



Conveyance of a Preservation Easement to the Maryland Historical Trust

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Should you have any questions please contact:

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Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032
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Historic Preservation Easements: A Preservation Tool

What is a Historic Preservation Easement?

The State of Maryland's preservation easements are managed by the Maryland Historical Trust (MHT). A preservation easement is a type of conservation easement – a private legal right given by the owner of a property to a qualified easement-holding organization or governmental entity by written contract for the purpose of protecting a property with historic, architectural, or archeological significance in perpetuity. A preservation easement can safeguard historic homes, farmsteads, archeological sites, historic landscapes and other historic structures. Considered the strongest historic preservation tool available, MHT acquires easements in a variety of ways, including:

- donation by property owner;
- as mitigation for a State or Federally funded or permitted project that has an adverse impact on a historic resource; or
- as a condition of State financing (capital grants, bond bills, or loans) for construction projects that affect historic and cultural properties.

Typically, owners of easement properties agree that they must receive MHT's consent and approval before making changes to the protected building, and before constructing new buildings. Owners also agree to maintain the property and buildings in good condition, and to provide limited access for the public to view the historic structures.

The easement-holding organization is responsible for ensuring the current and all future owners' compliance with the terms of the easement, in order to protect the property forever. Donations of preservation easements may also provide certain tax benefits to the property owner. In some cases, conveyance of an easement is a requirement of receiving financial support from the state or federal government.

Summary: The Maryland Historical Trust Preservation Easement Program

MHT holds more than 700 easements encompassing approximately 7,000 acres statewide on a variety of buildings and properties, including Native American archaeological sites, homes and farms of Maryland's earliest families, churches of all denominations, schools, commercial buildings, factories, a WWII bomber factory, a furnace, lighthouses, bridges, railroad stations, mills, museums, parks, and monuments. Our easements can cover interior, exterior and archeological features.

Guidelines for Review

A preservation easement restricts changes to a property that would be inconsistent with the preservation of the historic characteristics of the property. In determining what changes are appropriate for each easement property, MHT consults:

- the language in the specific Deed of Easement
- the condition and significance of the resource
- the details of the proposed project and
- The Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68) (the "*Standards*"), published by the National Park Service.

The *Standards* are nationally accepted guidelines for the treatment of historic buildings, which purpose is to preserve those elements that contribute to a building's historic character. The Secretary of the Interior's *Standards* are intended to be flexible and accommodate a wide variety of building types and project goals. Each property and each easement is unique; therefore, MHT considers each project individually.

The MHT Easement staff works with property owners who want to change or make alterations to their property. The steps for submitting a change request to MHT is found on the MHT website under the "Resources" heading on the left hand side of the page and the "Existing Easements" tab at <http://mht.maryland.gov/easement.shtml>. MHT will review proposed changes or alterations to the property, and advise owners on the best ways to maintain and preserve their properties. The Maryland Historical Trust Easement Committee consists of MHT staff architectural historians, archeologists, technical and materials specialists, and rehabilitation experts, and requests are coordinated by the Easement Administrator. The committee meets every three weeks to review proposed modifications to easement properties and to make recommendations regarding a proposal's compliance with the terms of the easement.

Inspections

Each Deed of Easement has a provision that grants MHT the right to inspect the property, after giving notice to the owner, to determine the condition of the property and whether the owner is complying with the terms of the Easement. Inspections are performed on a rolling basis, typically once every three-to-five years. Frequency of visits, however, may fluctuate in order to accommodate special circumstances, such as the sale of a property or damage due to a catastrophic event.

Scope of Easement

Preservation easements held by MHT last permanently. Easements that qualify for the federal tax deduction are required by the IRS to be perpetual. The easements are drafted by the Maryland Office of Attorney General, and must be approved by the Director of the MHT. Typically the scope of the easement includes the exterior and/or interior of the resource(s), as well as the land or a portion of the land surrounding the resource. The easement may also protect against deterioration by imposing maintenance obligations on the owner.

Conveying an Easement

The owner may also be responsible for costs associated with the legal documentation required to process the easement, such as property title work or survey/site plan work. However, MHT does not charge any administrative fees for processing or administering the easements.

Gift Easements

MHT will consider accepting a donation of a gift easement from an owner only if the property, building, or structure is listed on, *or is eligible for* listing on the National Register of Historic Places, or is located in a registered national historic district. Property owners may begin this process by submitting a letter to MHT expressing their desire to donate an easement. Please note that property owners must provide adequate information for consideration of the request. Documentation on the value and significance of the resource /property, as well as current and historic photographs (if available) may be required. Easement donations may be eligible for a charitable tax deduction. Please consult with the IRS and/or a tax professional for more information on what deductions may be available to you.

Easement Conveyance Checklist of Required Items

- The **Maryland Historical Trust** in consultation with the Office of the Attorney General of Maryland will prepare the easement document. Both your and our attorneys will need to review and approve of the draft easement prior to the preparation of a final easement.

To develop a mutually acceptable final draft easement for your review, we will need the following items which must be acceptable to and approved by the MHT:

- ☐ **A copy of your Title Insurance Policy**, issued by a Maryland licensed Title Company to which are attached complete copies of vesting documents, liens, encumbrances and rights-of-way upon the property.
- ☐ **A Property and Judgment Report** (“P&J Report”) from the date of easement grantor/property owner’s acquisition of the property through the date of easement conveyance, prepared by a Maryland licensed Title Company, to which are attached any exception documents not previously provided.

If property owner is unable to submit an existing homeowner’s title insurance policy with a P&J Report, MHT will accept a new owner’s title policy issued to MHT or a 60 year title search and report prepared by a Maryland licensed Title Company.

Title Policies, 60 year title reports and P&J Reports may contain exceptions only to those items which have been approved by MHT. If easement grantor/property owner elects to have a new title policy issued to MHT, such policy may not contain the standard pre-printed exceptions for survey matters, general or blanket exceptions, mechanics or materialman’s liens. Taxes must be paid through date of easement recordation.

Immediately following the recordation of the easement, a bring-to-date P&J Report must be submitted to MHT in order to finalize the easement conveyance process.

- ☐ **A legal property description** (metes and bounds) in paragraph form (if not in the deed) for the easement property.
- ☐ **A scaled site plan or plat** locating the building(s) footprint(s) and identifying the metes and bounds, as described in the written legal property description. (The legal property description must match the scaled site plan.)
- ☐ **A Property (Hazard) Insurance Policy to which the Maryland Historical Trust is added to the policy as additionally insured.** An endorsement or declaration page stating the MHT as additionally insured generally will be issued.

