

**THIS DEED OF PRESERVATION EASEMENT**, made as of the \_\_\_ day of \_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_, hereinafter called the Grantor, and the State of Idaho through the Idaho State Historical Society, hereinafter called the Grantee.

**WITNESSETH:**

**WHEREAS**, the Grantor is the owner in fee simple of certain real property located in the [town, county, and state], more fully described in Exhibit A attached hereto and incorporated herein (hereinafter "the Property"). The Property includes the following structures (hereinafter "the Building(s)"):

The principal building constructed of [brief description] dating from [year] (hereinafter "the Principal Building"); and additional ancillary structures [describe] (hereinafter "the Ancillary Structures").

[As applicable] **WHEREAS**, the Property also includes a formal landscaped garden, [describe], designed by noted landscape architect [name] (hereinafter "the Garden");]

[As applicable] **WHEREAS**, the Property has significant undeveloped open space, including fields, forests, and [describe other], that contributes to the setting, context, and the public's view of the Property;

**WHEREAS**, Grantor desires to grant to the Grantee and the Grantee desires to accept a natural, scenic, open-space, or architectural façade easement on real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property. The term "façade" as used herein consists of all exterior surfaces of the improvements on the Property, including all walls, roofs, and chimneys;

**WHEREAS**, the Property is comprised essentially of grounds, collateral or appurtenant improvements, and a [# of stories and material] building. Written descriptions and photographs of Property, along with the Property's conservation and preservation values, are documented in a set of reports, drawings, and photographs (hereinafter, "Baseline Documentation Report" or "Exhibit B") incorporated herein by reference. [As applicable] Exhibit B is on file at the offices of the Grantee but is not appended hereto. All parties agree that the Baseline Documentation Report provides an accurate representation of the Property as of the effective date of this historic preservation easement. In the event of any discrepancy between the Baseline Document Reports held by the Grantor and Grantee, the report retained by Grantee shall control;

[As applicable] **WHEREAS**, the Property stands as a significant example of [style] architecture in Idaho, illustrates aesthetics of design and setting, and possesses integrity of materials and workmanship;

[As applicable] **WHEREAS**, because of its architectural, historic, and/or cultural significance the Property was listed in the National Register of Historic Places on [date] [or certified by the National Park Service on [date] as a contributing building in the [name] National Register Historic District], and is a certified historic structure [or historically important land area] as described under Section 170(h) of the Code;

**WHEREAS**, Grantee is authorized to accept preservation and conservation easements to protect property significant in national, state, or local history and culture under the provisions of the State of Idaho's Uniform Conservation Act, Idaho Code, Title 55, Chapter 21 (hereinafter "the Act") and Idaho Code, Section 67-4129;

**WHEREAS**, Grantee is a "governmental unit" as defined in Sections 170(b)(1)(A)(v) and 170(c)(1) of the Internal Revenue Code of 1986, as amended ("IRC"), whose purposes include the preservation and conservation of sites, building, and objects of historic significance and is a qualifying recipient of

qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter, "the Code");

**WHEREAS**, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter "conservation and preservation values") and significance of the Property, and have the common purpose of conserving and preserving the aforesaid conservation and preservation values and significance of the Property;

[As applicable] **WHEREAS**, in consideration of the sum of \$[grant amount] 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 for the purpose of assuring preservation of the Property;

[As applicable] **WHEREAS**, the 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 [HPF Grant Program Name].

**WHEREAS**, the grant of a preservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and its architectural, historic, and cultural features for the benefit of the people of the Town [County] of \_\_\_\_\_, the State of \_\_\_\_\_, and the United States of America;

**WHEREAS**, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation easement (hereinafter, the "Easement") [in perpetuity on the Property pursuant to the Act] or [for [#] years commencing on the date when it is filed with the [county] County Recorder, in the State of Idaho, in the United States].

