

## General Easement Provisions for Save America's Treasures Grants

**Easements held on Save America's Treasures grants must run for no less than 50 years after the end date of the grant agreement**

*(Provisions taken from Chapter 6 – Historic Preservation Fund Grants Manual)*

c. Characteristics and Mandatory Provisions.

- 1) Legally Enforceable. Covenants and preservation agreements must be written in such a manner that they are legally enforceable by the State through specific performance by the owner, and for covenants, subsequent owner(s). The standard provisions listed in this Chapter are all legally enforceable. States must obtain a legal opinion from the State Attorney General for any additional provisions. A model preservation agreement is presented as Exhibit 6-A of this Chapter.
- 2) Subgrantee is not the owner of record. For a lessee to receive grant assistance, there must be a binding written agreement between the lessee and the owner for, at a minimum, the period of the covenant or preservation agreement, and the following provisions must be satisfied:
  - a) Mortgaged property. The covenant or preservation agreement must be executed between the State and the property owner of record. If the property has been financed through a mortgage lender, the holder of the mortgage must also sign the covenant or preservation agreement.
  - b) Building and the land are in different ownership. When the building and the land are in different ownership, the owner of the land must also be a party to the covenant or the preservation agreement.

The covenant runs with the land and must be executed by the owner of record for the term of years specified above. (A lease of the land does not convey title or transfer ownership.) The owner, the State, and the subgrantee must execute a maintenance and administration covenant for the period required.

- 3) Provisions in Covenants and Preservation Agreements. See Exhibit 6-A for required language.
  - a) Site Protection. The owner must agree to take appropriate measures to protect the site against willful damage or vandalism, i.e., whatever is necessary to maintain the National Register eligibility of the property. Nothing in this agreement prohibits the owner from developing the site in a manner that will not threaten or damage the National Register eligibility of the resource.
  - b) Recovered Data Protection. The owner must agree 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 Secretary of the Interior's "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.

- c) Maintenance. The owner must agree to assume the cost of continued maintenance and repair of the property so as to preserve the architectural, historical, and/or archeological integrity of the property and its materials for the number of years specified above in order to protect those qualities that made the property eligible for listing in the National Register of Historic Places (or a property contributing to the significance of a National Register listed Historic District). Nothing in this agreement shall prohibit the owner from seeking financial assistance from any source (including HPF Development grants) for additional preservation treatment work available to him/her.
  
- d) Public Access. "Public Access" means that the general public can see the results of the HPF investment of public funds.
  - 1) As long as all the HPF-assisted work is clearly visible from a public right-of-way, public access to the property is not required. Public access is also not required when interior development work (such as electrical or plumbing repairs) would not be visible if general access to property were to be provided. (However, the interior of a property acquired with grant assistance must be open to the public at least 12 days a year if the interior has any architecturally or historically significant features.)
  - 2) When the grant-assisted work (interior or exterior), or property acquired with grant assistance, is not clearly visible from the public right-of-way, clauses 4 and 5 of the Model Preservation Agreement must be inserted (see Exhibit 6-A).
  - 3) For compliance with the Americans with Disabilities Act, see clause 5 of Exhibit 6-A.
  - 4) Exceptions to Public Access Requirement. In accordance with Section 304 of the National Historic Preservation Act, NPS may allow the State to withhold from disclosure to the public information relating the location or character of a historic resource whenever the disclosure of such information may incur substantial risk of harm, theft, or destruction to the resource. The State shall request written approval from NPS to withhold information from the public prior to recordation of the covenant or execution of the preservation agreement.

If an archeological site is not left in an excavated state and interpreted for the public, there are usually no visible features above the ground. Accordingly, public access to archeological sites may be restricted. However, public access may not be restricted if the site is being interpreted, the site is not fragile, or access needs to be provided to serious researchers.

- 5) Notification to the General Public of Access. For properties that are not open to the public except for the required 12 days per year, and where the improvements assisted by HPF grant funds are not visible from the public way, or the property was acquired with HPF grant funds, owners must agree as part of the covenant or preservation agreement to provide public notification by advertising in newspapers of general circulation in the community or area in which the property is located, giving the dates and times when the property will be open to the public.

The covenant or preservation agreement must include a statement that the owner will annually publish dates and times when the property will be open to the public (specific dates and times are not to be included in the preservation agreement). However, the owner must agree that documentation of such notice being published will be furnished annually to the State during the term of the covenant or preservation agreement.

- d. Effective Date. The covenant or preservation agreement is effective upon execution of the document, which for both Acquisition and for Development projects, must be done prior to the disbursement of HPF funds. In addition, for properties acquired with HPF assistance, the covenant period will commence no later than on the date the title of record transfers from the seller to the buyer.