Additional required items for Organizations and Corporations:

- ☐ **Corporate Resolutions** (sample form attached) to convey an easement to the Maryland Historical Trust on the property which will benefit from the program; the name, title and signature of the person(s) authorized to sign the Deed of Easement and receive future notices.
- ☐ **A print-out of the Certificate of Good Standing from the Maryland State Department of Assessments and Taxation**, visit their website at www.dat.state.md.us for more information. (30 days prior to easement being recorded.)
- ☐ **Articles of Incorporation and Bylaws or Articles of Organization and Operating Agreement.**
- ☐ **Letter of Determination of Tax Exempt Status.** (if applicable)
- ☐ **Approved Capital Project Grant Application** (for Bond Bills, approved by the Board of Public Works and fully executed by all parties).
- The MHT staff will coordinate a site visit with you to take photographs of the property and discuss the easement after all of the requirements above are met and deemed satisfactory.
- **Please mail all materials to:**

*Kate Bolasky, Easement Administrator
Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032
Phone: (410) 697-9537
Email: kate.bolasky@maryland.gov*

Resolution and Authorized Signature Format

CERTIFICATE and CORPORATE RESOLUTION

I, _____, the Secretary of _____ (the “Corporation”), certify that:

1. I am the duly elected and acting Secretary of the Corporation, which is organized and existing in good standing under the laws of Maryland.

2. Paragraph three below constitutes a true and correct statement of the resolutions (the “Resolutions”) that were duly adopted by the Board of Directors of the Corporation at a meeting held on _____, 20____.

3. **RESOLVED:** That the Corporation is authorized by this resolution to convey to the Maryland Historical Trust (“MHT”), an instrumentality of the State of Maryland within the Maryland Department of Planning, a historic preservation easement with respect to the property located at _____, in compliance with [Chapter ____, Laws of Maryland of ____] [an MOU between _____ and _____, dated ____; and it is

4. **FURTHER RESOLVED:** That the approval of the Corporation’s Board of Directors is deemed conclusively evidenced by the execution of any and all documents required in connection with the easement by one of the authorized signatories listed in Paragraph 9 below; and the Secretary of the Corporation is authorized to certify these resolutions to MHT; and it is

5. **FURTHER RESOLVED:** That if there shall be any conflict between (i) the easement documents or these resolutions, and (ii) the By-laws and Articles of Incorporation of the Corporation, the language of the easement documents or these Resolutions, as the case may be, shall control.

7. The Resolutions have not been amended, rescinded or modified and are in full force and effect on this date in the form originally adopted, and conform with the Corporation’s Articles of Incorporation and By-Laws.

8. The Corporation’s Articles of Incorporation and By-Laws, as amended, have been submitted to MHT, and have not been amended since the date of their submission and are in full force and effect as of this date.

9. The following persons (i) are duly elected, qualified and acting officers of the Corporation in the capacity indicated, or (ii) are otherwise authorized to execute, acknowledge, and deliver documents on behalf of the Corporation for purposes of binding the Corporation; and (iii) the signatures set forth after their names and offices or titles are their true and genuine signatures:

<u>Name</u>	<u>Office/Title</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

WITNESS my signature and the seal of the Corporation this ____ day of _____, 20__.

_____(SEAL)
Secretary of the Corporation

Deed of Easement (Sample)

NOT SUBJECT TO RECORDATION TAX PURSUANT TO MARYLAND ANNOTATED CODE, TAX-PROPERTY ARTICLE, SECTION 12-108(a)

NOTICE: THIS DEED OF EASEMENT CONTAINS COVENANTS THAT INCLUDE RESTRICTIONS ON USE OF LAND AND REQUIRES SPECIFIC REFERENCE IN A SEPARATE PARAGRAPH OF ANY SUBSEQUENT DEED OR OTHER LEGAL INSTRUMENT BY WHICH ANY INTEREST IN THE PROPERTY IS CONVEYED.

Tax Map _____, Parcel _____
Tax I.D. No.: _____

DEED OF PRESERVATION EASEMENT

THIS DEED OF PRESERVATION EASEMENT (“Preservation Easement”), made as of this _____ day of _____, 20____, by and between _____, having an address at _____ (the “**Owner**”), and the MARYLAND HISTORICAL TRUST, an instrumentality of the State of Maryland (the “**State**”), having a current address at 100 Community Place, Third Floor, Crownsville, Maryland 21032 (“**MHT**”).

RECITALS

WHEREAS, MHT is a body corporate and instrumentality of the State of Maryland, created pursuant to Part II of Title 5A of the State Finance and Procurement Article, Annotated Code of Maryland for the purpose of preserving, protecting, and enhancing districts, sites, buildings, structures and objects of significance in the prehistory, history, upland and underwater archeology, architecture, engineering, and culture of the State. MHT is a “qualified organization” within the meaning of Section 170(h)(3) of the United States Internal Revenue Code of 1986, as amended (the “**IRC**”).

WHEREAS, Owner owns in fee simple _____ acres, more or less, of certain real property located at _____ in _____ County, Maryland, which was conveyed to the Owner by Deed dated _____ and recorded among the land records of _____ County (the “**County**”), Maryland (the “**Land Records**”), in Liber _____, Folio _____, as more particularly described in **Exhibit A**, attached hereto and incorporated herein.

WHEREAS, the real property is improved by the historic structure known as _____, and certain historic accessory structures as listed, described, or depicted in the Baseline Documentation (defined in Article II of this Preservation Easement), which, individually, are referred to herein as a “**Structure**” and collectively as the “**Structures**”. The above described real property and the Structure are referenced herein together as the “**Property**”.

WHEREAS, as detailed in the National Register of Historic Places Registration Form/ Maryland Inventory of Historic Properties Number _____, Inventory No. _____, the Property contributes significantly to the historic, architectural, aesthetic and cultural character of the County and the State.

WHEREAS, in recognition of the Preservation Attributes as defined below, and to promote and further the preservation and conservation of the Property and its historic, architectural, aesthetic and cultural character, Owner intends to grant this perpetual Preservation Easement over the Property, thereby restricting and limiting certain activities on and uses of the Property as provided in this Preservation Easement.

WHEREAS, this Preservation Easement applies to, among other things, the [Interior] [Exterior] [Interior and Exterior] Features of the Structure(s).

WHEREAS, MHT is possessed with the power and duty to accept, hold and administer this Preservation Easement, and intends to do so exclusively for preservation purposes.