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and pursuant to 26 U.S.C. § 170 and State of Idaho's Uniform Conservation Act, Grantor does hereby voluntarily grant and convey unto the Grantee a preservation and conservation easement in perpetuity over the Property described in Exhibit A.

## **PURPOSE**

### **1. Purpose.**

It is the Purpose of this Easement to assure that the architectural, historic, cultural, and associated open space features of the Property will be retained and maintained in perpetuity in their current or better condition for conservation and preservation purposes and to prevent any use or change of the Property that will significantly impair or interfere with the Property's conservation and preservation values.

## **GRANTOR'S COVENANTS**

### **2.1 Duty to Maintain.**

(a) Grantor agrees at all times to maintain the Building(s) in the same or better structural condition and state of repair that are existing on the effective date of this Easement and documented in the Baseline Documentation Report. Grantor's obligation to maintain shall require replacement, repair, and/or reconstruction by Grantor whenever necessary to preserve the Building(s) in the same or better structural condition and state of repair as that existing on the date of this Easement.

(b) Grantor's obligation to maintain shall also require that the Property's landscaping be maintained in good/better appearance with substantially similar plantings, vegetation, and natural screening to that existing on the effective date of this Easement. The existing lawn areas shall be maintained as lawns, regularly mowed. [As applicable] The existing meadows and open fields shall be maintained as meadows and open fields, and vegetation should be regularly cut back to prevent the growth of woody vegetation where none currently grows.

(c) Subject to the casualty provisions of Paragraphs 7 and 8, the obligation to maintain shall require replacement, repair, and/or reconstruction whenever necessary in accordance with the standards stated in Paragraph 4.

## **2.2 Prohibited Activities.**

The following acts or uses are expressly forbidden on, over, or under the Property:

(a) The Building(s) shall not be demolished, removed, or razed except as provided in Paragraphs 7 and 8.

(b) Nothing shall be erected or allowed to grow on the Property which would impair the visibility of the Property and the Building(s) from the street level or other public rights of way.

(d) The dumping of trash, rubbish, ashes, or any other unsightly or offensive materials is prohibited on the Property.

## **GRANTOR'S CONDITIONAL RIGHTS SUBJECT TO APPROVAL**

### **3.1 Activities Requiring Approval by Grantee.**

The following acts are prohibited except with the prior express written approval of the Grantee, which approval may be withheld or conditioned in the sole discretion of Grantee:

(a) Grantor shall not increase or decrease the height of, make additions to, change the exterior construction materials or colors of, or move, improve, alter, reconstruct, or change the facades (including fenestration) and roofs of the Building(s).

[As applicable] (b) Grantor shall not remove, demolish, or alter the following interior features located in the Principal Building [or Building(s)/Ancillary Structures]: [Specific interior features that are to be protected are described here, if applicable]

[As applicable] (c) Grantor shall not change the floor plan of the Principal Building [or Building(s)/Ancillary Structures][limit or zone as applicable].

(d) Grantor shall not erect or place on the Property any additional Building(s) or structures, including but not limited to, sheds, barns, similar ancillary structures, and non-building structures such as utility transmission lines (subject to utility easements already recorded), satellite receiving dishes, antennas, cellular communications transmitters, or similar electronic frequency receiving or emitting devices, flagpoles, fences, walls, wind turbines, solar panels or other similar devices, tents of longer duration than 30 days, mobile homes or trailers, dumpsters, storage containers, camping accommodations, or other similar temporary structures

(e) Grantor shall not erect or allow to be erected any external signs or external advertisements except: (i) such plaque permitted under Paragraph 19 of this Easement; (ii) a sign stating solely the name and/or address of the Property and owner; and (iii) a temporary sign to advertise the sale or rental of the Property.

(f) Grantor shall not make substantial topographical changes, such as, by example, excavation for the construction of roads, swimming pools, and recreational facilities. Grantee, at its discretion, may as a condition of granting approval, require Grantor, at Grantor's cost, to perform an archaeological survey to identify and determine the significance of archaeological deposits. If archaeological deposits are identified, then Grantee may deny or conditional approval of topographical changes as appropriate.

