

**GRANT PROGRAM GUIDELINES & REQUIREMENTS****APPENDIX C: Model Preservation Covenant**

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In order to ensure that a public benefit will be derived from the expenditure of federal funds and also that the historic significance and integrity of the qualities which made the property eligible for listing in the National Register of Historic Places are preserved, the owner of the historic property must agree to maintain and repair the historic property in a manner consistent with the Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties. To fulfill this requirement, the grant recipient and the PHMC execute an Historic Preservation Covenant that is recorded against the property deed. The Covenant is binding on the current legal owner(s) and all future owners for a period of time that is determined by the amount of the federal grant award, as follows:

- Up to \$50,000 – a five year Covenant
- \$50,001 up to \$99,999 – a ten year Covenant
- \$100,000 and above – a twenty year Covenant

The following is a model Covenant which the PHMC will use as a template for preparing the specific document for each grant recipient.

**HISTORIC PRESERVATION COVENANT**

THIS HISTORIC PRESERVATION COVENANT, made this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **[Property Owner Name]**, the owner(s) of the subject property, hereinafter referred to as Grantor, and the Pennsylvania Historical and Museum Commission ("PHMC"), hereinafter referred to as Grantee.

**WITNESSETH:**

WHEREAS, Grantor is(are) the owner(s) of certain real property more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference as if copied fully herein in words and figures;

WHEREAS, Grantor has applied for and has been determined eligible for an award under the Hurricane Sandy Disaster Recovery Grant Program ("Program") for Historic Properties administered by the Grantee's Bureau for Historic Preservation (The Pennsylvania State Historic Preservation Office) pursuant to withdrawals from the Historic Preservation Fund, authorized by the Disaster Relief Appropriations Act, , Pub. L. No. 113-2, hereinafter referred to as the "Act";

WHEREAS, The terms of the Hurricane Sandy Disaster Recovery Grant Program for Historic Properties require the Grantee to hold a protective covenant on any property rehabilitated using funds provided by the Act, as a means of protecting the public's investment in that property;

WHEREAS, Grantee is authorized to accept preservation covenants to protect property significant in national and Pennsylvania history and culture in accordance with the Pennsylvania Historic Preservation Act, 37 Pa.C.S. §§ 501-512 and the Pennsylvania History Code, 37 Pa.C.S. § 101 et seq.;

WHEREAS, In accordance with the program requirements, the Grantor desires to grant to the Grantee, and the Grantee desires to accept, a preservation covenant, (hereinafter referred to as "Covenant") in gross for the period specified herein below;

NOW, THEREFORE, in Consideration of the receipt of grant funds from the Historic Preservation Fund and other good and valuable consideration the receipt of which is hereby acknowledged, and pursuant to the requirements of the Act, the Grantor does hereby voluntarily grant and convey unto the Grantee a preservation Covenant on, to and over the subject property described herein in "Exhibit A," subject to the following terms:

**1. Purpose:**

It is the purpose of this Covenant to ensure the preservation, stabilization, rehabilitation or repair of the subject property, and to provide planning and technical assistance to preserve the historical and architectural integrity of

**GRANT PROGRAM GUIDELINES & REQUIREMENTS****(APPENDIX C: Model Preservation Covenant, Continued)**

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the features, materials, appearance, workmanship, and environment that rendered the subject property eligible for listing in the National Register of Historic Places;

2. The Grantor's Covenant to Maintain:

The Grantor agrees at all times to maintain and repair any structures on the property so as to preserve the historical and architectural integrity of the features, materials, appearance, workmanship, and environment that rendered the subject property eligible for the National Register of Historic Places. The Grantor's obligation to maintain shall require replacement, repair, and restoration by the Grantor whenever necessary to preserve the subject property.

3. Maintenance of Historic Integrity:

- a. The Grantor shall take all reasonable steps to prevent inappropriate, incompatible, and/or irreversible changes to the subject property in the future and agrees for the life of this Covenant, that neither the Grantor, nor his/her heirs, executors, administrators and assigns, shall begin any work, make any modifications or improvements to said subject property without the express written approval of the Grantee, said approval shall not be unreasonably withheld.
- b. In no case shall approval be granted for any proposed work, modifications or improvements that do not comply with the Secretary of the Interior's *Standards for the Treatment of Historic Properties*, as determined by PHMC review.
- c. Before any such approval may be granted, the Grantor shall submit to the Grantee any plans, specifications, designs and/or any other information pertinent to the proposed modification or improvement to the subject property. In addition thereto, the Grantor shall submit a timetable for the proposed modifications or improvements.
- d. The said Grantor, his/her heirs, executors, administrators and assigns, acknowledge, covenant and agree for the life of this Covenant the existing structures shall not be demolished, removed, or razed except as provided herein.

