. Right to Take Emergency Action. City or its agents shall have the

right (but not the duty) to enter the Premises without the consent of PPC at any time to correct any situation which, in the reasonable discretion of City, is deemed to be of an emergency nature. The Pittsburgh Water and Sewer Authority shall also have the right to enter to maintain water and sewer infrastructure.

ARTICLE VIII

INDEMNIFICATION

Section 8.01. Indemnification by PPC. PPC shall indemnify, protect and save harmless City, its officers, employees and agents from all liabilities, obligations, damages, penalties, claims, costs and expenses of every nature, including reasonable attorney's fees, which may be imposed on or incurred by or asserted against them or any of them in connection with its construction, restoration, use and maintenance of the Premises arising by reason of:

- (a) any failure by PPC to perform or comply with any of the covenants, agreements, terms or conditions contained in this Agreement on its part to be performed or complied with;
- (b) any work or thing done by or on behalf of PPC in, or about the Premises or any part thereof;
- (c) PPC's use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises during the term of this Agreement; or
- (d) any negligence on the part of PPC or any of its officers, agents, employees, permittees, or invitees.

In the event any action or proceeding is brought against City by reason of any such claim, PPC, upon written notice from City, shall at PPC's sole cost and expense resist and defend such action or proceeding and shall fully indemnify and hold harmless City for any and all costs, damages, demands or judgments relating in any way to the Premises or the

obligations set forth herein. City agrees that PPC's obligations under this Section shall not exceed the amount of insurance proceeds required hereunder. The City agrees that Officers and Directors of PPC will not have personal liability under this Section.

Section 8.02. Indemnification of PPC. To the extent permitted under the Political Subdivision Tort Claims Act, 42 Pa.C.S. Section 8451 *et seq.*, City will defend and indemnify PPC and its officers and directors for the City's obligations under this Agreement.

Section 8.03. Limitation on City's Liability. Notwithstanding any other provision herein to the contrary, the City shall not be liable for any claims or damages arising out of the conduct, operation or management of the Premises by the PPC or by its officers, agents, employees, invitees, or permittees. The City represents that any City employees performing maintenance work on or around the Premises shall be covered by the City's Workers' Compensation Program. In no event shall any agent or employee of the City be deemed to be an agent or employee of PPC nor shall any agent or employee of the PPC be deemed to be an agent or employee of the City. All experts or consultants or employees of PPC who are employed by PPC to perform work required under this Agreement are neither employees of the City nor under contract to the City, and PPC alone is responsible for their work, direction, compensation and conduct in the course of their engagement. Entering into this Agreement and performing requirements thereunder shall not create an agency relationship between the parties or establish a joint venture or legal partnership.

Section 8.04. Accidents/Unusual Conditions. PPC shall promptly notify the City's Director of the Department of Public Works and provide the Director with reports of

any accident occurring at the Premises that PPC, its employees, agents, servants or contractors observe or are made aware of through oral or written communications. PPC shall promptly send notice, in writing, of any claim for injury, death, property damage or theft that shall be asserted for or against PPC with respect to the Premises to the following address:

City of Pittsburgh
Department of Law
313 City-County Building
414 Grant Street
Pittsburgh, PA 15219

PPC shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operation of the Premises and shall notify the City, in writing, as to said person's name and address. PPC shall likewise promptly notify City's Director of the Department of Public Works of any unusual conditions that develop in the course of the Term of this Agreement which PPC, its employees, agents, servants or contractors observe or are made aware of through oral or written communications such as, but not limited to, fire, flood, casualty or substantial damage of any nature.

ARTICLE IX

DAMAGE OR DESTRUCTION

Section 9.01. Repair by PPC. In the event of casualty to the Premises or improvements thereon, regardless of the amount of any such damage or destruction, PPC shall have the right at its sole cost and expense to restore, repair, or rebuild the Premises as nearly as possible to its functional equivalent immediately prior to such damage or destruction. Any such restoration, repair, or rebuilding of the Premises shall be

accomplished in accordance with applicable laws and shall be subject to the prior approval of the City. The PPC shall submit its proposal for such restoration, repair, or rebuilding to the Mayor's Office which shall endeavor to timely respond to the PPC with an explanation of the approval process and the anticipated time line for review. The City's approval shall include a review and approval of plans and specifications by the City's Department of City Planning, Department of Parks and Recreation, the Department of Public Works, and the Department of Engineering and Construction and may include review and approval by other City Departments and City Council. The City's Department of Engineering and Construction shall approve or object to such plans within 45 days of receipt of complete plans and specifications. Any objections by Engineering and Construction shall be provided in writing and provide detail sufficient for the PPC to respond to its concerns. Pending PPC's decision on whether to restore, repair, or rebuild, any insurance monies shall be placed into an escrow account. Thereafter, if PPC decides not to rebuild, any and all insurance proceeds recovered by PPC due to such casualty shall be forwarded to City.

Section 9.02. Termination for Failure to Make Timely Repairs. In the event that PPC cannot or does not, for whatever reason (other than City's disapproval of plans proposed by PPC as required herein), within one (1) year after the fire or other casualty, to commence the restoration, repair, replacement or rebuilding of the Premises improvements, or its functional equivalent immediately prior to such damage or destruction, either party shall have the right to terminate this Agreement.

