

«Application_Type»-«Project_Number»-«Variable_Number»
«Project_Name»
«ContractNumber»
«HP_Number»

PRESERVATION COVENANT

THIS INDENTURE, made this _____ day of _____, 20____, by and between the «**Applicant**» (hereinafter referred to as the “OWNER” or “CONTRACTOR” or “GRANTOR”) with offices at «**Contract_Address1**», «**Contract_Address2**», «**Contract_City**», **New York** «**Contract_Zip**» and **THE PEOPLE OF THE STATE OF NEW YORK**, acting by and through their Commissioner of Parks, Recreation and Historic Preservation (hereinafter referred to as the "STATE" or “GRANTEE”) having an address at **Albany, New York 12238** (For USPS Mail) with offices at **625 Broadway, Albany, New York 12207** (For Physical Delivery).

WITNESSETH:

WHEREAS, pursuant to the Environmental Protection Act, Title 9 of Article 54 of the Environmental Conservation Law, the STATE administers a program providing grants to municipalities and not-for-profit corporations to restore and develop historic properties which are listed, or eligible to be listed, on the National or State Registers of Historic Places; and

WHEREAS, the OWNER has title to certain historic real property along with the improvements located thereon, which is more particularly described in a deed from «**Grantor**» to the OWNER dated «**Deed_Date**», and recorded on <<recorded date if different with signed date >> in the «**County_Recorded**» County Clerk's Office, in Liber «**Deed_Liber**» of Deeds at Page «**Deed_Page**», and the description from such deed is attached hereto and made a part hereof as Exhibit A; and

WHEREAS, entirety of the parcel described in Exhibit A is referred to herein as “the SUBJECT PROPERTY”; and

WHEREAS, the OWNER has been awarded «**Contract_Amount**» pursuant to grant agreement no. «**ContractNumber**» for the «**Purpose**» of the «**Property_Name**» on the **SUBJECT PROPERTY**, with an address at <<insert property address here, New York ZIP Code>>, and such award is conditioned on the satisfaction of certain duties and obligations.

NOW, THEREFORE, in consideration of the receipt of the State funds mentioned above, the OWNER does hereby covenant and agree to the following restrictions in relation to the SUBJECT PROPERTY.

1. Scope of Covenant. This restriction shall be binding on the OWNER in relation to the interior and exterior of the structures on, as well as the grounds of, the SUBJECT PROPERTY.
2. Covenant Running with the Land. This restriction constitutes a covenant running with the land, and all successive future owners shall have the same obligations as the OWNER for as long as the restriction is in effect.
3. Purpose. The purpose of this restriction is to preserve the SUBJECT PROPERTY as a historic resource and to ensure that a public benefit is derived from the expenditure of public funds.

4. Public Access. The OWNER agrees to permit the public to have access to the SUBJECT PROPERTY as follows: «**Method**». If applicable the OWNER shall submit verification of such access to the STATE.

5. Term of Restriction. This restriction shall be binding upon the OWNER for «**Term**» years <or in **perpetuity** if acquisition >from the date of the recording of this instrument.

6. Maintenance Required. The SUBJECT PROPERTY shall be kept and maintained in reasonably good order, condition and repair and in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995, The Secretary of the Interior's Standards and Guidelines for Archeological Documentation, The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes or any other applicable Secretary of the Interior's Standards (collectively referenced as "STANDARDS").

7. Alterations to SUBJECT PROPERTY.

- (a) Before plans for any proposed construction, alteration or demolition affecting the SUBJECT PROPERTY are finalized, the OWNER will provide such information to the STATE as will reasonably inform the STATE as to the work to be performed, the scope of the work, details of the treatment and materials and application, along with any other documentation requested by the STATE that is reasonably needed to define the nature and character of the work to be performed and the anticipated period of time in which the work is estimated to be completed. The provisions of this paragraph shall not apply if the changes are clearly of a minor nature and not affecting architectural, archeological or historic values of the SUBJECT PROPERTY.
- (b) Secretary of the Interior's Standards. No alteration work affecting the SUBJECT PROPERTY shall commence until the OWNER has received written certification from the STATE that all work is anticipated to be in substantial conformance with the STANDARDS.

