

SAMPLE PROTECTIVE COVENANTS

Preservation North Carolina sells all of its Properties subject to Protective Covenants. The Secretary of the Interior's Standard for the Rehabilitation of Historic Properties (1992) will be attached to the covenants. The actual covenants will be tailored to suit the specific property.

PROTECTIVE COVENANTS FOR THE _____ HOUSE

WHEREAS, the _____ located at _____, _____ County, North Carolina, hereinafter referred to as the Subject Property, is a building of recognized historical, cultural and architectural significance; and

WHEREAS, The Historic Preservation Foundation of North Carolina, Inc. (hereafter the Foundation) and the Grantee both desire that the historic _____ be rehabilitated and preserved for the enjoyment and edification of future generations; and

WHEREAS, the Foundation and Grantee both desire that the Subject Property shall retain its historically and architecturally significant features, while being sympathetically adapted and altered, where necessary, to provide for contemporary uses; and

WHEREAS, the Foundation and Grantee both desire that the Subject Property shall not be subdivided in order to preserve its integrity of site; and

WHEREAS, the Foundation is a charitable organization which acquires certain rights pursuant to historic preservation agreements that will ensure that structures located within the state of North Carolina of recognized historical and architectural significance are preserved and maintained for the benefit of future generations; and

WHEREAS, the North Carolina General Assembly has enacted the Historic Preservation and Conservation Agreements Act validating restrictions, easements, covenants, conditions or otherwise, appropriate to the preservation of a structure or site historically significant for its architectural, archeological or historical associations.

NOW THEREFORE, the Grantee hereby agrees that the Subject Property shall be and shall permanently remain subject to the following agreement, easements, covenants and restrictions:

1. These covenants shall be administered solely by The Historic Preservation Foundation of North Carolina, Inc., its successors in interest or assigns; and in all subsequent conveyances of Subject Property, the Foundation, its successors in interest or assigns shall be the sole party entitled to administer these covenants. In the event that the Foundation, or its successors in interest by corporate merger cease to exist, then in such event the Foundation shall assign all of its rights and interests in these easements, covenants, and conditions subject to such duties and obligations which it assumes hereby to a non-profit corporation of responsibility which exists for substantially the same reasons as the Foundation itself (as described hereinabove); if no such corporation be available for such assignment then, under such circumstances such assignment shall be made to the State of North Carolina which shall be the sole party entitled to administer those covenants.

Rehabilitation and Maintenance

2. The Grantee covenants and agrees to rehabilitate the _____ according to the terms, conditions, and deadlines of a Rehabilitation Agreement entered into by the parties and signed by authorized officials of the Foundation and, after rehabilitation, to continuously maintain, repair, and administer the Subject Property herein described in accordance with the Secretary of the Interior's Standards for the Rehabilitation of Historic Properties (1992) so as to preserve the historical integrity of features, materials, appearances, workmanship and environment of the Subject Property. Maintenance shall be continuously provided. Said standards are attached hereto and incorporated in these covenants by reference.

Prior Approval Required For Modifications

3. Unless prior written approval by the President or Chairman of the Board of Directors of the Foundation is obtained, no alteration, physical or structural change, or changes in the color, material or surfacing to the exterior of the _____ shall be made.

4. Unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the President or Chairman of the Board of Directors of the Foundation, no addition or additional structure shall be constructed or permitted to be built upon the Subject Property. The Foundation in reviewing the plans and designs for any addition or additional structure shall consider the following criteria: exterior building materials; height; fenestration; roof shapes, forms, and materials; surface textures; expression of architectural detailing; scale; relationship of any additions to the main structure; general form and proportion of structures; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural traditions; and effect on archeological resources. Contemporary designs for additions or additional structures shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, color, material and character of the property and its environment.

5. The Grantee and the Foundation hereby agree that the interior architectural features listed below are elements which contribute to the architectural significance of the _____:

{to be completed later}

Unless prior written approval by the President or Chairman of the Board of Directors of the Foundation is obtained, no removal, relocation, or alteration of the above mentioned architectural features shall be made.