Section 9.03. Non-obligation of City to Repair. In the event of casualty to the Premises, regardless of the amount of damage or destruction, City shall be under no obligation to repair and/or replace the improvements thereon. In the event of damage to any PPC property or equipment, City shall likewise be under no obligation to repair

and/or replace such property or equipment.

Section 9.04. Non-obligation of City to Repay any Private Funds or Grants. In the event that this Agreement is terminated by City based on this provisions of this article due to casualty to Premises or for any other basis permitted in this Agreement, or in the event of bankruptcy of PPC, City shall not be obligated to repay any private monies obtained by PPC for improvements to the Premises.

ARTICLE X

DEFAULT PROVISIONS; TERMINATION

Section 10.01. City's Right to Repossess upon Default. City shall have the right to terminate this Agreement upon the material breach by PPC of any of the terms or conditions of the Agreement (including but not limited to: 1) a failure to perform any obligation required hereunder, 2) a failure to obtain necessary funding, 3) a failure to procure and maintain necessary insurance or 4) an abandonment or failure to manage the Premises) or 5) upon dissolution of PPC. Upon such a breach of the terms or conditions of the Agreement by the PPC, City shall notify PPC in writing of the specific provisions of the Agreement under which PPC is in default. PPC shall have ninety (90) days from the date of the notice of default in which to cure the default and to notify City in writing of such cure. If PPC fails to cure the default and notify City within this period, or fails to promptly commence to cure a default that cannot be cured within ninety (90) days, City shall have the right, upon thirty (30) days' written notice to PPC, to finally terminate this Agreement and to re-enter and repossess the Premises by whatever means are necessary and shall have the right to discontinue operations of PPC or to take any other action that City believes is in its best interests. In the case of violation of any of the terms, conditions or covenants of this Agreement by PPC, PPC, at the option of City, authorizes and empowers

any attorney of any court of record within the United States or elsewhere to appear for PPC and confess judgment forthwith against PPC, and in favor of City in an amicable action of ejectment for the Premises above described. PPC authorizes the entry of such action, confession of judgment therein, and the immediate issuing of a writ of possession with writ of execution for the amount of all costs, without leave of court, and City may without notice reenter and expel PPC from the Premises, and also any person holding under PPC, and in each case this Agreement or a true copy thereof shall be a sufficient warrant of any person.

Section 10.02. Other Remedies. The exercise of the option under Section 10.01 of this Agreement shall not deprive City of other actions against PPC for possession of the Premises. City may use the remedies herein given or those prescribed by law or both.

Section 10.03. Inability or Failure to Perform Permitted Use. If PPC determines that it is unable, for any reason, to use the Premises for the permitted uses set forth in Section 2.01 and in compliance with the terms and conditions of this Agreement, PPC may terminate this Agreement upon ninety (90) days' written notice to City. PPC shall do all things necessary to protect the Premises and maintain the Premises for the ninety (90) day period.

ARTICLE XI

CONDITION OF AND TITLE TO PREMISES

Section 11.01. Existing State of Title. City represents that the title to the Premises is held by City free and clear of all liens, encumbrances, and claims.

Section 11.02. Disclaimer of Warranties. PPC hereby acknowledges that City has not made any other warranty of any nature, expressed or implied, as to the Premises or the suitability thereof for PPC's intended purposes. Except as otherwise set forth in this

Agreement, PPC hereby accepts the Premises in "as is" condition. PPC represents that it has made complete inspection of the Premises and that it has conclusively determined therefrom that the Premises are suitable for PPC's intended use thereof.

ARTICLE XII

SURRENDER OF PREMISES

Section 12.01. Surrender of Premises. PPC shall surrender the Premises to City upon either party's termination of the Agreement pursuant to Section 10.01, 10.02, or 10.03 or otherwise as set forth herein. PPC waives all right to any additional notice as may be provided under any laws now or hereafter in effect in Pennsylvania, including the City and PPC Act of 1951, as amended.

ARTICLE XIII

CORPORATE AUTHORIZATION AND BOARD MEMBERSHIP

Section 13.01. Authorization by City. City represents that it is duly authorized to enter into this Agreement and that the Agreement is binding on City in accordance with and subject to the terms and conditions set forth herein.

Section 13.02. Authorization by PPC. PPC represents that it is duly organized and existing and is duly authorized to enter into this Agreement and that the Agreement is binding on PPC in accordance with and subject to the terms and conditions set forth herein. PPC further represents that it has the necessary corporate authority to enter into this Agreement.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Monitoring and Audit. The authorized representatives of City shall have access to the books and records maintained by PPC in connection with PPC's

operation or use of the Premises at all reasonable times for the purpose of monitoring PPC's compliance with the provisions of this Agreement, including, but not limited to auditing, inspecting and copying any books, records, memoranda, checks, correspondence or other relevant documents. PPC shall provide City, at City's request, copies of any budgets or financial statements prepared by PPC during the Term of the Agreement, and shall provide City with such reasonable additional information and data as may be periodically required by City or by federal or state authorities. This Section shall be effective during the entire term of the Agreement.