WHEREAS, the Owner acknowledges and accepts that MHT will apply the Secretary of the United States Department of the Interior’s *Standards for the Treatment of Historic Properties*, as set forth in Part 68, Title 36, Code of Federal Regulation, or comparable standards as may be developed, amended or revised from time to time (the “**Secretary of the Interior’s Standards**”), as interpreted by MHT, to MHT’s administration and enforcement of this Preservation Easement.

AGREEMENT

ARTICLE I. GRANT AND DURATION OF EASEMENT

The above Recitals are incorporated as if fully set forth herein. As an absolute gift for no monetary consideration (\$0.00), but in consideration of the facts stated in the above Recitals and the covenants, terms, conditions and restrictions in this Preservation Easement, Owner hereby unconditionally, irrevocably and voluntarily grants and conveys unto MHT, its successors and assigns, forever and in perpetuity, with Special Warranty of Title, this Preservation Easement in the Property, together with all of the improvements thereon, and appurtenances, rights and interests thereunto belonging.

This Preservation Easement shall be perpetual. It is an easement in gross and as such it is inheritable and assignable in accordance with Article VI, runs with the land as an incorporeal interest in the Property, and is enforceable by MHT against Owner and Owner’s personal representatives,

heirs, successors and assigns.

ARTICLE II. PRESERVATION PURPOSE

A. Preservation of the Property shall be in conformance with the provisions of this Preservation Easement, the purpose of which is to protect, preserve and enhance the Property's preservation attributes (the "**Preservation Purpose**"). The preservation attributes are those Structures, character defining [Interior] [Exterior] [Interior and Exterior] Features of Structures, and other details that give the Property its historic, architectural, aesthetic and cultural character (the "**Preservation Attributes**"). Pursuant to and in compliance with the requirements of Section (h)(4)(A) of the IRC, and the regulations thereunder, the preservation of the Property will protect the preservation of historically important land areas or certified historic structures.

B. The Preservation Attributes are further represented, detailed or depicted in **Exhibits B and C** (together, the "**Baseline Documentation**"). **Exhibit B** consists of a site plan or survey of the Property. **Exhibit C**, totaling __ pages, consists of a one-page schedule of documents, photographs of selected portions of the Property, and/or other materials depicting Structures, character defining [Interior] [Exterior] [Interior and Exterior] Features, and other details representative of the Property's Preservation Attributes. The materials listed on the schedule are not recorded herewith, but are and will be kept on file at MHT's principal office or at the Maryland State Archives, and are fully and completely incorporated by reference into this Preservation Easement as though recorded herewith. The Baseline Documentation might not detail or depict every singular, individual and unique character defining feature or detail that comprise the Preservation Attributes.

C. Following completion of the renovation of the Property, or other significant alteration of the Property as determined by MHT, MHT may elect to modify and update the Baseline Documentation to accurately depict the then current condition of the Preservation Attributes. The updated Baseline Documentation shall be identified as **Exhibits B-1 and C-1**, and shall be kept on file at MHT's principal office or at the Maryland State Archives. MHT shall promptly notify Owner when it files **Exhibits B-1 and C-1**, and shall provide to Owner copies of **Exhibits B-1 and C-1**. Once **Exhibits B-1 and C-1** have been filed, all references in this Preservation Easement to **Exhibit B** shall mean **Exhibit B-1** and to **Exhibit C** shall mean **Exhibit C-1**.

ARTICLE III. LAND USE AND FEATURES

A. **General**. This Article sets forth certain specific restrictions, prohibitions, requirements, and permitted activities and uses under this Preservation Easement. If Owner believes, or reasonably should believe, that any completed, contemplated or planned undertaking, activity or use on or of the Property may have a significant adverse effect upon the Preservation Purpose or the Property, Owner shall, in accordance with the requirements of Article IV, notify MHT prior to such undertaking, activity, or use.

B. **Defined Terms**. The following terms, as used in this Article and throughout this Preservation Easement, shall have the following meaning:

- (1) "**Construction**" means all construction, reconstruction, improvement, enlargement,

painting and decorating, alteration, actual or exploratory demolition, maintenance or repair of any Structure, or part thereof.

- (2) **“Exterior Features”** include, but are not limited to: (i) the exterior design, composition and surfaces of a Structure, including the architectural style, general design and arrangement, color, finish, appearance, kind and texture of the Structure’s exterior building materials and (ii) the type, building material and style of windows, doors, light fixtures, signs and other character defining exterior components of a Structure, as determined by MHT. A feature does not have to be original to a Structure to be an Exterior Feature.
- (3) **“Interior Features”** include, but are not limited to: (i) the interior design, composition and surfaces of a Structure, including the architectural style, general design and arrangement, color, finish, appearance, kind and texture of the Structure’s interior building materials and (ii) the type, building material and style of windows, doors, light fixtures, and other character defining interior components of a Structure, as determined by MHT. A feature does not have to be original to a Structure to be an Interior Feature.
- (4) **“Casualty Loss”** means loss by fire or other hazard and casualties typically covered by a standard all-risks policy of hazard insurance that includes vandalism and malicious mischief endorsements.

C. Maintenance, Repair and Administration.

(1) Owner shall maintain, repair and administer the Property, including the Property’s grounds, Structures, and the [Exterior Features] [Interior Features] [Exterior and Interior Features] of Structures, in good, clean and safe condition, and in a manner consistent with and in furtherance of the Preservation Purpose.

(2) Subject to the requirements of Paragraphs D.(1) and D.(2) of this Article, the Owner may, without the prior express written approval of the Director of the Maryland Historical Trust (the **“Director”**), cause, permit or suffer maintenance, repair, repainting or refinishing on or to the Property’s Preservation Attributes – including, but not necessarily limited to, the Property’s grounds, Structures, or the [Exterior Features] [Interior Features] [Exterior or Interior Features] of Structures – if such maintenance, repair, repainting or refinishing is necessary to correct damage or conditions that result from Casualty Loss or ordinary wear and tear; provided that such maintenance, repair, repainting or refinishing is performed in a manner that does not negatively impact the Preservation Attributes or the Preservation Purpose, as may be determined by the Director at the Director’s sole discretion.

(3) Owner shall not permit or allow, through neglect or a failure to maintain or repair, deterioration or constructive demolition (i.e. demolition-by-neglect) of the Property’s grounds, Structures, or the [Exterior Features] [Interior Features] [Exterior and Interior Features] of Structures.

D. Changes and Alterations to the Property.

(1) Owner shall not, without the prior express written approval of the Director, cause, permit or suffer: (i) ground disturbance on the Property as further detailed in Paragraph E. of this Article; (ii) demolition of any Structure or part thereof; (iii) Construction on the Property that alters or changes the Property's Preservation Attributes; or (iv) replacement, of any kind, of any [Exterior Features] [Interior Features] [Exterior or Interior Features] of any Structure.