6. Neither _____ nor any part thereof may be removed or demolished without the prior written approval of the President or Chairman of the Board of Directors of the Foundation.

7. No portion of the Subject Property may be subdivided.

8. Express written approval of the Foundation is required for removal of living trees greater than 12 inches in diameter at a point 4 feet above the ground from the Subject Property unless immediate removal is necessary for the protection of any persons coming onto the Subject Property or of the general public; for the prevention or treatment of disease; or for the protection and safety of the _____ or other permanent improvements on the Subject Property. Any tree of the aforementioned size which must be removed shall be replaced within a reasonable time by a new tree of a substantially similar species. If so requested, the Foundation may approve the use of an alternate species.

Covenant to Obey Public Laws

9. The Grantee shall abide by all federal, state, and local laws and ordinances regulating the rehabilitation, maintenance and use of the Subject Property.

Right of First Refusal

10. In case of any contemplated sale of the Subject Property or any portion thereof by the Grantee or any successor in title thereto, first refusal as to any bona fide offer of purchase must be given to the Foundation, its successors or assigns. If the Foundation so decides to purchase, it shall notify the then owner of its willingness to buy upon the same terms within thirty (30) days of receipt of written notice of such bona fide offer. Failure of the Foundation to notify the then owner of its intention to exercise this right of first refusal within such thirty (30) day period shall free the owner to sell pursuant to the bona fide offer. The Foundation may, in its discretion, waive its right of first refusal in writing, upon written receipt of such bona fide offer. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

Inspection

11. Representatives of the Foundation shall have the right to enter the Subject Property at reasonable times, after giving reasonable notice, for the purpose of inspecting the buildings and grounds to determine if there is compliance by the Grantee with the terms of these covenants.

Public Access

12. Researchers, scholars, and groups especially interested in historic preservation shall have access to view the interior of the rehabilitated property by special appointment at various times and intervals during each year. The general public shall have access to the Subject Property to view the exterior and interior features herein protected at the Grantee's discretion at various times and intervals during each year at times both desirable to the public and convenient with the Grantee. Nothing shall be erected or allowed to grow on the Subject Property which would impair the visibility of the property and the buildings from the street level or other public rights of way.

Hazardous Materials

13. The properties the Foundation seeks to protect may contain certain hazards as a result of outdated building practices or use of certain materials that may contain lead paint, asbestos, or some other hazards that may need to be removed or encapsulated before the buildings are habitable. Addressing these problems is one of the challenges of owning and restoring a historic property. The Foundation does not have the resources to correct these problems and cannot take responsibility for the condition of the properties being sold. The Foundation is not liable in any way for any hazards, defects, or other problems with the properties under covenants.

Extinguishment

14. The Grantee and the Foundation recognize that an unexpected change in the conditions surrounding the Subject property may make impossible or impractical the continued use of the Subject Property for conservation purposes and necessitate the extinguishment of these Protective Covenants. Such an extinguishment must comply with the following requirements:

(a) The extinguishment must be the result of a final judicial proceeding.

(b) The Foundation shall be entitled to share in the net proceeds resulting from the extinguishment in an amount in accordance with the then applicable regulations of the Internal Revenue Service of the U. S. Department of the Treasury.

(c) The Foundation agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other property or buildings having historical or architectural significance to the people of the State of North Carolina.

(d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantee of any portion of the Subject Property after the extinguishment.

Remedies

15. In the event of a violation of covenants contained in Paragraphs 2, 3, 4, 5, and 6 hereof, the Foundation then shall have an option to purchase the Subject Property, provided that it shall give the Grantee written notice of the nature of the violation and the Grantee shall not have corrected same within the ninety (90) days next following the giving of said notice. The purchase of the Subject Property, pursuant to the exercise of the option retained hereby, shall be at a price equal to the then market value of the Subject Property, subject to restrictive covenants, as determined by agreement of the then owner and the Foundation, or, in the absence of such agreement, by a committee of three appraisers, one to be selected by the Foundation, one to be selected by the then owner, and the other to be designated by the two appraisers selected by the Foundation and the owner respectively. Provided, however, that if there are outstanding deeds of trust or other encumbrances against the property, any right to purchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

16. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to the Foundation. No failure on the part of the Foundation to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Foundation shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Foundation to enforce the same in event of a subsequent breach or default. In any case where a court finds that a violation has occurred, the court may require the Grantee to reimburse the Foundation for all expenses incurred in stopping, preventing and correcting the violation, including but not limited to reasonable attorney's fees.

