

GRANT OF HISTORIC PRESERVATION EASEMENT

This GRANT of Historic Preservation Easement (the "Grant") is given on this _____ day of (month), (year), by the (name of property owner, known as the "Grantor") to the Preservation Trust of Vermont, Inc., ("PTV") a Vermont nonprofit corporation with an address of 90 Main Street, Montpelier, Vermont, and their successors and assigns (collectively known as the "Grantee").

WHEREAS, the Preservation Trust of Vermont, Inc., is a Vermont nonprofit corporation which has been determined by the Internal Revenue Service to be an exempt organization under 26 USC. §501(c)(3) and is a qualified holder of preservation rights and interests pursuant to 10 V.SA Chapter 34;

WHEREAS, this preservation easement is granted as a condition of the eligibility of the Grantor for the financial assistance from the National Park Service of the United States Department of the Interior appropriated from the Historic Preservation Fund for the Paul Bruhn Historic Revitalization Program Grant.

WHEREAS, Grantor will use said federal funding to rehabilitate the (name of property) to preserve the historic features of the building in accordance with the Secretary of Interior's Standards for Rehabilitation.

KNOW ALL PERSONS BY THESE PRESENTS that the Grantor, pursuant to the authority granted in Title 10 V.S.A. Chapters 34 and 155 and in consideration of the sum of \$ _____ received in grant-in-aid financial assistance from the National Park Service of the United States Department of the Interior, the Grantor hereby grants to the Grantee a preservation easement on a building known as (name of the property, known as the "Building"), located on a lot or parcel of land in the Town of (town), County of (county) and State of Vermont, as more particularly described in Schedule A attached hereto and incorporated herein (the "Protected Property") for the purpose of assuring preservation of the _____ (name of property).

The Grant hereby conveyed to Grantee consists of covenants on the part of Grantor to do and refrain from doing, severally and collectively, the various acts set forth below. Grantee accepts such covenants in order to further the public purpose of preserving the Building and to help maintain and assure the historic integrity of the Protected Property.

This preservation easement is granted for a period of _____ () years commencing on the date when it is filed with the _____ Town _____, in the State of _____, in the United States of America.

I. Purposes of the Grant and Documentation Report.

A. Statement of Purposes

Grantor and Grantee acknowledge that the purposes of this Grant are as follows (the "Purposes of this Grant"):

1. To assure that the significant exterior and interior features, finishes and structural soundness of the Building will be retained and maintained substantially in their current condition so that their historic and architectural integrity is not lost and to prevent any use or change of the Building that will significantly compromise such integrity.

2. These purposes will be advanced by protecting the (name of property) which is an outstanding (condensed description and significance, usually about one paragraph). The Protected Property was listed on the National Register of Historic Places as _____ on _____ (date) or has been determined eligible for the National Register of Historic Places on _____ (date) by the Vermont State Historic Preservation Advisory Council.

B. Documentation Report.

In order to make more certain the full extent of Grantor's obligations and the restrictions on the Protected Property, and in order to document the nature and condition of the Building, including significant interior elements in spatial context, a list of character-defining materials, features, and spaces is incorporated as Schedule B at the end of this Grant. To complement Schedule B, Grantee and/or the Grantor personnel has compiled a photographic record, including photographer's affidavit, architectural drawings, black and white photographs and negatives or electronic image files saved as high-resolution images, photograph logs, and a keyed location map as well as a copy of the narrative from the National Register Nomination for the Protected Property (the "Documentation Report"). The Documentation Report will be signed by Grantor and Grantee and will be held by Grantor, Grantee and the Vermont Division for Historic Preservation in Montpelier, Vermont. It is stipulated by and between Grantor and Grantee that the exterior and interior nature of the Building as shown and described in the Documentation Report are deemed to be the exterior and interior nature of the Building as of the date thereof and as of the date this instrument is first recorded in the Town of _____ (town) Land Records. The Documentation Report shall be maintained for the life of this easement in the Grantee's historic preservation easement file for the Protected Property. The exterior nature of the sides and interior features and finishes of the Building as shown and described in the Documentation Report are hereinafter referred to as the "Facades".