8. Damage or Destruction to SUBJECT PROPERTY.

- (a) As early as practicable after damage or destruction to the SUBJECT PROPERTY, whether caused by the OWNER or through a cause beyond the OWNER'S control, the OWNER will notify the STATE in writing of such damage or destruction. The notice will include (1) an assessment of the nature and extent of the damage; (2) an estimate of the restoration/reconstruction work necessary to return the SUBJECT PROPERTY to the condition existing at the time of completion of the State-funded work, along with any plans and specifications prepared for the work required; and (3) a description of any emergency work already completed. The OWNER shall restore/reconstruct the SUBJECT PROPERTY according to paragraph seven of this agreement, if in the opinion of the STATE the purpose and intent of this restriction will thereby be served. In no circumstance will the STATE require the OWNER to expend more than the amount of the grant award referenced above for the restoration/reconstruction of the SUBJECT PROPERTY.
- (b) If the STATE determines it is not feasible to restore/reconstruct the SUBJECT PROPERTY, and the SUBJECT PROPERTY has been so damaged that the qualities that resulted in its being listed, or eligible to be listed, on the National or State Registers of Historic Places have been lost, the STATE will take steps to remove the SUBJECT PROPERTY from the National and/or State Registers, or to make a determination the SUBJECT PROPERTY is ineligible for listing. If the SUBJECT PROPERTY is removed from listing or determined to be ineligible for listing,

the STATE will notify the OWNER in writing that this Preservation Covenant is null and void.

- (c) If destruction is determined to be due to a deliberate act of the OWNER or caused by the gross negligence of the OWNER, the OWNER may be required to repay to the STATE an amount equal to one and one-half times the State funds expended on the SUBJECT PROPERTY.

9. Violations. In the event of a violation of any provision of this covenant the STATE may, at its option, and following reasonable notice to the OWNER, exercise any or all of the following remedies:

- (a) declare the grant forfeited and demand the return of all funds disbursed under the grant agreement.
- (b) declare the grant forfeited and demand the return of all funds disbursed under the grant agreement plus a penalty equal to 1/2 of the amount of the grant.
- (c) enter the SUBJECT PROPERTY, correct any violation of the terms of this covenant, restore the SUBJECT PROPERTY to its prior condition, and hold the OWNER or any successor in interest responsible for the cost thereof.
- (d) institute suit to enjoin such violations and, if appropriate, require the restoration of the SUBJECT PROPERTY to its prior condition.

In addition to the remedies set forth above, the STATE shall have all legal and equitable remedies to enforce the OWNER'S obligations under this agreement, and in the event the OWNER or any successor in interest is found to have violated such obligations, the OWNER or such successor shall reimburse the STATE for any costs and expenses incurred in connection with the enforcement of this agreement, including court costs and attorney's fees.

10. OWNER'S Rights to Use. Except as provided in paragraph four of this agreement, nothing in this covenant shall be construed to convey to the public a right of access or use of the property and the OWNER, its heirs, successors and assigns shall retain the exclusive right to such access and use.

11. Amendment. This covenant may also be modified in accordance with the common and statutory laws of the State of New York applicable to the modification of covenants running with the land. To this end, OWNER and the GRANTEE shall mutually have the right, in their sole discretion, to agree to amendments to this covenant.

12. Waivers. A waiver of any breach of any covenant, term, condition or limitation of this agreement shall not constitute a waiver of any other or any later breach of any covenant, term, condition or limitation, nor shall it otherwise prevent the enforcement of such breach.

13. Severability. The parties to this agreement agree that all covenants, easements and restrictions in this agreement shall be severable, and that should any covenant, easement or restriction in this agreement be declared invalid or unenforceable, the remaining covenants, easements and restrictions shall not terminate.

14. Binding Upon Successors. The foregoing representations, covenants, terms and conditions are expressly understood as being binding upon the OWNER, all heirs, executors, administrators, assigns and successors of the OWNER and all other persons whatsoever, real or artificial, having or claiming any interest in the SUBJECT PROPERTY and, together with this paragraph, shall be inserted in all

instruments which dispose of any interest in the SUBJECT PROPERTY, but whether or not so inserted, shall be deemed by all persons to have been inserted.

15. Recording of Covenant. The STATE shall record this instrument in the County Clerk's Office and shall provide the OWNER with proof of such recording.

16. The OWNER shall not sell, lease or otherwise convey the SUBJECT PROPERTY, in whole or in part, unless it shall have first received the written approval of the STATE.

IN WITNESS WHEREOF, the OWNER and the STATE have hereunto set their hands the day and year first above written.

«Applicant»

Signed _____

By _____

Title _____

The People of the State of New York through the Commissioner of Parks, Recreation and Historic Preservation

By: _____

XXXXXX

Its: Deputy Commissioner for Historic Preservation

«Applicant»

STATE OF NEW YORK)
) SS.:

County of _____)

On the _____ day of _____ in the year 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public, State of New York

STATE OF NEW YORK)
)SS.:
County of _____)

Notary Public, State of New York

Exhibit A

Property in town of < name>, County of «County_Recorded», State of New York

*Enter the metes and bounds description of the Subject Property from the deed. Do not re-type.
If deed is in PDF, click the camera icon, select area for snapshot, then paste here.*

SAMPLE LANGUAGE
SUBJECT TO CHANGE