Section 14.02. Form of Notices. Except where otherwise provided for herein, notice hereunder shall conform to the requirements of the Cooperation Agreement, which is attached hereto as Exhibit "A".

Section 14.03. No Waiver; Consents. No failure by either party to this Agreement to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance or payment of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. In any case under this Agreement when the prior written approval or consent of City shall have been requested by PPC, such approval or consent shall not be unreasonably withheld or delayed by City.

Section 14.04. Entire Agreement. This Agreement, including the Cooperation Agreement and all Exhibits which are attached hereto and incorporated herein, contains the entire agreement and understanding between the parties hereto and shall be deemed to supersede and cancel all other agreements and understandings, written or oral, entered into prior to the date hereof, relating to the transactions herein contemplated.

Section 14.05. Home Rule Charter. This Agreement is subject to the Home Rule Charter of the City of Pittsburgh.

Section 14.06. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

Section 14.07. Assignment; Subcontracting. Except as otherwise provided herein, PPC may not assign, mortgage, sublease, subcontract, license or otherwise transfer its interests herein or its obligations hereunder without obtaining the prior written consent of City.

Section 14.08. Debarment. PPC warrants that it is not prohibited from entering into this Agreement with City by reason of disqualification under Subsection (b) of Section 161.22 of the Pittsburgh Code. An affidavit certifying compliance with this Section is attached hereto as Exhibit "J" and incorporated into and made part of this Agreement.

Section 14.09. Compliance with Laws. PPC shall fully obey and comply with all federal, state and local laws, ordinances, resolutions and administrative regulations which are or should be applicable to any work performed under this Agreement or to the operation and maintenance of the Premises pursuant to the terms of this Agreement.

Section 14.10. Authorizing Resolution. This Agreement is entered into by City pursuant to the authority conferred by Resolution No. ___ of 2004, effective _____ 2004, a copy of which is attached hereto as Exhibit "K" and incorporated herein by reference.

Section 14.11. Hiring of City Residents. PPC represents that it will use its best efforts to seek the employment of qualified residents of the City of Pittsburgh.

Section 14.12. Consents and Approvals. Whenever the City's consent or

approval is required, the City shall not unreasonably withhold, delay or condition such consent or approval. However, it is understood that this provision in no way guarantees the City's consent or approval.

IN WITNESS WHEREOF, City and PPC have duly executed this Agreement the day and year first above written.

CITY:

CITY OF PITTSBURGH

WITNESS:

By: _____
Mayor

By: _____
Director, Department of
Public Works

By: _____
Director, Department of
City Planning

EXAMINED BY:

Assistant City Solicitor

APPROVED AS TO FORM:

By: _____
City Solicitor

COUNTERSIGNED:

City Controller

PPC:

PITTSBURGH PARKS CONSERVANCY

ATTEST:

By: _____

Title: _____

Title: _____

Tax Identification or
Social Security No. _____

EXHIBITS

- Exhibit A: Cooperation Agreement with PPC
- Exhibit B: Description of Premises
- Exhibit B-1: Description of Frick Fine Arts Extension
- Exhibit B-2: Description of Carnegie Library Lawn Extension
- Exhibit C: Schenley Conveyance Documents
- Exhibit D: Naming Rights Plan
- Exhibit E: PPC MOU with University of Pittsburgh
- Exhibit F: Restoration Project Description
- Exhibit G: Preliminary Construction Budget
- Exhibit H: Insurance Certificates
- Exhibit I: Maintenance Plan
- Exhibit J: Authorizing Resolution
- Exhibit K: Debarment

EXHIBIT A: COOPERATION AGREEMENT BETWEEN CITY AND PPC

EXHIBIT B: DESCRIPTION OF PREMISES

EXHIBIT B-1: DESCRIPTION OF FRICK FINE ARTS EXTENSION

EXHIBIT B-2: DESCRIPTION OF CARNEGIE LIBRARY LAWN EXTENSION

EXHIBIT C: MARY SCHENLEY DOCUMENTS

EXHIBIT D: NAMING RIGHTS PLAN

EXHIBIT E: PPC MOU with University of Pittsburgh

EXHIBIT F: Restoration Project Description

EXHIBIT G: Preliminary Construction Budget

EXHIBIT H: INSURANCE CERTIFICATES

EXHIBIT I: MAINTENANCE PLAN

EXHIBIT J: AUTHORIZING RESOLUTION

EXHIBIT K: DEBARMENT AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

DEBARMENT AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared
who, being duly sworn according to law, and under penalty of perjury, deposes and
says that neither he nor, to the best of his actual knowledge, information or belief,
PITTSBURGH PARK CONSERVANCY or any affiliated individual is prohibited from
entering a bid or participating in a CITY of Pittsburgh contract by reason of
disqualification as set forth at Pittsburgh Code §161.22(b).

Name:
Title:

SWORN TO and subscribed
before me this _____ day of _____,
_____, 2004.

Notary Public

(SEAL)