

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.

_____ County/City

Account Identifier:

Ward __, Section __, Block __, Lot __

Tax Map ____, Parcel ____

Tax I.D. No.: _____

DEED OF PRESERVATION EASEMENT

THIS DEED OF PRESERVATION EASEMENT (“**Preservation Easement**”), is entered into, effective as of the Recordation Date (defined herein), by and between _____, having an address at _____ (the “**Owner[s]**”), 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.

WHEREAS, Owner[s] own[s] in fee simple ____ acres, more or less, of certain real property located at _____ in _____ County, Maryland, which was conveyed to the Owner[s] 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[s] 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[s] 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, and is listed or eligible to be listed in the Maryland Register of Historic Properties.

WHEREAS, in accordance with Chapter ____ of the Laws of Maryland _____ [as amended by Chapter ____ of the Laws of Maryland _____] ([collectively,] the “**Act**”), and the terms and conditions

of a letter of approval from the Department of General Services on behalf of the Maryland Board of Public Works (the “BPW”) to the [Owner[s]] [_____] [if different than the Owner] (the “BPW Grant Recipient”) dated _____, and further pursuant to a Capital Project Grant Application submitted by the [Owner[s]] [BPW Grant Recipient [if different than the Owner], the BPW has approved a grant in the amount of up to [_____ Dollars (\$ _____)] (the “BPW Grant”), to be made to the [Owner[s]] [BPW Grant Recipient [if different than the Owner] for the purpose of financing, in part, [description of project].

WHEREAS, the Act requires as a condition precedent to the making of the BPW Grant that the Owner[s], as owner[s] of the Property, convey a historic preservation easement in form, substance and duration acceptable to MHT, a requirement that this Preservation Easement satisfies.

WHEREAS, in accordance with the terms and conditions of a grant agreement entered into between [the Owner[s]] [_____] [if different than the Owner] and [MHT] [the Maryland Heritage Areas Authority (“MHA”) dated [_____] (the “Grant Agreement”), [MHT] [MHA] has approved a grant from the _____ Program in the amount of [_____ Dollars (\$ _____)] (the “Grant”), to be made to the [Owner[s]] [_____] [if different than the Owner] for the purpose of financing, in part, [description of project].

WHEREAS, as a condition of the Grant Agreement, the Owner[s] [is][are] required to convey a historic preservation easement on the Property, in form, substance and duration acceptable to MHT, a requirement that this Preservation Easement satisfies.

WHEREAS, in accordance with policy adopted by MHT’s Board of Trustees (the “Board”) on October 18, 2018, a historic preservation easement conveyed as a condition of the [Grant] [BPW Grant] shall have a term of duration equal to the longer of (i) fifteen years or (ii) one year for every \$5,000 increment of the [Grant] [BPW Grant] or portion thereof.

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[s] intend[s] to grant this Preservation Easement over the Property, thereby restricting and limiting certain activities on and uses of the Property as provided in, and for the term of duration specified by 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[s] acknowledge[s] and accept[s] 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 Property 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

A. 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[s] hereby

unconditionally, irrevocably and voluntarily grant[s] and convey[s] 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.

B. 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[s] and Owner[s'] 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**").

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 until the Termination Date. MHT shall promptly notify Owner[s] when it files Exhibits B-1 and C-1, and shall provide to Owner[s] 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[s] believe[s], 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[s] 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) “**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.
- (2) “**Construction**” means any construction, reconstruction, improvement, enlargement, painting and decorating, alteration, actual or exploratory demolition, maintenance or repair of any Structure, or part thereof.
- (3) “**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.
- (4) “**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.
- (5) “**Recordation Date**” means the date this Preservation Easement is recorded in the Land Records.

C. Maintenance, Repair and Administration.

- (1) Owner[s] shall maintain, repair and administer the Property, including the Property’s grounds, Structure[s], the [Exterior Features] [Interior Features] [Exterior and Interior Features] of Structure[s], and other Preservation Attributes, 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[s] 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, Structure[s], or the [Exterior Features] [Interior Features] [Exterior or Interior Features] of Structure[s] – 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[s] 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, Structure[s], the [Exterior Features] [Interior Features] [Exterior and Interior Features] of Structure[s], or other Preservation Attributes.