II. Restricted Uses

The Grant consists of preservation restrictions and affirmative obligations to maintain the historic character of the Protected Property as follows:

1. Grantor covenants and agrees at all times to maintain the significant Facades in a reasonably good and sound state of repair and to maintain the structural soundness and safety of the Building. This obligation to maintain shall require reasonable levels of replacement, rebuilding, repair and reconstruction whenever necessary to have the external **and internal nature** of the Building at all times appear to be and actually be the same as the Facades and to prevent deterioration of the significant Facades, and to preserve the architectural, historical, and/or archeological integrity of the Building and its materials to protect those qualities that made the Building eligible for listing in the National Register of Historic Places (or a Building contributing to the significance of a National Register listed Historic District) throughout the effective date of this Grant of Historic Preservation Easement.

2. Grantor shall follow "The Secretary of Interior's Standards for the Treatment of Historic Properties" issued by the Secretary of the United States Department of the Interior (the "Secretary"), a copy of which is attached hereto as Schedule D and incorporated herein by reference (the "Standards") in conducting repairs and maintenance to the Facades, in planning additions to the Building and in planning physical or structural alterations to the exterior of the Building. Prior to commencing construction on any additions or physical or structural alterations to the exterior of the Building, Grantor shall meet with Grantee, or a historic preservation professional acceptable to Grantee, and consult the "Guidelines for Rehabilitating Historic Structures" published by the Secretary.

3. Unless otherwise agreed pursuant to this paragraph, the standard for review shall be as set forth in paragraph 2. If Grantor and Grantee mutually agree to do so in writing, Grantor and Grantee may use the Standards as they may be amended from time to time by the Secretary, or state or local standards considered appropriate by Grantor and Grantee, instead of the Standards.

4. Grantor shall not make or permit any alteration to the exterior of the Building, nor shall Grantor construct, erect or permit any new buildings or structures on the Protected Property without the prior written consent of Grantee. The approval of Grantee shall not be unreasonably withheld, conditioned or delayed, provided said alteration, building or structure is consistent with the architectural and historic integrity of the Building's features, materials, workmanship and environment and is consistent with the Standards.

5. In furtherance of the covenants contained herein, and without limiting the requirements of paragraph 4 above, Grantor shall not undertake any of the following actions without the prior written consent of Grantee;

(a) increase the height of the Building;

(b) adversely affect the structural soundness of the Facades or the Building;

(c) make any changes to the Facades or Building including the alteration, partial removal, construction, remodeling, or other physical or structural change including any change in color or surfacing or placement of awnings or signs thereon, with the exception of ordinary maintenance allowed by paragraph 6;

(d) erect anything on the Protected Property or on the Facades which would obstruct the substantial and regular opportunity of the public to view the exterior features of the Building from adjacent publicly accessible areas such as public streets, except for a temporary structure during any period of alteration, restoration, or routine maintenance;

(e) permit any significant reconstruction, repair, repainting, or refinishing of the Facades that materially alters their state;

(f) dump ashes, trash, rubbish, or any other unsightly or offensive materials on the Protected Property.

6. Notwithstanding the provisions of paragraphs 4 and 5, no approval shall be required for routine maintenance and repair of the Facades or the Building. Ordinary and necessary repairs and maintenance not materially affecting the architectural integrity of the Facades shall not be considered as alterations and nothing in this Grant shall be construed to prevent the ordinary maintenance and repair of the Building or the Protected Property.

7. Grantor covenants and agrees to assume the total cost of the continued maintenance, repair, safety and administration of the Protected Property so as to preserve the architectural and historic integrity of the Building's significant exterior features, materials, workmanship, and environment in perpetuity. Grantor and Grantee agree that Grantee in no way assumes any obligation for maintaining, repairing, reconstructing administering or the safety of the Protected Property or for paying any claims, liabilities, expenses, costs, damages, losses or expenditures related to the maintenance, repair, safety and administration of the Protected Property.

8. The Grantor agrees that no ground disturbing activity shall be undertaken or permitted to be undertaken on the Protected Property which would affect historically significant archeological resources without prior written permission of the Grantee affirming that such work will meet The Secretary of the Interior's applicable "*Standards for Archeology and Historic Preservation*".

9. The Grantor agrees to ensure that any data and material recovered will be placed in a repository that will care for the data in the manner prescribed in the applicable *Standards for Archeology and Historic Preservation* or will comply with the requirements of the Native American Graves Protection and Repatriation Act, and with 36 CFR 79 and 43 CFR 10.