[As applicable] Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Property, and that archaeologically significant deposits, sites, or features on the Property shall not be intentionally disturbed or excavated except by or under the supervision of a professionally qualified archaeologist retained by Grantor, and an archaeological plan approved by the Grantee.

(g) Grantor shall not cut down or remove live trees located in the lawn, open fields, or meadow areas unless diseased or damaged as determined in the sole discretion of the Grantee. Grantee may require, at Grantor's expense, a professional arborist's report as a condition of reviewing any request to remove live trees.

[As applicable] (h) Grantor shall not cut down or remove live trees located in forests for the purpose of conducting commercial timber production [or allow conditional harvesting of timber except in accordance with a qualified forest management plan presented to Grantee for approval.]

(i) The Grantor shall not change the use of the Property to another use. The Grantee must determine that the proposed use: (i) does not impair the significant conservation and preservation values of the Property; and (ii) does not conflict with the Purpose of the Easement.

(j) The Grantor shall not divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit. For the purposes of this Easement the term "subdivision" shall include a long-term lease or other use of any portion of the Property that creates the characteristics of a subdivision of the property, as determined in the sole discretion of the Grantee. The term "subdivision" shall also include division into condominium or cooperative interests or the partition of undivided interests in the property.

(k) The Grantor shall not make any boundary line adjustments.

(l) The Grantor shall not execute any easement for any purpose, including access easements, utility easements or overlay easements in favor of any private person or entity or any public utility.

### **3.2 Review of Grantor's Requests for Approval**

(a) Pursuant to Paragraph 3.1, Grantor shall submit in writing to Grantee for Grantee's approval information (including plans, specifications, and designs where appropriate) together with a specific request identifying the proposed activity. In addition, Grantor shall also submit to Grantee a timetable for the proposed activity which is sufficient to permit Grantee to monitor such activity. Grantor shall not make changes or take any action subject to the approval of Grantee unless expressly authorized in writing by an authorized representative of Grantee.

(b) Grantee reserves the right to consult with governmental agencies, nonprofit preservation and conservation organizations, and/or other advisors deemed appropriate by the Grantee, concerning the appropriateness of any activity proposed under this Easement.

(c) All approval rights of the Grantee shall be exercised at the reasonable discretion of Grantee. Grantee agrees to use its reasonable efforts to respond to any written request of Grantor not later than thirty (30) days following receipt by Grantee of Grantor's request. Failure of Grantee to respond to Grantor within the thirty (30) day period shall not, however, be deemed to constitute approval of Grantor's request.

(d) In the event that the Grantor does not implement any approval granted pursuant to Paragraphs 3.1 and 3.2, for a period of one (1) year, such approval shall be void. Grantor may resubmit the request for approval; however, such approval may be given or denied in the sole discretion of the Grantee.

## **STANDARDS FOR REVIEW**

### **4. Standards for Review.**

In exercising any authority created by this Easement to inspect the Property or the interior of the Building(s); to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction following casualty damage, Grantee shall apply the following standards (hereinafter "the Secretary's Standards"), as they may be amended from time to time: For buildings and structures: The Secretary of the Interior's Standards for Rehabilitation (36

C.F.R. § 67.7) and the guidelines referenced therein; and, for landscapes: The Secretary of the Interior's Guidelines for Rehabilitating Cultural Landscapes.

## **GRANTOR'S RESERVED RIGHTS**

### **5. Grantor's Reserved Rights Not Requiring Further Approval by Grantee.**

Subject to the provisions of Paragraphs 2.1, 2.2, 3.1, and 3.2, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval by Grantee:

(a) the right to engage in all those acts and uses that:

- (i) are permitted by governmental statute or regulation;
- (ii) do not substantially impair the conservation and preservation values of the Property; and
- (iii) are not inconsistent with the Purpose of this Easement;

(b) pursuant to the provisions of Paragraph 2.1, the right to conduct ordinary maintenance and repair the Building(s) strictly according to the Secretary's Standards, subject to the following qualifications:

- (i) The right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Building(s).
- (ii) The right to maintain and repair shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior written approval of Grantee in accordance with the provisions of Paragraphs 3.1 and 3.2.
- (iii) The right to maintain and repair shall not include the right to replace historic materials.

