

The Illinois State Historic Preservation Office will use this model historic-preservation covenant to avoid certain adverse effects to standing structures under Section 106 of the National Historic Preservation Act or under the Illinois State Agency Historic Resources Preservation Act. The model covenant is intended for informational purposes only. Your actual covenant may differ, as each site and application is unique. The Department is not attempting to provide legal advice through this example. The highlighted text should be replaced with text tailored to the project under review.

[space above reserved for recording information]

This instrument was prepared by:

Illinois State Historic Preservation Office
Illinois Department of Natural Resources
One Old State Capitol Plaza
Springfield, Illinois 62701

Please return this instrument to:

[NAME OF COVENANT GRANTOR POINT OF CONTACT]
[TITLE]
[COVENANT GRANTOR]
[MAILING ADDRESS]

HISTORIC PRESERVATION COVENANT

This Historic Preservation Covenant (Covenant) is made this [DATE THE GRANTOR SIGNS THE COVENANT] day of [MONTH THE GRANTOR SIGNS THE COVENANT], [YEAR THE GRANTOR SIGNS THE COVENANT], by and between the [NAME OF COVENANT GRANTOR] (Covenant Grantor) and the Illinois Department of Natural Resources (Covenant Grantee) pursuant to [National Historic Preservation Act (54 USC §306108 and 36 CFR Part 800 OR the Illinois State Agency Historic Resources Preservation Act (20 ILCS 3420)] (Act) and the Real Property Conservation Rights Act (765 ILCS 120/ *et seq*) for the purpose of encumbering the Property subject to this Covenant, as described in Paragraph 1, to the Historic Preservation Restrictions and Requirements and other terms set forth herein. The purpose of this Covenant and the Historic Preservation Restrictions and Requirements set forth herein are to secure the long-term preservation of the historic resources associated with the Property.

- 1. Property.** The real property subject to this Covenant is located at [ADDRESS] in [MUNICIPALITY], [COUNTY], Illinois [ZIP], and is legally described in Appendix A. This property and any improvements thereon as of the effective date of this Covenant are hereinafter referred to as the “Property.”

2. **Historic Property Designation.** The Property is a Historic Property as defined in the Act and the regulations promulgated thereunder and is subject to legal restrictions on the use of the property pursuant to the Act. The Covenant Grantor desires to sell the Property to a private entity that would not otherwise be subject to such legal restrictions on use. The Covenant Grantee, acting through the Illinois State Historic Preservation Office (SHPO), has determined that such a sale would be an “undertaking” that would have an “adverse effect” on the Property, as defined in the Act. To address this adverse effect, Covenant Grantor and Covenant Grantee have agreed that entering into this Covenant will avoid the adverse effect of the proposed sale by maintaining many of the restrictions on use of the Property.
3. **Grant of Covenant. Covenant Runs With The Land.** In consideration for the benefits set forth above, the Covenant Grantor grants this Covenant pursuant to all the terms herein to the Covenant Grantee for the subject Property. This Covenant is binding on the Covenant Grantor and any Subsequent Owner(s) that acquire any interest in the Property after the Covenant Grantor, their heirs, successors, and assigns in perpetuity and shall be deemed to run with the land. All restrictions, stipulations, and covenants contained herein shall be inserted by the Covenant Grantor or Subsequent Owner(s) verbatim or by the express reference in any deed or other legal instrument by which Covenant Grantor and/or Subsequent Owner(s) divests themselves of either the fee simple title or any other lesser estate in the Property or any part thereof. Execution of this Covenant shall constitute conclusive evidence that the Covenant Grantor or Subsequent Owner(s) agree to be bound by the terms set forth herein.
4. **Historic Preservation Restrictions and Requirements.** The following restrictions and requirements apply to the use of the Property in perpetuity from and after the initial transfer by Covenant Grantor to subsequent owner:
 - a. No construction, alteration or demolition affecting the Property of any kind shall commence until the Subsequent Owner(s) have received written certification from Covenant Grantee that: (1) all work is anticipated to be in substantial conformance with the Secretary of the Interior’s Standards for Rehabilitation (36 CFR Part 67) (Standards) or (2) the changes are determined to be clearly of a minor nature and not affecting architectural, archaeological or historic values of the Property. The certifications required by this paragraph are in the sole discretion of the Covenant Grantee.
 - b. The Property shall be kept and maintained in reasonably good order, condition and repair, in conformance with the Standards.
 - c. Before plans for any proposed construction, alteration or demolition affecting the Property are finalized, the Subsequent Owner(s) will provide notice and such information to the Covenant Grantee as will reasonably inform the Covenant Grantee as to the work proposed to be performed, the scope of the work, details of the treatment and materials and application, along with any other documentation requested by the Covenant Grantee and reasonably needed to define the nature and character of the work to be performed, and the anticipated period of time in which the work is estimated to be completed.