10. The Grantor agrees to provide public access to view the grant-assisted work or features no less than 12 days a year on an equitably spaced basis. The dates and times when the Protected Property will be open to the public must be annually published and provided to the Grantee. At the option of the Grantor, the relevant portions of the Protected Property may also be open at other times in addition to the scheduled 12 or more days a year. Nothing in this Grant will prohibit a reasonably nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

11. The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the Grantee.

12. In the event that the Protected Property or any part of it shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantor shall notify the Grantee in writing within 14 calendar days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Protected Property and to protect public safety, shall be undertaken by the Grantor without the Grantee's prior written approval indicating that the proposed work will meet the Standards. The Grantee shall give its written approval, if any, of any proposed work within 60 days of receiving the request from the Grantor. If after reviewing the condition of the Protected Property, the Grantee determine that the features, materials, appearance, workmanship, and environment (or setting) which made the Protected Property eligible for listing in the National Register of Historic Places have been lost or so damaged that its continued National Register listing is in question, the Grantee will notify the State Historic Preservation Officer (SHPO) in writing of the loss. The SHPO will evaluate the findings and notify the Grantee in writing of any decision to remove the Protected Property from the National Register. If the Protected Property is removed, the Grantee will then notify the Grantor that the Grant is null and void. If the damage or destruction that warrants the Protected Property's removal from the National Register was deliberately caused by the gross negligence or other actions of the Grantor or successor owner, then the Grantee will initiate requisite legal action to recover, at a minimum, the Federal grant funds applied to the Protected Property which will then be returned to the U.S. Government.

13. Grantor and Grantee hereby acknowledge that these covenants shall constitute a servitude upon the land and run with the Protected Property for the duration of the term of the Grant.

III. Enforcement of the Restrictions.

1. The Grantor agrees that the Grantee, their employees, agents and designees shall have the right to inspect the Protected Property including the interior of

the Protected Property at all reasonable times, with twenty-four hours written notice, in order to ascertain whether the conditions of this preservation easement Grant are being observed. However, in the case of any natural or man-made disaster or imminent endangerment to the Protected Property the Grant holder shall be granted access to the Protected Property with no prior notice.

2. In the event that Grantee becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantee shall give notice to Grantor of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. In the event there has been an event or circumstance of non-compliance which is corrected through negotiation and voluntary compliance, Grantor shall reimburse Grantee all reasonable costs, including staff time, incurred in investigating the non-compliance and in securing its correction.

3. The Grantee shall have the right to prevent and correct violations of the terms of this Historic Preservation Grant. If the Grantee, upon inspection of the Subject Property, finds what appears to be a violation, it may exercise its discretion to seek injunctive relief in a court having jurisdiction. Except when an ongoing or imminent violation will irreversibly diminish or impair the cultural, historical and/or architectural importance of the Protected Property, the Grantee shall give the Grantor written notice of the violation and allow thirty (30) calendar days to correct the violation before taking any formal action, including, but not limited to, legal action. If a court, having jurisdiction, determines that a violation exists or has occurred, the Grantee may seek to obtain an injunction to stop the violation, temporarily or permanently. A court may also issue a mandatory injunction requiring the Grantor to restore the Protected Property to a condition that would be consistent with preservation purposes of the grant from the National Park Service. In any case where a court finds that a violation has occurred, the court may require the Grantor to reimburse the Grantee and the Vermont Attorney General for all the State's expenses incurred in stopping, preventing, and/or correcting the violation, including, but not limited, to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

4. The remedies described herein are in addition to, and not in limitation of, any other remedies available to Grantee at law, in equity, or through administrative proceedings. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair Grantee's rights or remedies or be construed as a waiver.

IV. Miscellaneous Provisions.

1. The construction of any buildings, structures or improvements, or any use of the land otherwise permitted under this Grant, shall be in accordance with all applicable ordinances, statutes and regulations.

2. In the event that Grantee deems it necessary or appropriate to procure the services of an architect or a historic preservation professional in connection with any proposed activity or act requiring Grantee's approval under Section II of this Grant, Grantor shall reimburse Grantee for the reasonable costs of said services, provided that such reimbursement shall not exceed the reasonable cost of five hours of such services per approval. Costs incurred by Grantee in excess of that amount shall be paid by Grantee.

