

SAMPLE HISTORIC PRESERVATION AGREEMENT

Owners of historic properties are able to ensure the protection of their property for future generations with an easement, also known as an Historic Preservation Agreement, granted to Preservation North Carolina. The Secretary of the Interior's Standard for the Rehabilitation of Historic Properties (1992) will be attached to the Covenants. The actual agreement will be tailored to suit the specific property.

HISTORIC PRESERVATION AGREEMENT

THIS AGREEMENT, made this the ____ day of _____, 20__, by and between _____, of _____ County, North Carolina (hereinafter referred to as the "Grantor"), and **THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC.**, a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal office being in Raleigh, North Carolina (hereinafter referred to as the "Foundation");

WITNESSETH:

WHEREAS, the Grantor owns certain real property (hereinafter referred to as the "Subject Property"), a description of which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Subject Property currently has certain permanent improvements consisting of _____ hereinafter referred to as the "_____"; and

WHEREAS, the _____, located at _____, _____ County, North Carolina, is a property of recognized historical and architectural significance; and

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

WHEREAS, the Foundation is a charitable organization which accepts preservation easements on buildings having historical or architectural importance, said easement subjecting such buildings to restrictions that will ensure that they 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 significant for its architecture, archaeology or historical associations.

NOW, THEREFORE, for and in consideration of the Grantor's interest in historic preservation and ___ support for the Foundation and its purposes, and for and in consideration of the sum of **ONE DOLLAR (\$1.00)**, the Grantor, for ___self, ___ successors and assigns, hereby covenants and agrees to abide by the following restrictions (hereinafter referred to as "Covenants"), said Covenants to be restrictions of record to attach to the land described in Exhibit A:

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 Covenants 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 these Covenants.

Maintenance

2. The Grantor covenants and agrees to continuously maintain, repair, and administer the _____ 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 Grantor 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 the _____ 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 ___-acre 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 Grantor 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 Grantor 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 Grantor 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. 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 Grantor 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 this Historic Preservation Agreement. 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 Grantor 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 Grantor written notice of the nature of the violation and the Grantor 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 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, 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 Grantor 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, 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 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. Grantor 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 Grantor shall keep the Subject Property insured under a comprehensive liability policy that protects the Grantor 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. Grantor will provide a copy of these Covenants to all mortgagees of the Subject Property and has caused all mortgagees as of the date of this Historic Preservation Agreement to subordinate the priority of their liens to these Covenants. The subordination provisions as described above relates only to the purposes of these Covenants, namely the preservation of the historic architecture and landscape of the Subject Property.

Duration of Covenants

20. The Grantor does hereby covenant to carry out the duties specified herein, and these Covenants shall be covenants and restrictions running with the land, which the Grantor, _____ heirs, successors, and assigns, covenants and agrees, 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.

IN WITNESS WHEREOF, the Grantor has hereunto set ___ hand and seal, and The Historic Preservation Foundation of North Carolina, Inc., has caused this instrument to be signed in its corporate name by its duly authorized officer by the authority of its Board of Directors, the day and year first above written.

TYPE GRANTOR NAME HERE

_____ (Seal)

THE HISTORIC PRESERVATION FOUNDATION
OF NORTH CAROLINA, INC.

BY _____
J. Myrick Howard, President

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public for _____ County, North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the _____ day of _____, 20____.

Notary Public

My commission expires: _____

NORTH CAROLINA
WAKE COUNTY

I, _____, a Notary Public for Wake County, North Carolina, certify that J. Myrick Howard personally came before me this day and acknowledged that he is President of THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC., a non-profit North Carolina corporation, and that he, as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the _____ day of _____, 20____.

Notary Public

My commission expires: _____

EXHIBIT A

Legal Property Description

EXHIBIT B

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.