- d. Should the Property become damaged or destroyed, whether caused by the Subsequent Owner or through a cause beyond the Subsequent Owner's or Owners' control, the Subsequent Owner(s) will notify the Covenant Grantee in writing of such damage or destruction as soon practicable, but in all cases within 30 days of the damage or destruction to the Property. The notice will at a minimum include the following information:
 - i. photographs of the nature and extent of the damage; and
 - ii. an estimate of the restoration/reconstruction work necessary to return the Property to the condition existing prior to said damage or destruction, along with any plans and specifications prepared for the work required; and
 - iii. a description of any emergency work already completed.

If, after review of the notice and any investigation deemed appropriate, the Covenant Grantee determines that it is reasonable to restore/reconstruct the Property and that such restoration/reconstruction would serve the purpose and intent of this Covenant, the Covenant Grantee will notify the Subsequent Owner(s) of this determination, and the Subsequent Owner(s) shall restore/reconstruct the Property according to Paragraphs 4(b) and 4(c) of this Covenant.

If, after review of the notice and any investigation deemed appropriate, the Covenant Grantee determines that it is not reasonable to restore/reconstruct the Property or that such restoration/reconstruction would not serve the purpose and intent of this Covenant, the Covenant Grantee will notify the Covenant Grantor and/or Subsequent Owner(s) of this determination. Thereafter, the Covenant Grantor and/or Subsequent Owner(s) may elect either to restore/reconstruct the Property according to Paragraphs 4(b) and 4(c) or to request that the Covenant Grantee terminate this Covenant.

- 5. **Covenant Grantee Access to Property.** The Subsequent Owner(s) consent to officers, employees, contractors, and authorized representatives of Covenant Grantee entering and having continued access at reasonable times to the Property for the following purposes:
 - a. Verifying any data or information submitted to the Covenant Grantee; and
 - b. Verifying that no action is being taken on the Property in violation of the terms of this Covenant or of any federal or state laws or regulations;

Nothing in this Covenant shall limit or otherwise affect the Covenant Grantee's rights of entry and access to the Property pursuant to this Paragraph.

- 6. **Covenant Grantee Assignment.** The Covenant Grantor and/or Subsequent Owner(s) consent to the Covenant Grantee, at its sole discretion and without prior notice to the

Covenant Grantor and Subsequent Owner(s), conveying and assigning all or part of its rights and responsibilities contained herein to a third party.