D. Changes and Alterations to the Property.

- (1) Owner[s] 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 any of 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[s] shall not, without the prior express written approval of the Director, [unless permitted under Paragraph D.(3) of this Article,] 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 Recordation Date located on the Property, as listed, described, or depicted in the Baseline Documentation. Owner[s] and MHT acknowledge and affirm that all those Structures located on the Property as of the Recordation Date are listed, described, or otherwise depicted in the Baseline Documentation.

[3] INSERT PERMISSIBLE CONSTRUCTION ACTIVITIES]

E. Archeological Resources. Owner[s] 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 ground disturbance, the Director may require the Owner[s] 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[s] 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[s] 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[s] shall make the [interior and/or 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[s] 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/or 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[s] 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.

[I. Burials. Not notwithstanding the requirements of Paragraphs D and E of this Article, and subject to existing State law governing the use of cemeteries, Owner[s] may use the cemetery located on the Property as of the Recordation Date for future burials without the Director's prior written approval.]

ARTICLE IV. MHT APPROVAL PROCESS

- A. Request for Approval. Article III of this Preservation Easement provides that before Owner[s] commence[s] certain undertakings, activities or uses, the Owner[s] must receive from the Director express written approval for the undertaking, activity or use. Whenever the Director's prior written approval is required, Owner[s] 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]'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[s] of any application for any required federal, State, or local government permit or approval.
- 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[s] 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[s] 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 Director's receipt of a request under Paragraph A. of this Article, inform Owner[s] of the Director's determination on Owner[s]'s request. A request shall be denied if the Director or Director's designee determines that the request is not sufficient under Paragraph B. of this Article, and such denial shall describe the additional documentation Owner[s] [is][are] required to submit in a new request. The Director's approval of Owner[s]'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]'s request, in whole or part, Owner[s] may appeal the denial to the Board, or its successor. Owner[s]'s appeal shall be made by written notice to the Director within forty-five (45) days of receipt by Owner[s] 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[s] for the purpose of inspecting, photographing, and surveying all portions of the Property, including the [interior] [exterior] [interior and exterior] of the Structure[s], as may be necessary for MHT to determine whether the Owner[s] [is] [are] in compliance with the provisions of this Preservation Easement. MHT shall provide prior notice of the date and time of an inspection to Owner[s], 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. Within six (6) months prior to the Termination Date, the Owner[s] shall accommodate entrance onto the Property for a final inspection by MHT (the “**Pre-Termination Inspection**”). Failure by the Owner[s] to reasonably accommodate or permit the Pre-Termination Inspection shall constitute of breach of this Preservation Easement for purposes of this Article, and the Easement shall remain in force and effect as provided in Paragraph C of this Article.
- 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[s] responsible for resulting costs to MHT. Before instituting any such suit, MHT shall give notice to Owner[s] of the suspected or actual breach of this Preservation Easement (a “**Notice of Breach**”), 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[s] [is/are] found by a court exercising jurisdiction to have breached any provision of this Preservation Easement, Owner[s] shall reimburse MHT for any costs or expenses incurred by MHT to remedy the breach, including court costs and reasonable attorneys’ fees.
- C. Extension of Easement Term Due to Suit or Breach. If at the expiration of the Easement Term or any Extended Term there is either (i) a pending suit instituted by MHT pursuant to Paragraph B. of this Article or (ii) an outstanding Notice of Breach concerning the Property (for which MHT has not provided written notice to the Owner[s] that the breach has been cured to MHT’s satisfaction), this Preservation Easement shall remain in force and effect, and be fully enforceable by MHT, until such time as the suit is terminated or MHT provides written notice to the Owner[s] that the Notice of Breach is cured to MHT’s satisfaction. A suit is terminated, for purposes of this Paragraph, when: (i) the suit has been dismissed by a court of law and all avenues to appeal the dismissal are exhausted; (ii) a judgment on the suit has been issued by a court of law and the judgment is fully and completely satisfied; or (iii) the suit has been resolved and dismissed pursuant to an agreement of settlement, the terms and conditions of which Owner[s] [has/have] fully and completely satisfied.
- D. Extension of Easement Term Due to Additional State Funding. The duration of the Easement Term or any Extended Term shall be extended if so required as a condition of additional funding

made for the benefit of the Property by the State after the Recordation Date; any such extension will be effectuated by the recording of a modification to this Preservation Easement in the Land Records. If at the expiration of the Easement Term or any Extended Term, the State has either made, committed, or allocated additional funding for the benefit of the Property for which (i) an extension of the Easement Term or any Extended Term is required and (ii) the Easement Term or any Extended Term has not yet been extended through the recordation of a modification of this Preservation Easement, this Preservation Easement shall remain in force and effect and shall be modified as required by condition of the additional funding.