(2) Owner shall not, without the prior express written approval of the Director, cause, permit or suffer the construction or erection of any new structure or improvement on the Property. The Property shall include only those Structures which are as of the date of this Preservation Easement located on the Property, as listed, described, or depicted in the Baseline Documentation. Owner and MHT acknowledge and affirm that all those Structures located on the Property as of the date of this Preservation Easement are listed, described, or otherwise depicted in the Baseline Documentation.

E. Archeological Resources. Owner shall not, without the prior express written approval of the Director, cause, permit or suffer any grading, excavation, tree removal that includes root removal, subsoiling, drainage improvement, plowing or tilling of land not previously plowed or tilled for agricultural purposes, or any other undertaking that may materially disturb the surface or subsurface or otherwise alter the topography of the Property's grounds. Prior to approving a disturbance, the Director may require the Owner to: (i) modify or relocate the undertaking in order to avoid, reduce or mitigate impacts on archeological deposits; (ii) perform and report to the Director, in accordance with applicable and contemporary professional standards, an archeological survey of the area to be disturbed to identify and determine whether any significant archeological deposits are located in the area; and/or (iii) produce to the Director a written report by a qualified archeologist that documents archeological research or study of the proposed ground disturbance. If deemed necessary by the Director as a condition of an approval for a disturbance, the Owner shall conduct archeological excavation, curation, documentation and reporting of affected archeological deposits, all in accordance with applicable and contemporary professional standards and in a form and of substance satisfactory to the Director.

F. Viewshed Protection. Owner shall not, without the prior express written approval of the Director, erect, construct, assemble, or plant on the Property visual screens or barriers, including, without limitation, fences, walls, berms or dense hedges, that might obstruct the substantial and regular opportunity of the public to view the exterior of Structures from adjacent publicly accessible areas.

G. Public Access. Owner shall make the [interior and exterior] of the Property and the Structures open to the public a minimum of two (2) days per year, from 10:00 a.m. to 5:00 p.m. each day. In addition, upon request, and subject to reasonable limitations, Owner shall permit scholars, researchers and other persons associated with educational institutions, historical societies or other groups or organizations having particular interest in historic preservation access to the [interior and exterior] of the Property and the Structures. Any public admission or access may be subject to such restrictions and limitations, as approved by MHT, reasonably designed for the protection and maintenance of the Property and the Structures.

H. Reserved Rights Exercised to Minimize Impacts. All rights reserved by Owner or activities not prohibited by this Preservation Easement shall be exercised so as not to negatively impact the Preservation Purpose or the Preservation Attributes. The determination as to whether the exercise of a right or the conduct of an undertaking, activity or use negatively impacts the Preservation Purpose or a Preservation Attribute shall be at the sole discretion of the Director.

ARTICLE IV. MHT APPROVAL PROCESS

A. Request for Approval. Article III of this Preservation Easement provides that before Owner commences certain undertakings, activities or uses, the Owner must receive from the Director express written approval for the undertaking, activity or use. Whenever the Director's prior written approval is required, Owner shall submit in writing to the Director a request that includes a written and visual description of the contemplated undertaking, activity or use. The submission shall include such plans, drawings, photographs, written specifications, identification and description of materials, and other such information or material as the Director, or the Director's designee, may determine necessary to consider and evaluate the request. The Owner's submission shall be made to the Director prior to commencement of the undertaking, activity or use, and in advance of, or concurrent with, submission by the Owner of any application for any required federal, State, or local government permit.

B. Sufficiency of Request. The Director or the Director's designee may review any request made pursuant to Paragraph A. of this Article for purposes of determining if the information and materials submitted are sufficient for the Director to make a determination on the request, and, after conducting such review, may require the Owner to submit additional information or materials. The Director or the Director's designee shall deem the request complete once the Director receives from the Owner all information and materials that the Director or the Director's designee deems necessary to make a determination on the request.

C. Review and Determination. In reaching a determination on a request made pursuant to this Article, the Director shall consider the provisions of this Preservation Easement, and shall grant or deny the request based upon the Director's sole discretion as to whether the requested undertaking, activity or use conforms with the Preservation Purpose, as may be informed by the Secretary of the Interior Standards. The Director may approve a request in whole or in part, may require changes, amendments or additions to a request as condition of an approval, or may deny a request.

D. Notice of Determination. The Director shall, by written notice dated not later than forty-five (45) days after the later of (i) the Director's receipt of a request under Paragraph A. of this Article or (ii) the date that the Director or the Director's designee deems a request complete under Paragraph B. of this Article, inform Owner of the Director's determination on Owner's request. The Director's approval of Owner's request is deemed to be given if the Director does not provide written notice of the Director's determination on the request by the deadline date established under this Paragraph.

E. Appeal. In any event where the Director denies Owner's request, in whole or part,

Owner may appeal the denial to the Board of Trustees of the Maryland Historical Trust (the “**Board**”), or its successor. Owner’s appeal shall be made by written notice to the Director within forty-five (45) days of receipt by Owner of the Director’s written notice under Paragraph D. of this Article. The decision of the Board on an appeal is final, and is not reviewable by or appealable to any administrative or judicial agency, entity or body.

ARTICLE V. ENFORCEMENT AND REMEDIES

A. Inspection. MHT, and its employees and agents, shall have the right to enter the Property at reasonable times and on reasonable notice to Owner for the purpose of inspecting, photographing, and surveying all portions of the Property, including the [interior] [exterior] [interior and exterior] of the Structure, as may be necessary for MHT to determine whether the Owner is in compliance with the provisions of this Preservation Easement. MHT shall provide prior notice of the date and time of an inspection to Owner, unless MHT determines that immediate entry is necessary to prevent, terminate, or mitigate a suspected or actual violation of this Preservation Easement which poses a serious or potentially permanent threat to a Preservation Attribute, in which latter case prior notice is not required.

B. Remedy. MHT may institute suit to: (i) enjoin any breach or enforce any provision of this Preservation Easement by ex parte, temporary, and/or permanent injunction; (ii) require in the event of a breach that the Property be restored promptly to a condition required by this Preservation Easement; and/or (iii) enter upon the Property, correct any breach, and hold Owner responsible for resulting costs to MHT. Before instituting any such suit, MHT shall give notice to Owner of the suspected or actual breach of this Preservation Easement, and provide a reasonable time for cure of the breach; provided, however, that MHT need not give such notice and opportunity to cure if MHT determines that immediate action is necessary to prevent, terminate or mitigate a suspected or actual breach which poses a serious or potentially permanent threat to a Preservation Attribute. MHT's remedies as set forth in this Paragraph are cumulative and shall be in addition to any other rights and remedies available to MHT at law or equity. If Owner is found by a court exercising jurisdiction to have breached any provision of this Preservation Easement, Owner shall reimburse MHT for any costs or expenses incurred by MHT, including court costs and reasonable attorneys’ fees.