7. **Covenant Grantor's and/or Subsequent Owners' Reserved Rights.** The Covenant Grantor and/or Subsequent Owner(s) hereby reserve unto themselves, their successors and assigns, including heirs, lessees and occupants, all rights and privileges in and to the use of the Property that are not incompatible with the restrictions and requirements identified herein. No right of access or use by the public to any portion of the Property is conveyed by this Covenant.
8. **Discretion to Amend, Modify or Terminate.** The Covenant Grantee may for good cause amend, modify, or terminate any or all of the terms, restrictions and requirements of this Covenant upon application by and notice to the Covenant Grantor and/or Subsequent Owner(s), their heirs, successors or assigns, if, in the sole discretion of the Covenant Grantee, the preservation purpose of this Covenant is no longer applicable in whole or in part.
9. **Covenant, Amendments and Termination: Recording and Notice.**
 - a. **Covenant.** This Covenant must be recorded in the Office of the Recorder or Registrar of Titles of the county in which the Property that is the subject of the Covenant is located. Within 30 days after Covenant Grantee signs and delivers to the Covenant Grantor this Covenant, the Covenant Grantor shall record this Covenant in the office of the County Recorder or Registrar of Titles for the County in which the Property is located. Within 30 days after recording the Covenant, the Covenant Grantor shall transmit a copy of the Covenant in recorded form to:
 - i. Covenant Grantee; and
 - ii. each person holding a recorded interest in the Property, including those interests in Appendix B; and
 - iii. each person or entity in possession of the Property.
 - b. **Amendment or Termination.** Within 30 days after Covenant Grantee signs and delivers to the Covenant Grantor or Subsequent Owner any termination, amendment or modification of this Covenant, the Covenant Grantor and/or Subsequent Owner(s) shall record the amendment, modification, or termination of this Covenant in the office of the County Recorder or Registrar of Titles in which the Property is located. Within 30 days after recording the termination, amendment or modification, the Covenant Grantor and/or Subsequent Owner(s) shall transmit a copy of the termination, amendment or modification in recorded form to:
 - i. Covenant Grantee; and
 - ii. each person holding a recorded interest in the Property, including those interests in Appendix B; and

- iii. each person or entity in possession of the Property.

10. Future Conveyances: Covenant Notice and Reservation.

- a. Should the Property be conveyed or transferred at any time after the effective date of this Covenant, Covenant Grantor and/or Subsequent Owner(s) agree to include in any future instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases, licenses, covenants and mortgages, a notice and reservation that is in substantially the following form applicable to the specific transaction:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO, AND [BUYER / LESSEE / LICENSEE / MORTGAGEE] SPECIFICALLY RATIFIES, THE HISTORICAL PRESERVATION COVENANT RECORDED IN THE OFFICIAL PROPERTY RECORDS OF [COUNTY] COUNTY, ILLINOIS ON _____ AS DOCUMENT NO. _____, IN FAVOR OF AND ENFORCEABLE BY THE ILLINOIS DEPARTMENT OF NATURAL RESOURCES, AS THE HISTORICAL PRESERVATION COVENANT GRANTEE, OR ITS ASSIGN.

[After this covenant is filed, if the property is conveyed or transferred, this wording must be used as a notice and the blanks above must be filled in with the county, the date this covenant was recorded, and the document number it was assigned.]

- b. The Covenant Grantor and/or Subsequent Owner(s) agree to provide written notice to Covenant Grantee within 30 days after any conveyance of fee title to the Property or any portion of the Property. The notice shall identify the name and contact information of the new Subsequent Owner(s) and the portion of the Property conveyed to that Subsequent Owner(s).

11. Enforcement and Compliance.

- a. The Covenant Grantee may enforce the terms of this Covenant through any and all remedies at law or equity, including but not limited to civil action for injunction or equitable relief. Such an action may be brought by the Covenant Grantee or its designated agent, including but not limited to the Illinois Attorney General.
- b. The Covenant Grantor and/or all former Subsequent Owner(s) remain subject to enforcement with respect to any violation of this Covenant that occurred during the time when the Covenant Grantor and/or former Subsequent Owner(s) were bound by this Covenant regardless of whether the Covenant Grantor and/or former Subsequent Owner(s) has subsequently conveyed the Property to another person.

- c. Failure of the Covenant Grantee to exercise any enforcement right or remedy granted under this Covenant shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.

12. Survivability of Covenant. This Covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or similar doctrine.

13. Covenant Grantor's Representations and Warranties. The Covenant Grantor hereby represents and warrants to the Covenant Grantee that, at the time of execution of this Covenant: (1) The Covenant Grantor is lawfully seized in fee simple of the Property and (2) The Covenant Grantor has a good and lawful right and power to grant this Covenant.