E. 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[s] 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[s] retain[s] 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[s] shall (i) notify MHT in writing of the names and addresses of all persons or entities to whom the Owner[s] intend[s] 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, Annotated Code of Maryland, or such other comparable provision of law as it may be amended or revised from time to time. Owner[s] 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[s] divest[s] or convey[s] a fee simple or other possessory interest in the Property.

B. Subordination. Owner[s] [certifies][certify] 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[s] [has][have] 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[s] shall maintain property and liability insurance for the Property including the Structure[s]. Insurance policy coverage shall provide for: (i) the full replacement value of the Structure[s] 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[s] and the Property without cost or expense to Owner[s] or contribution or coinsurance from Owner[s], 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[s] of the obligation to pay taxes in connection with the ownership or transfer of the Property.
- E. Warranties. The Owner[s] of the Property on the Recordation Date (“**Original Owner[s]**”) [is][are] the sole owner(s) of the Property in fee simple as of the Recordation Date and [has][have] the right and ability to convey this Preservation Easement to MHT. The Original Owner[s] [warrant][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[s]. 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[s] 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[s] grant[s] 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

The Original Owner[s] and MHT have determined that the Preservation Attributes constitute a valued public purpose worthy of protection. As such, this Preservation Easement may be extinguished only under circumstances as provided for in this Article.

- A. Termination. This Preservation Easement will terminate on the Termination Date, and be extinguished by operation of Article I.
- B. 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[s] 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[s] and MHT shall share any net proceeds resulting from such sale in accordance with Paragraph D 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.

C. 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.

D. Proceeds; Percentage Interests. On the Recordation 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 B. or C. 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 Recordation Date (without consideration for or deduction for the value of the Preservation Easement), and c equals the Property's fair market value after the Recordation 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, as respectively described in Paragraphs A and B of this Article, 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[s] and MHT recognize that circumstances may arise that justify a modification of certain provisions contained in this Preservation Easement. Owner[s] 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 MHT's obligation to protect the Property;
- (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.

This Preservation Easement shall only be modified as mutually agreed upon by the Owner[s] and MHT and neither the Owner[s] nor MHT shall, under any circumstance, be obligated to (i) agree to a modification or (ii) consult or negotiate regarding a modification. Owner[s] shall be responsible for paying all costs and expenses, including attorneys' fees and court costs, arising from Owner[s]'s request to modify this Preservation Easement.

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

Owner Name Street, Address, City, State Zip

or to such other address as the Owner[s] 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[s].

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[s], would be a violation of a provision of this Preservation Easement, Owner[s] shall: (i) if said requirement directs a specific act which does not permit the exercise of any discretion on the part of Owner[s], give MHT written notice of Owner[s]'s intent to comply at least forty-five (45) calendar days before the Owner[s] commence[s] any undertaking necessary for compliance; or (ii) if said requirement permits the exercise of some discretion by Owner[s] on how to comply, use the method most protective of the Preservation Attributes and give MHT written notice of Owner[s]'s intent to comply at least forty-five (45) calendar days before the Owner[s] commence[s] 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, Annotated Code of Maryland, and the Preservation Purpose. 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[s] 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[s], 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[s] 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[s] at any time own[s] 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[s], Owner[s]'s survivors, agents, personal representatives, heirs, assigns and all other successors to Owner[s] in interest, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Owner[s] and MHT have hereunto set their hands and seals.

WITNESS/ATTEST:

OWNER: [NAME]

By: _____ (SEAL)

Name:

Title:

WITNESS:

**ACCEPTED BY THE
MARYLAND HISTORICAL TRUST**

By: _____ (SEAL)

Elizabeth Hughes, Director

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 [Mark N/A if there are no prior liens, delete page which would be used for Exhibit D.]

SAMPLE