NOTE: No funds shall be disbursed for Acquisition or Development projects prior to the execution of a covenant or preservation agreement.

- e. Monitoring Covenants and Preservation Agreements. The State must maintain an up-to-date list of covenants and/or preservation agreements, including the addresses, names of property owners, expiration dates of the agreements, and dates of any on-site visit. Occasional site visits and correspondence to owners reminding them of their responsibilities under the covenant or preservation agreement must be documented in the State's files, as well as newspaper notices by owners for any properties requiring public access.
- f. Covenant and Preservation Agreement Violations. In the event of the non-performance or violation of the maintenance provision of the covenant or preservation agreement by the owner (or any successor-in-interest) during the term of the covenant, the State must initiate legal action to require the owner to restore the property to the condition existing at the time HPF-assisted work was completed. If the State fails to initiate legal action, the State is in breach of contract and NPS may exercise any legal remedies available. Documentation of such State legal action, if any has occurred, must be included or referenced in the project file.

Consequences when a property has been DAMAGED or DESTROYED.

- 1) DAMAGED. If an HPF-assisted property is damaged by accidental or natural causes, or is damaged deliberately or through gross negligence during the covenant or preservation agreement period, the State will inform NPS in writing of the damage to the property, including: (1) an assessment of the nature and

extent of the damage; and (2) an estimate of the cost of restoration work necessary to return the property to the condition existing at the time of the grant-assisted project's completion. The State or subgrantee shall, without direct HPF grant assistance, take all necessary steps, including legal action, if necessary, to restore, reconstruct, or stabilize the damaged property.

- 2) DESTROYED: ACCIDENTAL OR NATURAL CAUSES. If an HPF-assisted property has been destroyed or irreparably damaged by accidental or natural causes, that is, if the historical integrity of the features, materials, appearance, workmanship, and environment which made the property eligible for listing in the National Register of Historic Places has been lost or so damaged that its continued National Register listing is in question, the State will notify the Keeper of the National Register in writing of the loss. The Keeper of the National Register will evaluate the findings and notify the State in writing of any decision to remove the property from the National Register. If the property were to be so removed, the State will then notify the owner that the covenant or preservation agreement is null and void.
  
- 3) DESTROYED: DELIBERATE ACTION OR THROUGH GROSS NEGLIGENCE. If an HPF-assisted property has been severely damaged or destroyed deliberately or through gross negligence by a owner, that is, if the historical integrity of the features, materials, appearance, workmanship, and environment which made the property eligible for listing in the National Register of Historic Places has been lost or so damaged that its continued listing in the National Register is in question, the State will notify the Keeper of the National Register in writing of the loss. The Keeper will evaluate the findings and notify the State in writing of any decision to remove the property from listing in the National Register. If the property were to be so removed, the State will initiate requisite legal action to recover, at a minimum, grant funds. Such legal expenses related to National Register properties would be an eligible grant program cost.

**SAMPLE CONSERVATION EASEMENT AGREEMENT  
For a Save America's Treasures Grant**

**INTRODUCTION.** This conservation easement agreement is made the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, between Organization, as GRANTOR of a conservation easement (hereafter referred to as the "Grantor"), and the SHPO/Covenant Holder, as GRANTEE of the conservation easement (hereafter referred to as the "Grantee"). This conservation easement agreement is entered under State Law/Regulation for the purpose of preserving the Name of Property, a building that is important culturally, historically, architecturally and archeologically.

1. **The Subject Property.** This agreement creates a conservation easement in real estate legally described as Property Description. The Subject Property is the site of the Name of Property, located at Street Address, City, County, & State (hereafter referred to as the "Property").

2. **Grant of conservation easement.** 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 conservation easement in the Subject Property for the purpose of assuring preservation of the Property.

3. **Easement required for federal grant.** This conservation 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 Save America's Treasures Grant Program.

4. **Conditions of easement:**

a. *Duration.* This conservation easement is granted for a period of fifty (50) years commencing on the date when it is filed with the County County Recorder.

b. *Documentation of condition of the Property Name at time of grant of this easement.* In order to make more certain the full extent of Grantor's obligations and the restrictions on the Subject Property, and in order to document the nature and condition of the Property, including significant interior elements in spatial context, a list of character-defining materials, features and spaces, including archeological features (if known) is incorporated as Exhibit "A" at the end of this agreement. The Grantor has provided to the Grantee architectural drawings of the floor plans. To complement Exhibit "A", Grantee personnel have compiled a photographic record, including photographer's affidavit, black and white photographs and negatives, color digital prints, photograph logs, and a keyed location map. The Grantor agrees that the nature and condition of the Property on the date of execution of this easement is accurately documented by the architectural drawings and photographic record, which shall be maintained for the life of this easement in the Grantee's conservation easement file for the Property.