Transfer Fee

17. Except as otherwise provided herein, there shall be assessed by the Foundation and collected from the purchasers of the Subject Property, or any portion thereof subject to these covenants and restrictions, a transfer fee equal to twenty-five one-hundredths of one percent (0.25%) of the sales price of such property, or any portion thereof, which transfer fee shall be paid to the Foundation and used by the Foundation for the purpose of preserving the historical, architectural, archeological or cultural aspects of real property. Such fee shall not apply to inter-spousal transfers, transfers by gift, transfers between parents and children, transfers between grandparents and grandchildren, transfers between siblings, transfers between a corporation and any shareholders in the same corporation who owns 10 percent (10%) or more of the stock in such corporation and transfers between a limited liability corporation and any member who owns more than ten percent (10%) of such limited liability corporation, transfers by Will, bequest, intestate succession or transfers to the Foundation (each of the foregoing hereinafter referred to as an "Exempt Transfer"); *provided, however*, that such fee shall not apply to the first non-exempt transfer of the Subject Property, but shall apply to each non-exempt transfer thereafter. In the event of non-payment of such a transfer fee, the amount due shall bear interest at the rate of 12% (twelve percent) per annum from the date of such transfer, shall, together with accrued interest, constitute a lien on the real property, or any portion thereof, subject to these covenants and restrictions and shall be subject to foreclosure by the Foundation. In the event that the Foundation is required to foreclose on its lien for the collection of the transfer fee, and/or interest thereon, provided for herein, the Foundation shall be entitled to recover all litigation costs and attorney's fees incurred at such foreclosure, which litigation costs and attorney's fees shall be included as part of the lien and recoverable out of proceeds of the foreclosure sale. The Foundation may require the purchaser and/or seller to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds, affidavits or

such other evidence, and purchaser shall be obligated to provide such information within forty-eight (48) hours after receipt of written request for such information from the Foundation.

Insurance

18. Grantee shall insure the Subject Property against damage by fire or other catastrophe. If the original structure is damaged by fire or other catastrophe to an extent not exceeding fifty percent (50%) of the insurable value of those portions of the building, then insurance proceeds shall be used to rebuild those portions of the Subject Property in accordance with the standards in Exhibit B. The Grantee shall keep the Subject Property insured under a comprehensive general liability policy that names the Foundation as an additional insured and that protects the Grantee and the Foundation against claims for personal injury, death and property damage.

Mortgage Subordination

19. All mortgages and rights in the property of all mortgagees are subject and subordinate at all times to the rights of the Foundation to enforce the purposes of these covenants and restrictions. Grantee will provide a copy of these covenants and restrictions to all mortgagees of the Subject Property and has caused all mortgagees as of the date of this deed to subordinate the priority of their liens to these covenants and restrictions. The subordination provisions as described above relates only to the purposes of these covenants and restrictions, namely the preservation of the historic architecture and landscape of the Subject Property.

Duration of Covenants

20. The Grantee does hereby covenant to carry out the duties specified herein, and these restrictions shall be covenants and restrictions running with the land, which the Grantee, _____ heirs, successors, and assigns, covenant and agree, in the event the Subject Property is sold or otherwise disposed of, will be inserted in the deed or other instrument conveying or disposing of the Subject Property.

21. Unless otherwise provided, the covenants and restrictions set forth above shall run in perpetuity.

**SECRETARY OF THE INTERIOR'S
STANDARDS FOR THE REHABILITATION OF HISTORIC PROPERTIES
(1992)**

REHABILITATION is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

STANDARDS FOR REHABILITATION

1. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.
4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historical materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.