C. Waiver. No waiver of any term or condition of this Preservation Easement shall have any force or effect unless the waiver is in writing and approved by the Owner and MHT. Absent such written waiver, no failure or delay on the part of MHT to enforce any provision or actual or suspected breach of this Preservation Easement shall waive, discharge or invalidate a provision of this Preservation Easement or affect the right of MHT to enforce an actual or suspected breach, or a subsequent breach, in accordance with Paragraph B. of this Article. The failure of MHT to inspect the Property in accordance with Paragraph A. of this Article does not constitute a waiver by MHT of any right under this Preservation Easement.

ARTICLE VI. OTHER RIGHTS, DUTIES AND WARRANTIES

A. Transfer of Ownership or Possession. Owners retains the right to sell, devise, transfer, lease, mortgage or otherwise encumber the Property. At least thirty (30) calendar days

prior to the closing of any conveyance or transfer of a fee simple or other possessory interest in the Property, or part thereof, Owner shall (i) notify MHT in writing of the names and addresses of all persons or entities to whom the Owner intends to convey or transfer the interest and (ii) provide notice of the existence of this Preservation Easement to all such persons or entities. These requirements shall be in addition to, and not a substitute for, the notice requirements established under Section 10-705(f) of Real Property Article, Ann. Code of Maryland, or such other comparable provision of law as it may be amended or revised from time to time. Owner shall further make verbatim or specific reference to this Preservation Easement in a separate paragraph of any deed or other legal instrument by which Owner divests or conveys a fee simple or other possessory interest in the Property.

B. Subordination. Owner certifies that all mortgages, deeds of trust, or other liens (collectively “**Liens**”), if any, affecting the Property are subordinate to, or shall at time of recordation of such Lien become subordinate to, the rights of MHT under this Preservation Easement. Owner has provided, or shall provide, a copy of this Preservation Easement to all mortgagees of mortgages and to all beneficiaries and/or trustees of deeds of trust (collectively “**Lienholders**”) currently encumbering the Property or which will affect the Property prior to the recording of this Preservation Easement, and shall also provide notice to MHT of all such Liens. If required by MHT, each of the Lienholders shall agree to subordinate its Lien to this Preservation Easement prior to recordation of this Preservation Easement, either by signing a subordination agreement in the form attached to this Preservation Agreement as **Exhibit D**, which subordination agreement shall become a part of this Preservation Easement and recorded with it, or by recording a separate subordination agreement pertaining to any such Lien.

C. Insurance. Owner shall maintain property and liability insurance for the Property including the Structure. Insurance policy coverage shall provide for: (i) the full replacement value of the Structure against Casualty Loss, including, without limitation, loss from the perils commonly insured under standard fire and extended coverage policies; and (ii) comprehensive general liability insurance against claims for personal injury, death, and property damage. Said insurance policy shall include change in condition and change in building ordinance coverage, in form and amount sufficient to fully repair damage to the Structure and the Property without cost or expense to Owner or contribution or coinsurance from Owner, save standard deductibles. Insurance shall name MHT as an additional insured, with the right of cancellation notice from the insurance carrier at least fifteen (15) days before cancellation of such insurance.

D. Real Property Taxes. Except to the extent that may be provided for by State or local law, nothing in this Preservation Easement shall relieve Owner of the obligation to pay taxes in connection with the ownership or transfer of the Property.

E. Warranties. The Owner who signed this Preservation Easement on the date set forth above (“**Original Owner**”) is the sole owner of the Property in fee simple and has the right and ability to convey this Preservation Easement to MHT. The Original Owner warrants that the Property is free and clear of all rights, restrictions, and encumbrances, other than those subordinated to this Preservation Easement or otherwise specifically agreed to in writing by the MHT.

F. Continuing Duties of Owner. For purposes of this Preservation Easement, “**Owner**” or “**Owners**” shall mean only, at any given time, the then current fee simple owner(s) of the Property and shall not include the Original Owner or other successor owners preceding the current fee simple owner(s) of the Property, except that if any preceding owners violated any provision of this Preservation Easement, both the current fee simple Owner(s) and the preceding owners shall be liable therefor.

G. Transfer by MHT. MHT agrees that it will hold this Preservation Easement exclusively for preservation purposes and that it will not transfer this Preservation Easement whether or not for consideration, except that, subject to provisions of applicable law, MHT may assign or transfer its interest in this Preservation Easement to a qualifying governmental unit or organization.

H. Use of Photography. Inspection pursuant to Paragraph A of Article V of this Preservation Easement shall, as deemed necessary by MHT, include photographic or video documentation of the Property. Owner grants to MHT permission to use such photographs or videos, and any other photographs, videos, drawings or visual depictions of the Property possessed by MHT, for any purposes that MHT deems necessary or appropriate, including without limitation, publication in magazines, newsletters, promotional materials and other print, television or electronic media, and for uses including without limitation, preservation, education and publicity purposes.

ARTICLE VII. EXTINGUISHMENT

As set forth in Article I, this Preservation Easement is granted in perpetuity. The Original Owner and MHT have determined that the Preservation Attributes constitute a valued public purpose worthy of permanent protection. As such, this Preservation Easement may be extinguished only due to extraordinary circumstances and only as set forth in this Article.

A. Judicial Extinguishment. This Preservation Easement may be extinguished by an order of a Maryland court of competent jurisdiction issued upon the joint request of Owner and MHT, if, as determined by MHT in its sole discretion: (i) the Preservation Attributes have been deteriorated or damaged to the extent that this Preservation Easement no longer serves the Preservation Purpose; or (ii) the conditions on or surrounding the Property have changed such that it is impossible or impractical that continued adherence to the provisions of this Preservation Easement will serve or fulfill the Preservation Purpose. In the event of any sale of all or a portion of the Property after such extinguishment, Owner and MHT shall share any net proceeds resulting from such sale in accordance with Paragraph C of this Article. Net proceeds shall also include without limitation, net insurance proceeds. In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property with the same effect and priority as a mechanic’s lien.