c. *Restrictions on activities that would affect historically significant components of the Property.* The Grantor agrees that no construction, alteration, or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Subject Property which would affect historically significant, interior spaces and features identified in Exhibit "A", exterior construction materials, architectural details, form, fenestration, height of the Property, or adversely affect its structural soundness without prior written permission of the Grantee affirming that such reconstruction, repair, repainting, refinishing, rehabilitation, preservation, or restoration will meet The Secretary of the Interior's *Standards for the Treatment of Historic Properties* (hereinafter referred to as the "Standards")

d. *Duty to maintain the Property.* The Grantor agrees at all times to maintain the Property in a good and sound state of repair and to maintain the subject Property, including the Other structures or features of the site, according to the Standards so as to prevent deterioration and preserve the architectural and historical integrity of the Property in ways that protect and enhance those qualities that make the Property eligible for listing in the National Register of Historic Places

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

*f. Maintenance of recovered materials.* 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 *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.

*g. Public access.* 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 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 Property may also be open at other times by appointment, in addition to the scheduled 12 days a year. Nothing in this agreement will prohibit a reasonably nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

*h. Right to inspect.* The Grantor agrees that the Grantee, its employees, agents and designees shall have the right to inspect the Property at all reasonable times, with twenty-four hours written notice, in order to ascertain whether the conditions of this easement agreement are being observed.

*i. Anti-discrimination.* The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 (d)), 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 (*or State Historic Preservation Office if another organization is holding the easement*).

*j. Easement shall run with the land; conditions on conveyance.* This conservation easement shall run with the land and be binding on the Grantor, its successors and assigns. The Grantor agrees to insert an appropriate reference to this easement agreement in any deed or other legal instrument by which it divests itself of either the fee simple title or other lesser estate in the Property, the Subject Property, or any part thereof.

*k. Casualty Damage or Destruction.* In the event that the 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 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 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 property, the Grantee determines that the features, materials, appearance, workmanship, and environment which made the property eligible for listing in the National Register of Historic Places has been lost or so damaged that its continued National Register listing is in question, the Grantee will notify the Keeper of the National Register (*or the SHPO if the Grantee is not the State*) in writing of the loss. The Keeper of the National Register will evaluate the findings and notify the Grantee in writing of any decision to remove the property from the National Register. If the property is removed, the Grantee will then notify the Grantor that the agreement is null and void. If the damage or destruction that warrants the properties removal from the National Register is deliberately caused by the gross negligence of the Grantor or future owner, then the Grantee will initiate requisite legal action to recover, at a minimum, the Federal grant funds applied to the property which will then be returned to the U.S. Treasury.

*l. Enforcement.* The Grantee shall have the right to prevent and correct violations of the terms of this easement. If the Grantee, upon inspection of the 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 architectural importance of the Property, the Grantee shall give the Grantor written notice of the violation and allow thirty (30) 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 obtain an injunction to stop the violation, temporarily or permanently. A court may also issue a mandatory injunction requiring the Grantor to restore the 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 Property to reimburse the Grantee and the State Attorney General for all the State's expenses incurred in stopping, preventing and 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.

*m. Amendments.* The parties may by mutual written agreement jointly amend this easement, provided the amendment shall be consistent with preservation purpose of this easement and shall not reduce its term of duration. Any such amendment shall not be effective unless it is executed in the same manner as this easement, refers expressly to this easement, and is filed with the County County Recorder.

*n. Effective date; severability.* This conservation easement shall become effective when the Grantor files it in the Office of the Recorder of County County, State, with a copy of the recorded instrument provided to the Grantee for its conservation easement file. If any part of this conservation easement agreement 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 conservation agreement does not contain the particular part held to be invalid.

**GRANTOR:** \_\_\_\_\_

By: \_\_\_\_\_  
Name and Title

STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss: On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me the undersigned, a Notary Public for said State, personally appeared **Name of Person**, to me personally known, who stated that he is **Title and Organization**, that no seal has been procured by said corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and that as such officer, he acknowledged that he executed the foregoing instrument as his voluntary act and the voluntary act of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC

**GRANTEE:** \_\_\_\_\_

By: \_\_\_\_\_  
Name and Title

STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss: On the \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, a Notary Public for said State, personally appeared **Name of Person**, who stated that he is the duly appointed and actively serving **Title and Organization**, and that he executed the foregoing conservation easement agreement as his voluntary act and as the voluntary act of the State Department of Cultural Affairs.

\_\_\_\_\_  
NOTARY PUBLIC

## **EXHIBIT "A" TO CONSERVATION EASEMENT AGREEMENT**

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 features have been identified as those that help convey the significance of the Property Name, photo documentation is attached.

Significant Interior Spaces and Features

Significant Exterior Spaces and Features

Significant Archeological Features