(c) the right to continue all manner of existing use and enjoyment of the Property's Building(s) [and Garden], including but not limited to the maintenance, repair, and restoration of existing fences; the right to maintain existing driveways, roads, and paths with the use of same or similar surface materials; the right to maintain existing utility lines, gardening and building walkways, steps, and garden fences; the right to cut, remove, and clear grass or other vegetation and to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Easement.

## **PUBLIC ACCESS**

### **6. Public Access.**

[As applicable] Grantor shall make the Property [and interior portions of any structure protected under the Easement] accessible to the public on a minimum of \_\_\_ days per year. This requirement may be fulfilled through an open house, house tour, or similar event that is open to the general public following published notice. Grantor may have a representative present during such public access, and access may be subject to reasonable restrictions to ensure security of the property and safety of the visitors.

[As applicable] 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.

At other reasonable times, upon request of Grantee made with reasonable notice to Grantor, persons affiliated with educational organizations, professional architectural associations, and historical societies shall be admitted to study the property. In addition, Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, and architectural character and features of the property and may use or publish them (or authorize others to do so) to fulfill its charitable or educational purposes.

## **CASUALTY DAMAGE OR DESTRUCTION; INSURANCE**

### **7. Casualty Damage or Destruction.**

In the event that the Property or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (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 Grantor without Grantee's prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and/or a structural engineer who is acceptable to Grantor and Grantee; this report shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of the Building(s) and/or reconstruction of damaged or destroyed portions of the Building(s); and
- (c) a report of such restoration/reconstruction work necessary to return the Building(s) to the condition existing at the effective date of this instrument.

### **8. Review After Casualty Damage or Destruction.**

If, after reviewing the report provided in Paragraph 7 and assessing the availability of insurance proceeds, Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Building(s) in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Easement would not be served by such restoration/reconstruction, Grantor may, but only with the prior written consent of Grantee, alter, demolish, remove, or raze one or more of the Building(s), and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of Idaho and Paragraph 23.2 of this instrument.

### **9. Insurance.**

(a) Grantor shall keep the Property insured by an insurance company rated "Secured" by an independent rating agency for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage.

(b) Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property and Building(s) without cost or expense to Grantor or contribution or coinsurance from Grantor. Such insurance shall include Grantee's interest, name Grantee as an additional insured, and provide for at least thirty (30) days' notice to

additionally insured before cancellation and that the act or omission of one insured will not invalidate the policy to the other insured.

(c) Grantor shall deliver to Grantee a certificate of insurance annually or when coverage is renewed by Grantor. If Grantor fails to submit proof of insurance coverage annually or at the time of renewal, Grantor must deliver proof of coverage within ten (10) days of Grantee's written request for documentation of coverage.

## **INDEMNIFICATION AND TAXES**

### **10. Indemnification.**

Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, trustees, directors, officers and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury or other damage occurring on or about the Property, unless such injury or damage is caused by Grantee or any agent, trustee, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. The Grantee is not responsible for any environmental or biological hazards found on the Property.

### **11. Taxes.**

Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal of the charge, in which case the obligation to pay such charges as defined in this paragraph shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

## **ADMINISTRATION AND ENFORCEMENT**

### **12. Written Notice.**

Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods: electronic mail, by overnight courier postage prepaid, regular postal services, registered or certified mail with return receipt requested, or hand delivery; if to Grantor, then at [address], and if to Grantee, then to 210 W Main Street, Boise, Idaho, 83702.

Each party may change its address set forth herein by a notice to such effect to the other party.