B. Condemnation. This Preservation Easement may be extinguished through condemnation proceedings if condemnation of a part or all of the Property by a public authority renders it impossible or impractical to fulfill the Preservation Purpose, as determined by MHT in its sole discretion. MHT may, at its option, join in condemnation negotiations or proceedings at any time for purposes of objecting to the condemnation and to recover the value of its interests in the Property and all incidental or direct damages resulting from the condemnation. All expenses

reasonably incurred by the parties to this Preservation Easement in connection with condemnation proceedings shall be paid out of the condemnation award.

C. Proceeds; Percentage Interests. On the date that this Preservation Easement is recorded (the “**Effective Date**”), this Preservation Easement gives rise to a real property interest in the Property, vested in MHT, which shall entitle MHT to an allocated portion of the proceeds in the event of a judicial extinguishment or condemnation under Paragraphs A or B of this Article (any judicial extinguishment proceeds or condemnation proceeds are the “**Net Proceeds**”). The portion of Net Proceeds which shall be allocated to MHT (“**MHT’s Allocation**”) shall be calculated utilizing the following formula, where a equals Net Proceeds, b equals the Property’s fair market value before the Preservation Easement’s Effective Date (without consideration for or deduction for the value of the Preservation Easement), and c equals the Property’s fair market value after the Preservation Easement’s Effective Date (with consideration for or deduction for the value of the Preservation Easement):

$$\text{MHT's Allocation} = a \times \left[\frac{(b-c)}{b} \right]$$

If this Preservation Easement is terminated in whole or in part, whether by judicial extinguishment or condemnation, MHT shall be entitled to MHT’s Allocation. This paragraph is subject to Section 12-104(g) of Real Property Article, Ann. Code of Maryland, or such other comparable provision of law as may be amended or revised from time to time.

ARTICLE VIII. MISCELLANEOUS

A. Modification. Owner and MHT recognize that circumstances may arise that justify a modification of certain provisions contained in this Preservation Easement. Owner and MHT have the right to agree to modify this Preservation Easement, provided, however, that:

- (1) The modification will not create private inurement or private benefit;
- (2) As determined by MHT, the modification, as proposed, (i) either enhances or has no adverse effect on the Preservation Purpose and (ii) upholds both the intent of the Original Owner and the fiduciary obligation of MHT to protect the Property for the benefit of the public in perpetuity;
- (3) The modification is in conformance with all applicable MHT policies in effect at the time of the modification; and
- (4) The modification is recorded among the Land Records in the county or counties where this Preservation Easement is recorded.

A proposed modification that exceeds the discretion granted to the Owner or MHT pursuant to this paragraph is permitted only if it is authorized by a Maryland court having jurisdiction, and in evaluating any such proposed amendment, the court applies the law of charitable trusts as then in effect in the State of Maryland. Nothing in this paragraph shall require Owner or MHT to (i) agree to a modification or (ii) consult or negotiate regarding a modification.

B. Notice. Any notice required to be given by this Preservation Easement to the Owner shall be addressed to the Owner as follows:

Owner Name
Street Address
City, State Zip

or to such other address as the Owner may from time to time designate by notice to the Director; or to MHT or the Director shall be addressed to the Director as follows:

Director
Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032-2023

or to such other address as the Director may from time to time designate by notice to the Owner.

C. Compliance with Other Laws. The provisions of this Preservation Easement do not replace, abrogate or otherwise set aside any local, State or federal laws, requirements or restrictions, whether existing at the time of this Preservation Easement or as subsequently enacted or adopted, that might impose limitations on the use of the Property. In the event that any applicable legal requirement imposes affirmative obligations, which if complied with by Owner, would be a violation of a provision of this Preservation Easement, Owner shall: (i) if said requirement directs a specific act which does not permit the exercise of any discretion on the part of Owner, give MHT written notice of Owner's intent to comply at least forty-five (45) calendar days before the Owner commence any undertaking necessary for compliance; or (ii) if said requirement permits the exercise of some discretion by Owner on how to comply, use the method most protective of the Preservation Attributes and give MHT written notice of Owner's intent to comply at least forty-five (45) calendar days before the Owner commences any undertaking necessary for compliance. Any notice to MHT under this provision shall be subject to the requirements of Article IV.

D. Construction and Governing Law. This Preservation Easement shall be construed to promote the purposes of the statutes creating and governing MHT, the purposes of Section 2-118 of the Real Property Article, Ann. Code of Maryland, and the Preservation Purpose, including such purposes as set forth in Section 170(h)(4)(A) of the IRC. This Preservation Easement shall be governed by and interpreted under the laws of the State of Maryland, and any ambiguities and questions of validity of a specific provision shall be resolved in a manner consistent with the Preservation Purpose. The common law principles of disfavoring restrictions on the use of real property and construing restrictions in favor of the free and unrestricted use of real property shall not apply to this Preservation Easement.

E. Indemnification. Owner shall defend, indemnify and hold MHT harmless from any liability, costs, attorneys' fees, judgments or expenses to MHT or any of MHT's officers, employees, agents or independent contractors resulting or caused in any way by reason of MHT's acceptance of

this Preservation Easement, including, without limitation, from actions or claims of any nature by third parties, whether asserted under Federal, State or local law, arising from a breach of this Preservation Easement by Owner, or arising out of the ownership, possession, or exercise of rights under this Preservation Easement.

F. Entire Agreement and Severability. This instrument sets forth the entire agreement between the Owner and MHT with respect to the Preservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to this Preservation Easement. If any provision is found to be invalid, the remainder of the provisions of this Preservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

G. Joint and Several. If Owner at any time owns the Property in joint tenancy, tenancy by the entireties or tenancy in common, all such tenants shall be jointly and severally liable for all obligations set forth in this Preservation Easement.

H. Recordation. MHT shall record or cause to be recorded this Preservation Easement in a timely fashion among the Land Records and may re-record it at any time as may be required to preserve MHT's rights hereunder.

I. Counterpart Signatures. The parties may execute this Preservation Easement in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the Maryland Historical Trust, its successors and assigns, forever. The covenants agreed to and the terms, conditions, and restrictions imposed as aforesaid shall be binding upon Owner, Owner's survivors, agents, personal representatives, heirs, assigns and all other successors to Owner in interest, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Owner and MHT have hereunto set their hands and seals the day and year above written.

WITNESS/ATTEST:

OWNER: [NAME]

By: _____ (SEAL)

Name: _____

Title: _____

WITNESS:

ACCEPTED BY THE
MARYLAND HISTORICAL TRUST

By: _____ (SEAL)

Name: _____

Title: _____

Approved as to form and legal
sufficiency this ____ day of
_____, 20____.