4. Construction and Archaeological Resources:

- a. For modification or improvement to the subject property that involves ground disturbance, the Grantee may require archaeological investigation at the Grantor's expense. In the event that archaeological materials are discovered during ground-disturbing activities, work shall temporarily cease, and the Grantee shall be consulted for instructions prior to proceeding with the work. Any archaeological work shall be conducted in accordance with the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48FR 447344-37) and any such standards and guidelines as the Grantee may specify.

5. Right of Entry:

- a. That the said Grantor, his/her heirs, executors, administrators and assigns, acknowledge, covenant, and grant unto the Grantee the right to enter unto the subject property upon reasonable notice for the purpose of making periodic inspections of said property to ensure compliance with this Covenant.
- b. The Grantee may, following reasonable written notice to the Grantor, institute suit(s) to enjoin any violation of the terms of this covenant by ex parte, temporary, preliminary and/or permanent injunction,

**GRANT PROGRAM GUIDELINES & REQUIREMENTS****(APPENDIX C: Model Preservation Covenant, Continued)**

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including prohibitory and/or mandatory injunctive relief, and to require the restoration of the subject property to the condition and appearance that existed prior to the violation. The Grantee shall also have available all legal and other equitable remedies to enforce the Grantor's obligations hereunder.

- c. In the event that the Grantor is found to have violated any of its obligations, the Grantor shall reimburse the Grantee for any costs or expenses incurred in connection with the Grantee's enforcement of the terms and conditions of this Covenant, including, but not limited to, court costs, and attorneys', architectural, engineering, and expert witness fees. In addition thereto, the Grantor shall be liable for the return of all funds awarded under the Act with interest in an amount to be established by a court of competent jurisdiction.
- d. Exercise by the Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

**6. 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 Subject 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 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. The Grantor is not required to provide public access to the property if the property is in residential use.

**7. Sale of the Property:**

- a. The Grantor shall promptly notify the Grantee in writing of any proposed sale of the property and provide the opportunity for the Grantee to explain the terms of this Covenant to potential new owners prior to the closing of the sale. The existence of this Covenant shall be disclosed to any potential purchaser as well as to any real estate professional involved in the listing of the said property.
- b. The obligations imposed by this Covenant shall be effective for \_\_\_\_\_ years and shall run with the land and be binding on the Grantor, its successors, and assigns. This Covenant shall extend to and be binding upon the Grantor and the Grantee, their respective successors in the interest and all persons hereafter claiming under or through the Grantor or the Grantee, and the words "the Grantor" and "the Grantee" when used herein shall include all such persons, including but not limited to heirs, executors, administrators, successors or assigns.
- c. Anything contained herein to the contrary notwithstanding, an owner of the subject property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Covenant shall be inserted by the Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which the Grantor divests himself of either the fee simple title to or any lesser estate in the property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the property.

**8. Recording of the Covenant:**

- a. The Grantee may convey, assign, or transfer this Covenant to a unit of federal, state, or local government or to a similar local, state, or national organization whose purposes, inter alia, are to promote preservation

**GRANT PROGRAM GUIDELINES & REQUIREMENTS****(APPENDIX C: Model Preservation Covenant, Continued)**

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of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the purpose for which the Covenant was granted will continue to be carried out.

- b. The Grantor shall do and perform at its own cost all acts necessary for the prompt recording of this instrument in the land records of the Pennsylvania County in which the property is located and situated.

9. Dissolution of the Covenant:

- a. The Grantor and the Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the property in a manner consistent with the purpose of this Covenant and necessitate extinguishment of the Covenant. Such circumstances may include, but are not limited to, partial or total destruction of the building(s) resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction. In no event shall the repayment of financial assistance received under the terms of the Act be deemed justification to extinguish this Covenant.
- b. If all or any part of the property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, the Grantor and the Grantee shall join in appropriate proceedings at the time of such taking to recover full value of those interests in the property that are subject to the taking and all incidental and direct damages resulting from the taking. After the satisfaction of prior claims and net of expenses reasonably incurred by the Grantor and the Grantee in connection with such taking, the Grantor and the Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs above unless otherwise provided by law.

10. Enforcement of the Covenant:

The following provisions shall govern the effectiveness, interpretation, and duration of the Covenant.

- a. It is the intention of the parties that the terms of this Covenant be interpreted to advance and affect its purpose of preserving the historical and architectural integrity of the property, and, therefore, any rule of construction designed to limit or restrict the alienation or use of property shall not apply to the construction or interpretation of this Covenant.
- b. This instrument may be executed in duplicate originals, one of which may be retained by the Grantee and the other, after recording, to be retained by the Grantor. In the event of any disparity between the counterparts produced, the recorded counterpart shall govern in all cases.
- c. This instrument is made pursuant to the Act, but the invalidity of such Act regulations or any part thereof shall not affect the validity and enforceability of this Covenant according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns for \_\_\_\_\_ years to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.
- d. Nothing contained herein shall be interpreted to authorize or permit the Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, the Grantor promptly shall notify the Grantee of such conflict and shall cooperate with the Grantee and the applicable governmental entity to accommodate the purposes of both this Covenant and such ordinance or regulation.