### **13. Evidence of Compliance.**

Upon request by Grantor, Grantee shall promptly furnish Grantor with a certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of this Easement, or that otherwise describes the status of this Easement to the extent of Grantee's knowledge.

**14. Inspection.**

With appropriate prior notice to Grantor, Representatives of Grantee shall be permitted at all reasonable times to inspect the Property [including the interior of the Principal Building] [and/or Building(s)/Ancillary Structures].

**15. Grantee's Remedies.**

Grantee may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this easement by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Building(s) to the condition and appearance that existed prior to the violation complained of in the suit. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations contained in this instrument.

In the event Grantor is found to have violated any of its obligations, Grantor shall, promptly upon request, reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Easement, including but not limited to all reasonable court costs, and attorney, architectural, engineering, and expert witness fees. The amount of debt shall be secured by a lien upon the Property, and if Grantor shall fail to reimburse Grantee in fully immediately after request, then Grantee may enforce the lien in the same manner as a mechanic's lien.

Exercise by 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.

**16. Notice from Government Authorities.**

Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

**17. Notice of Proposed Sale.**

Grantor shall promptly notify Grantee in writing of any proposed offer to sell the Property or of any listing of the Property for sale and provide the opportunity for Grantee to explain the terms of the Easement to the real estate listing agent and potential new owners prior to sale closing.

**18. Liens.**

Any liens on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien.

**19. Plaque.**

Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 24 by 24 inches in size, giving notice of the significance of the Property and the existence of this Easement.

**BINDING EFFECT AND ASSIGNMENT**

**20. Runs with the Land.**

Except as provided in Paragraphs 8 and 23.2, the obligations imposed by this Easement shall be effective in perpetuity [or for # years] and shall be deemed to run as a binding servitude with the



Property. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all such persons in the future claiming under or through Grantor and Grantee; the words "Grantor" and "Grantee" when used in this instrument shall include all such persons. Any right, title, or interest granted in this instrument to Grantee also shall be deemed granted to each successor and assign of Grantee and each following successor and assign; the word "Grantee" shall include all such successors and assigns.

An owner of the 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 Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself 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.

### **20.1 Liens Subordinated.**

Grantor represents that as of the date of this grant (and effective through the date of recordation), there are no liens or mortgages outstanding against the Property, except any listed in Exhibit C that are subordinated to Grantee's rights under this Easement. Grantor has the right to use the Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Grantee's rights under this Easement. Under no circumstances may Grantee's rights be extinguished or otherwise affected by the recording, foreclosure, or any other action taken concerning any subsequent lien or other interest in the Property created as a result of the use of the Property as collateral for the repayment of debt.

### **21. Assignment.**

Grantee may convey, assign, or transfer this Easement to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" under Section 170(h) of the Code whose purpose, among other things, is to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Easement was granted will continue to be carried out.

### **22. Recording and Effective Date.**

Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of [town, county or regional district], Idaho. Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the land records of [town, county, or regional district], Idaho.

## **PERCENTAGE INTERESTS AND EXTINGUISHMENT**

### **23.1 Percentage Interests.**

For purposes of allocating proceeds pursuant to Paragraphs 23.2 and 23.3, Grantor and Grantee stipulate that as of the date of this Easement, Grantor and Grantee are each vested with real property interests in the Property and that such interests have a stipulated percentage interest in the fair market value of the Property. These percentage interests shall be determined by the ratio of the Easement's value on its effective date to the value of the Property, without deduction for the value of the Easement, on the effective date of this Easement. The values on the effective date of the Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. The parties shall include the ratio of those values with the Baseline Documentation (on file with Grantor and Grantee) and shall amend such values, if necessary, to reflect any final determination by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Property thereby

determinable shall remain constant, except that the value of any improvements made by Grantor after the effective date of this Easement is reserved to Grantor.