Assistant Attorney General

Attachments:

Exhibit A	Legal Description
Exhibit B	Site Plan/Survey
Exhibit C	Schedule of Photographs, Drawing and Documents
Exhibit D	Form of Subordination Agreement

STATE OF MARYLAND, _____ CITY/COUNTY, to wit:

I HEREBY CERTIFY, that on this ____ day of _____, in the year 20__, before the subscriber, personally appeared _____, who acknowledged that (s)he executed the foregoing instrument for the purposes therein contained as the duly authorized _____ of _____.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND, _____ COUNTY, to wit:

I HEREBY CERTIFY, that on this ____ day of _____, in the year 20__, before the subscriber, personally appeared _____, and acknowledged that (s)he executed the foregoing instrument for the purposes therein contained as the fully authorized Director of the Maryland Historical Trust.

Notary Public

My Commission Expires: _____

CERTIFICATION

I hereby certify that this instrument has been prepared by me or under my supervision and that I am an attorney admitted to practice before the Court of Appeals of Maryland.

_____(SEAL)
(printed name of attorney)

EXHIBIT A

LEGAL DESCRIPTION

[Project name/ MIHP #/street address]
[remainder of address, including town & county]

SAMPLE

EXHIBIT B

SITE PLAN/SURVEY

[Project name/ MIHP #/street address]

[remainder of address, including town & county]

SAMPLE

EXHIBIT C

SCHEDULE OF PHOTOGRAPHS, DRAWINGS AND DOCUMENTS

[Project name/ MIHP #/street address]

[remainder of address, including town & county]

SAMPLE

EXHIBIT D

FORM OF SUBORDINATION AGREEMENT

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this “**Agreement**”) is made as of this ____ day of _____, 20____, by and among _____ and _____ as trustees (the “**Trustees**”) for the benefit of _____, a _____ company (the “**Beneficiary**”) and the **MARYLAND HISTORICAL TRUST**, an instrumentality of the State of Maryland as part of the Department of Planning (“**MHT**”).

RECITALS

A. _____ (“**Trustor**”) entered into a certain Deed of Trust in favor of the Trustees, dated _____, and recorded in the Land Records of _____ County, Maryland at Liber _____, folio ____ (the “**Deed of Trust**”), encumbering the real property described therein (the “**Property**”).

B. The Trustor has conveyed to MHT a perpetual preservation easement with respect to the Property, of even date herewith, to be recorded among the Land Records of _____ County, Maryland (the “**Easement**”).

C. MHT has requested, and the Beneficiary has agreed to subordinate the lien of the Deed of Trust to the legal operation and effect of the Easement.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Trustees and the Beneficiary hereby represent and warrant that they are the current trustees and beneficiary, respectively, under the Deed of Trust.

2. The Beneficiary hereby subordinates the lien of the Deed of Trust, and any modifications, renewals, and extensions thereof to the legal operation and effect of the Easement, so that the Easement shall have a superior position and priority senior to the lien of the Deed of Trust.

3. The Beneficiary agrees that the Easement, as may be modified from time to time, constitutes an encumbrance on the Property superior in position and priority to the lien of the Deed of Trust and, that, accordingly, the Deed of Trust shall be subject and subordinate to the Easement.

4. This Agreement shall bind and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns.

5. The Trustees and the Beneficiary agree to execute, acknowledge and deliver such further instruments as may be necessary to effectuate the purposes of this Agreement.

6. This Agreement shall be recorded among the Land Records of _____ County, Maryland and the recordation shall be at the expense of the Trustor.

7. This Agreement shall not cause a novation nor shall it extinguish, release, terminate, or impair the Trustor's obligations under the Deed of Trust.

8. This Agreement may not be amended or terminated except by a written instrument in recordable form, fully executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

WITNESS:

TRUSTEE:

_____(SEAL)
Name: _____

WITNESS:

TRUSTEE:

_____(SEAL)
Name: _____

WITNESS:

BENEFICIARY:

By: _____(SEAL)
Name: _____
Title: _____

WITNESS:

MARYLAND HISTORICAL TRUST

By: _____ (SEAL)

Name: _____

Title: _____

Approved as to form and legal
sufficiency this _____ day of
_____, 20____.

Assistant Attorney General

STATE OF MARYLAND, _____ COUNTY, to wit:

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, the
subscriber, a Notary Public of the State and County aforesaid, personally appeared
_____, known or satisfactorily proven to me to be the person
whose name is subscribed to the within instrument, and acknowledged that [he/she] executed the
foregoing instrument for the purposes therein contained as a duly authorized **TRUSTEE**.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND, _____ COUNTY, to wit:

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared _____, known or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that [he/she] executed the foregoing instrument for the purposes therein contained as a duly authorized **TRUSTEE**.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:_____

STATE OF MARYLAND, _____ COUNTY, to wit:

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared _____ in his/her capacity as _____ of _____, known or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that [he/she] executed the foregoing instrument for the purposes therein contained as the duly authorized _____ of said Beneficiary.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:_____

STATE OF MARYLAND, _____ COUNTY, to wit:

I HEREBY CERTIFY that on this ____ day of _____, 20____, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared _____, known or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that [he/she] executed the foregoing instrument for the purposes therein contained as the duly authorized **DIRECTOR OF THE MARYLAND HISTORICAL TRUST**.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

CERTIFICATION

I hereby certify that this instrument has been prepared by me or under my supervision and that I am an attorney admitted to practice before the Court of Appeals of Maryland.

_____(SEAL)
Name of Assistant Attorney General

Easement Application Process Overview

1. Complete the **Change/Alteration Request Application** and submit it to the Maryland Historical Trust, Administrator, Preservation Easement Programs, Ms. Kate Bolasky, at 100 Community Place, Crownsville, MD 21032, listing (in detail) each of the proposed alteration(s) to the easement property on the **Detailed Work Description** page. All applications must be submitted in hard copy. Any information that would assist the Easement Committee and the Director in their review, such as photos, architectural plans, drawings, etc. should be included.
 2. The Maryland Historical Trust Easement Committee will review the request at its regularly scheduled meeting, every three weeks. If the request does not include sufficient information for the Committee to make a decision, the Committee will consider the request incomplete and direct staff to obtain the required information from the applicant. For some projects, a site visit by staff or the Committee may be necessary.
 3. If the application is complete, the Committee will make a recommendation to the Maryland Historical Trust's Director, Elizabeth Hughes. The Director makes the final decision therefore; the Committee's guidance is for internal purposes only and may not be provided to the applicant. The Committee and the Director consult the language in the specific Deed of Easement, the condition and significance of the resource, the proposed project, and The Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR Part 68) in their review of requests. A copy of the *Standards* is available on the website under Forms and Documents.
 4. The Director will approve, approve with conditions, or deny the request based upon the Committee's recommendation. No work may be undertaken if a proposal is denied or if approved with conditions, until all of the conditions of an approval are met.
 5. A letter detailing the Director's decision will be sent to the applicant within the length of time specified within the easement. Approval by the Director is effective for a period of six (6) months from the date of approval. If an extension of the approval period is necessary, a written request must be submitted to the Director.
- *Please note:* A request for approval of work which is substantially identical to a previously rejected request may not be resubmitted within a period of one year after the rejection, except in cases where the applicant is able to present significant new information, as determined by the Committee.
- *Please note:* If warranted, applicants may be permitted to attend the meetings to present particularly complex projects to the Committee. Please indicate your desire to attend the Easement Committee meeting in a cover letter attached to your application. The Easement Committee is not a "public body" as defined under the State Open Meetings Act (State Government Article, § 10-502(h), Annotated Code of Maryland). Its meetings are not open sessions and the Open Meetings Act does not entitle the general public to attend.