**GRANT PROGRAM GUIDELINES & REQUIREMENTS****(APPENDIX C: Model Preservation Covenant, Continued)**

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- e. To the extent that the Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the property may be developed to a more intensive use (in terms of height, bulk, or other objective criteria related by such ordinances) than the property is devoted as of the date hereof, such development rights shall not be exercisable on, above or below the property during the term of the Covenant, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Covenant, without approval of such plans by the PHMC in regard to their impact upon the historic integrity of the property under covenant.

**11. Planned Changes to the Property Which May Impact Historic Integrity:**

If circumstances arise under which an amendment to or modification of this Covenant would be appropriate, the Grantor and the Grantee may by mutual written agreement jointly amend this Covenant, provided that no amendment shall be made that will adversely affect the qualification of this Covenant or the status of the Grantor under any applicable laws, including the laws of the Commonwealth of Pennsylvania. Any such amendment shall be consistent with the protection of the Preservation values of the property and the purpose of this Covenant; shall not limit its duration; shall not permit additional development on the property other than the development permitted by this Covenant on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall historic and architectural values protected by this Covenant. Any such amendment shall be recorded in the land records of the county in which the Covenant is recorded. Nothing in this paragraph shall require the Grantor or the Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

**12. Compliance with Federal Laws:**

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, where applicable, reasonable accommodation to qualified disabled persons shall be made in consultation with the Grantee. The Grantor will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), if applicable, which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

**13. Indemnification:**

It is agreed that the Grantee in no way assumes any liability or obligation for maintaining, repairing, or administering said property and the Grantor shall hold the Commonwealth of Pennsylvania harmless from and indemnify the Commonwealth against any and all claims, demands, and actions based upon or arising out of any activities performed by the Commonwealth, the Grantee, its officials, employees, and agents under this covenant and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

**14. Rights and Remedies:**

- a. Failure of the Grantee to exercise any rights or remedies granted under this covenant shall not be construed to be a waiver by the Commonwealth of Pennsylvania and the Grantee of its rights and remedies in regard to the event of default or any succeeding event of default.

**HURRICANE SANDY DISASTER RECOVERY PROGRAM  
FOR HISTORIC PROPERTIES**

**GRANT PROGRAM GUIDELINES & REQUIREMENTS**

**(APPENDIX C: Model Preservation Covenant, Continued)**

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- b. The rights and remedies of the Commonwealth of Pennsylvania and the Grantee provided in this covenant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this covenant.

This HISTORIC PRESERVATION COVENANT may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument. The said Preservation Covenant shall commence on \_\_\_\_\_ and shall run for \_\_\_\_\_.

IN WITNESS THEREOF, the Grantor and the Grantee have set their hands under the seal on the days and year set forth below.

WITNESS OUR SIGNATURES on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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Owner(s)/Grantor(s)

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF \_\_\_\_\_

This day personally appeared before me \_\_\_\_\_, (Grantor(s) who having been first duly sworn by me, acknowledged that they signed and delivered the foregoing instrument on the day and year thereon mentioned.

SWORN TO AND SUBSCRIBED BEFORE ME this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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NOTARY PUBLIC

My commission expires:

**GRANT PROGRAM GUIDELINES & REQUIREMENTS**

**(APPENDIX C: Model Preservation Covenant, Continued)**

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ACCEPTED ON BEHALF of the Pennsylvania Historical and Museum Commission (Grantee) this the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

Serena G. Bellew  
Deputy State Historic Preservation Officer  
Director, Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF DAUPHIN

This day personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named  
Serena G. Bellew, who having first been duly sworn to me, that she signed this instrument in such capacity accepting for  
the Grantee the benefits hereby on the day and year noted.

SWORN TO AND SUBSCRIBED BEFORE ME this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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NOTARY PUBLIC

My commission expires:

Grantor's Address:

Grantee's Address:

Pennsylvania Historical and Museum Commission  
Bureau for Historic Preservation  
Commonwealth Keystone Building, 2<sup>nd</sup> Floor  
400 North Street  
Harrisburg, PA 17120-0093

**GRANT PROGRAM GUIDELINES & REQUIREMENTS****(APPENDIX C: Model Preservation Covenant, Continued)**

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## EXHIBIT A TO THE HISTORIC PRESERVATION COVENANT

**[Legal Description of the Subject Property from the Deed]**