3. Where Grantor is required, as a result of this Grant, to obtain the prior written approval of Grantee before commencing an activity or act, and where Grantee has designated in writing another organization or entity which shall have the authority to grant such approval, the approval of said designee shall be deemed to be the approval of Grantee.

4. Grantor shall provide Grantee with prior written notice of any proposed conveyance of the Protected Property and provide Grantee with a reasonable opportunity to explain the terms of this Grant to the new owner prior to the date of the conveyance.

5. Grantee may transfer the historic preservation rights and restrictions conveyed by Grantor herein, but only to a qualified holder, as defined in 10 V.S.A. Chapter 34, in accordance with the laws of the State of Vermont and the regulations established by the Internal Revenue Service governing such transfers. Grantee shall give Grantor prior written notice of any such transfer.

6. In any deed conveying an interest in the Protected Property, Grantor shall make clear reference to the historic preservation easement, restrictions and obligations described herein and shall indicate that said easement, restrictions and obligations are binding upon all successors in interest in the Protected Property under the terms of this Grant for the term set forth herein. Grantor shall also notify Grantee of the name(s) and addressees of Grantor's successor(s) in interest.

7. Grantee shall be entitled to rerecord this Grant or to record a notice making reference to the existence of this Grant, in the title Land Records of the **Town of (town)**, as may be necessary to satisfy the requirements of the Marketable Record Title Act, 27 V.S.A., Chapter 5, Subchapter 7, including 27 V.S.A. §§603 and 605.

8. The term "Grantor" shall include the successors and assigns of the original Grantor, **(name of property owner)**. The term "Grantee" shall include the respective successors and assigns of the original Grantee the Preservation Trust of Vermont, Inc.

9. This Historic Preservation Grant shall become effective when filed by the Grantor in the Office of the Town Clerk of **____Town____**, Vermont, with a copy of the recorded instrument provided to the Grantee for their preservation easement file. This Grant shall be governed and construed in accordance with the laws of the state of Vermont. If any part of this preservation Grant is held to be illegal by a court, the validity

of the remaining parts shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the preservation Grant does not contain the particular part held to be invalid. To this end the provisions of this Grant are declared to be severable.

10. The parties may by mutual written agreement jointly amend this preservation Grant, provided the amendment shall be consistent with preservation purpose of this preservation Grant and shall not reduce the regulatory controls listed in the conditions of this preservation Grant. Any such amendment shall not be effective unless it is executed in the same manner as this Grant, refers expressly to this Grant, and is filed with the _____ (Town).

Invalidation of any provision hereof shall not affect any other provision of this Grant. TO HAVE AND TO HOLD said granted historic preservation easement and restrictions, with all the privileges and appurtenances thereof, to Grantee, their successors and assigns, to their own use and behoove forever, and Grantor, for itself and its successors and assigns, does covenant with Grantee, their successors and assigns, that until the ensuring of these presents, it is the sole owner of the Protected Property, and has good right and title to convey the same in the manner aforesaid, that the Protected Property is free from every encumbrance, except those encumbrances and use restrictions listed in **Schedule C** attached hereto and incorporated herein, and Grantor hereby engages to warrant and defend the same against all lawful claims whatever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized agent.

IN THE PRESENCE OF _____ (Property Owner)

Witness
By: _____
Its Duly Authorized Agent

**STATE OF VERMONT
COUNTY OF (COUNTY), SS.**

On this _____ day of _____ personally appeared _____, duly authorized agent of (Property Owner) and he/she acknowledged this instrument, by

him/her sealed and subscribed, to be his/her true act and deed and the free act and deed of
(Organization or property owner).

Before me, _____
Notary Public

My Commission Expires: _____

Approved by the Preservation Trust of Vermont:

Date

By: _____
Its Duly Authorized Agent

SCHEDULE A DESCRIPTION

(Legal Description of Protected Property)

SCHEDULE B SIGNIFICANT FEATURES

Property Name, City, State

To remain eligible for listing on the National Register of Historic Places, a property must be able to convey its significance. The following character-defining materials, spaces, and features have been identified as those that help convey the significance of _____ (property name).

Significant Character Defining Interior Spaces and Features

-
-
-
-

Significant Character Defining Exterior Spaces and Features

-
-
-

SCHEDULE C
PERMITTED ENCUMBRANCES

SCHEDULE D

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

36 CFR, Chapter 1, PART 68

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.

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.

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.