The Secretary of the Interior's *Standards*

CODE OF FEDERAL REGULATIONS

Title 36. Parks, Forests, and Public Property

Part 68. The Secretary of the Interior's Standards for the Treatment of Historic Properties

§ 68.1 Intent.

The intent of this part is to set forth standards for the treatment of historic properties containing standards for preservation, rehabilitation, restoration and reconstruction. These standards apply to all proposed grant-in-aid development projects assisted through the National Historic Preservation Fund. 36 CFR part 67 focuses on "certified historic structures" as defined by the IRS Code of 1986. Those regulations are used in the Preservation Tax Incentives Program. 36 CFR part 67 should continue to be used when property owners are seeking certification for Federal tax benefits.

§ 68.2 Definitions.

The standards for the treatment of historic properties will be used by the National Park Service and State historic preservation officers and their staff members in planning, undertaking and supervising grant-assisted projects for preservation, rehabilitation, restoration and reconstruction. For the purposes of this part:

- (a) Preservation means the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.
- (b) Rehabilitation means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values.
- (c) Restoration means the act or process of accurately depicting the form, features and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.
- (d) Reconstruction means the act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

§ 68.3 Standards.

One set of standards--preservation, rehabilitation, restoration or reconstruction--will apply to a property undergoing treatment, depending upon the property's significance, existing physical condition, the extent of documentation available and interpretive goals, when applicable. The standards will be applied taking into consideration the economic and technical feasibility of each project.

(a) Preservation.

- (1) A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected

and, if necessary, stabilized until additional work may be undertaken.

(2) The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(b) Rehabilitation.

(1) A property will 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 will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

(3) Each property will 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, will not be undertaken.

(4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(9) New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic 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 will 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.

(c) Restoration.

- (1) A property will be used as it was historically or be given a new use that interprets the property and its restoration period.
- (2) Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces and spatial relationships that characterize the period will not be undertaken.
- (3) Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.
- (4) Materials, features, spaces and finishes that characterize other historical periods will be documented prior to their alteration or removal.
- (5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.
- (6) Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.
- (7) Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.
- (8) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
- (9) Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
- (10) Designs that were never executed historically will not be constructed.

(d) Reconstruction.

- (1) Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture and such reconstruction is essential to the public understanding of the property.
- (2) Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
- (3) Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.
- (4) Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.
- (5) A reconstruction will be clearly identified as a contemporary re-creation.
- (6) Designs that were never executed historically will not be constructed.

§ 68.4 Specific standards for acquisition, protection, stabilization, preservation, rehabilitation, restoration, and reconstruction projects.

In addition to the general standards set forth in [§ 68.3](#) the following specific standards shall be applied as appropriate:

(a) Acquisition.

- (1) Careful consideration shall be given to the type and extent of property rights that are required to assure the preservation of the historic resource. The preservation objective shall determine the exact property rights to be acquired.
- (2) Properties shall be acquired in fee simple when absolute ownership is required to insure their preservation.
- (3) The purchase of less-than-fee-simple interests, such as open space or facade easements, shall be undertaken when a limited interest achieves the preservation objective.
- (4) Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archeological, architectural, or cultural significance.

(b) Protection.

- (1) Before applying protective measures, which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.
- (2) Protection shall safeguard the physical condition or environment of a property or archeological site from further deterioration or damage caused by weather or other natural, animal, or human intrusions.
- (3) If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.

(c) Stabilization.

- (1) Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting material deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.
- (2) Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the esthetic and historical quality of the property, except where concealment would result in the alteration or destruction of historically significant material or spaces.

(d) Preservation.

- (1) Preservation shall maintain the existing form, integrity, and materials of a building, structure, or site. Substantial reconstruction or restoration of lost features generally are not included in a preservation undertaking.
- (2) Preservation shall include techniques of arresting or retarding the deterioration of a property through a program of ongoing maintenance.

(e) Rehabilitation.

- (1) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.
- (2) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(f) Restoration.

- (1) Every reasonable effort shall be made to use a property for its originally intended purpose or to provide a compatible use that will require minimum alteration to the property and its environment.
- (2) Reinforcement required for structural stability or the installation of protective or code required mechanical systems shall be concealed whenever possible so as not to intrude or detract from the property's esthetic and historic qualities, except where concealment would result in the alteration or destruction of historically significant materials or spaces.
- (3) When archeological resources must be disturbed by restoration work, recovery of archeological material shall be undertaken in conformance with current professional practices.

(g) Reconstruction.

- (1) Reconstruction of a part or all of a property shall be undertaken only when such work is essential to reproduce a significant missing feature in a historic district or scene, and when a contemporary design solution is not acceptable.
- (2) Reconstruction of all or a part of a historic property shall be appropriate when the reconstruction is essential for understanding and interpreting the value of a historic district, or when no other building, structure, object, or landscape feature with the same associative value has survived and sufficient historical documentation exists to insure an accurate reproduction of the original.
- (3) The reproduction of missing elements accomplished with new materials shall duplicate the composition, design, color, texture, and other visual qualities of the missing element. Reconstruction of missing architectural features shall be based upon accurate duplication of original features, substantiated by historical, physical, or pictorial evidence rather than upon conjectural designs or the availability of different architectural features from other buildings.
- (4) Reconstruction of a building or structure on an original site shall be preceded by a thorough archeological investigation to locate and identify all subsurface features and artifacts.
- (5) Reconstruction shall include measures to preserve any remaining original fabric, including foundations, subsurface, and ancillary elements. The reconstruction of missing elements and features shall be done in such a manner that the essential form and integrity of the original surviving features are unimpaired.

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