### **23.2 Extinguishment.**

Grantor and Grantee hereby recognize that circumstances may arise that may make the continued ownership or use of the Property in a manner consistent with the Purpose of this Easement impossible and that extinguishment of the Easement may be necessary. 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. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and any costs or expenses associated with such sale, Grantor and Grantee shall share in any net proceeds resulting from such sale in accordance with their respective percentage interests in the fair market value of the Property, as such interests are determined under the provisions of Paragraph 23.1, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's primary purposes. Net proceeds shall also include, without limitation, net insurance proceeds. In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

### **23.3 Condemnation.**

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, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the 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 Grantor and Grantee in connection with such taking, Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Paragraphs 23.1 and 23.2 unless otherwise provided by law.

## **INTERPRETATION**

### **24. Interpretation.**

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

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Easement, and this instrument shall be interpreted broadly to affect its Purpose and the transfer of rights and the restrictions on use contained in this instrument.

(b) This instrument may be executed in two counterparts, one of which may be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern.

(c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity 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 its subject matter.

(d) Nothing contained in this instrument shall be interpreted to authorize or permit 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 of this instrument, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or hereafter under any applicable zoning or similar ordinance, that would permit the Property to be developed to a use or uses more intensive (in terms of height, bulk, number of structures, assemblage of lots, subdivision, or other criteria related by such ordinances) than that to which the Property is devoted as of the date of this Easement, such development rights shall not be exercisable on, above, or below the Property during the term of the Easement, nor shall they be transferred to any adjacent or other parcel.

(f) To the extent that any action taken by Grantee pursuant to this Easement gives rise to a claim of breach of contract, Grantor and Grantee agree that the sole remedy on the part of Grantor shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Grantor as a result of such breach and that Grantor shall not have any right to indirect, consequential, or monetary damages in excess of such actual, direct, and reasonable out-of-pocket expenses.

[As applicable] (g) While it is the mutual intention of Grantor and Grantee that the grant of this Easement shall constitute a qualified conservation contribution under federal and/or state law, Grantor is solely responsible for ensuring that the terms of the Easement and the circumstances of the grant meet the qualifications necessary for Grantor to obtain federal or state benefits applicable to qualified conservation contributions. Grantee makes no representation that the grant of this Easement entitles Grantor to any tax or other benefit under federal, state, or local law, and Grantor's failure to qualify for any such benefit relating to the grant of this Easement shall not constitute grounds for the rescission, termination, extinguishment, or amendment of this Easement, or for any claim of damages.

## **AMENDMENT**

### **25. Amendment.**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) of the Code and the laws of the State of Idaho. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the Purpose of this Easement; shall not affect its perpetual [or # years] duration; shall not permit additional residential and/or commercial development on the Property other than the residential and/or commercial development permitted by this Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Easement. Any such amendment shall be recorded in the land records of [town, county, or regional district], Idaho. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

## **PUBLIC LAW 109-280, Title XII, Subtitle B, Section 1213 "SPECIAL RULES" COMPLIANCE** [Numbers 26-28, as applicable for certain easements seeking tax deductions]

### **26. Protection of Entire Building.**

Grantor and Grantee agree that that the restrictions of this Easement shall apply to the entire exterior of the Building(s) (including the front, sides, rear, and height of the Building(s)) [and interior architectural features, as applicable], and that no change to the exterior of the Building(s) may be made by Grantor except as provided herein.

### **27. Inconsistent Changes Prohibited.**

Grantor and Grantee agree that Grantor shall not undertake, and Grantee shall not permit, any change to the exterior of the Building(s) [and interior architectural features, as applicable,] which would be inconsistent with the historical character of such exterior.

**28. Certification of Qualification of Grantee Under Penalty of Perjury.**

By execution of this Easement, Grantor and Grantee agree, and hereby certify under penalty of perjury, that Grantee is a qualified easement-holding organization (as defined in Section 170(h)(3) of the Internal Revenue Code) with a purpose of environmental protection, open space preservation, or historic preservation, and that the Grantee has both the resources to manage and enforce the restrictions of this Easement and a commitment to do so.