14. Notice to Parties. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing. This Covenant may be amended or terminated by consent only if the amendment or termination is signed by the Covenant Grantee and the Covenant Grantor or Subsequent Owners of the Property. If the Covenant Grantor or Subsequent Owners no longer owns the Property at the time of proposed amendment or termination, the Covenant Grantor and all non-current Subsequent Owners waive the right to consent to an amendment or termination of this Covenant. Notice to the initial parties of this Covenant shall be made via mail to:

Covenant Grantor:

[NAME OF COVENANT GRANTOR]
[GRANTOR'S MAILING ADDRESS]

Covenant Grantee:

Illinois Department of Natural Resources
1 Natural Resources Way
Springfield, IL 62702-1271

15. General Provisions:

- a. **Controlling law.** This Covenant shall be construed according to and governed by the laws of the State of Illinois and the United States of America.
- b. **Liberal construction.** Any general rule of construction to the contrary notwithstanding, this Covenant shall be liberally construed in favor of the establishment of activity and use limitations that run with the land to affect the purpose of this instrument. If any provision of this Covenant is found to be ambiguous, an interpretation consistent with the purpose of this Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Covenant Grantor's title in any respect.

- d. **Joint Obligation:** If there are two or more parties identified as Covenant Grantor or Subsequent Owners herein, the obligations imposed by this instrument upon them shall be joint and several.
- e. **Captions.** The captions in this Covenant have been inserted solely for convenience of reference and are not a part of this Covenant and shall have no effect upon construction or interpretation.
- f. **Severability.** All terms, restrictions and requirements in this Covenant shall be severable, and should any terms, restrictions or requirements in this Covenant be declared invalid or unenforceable, the remaining terms, restrictions and requirements shall not terminate.
- g. Signatures on separate pages.

16. **Effective Date:** This Covenant is effective on the date signed by the Covenant Grantee.

17. **List of Appendices:**

Appendix A – Legal Description, Map of the Property, and Plat of Survey (if applicable)

Appendix B – List of Recorded Encumbrances (if applicable)

[Signature Pages to follow]

[If the Covenant Grantor is an organization rather than an individual, include the following sentence. If the Covenant Grantor is not an organization, delete the following sentence.]

THE UNDERSIGNED REPRESENTATIVE OF THE COVENANT GRANTOR REPRESENTS AND CERTIFIES THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS HISTORIC PRESERVATION COVENANT.

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW:

FOR THE COVENANT GRANTOR:

[COVENANT GRANTOR]

By: _____(signature)
[NAME]
[TITLE]

State of Illinois)
) SS.
County of [COUNTY])

On [DATE AND YEAR], this instrument was acknowledged before me by [NAME OF SIGNER], [TITLE] of [COVENANT GRANTOR], on behalf of Covenant Grantor.

_____(signature)
Notary Public
My Commissioner Expires _____

FOR THE COVENANT GRANTEE:

ILLINOIS DEPARTMENT OF NATURAL RESOURCES

By: _____(signature)
Colleen Callahan
Director and Illinois State Historic Preservation Officer
Illinois Department of Natural Resources

State of Illinois)
) SS.
County of Sangamon)

On **[DATE AND YEAR]**, this instrument was acknowledged before me by Colleen Callahan, Director of the Illinois Department of Natural Resources, a state agency, on behalf of the State of Illinois.

_____ (signature)
Notary Public
My Commissioner Expires _____

APPENDIX A

LEGAL DESCRIPTION, MAP OF SUBJECT PROPERTY, AND PLAT OF SURVEY (IF APPLICABLE)

[LEGAL DESCRIPTION]

Common Address: [ADDRESS]

P.I.N.: [PIN]

APPENDIX B

LIST OF RECORDED ENCUMBERANCES (IF APPLICABLE)