

Preservation Covenant
for a Historic Preservation Fund Grant
to a Historic Subject Property

INTRODUCTION. This covenant agreement is made the _____ day of _____, _____ between the State of Alaska Historic Preservation Office, as GRANTOR of a covenant (hereafter referred to as the "Grantor"), and the _____ as GRANTEE of the covenant (hereafter referred to as the "Grantee"). This covenant agreement is entered under *Alaska Statute 41.35* for the purpose of preserving the _____, that is important culturally, historically, and/or architecturally.

1. **The Subject Property.** This agreement creates a covenant on property legally described in Exhibit A. The Subject Property is the site of the _____, located at _____ (hereafter referred to as the "Subject Property").
2. **Grant of covenant.** 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 covenant in the Subject Property for the purpose of assuring preservation of the _____.
3. **Covenant required for Federal grant.** This covenant 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* Grant Program, under Code of Federal Domestic Assistance (CFDA) number 15.904.
4. **Conditions of covenant:**
 1. **Duration.** This covenant is granted for a period of _____ years commencing on the date when it is filed with the _____ Borough Recorder, in the State of Alaska, in the United States of America.
 2. **Documentation of condition of the _____ at time of grant of this covenant.** 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 Subject Property, including significant interior elements in spatial context, a list of character-defining materials, features, and spaces is incorporated as Exhibit "B" at the end of this agreement. The Grantee has provided to the Grantor architectural drawings of the Subject Property. To complement Exhibit "B", Grantee and/or the Grantor personnel have compiled a photographic record, including photographer's affidavit, black and white photographs and negatives, or electronic image files saved as high-resolution images, photograph logs, and a keyed location map. The Grantee agrees that the nature and condition of the Subject Property on the date of execution of this covenant is accurately documented by the architectural drawings and photographic record, which shall be maintained for the life of this covenant in the Grantee's covenant file for the Subject Property.

3. ***Duty to maintain the Subject Property.*** The Grantee agrees to assume the cost of continued maintenance and repair of the Subject Property so as to preserve the architectural, historical, and/or archeological integrity of the Subject Property and its materials to protect those qualities that made the Subject Property eligible for listing in the National Register of Historic Places (or a Subject Property contributing to the significance of a National Register listed Historic District) throughout the effective date of this covenant.
4. ***Restrictions on activities that would affect historically significant components of the Subject Property.*** The Grantee agrees that no demolition, construction, alteration, remodeling, or any other activity shall be undertaken or permitted to be undertaken on the Subject Property which would affect historically significant exterior features or interior spaces identified as significant in Exhibit "B." Exterior construction materials, architectural details, form, fenestration, scale, and mass should not be adversely affected nor the structural soundness or setting altered without prior written permission of the Grantor affirming that such reconstruction, repair, refinishing, rehabilitation, preservation, or restoration will meet applicable standards prescribed by the Secretary of the Interior. These include *Standards for the Treatment of Historic Properties*, herein referred to as the "Standards."
5. ***Restrictions on activities that would affect archeological resources.*** The Grantee 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 Grantor affirming that such work will meet The Secretary of the Interior's applicable *Standards for Archeology and Historic Preservation*.
6. ***Maintenance of recovered materials.*** The Grantee 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.
7. ~~***Public access.*** The Grantee 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 Subject Property will be open to the public must be annually published and provided to the Grantor. At the option of the Grantee, the relevant portions of the Subject Property may also be open at other times 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.~~
8. ***Right to inspect.*** The Grantee agrees that the Grantor, its employees, agents, and designees shall have the right to inspect the Subject Property at all reasonable times, with twenty-four hours written notice, in order to ascertain whether the conditions of this covenant agreement are being observed. However, in the case of any natural or man-made disaster or imminent endangerment to the Subject Property the covenant holder shall be granted access to the Subject Property with no prior notice.