**GIFT ACKNOWLEDGMENT** [as applicable for donated easements accompanied by cash contributions]

**29. Gift Acknowledgment.**

Grantee hereby acknowledges the gift by Grantor of the real property interest described in this Deed of Preservation Easement, effective as of the date stated above, and further acknowledges that no goods or services were provided to Grantor in exchange for the donation of the Easement. Grantee also acknowledges that on [date] Grantor made an accompanying cash contribution of \_\_\_\_\_ to Grantee to support its charitable purposes, including but not limited to carrying out Grantee's obligations under this Easement, and Grantee further acknowledges that no goods or services were provided to Grantor in exchange for that cash contribution.

**THIS EASEMENT** reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution of this agreement, unless set out in this instrument. Grantor acknowledges that this Easement affects important legal rights and obligations of Grantor, including the rights and obligations of Grantor's successors and assigns, and that Grantor has had the opportunity to consult with knowledgeable legal counsel of Grantor's own choosing prior to execution of the Easement.

**TO HAVE AND TO HOLD**, the said Preservation and Conservation Easement, unto the said Grantee and its successors and permitted assigns in perpetuity [or for # years]. This **DEED OF PRESERVATION EASEMENT** 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.

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

[As applicable for certain tax benefited easements: Grantor and Grantee expressly acknowledge and understand that, by their execution of this document, the certification under Paragraph 28 is made under penalty of perjury.]

**GRANTOR:**

[PROPERTY OWNER NAME]

By: \_\_\_\_\_  
[Name], [Title]

**WITNESS:**

**GRANTEE:**

STATE OF IDAHO  
IDAHO STATE HISTORICAL SOCIETY

By: \_\_\_\_\_  
[Name], [Title]

By: \_\_\_\_\_  
[Name], Executive Director

[Notarizations to follow]

State of Idaho            )  
                                  )        SS.  
County of [Name]        )

On this \_\_\_\_ day of [Month], [Year], before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared [Name of Property Owner], a party to the foregoing agreement, acknowledged that, being authorized to do so, [he/she/they] executed the above instrument, and acknowledge to me that said partnership executed the same.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

State of Idaho            )  
                                  )        SS.  
County of Ada            )

On this \_\_\_\_ day of [Month], [Year], before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared [ISHS Executive Director], who acknowledged [himself/herself/themselves] to be the Executive Director of The Idaho State Historical Society, a party to the foregoing agreement, executed the above instrument on behalf of said organization for the State of Idaho and acknowledge to me that such organization executed the same.

\_\_\_\_\_

\_\_\_\_\_  
Notary Public for Idaho

Residing at \_\_\_\_\_

My commission expires: \_\_\_\_\_

## **SCHEDULE OF EXHIBITS**

- A. Legal Property Description
- B. Baseline Documentation Report [generally non-recordable]
- C. Subordinated Liens or Mortgages [as applicable]

**EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY**

**Easement donated by [property owner] to the  
Idaho State Historical Society in the State of Idaho**

**[Property Name]  
[Street Address]  
[City, State, Zip Code]**



**EXHIBIT B: BASELINE DOCUMENTATION REPORT**

**Easement donated by [property owner] to the  
Idaho State Historical Society in the State of Idaho**

**[Property Name]  
[Street Address]  
[City, State, Zip Code]**

[Use Baseline Documentation Report template]

**EXHIBIT C: MORTGAGE SUBORDINATION AGREEMENT [as applicable]**

**Easement donated by [property owner] to the  
Idaho State Historical Society in the State of Idaho**

**[Property Name]  
[Street Address]  
[City, State, Zip Code]**

**THIS SUBORDINATION AGREEMENT**, made this \_\_\_ day of \_\_\_, 20\_\_\_, between \_\_\_\_\_ a \_\_\_\_\_ corporation with offices at \_\_\_\_\_ ("Mortgagee"), and the State of Idaho through the Idaho State Historical Society, having offices at 210 W Main Street, Boise, Idaho 83702 ("Easement Holder").

**WITNESSETH:**

**WHEREAS**, Mortgagee is the holder of that certain mortgage dated \_\_\_\_\_ granted by ("Mortgagor") in favor of Mortgagee to secure an indebtedness in the original principal amount of dollars (\$ \_\_\_\_\_) (the "Mortgage"); and

**WHEREAS**, the Mortgage created a lien on certain real property owned by Mortgagor in County, \_\_\_ more particularly described on Exhibit A annexed hereto (the "Property"); and

**WHEREAS**, the Mortgage was recorded in the land records of \_\_\_\_\_ County, in Book \_\_\_ at page \_\_\_; and

**WHEREAS**, Mortgagor has agreed to grant to Easement Holder a Deed of Preservation Easement (the "Preservation Easement") restricting the use of the Property, or a portion thereof; and

**WHEREAS**, a true and complete copy of the Preservation Easement has been provided to Mortgagor; and

**WHEREAS**, the Preservation Easement is intended to be recorded simultaneously herewith; and

**WHEREAS**, Easement Holder has agreed to accept the grant of the Preservation Easement, subject to the subordination or discharge of all prior liens, mortgages, and other encumbrances affecting the Property; and

**WHEREAS**, Mortgagee is willing to subordinate the lien of the Mortgage to the provisions of the Preservation Easement;

**NOW, THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, Mortgagee and Easement Holder agree as follows:

1. The Mortgage, and all of Mortgagee's rights, interests, claims, remedies and privileges under the Mortgage are, and at all times shall continue to be, subject and subordinate in all respects to the Preservation Easement, with the same force and effect as if the Preservation Easement had been executed, delivered and recorded prior to the execution and delivery of the Mortgage.
2. If any action or proceeding is commenced by Mortgagee for the foreclosure of the Mortgage or the sale of all or part of the Property, Easement Holder will not be named as a party therein, and the sale of the Property (or a portion thereof) in any such action or proceeding shall be made subject to all rights of Easement Holder under the Preservation Easement.
3. If Mortgagee shall become the owner of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Preservation Easement shall not be affected thereby, but shall continue in full force and effect, and Mortgagee shall abide by all of the terms, covenants and conditions set forth in the Preservation Easement.

4. Easement Holder shall not amend or modify the Preservation Easement without the prior written consent of Mortgagee, which shall not be unreasonably withheld, and any amendment or modification of the Preservation Easement undertaken without Mortgagee's consent shall not be binding upon Mortgagee.

5. Easement Holder shall notify Mortgagee of any violation of the terms and conditions of the Preservation Easement which is not timely cured; provided, however, that Easement Holder's failure to notify Mortgagee of a violation of the Preservation Easement shall not bar Easement Holder from subsequently enforcing the terms of the Preservation Easement against Mortgagee or any other party.

6. All notices, requests, demands, elections, consents, approvals and other communications under this Agreement (each such communication, a "notice") must be in writing and delivered by hand, by United States mail or by commercial express courier service to Mortgagee and Easement Holder at the following addresses (or at any other address which Mortgagee or Easement Holder may designate by notice from time to time):

If to Mortgagee:

[Owner Name and Address]

With a copy to:

[Lawyer Name and Address]

If to Easement Holder:

Idaho State Historic Preservation Office  
ATTN: [Name], Easement Program Manager  
210 W Main Street, Boise, ID 83702

7. This Agreement shall be binding upon and inure to the benefit of Mortgagee and Easement Holder and their respective successors and assigns.

8. This Agreement may not be amended or modified except by an instrument in writing executed by the party against whom such amendment or modification is sought to be enforced.

9. This Agreement shall be construed and enforced in accordance with the laws of the state where the Property is located.

**IN WITNESS WHEREOF**, Mortgagee and Easement Holder have duly executed this Agreement as of the date first above written.

[Mortgagee]

By: \_\_\_\_\_  
[Name], [Title]

Idaho State Historical Society

By: \_\_\_\_\_  
[Name], [Title]