9. ***Anti-discrimination.*** The Grantee agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Americans with Disabilities Act (42U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794). These laws prohibit discrimination based on race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the Grantor.
10. ***Covenant shall run with the property; conditions on conveyance.*** This covenant shall run with the property and be binding on the Grantee, its successors, and assigns. The Grantee agrees to insert an appropriate reference to this covenant agreement in any deed or other legal instrument by which it divests itself in part or in whole of either the fee simple title or other lesser estate in the Subject Property, the Subject Property, or any part thereof.
11. ***Casualty Damage or Destruction.*** In the event that the Subject Property or any part of it shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantee shall notify the Grantor 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 Subject Property and to protect public safety, shall be undertaken by the Grantee without the Grantor's prior written approval indicating that the proposed work will meet the Standards. The Grantor shall give its written approval, if any, of any proposed work within 60 days of receiving the request from the Grantee. If after reviewing the condition of the Subject Property, the Grantor determines that the features, materials, appearance, workmanship, and environment (or setting) which made the Subject 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 Grantor 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 Grantor in writing of any decision to remove the Subject Property from the National Register. If the Subject Property is removed, the Grantor will then notify the Grantee that the agreement is null and void. If the damage or destruction that warrants the property's removal from the National Register is deliberately caused by the gross negligence or other actions of the Grantee or successor owner, then the Grantor will initiate requisite legal action to recover, at a minimum, the Federal grant funds applied to the Subject Property which will then be returned to the U.S. Government.
12. ***Enforcement.*** The Grantor shall have the right to prevent and correct violations of the terms of this covenant. If the Grantor, 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 Subject Property, the Grantor shall give the Grantee 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 Grantor may seek to obtain an injunction to stop the violation, temporarily or permanently. A court may also issue a mandatory injunction requiring the Grantee to restore the Subject 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 Subject Property to reimburse the Grantee and the *State* 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 Grantor to discover a violation or to take immediate action to correct a violation shall not bar it from doing so at a later time.

13. ***Effective date; severability.*** This covenant shall become effective when filed by the Grantee in the Office of the Recorder of _____ Borough, Alaska with a copy of the recorded instrument provided to the Grantor for its covenant agreement file. If any part of this covenant 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 covenant agreement does not contain the particular part held to be invalid.
14. ***Amendments.*** The parties may by mutual written agreement jointly amend this covenant, provided the amendment shall be consistent with preservation purpose of this covenant agreement and shall not reduce the regulatory controls listed in the conditions of this covenant agreement. Any such amendment shall not be effective unless it is executed in the same manner as this covenant, refers expressly to this covenant, and is filed with the _____ Borough Recorder.

This instrument reflects the entire agreement of Grantor and Grantee regarding the subject covenant. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution of this agreement, unless set out in this instrument. In witness whereof, Grantor and Grantee have set their hands under seal on the days and year set forth below.

Grantee: _____

By: _____

STATE of ALASKA _____ BOROUGH, S.S.

On this the _____ day of _____, _____ before me the undersigned, a Notary Public for said State, personally appeared _____, to me personally known, who stated that he/she is _____ of _____, that no seal has been procured by said organization, and that the foregoing instrument was signed on behalf of said organization, and that as such officer, he/she acknowledged that he/she executed the foregoing instrument as a voluntary act of the organization.

NOTARY PUBLIC

Grantor: *State of Alaska Office of History and Archaeology*

By: *Judith E. Bittner, State Historic Preservation Officer*

STATE OF ALASKA _____ BOROUGH, S.S.

On this the _____ day of _____, _____ before me the undersigned, a Notary Public for said State, personally appeared _____, to me personally known, who stated that she is the duly appointed and actively serving _____, and that she executed the foregoing covenant agreement as her voluntary act and as the voluntary act of the *State Historic Preservation Office*.

NOTARY PUBLIC

Exhibit A to the Covenant Agreement:

Exhibit B to the Covenant Agreement. Baseline Documentation:

_____ at _____

To remain eligible for listing on the National Register of Historic Places, a Subject 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 _____. Also, current photo documentation and the narrative of the National Register nomination must be attached to the baseline documentation.

Significant Character-Defining Interior Spaces and Features

Significant Character-Defining Exterior Spaces and Features