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DECLARATION OF HISTORIC PRESERVATION COVENANT

REGISTER OF DEEDS
MARILYN J. NICHOLS

WHEREAS, the City of Topeka, the owner of that certain real property, hereinafter referred to as Summer School, located in the City of Topeka, County of Shawnee, State of Kansas, and legally described as follows, to-wit:

The South Half of Lot 82 and all of Lots 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, 106, and 108 on Western Avenue; AND
Lot 83, EXCEPT, the North 7 1/2 feet thereof, and all of Lots 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, and 107, all on Taylor Street, in the City of Topeka, Shawnee County, Kansas, along with the vacated alley lying between the South 7 1/2 feet of Lot 99, and all of Lots 101, 103, 105, and 107 on Taylor Street, and the South 7 1/2 feet of Lot 100 and all of Lots 102, 104, 106, and 108 on Western Avenue in the City of Topeka, Shawnee County, Kansas.

WHEREAS, the Summer School in Topeka, Kansas was listed by the Kansas State Historic Preservation Officer on the National Register of Historic Places on November 6, 1991, and the State Historic Preservation Officer has identified non-contributing features of the property that may be removed or altered without compromising the property's physical integrity or National Register status, features that are set forth in Exhibit A, and

WHEREAS, the State Historic Preservation Officer acts for the preservation of historic properties, and is responsible for fulfilling the roles defined in K. S. A. 75-2715 to 75-2725, as amended, and the National Historic Preservation Act of 1966; as amended, and

WHEREAS, in accordance with the criteria set forth in Historic Preservation Fund Grants Manual), the (property owner) has applied to the Kansas State Historical Society and been selected to receive a Historic Preservation Fund grant for the preservation of said property.

THEREFORE, pursuant to K. S. A. 75-2701 et seq. which authorizes the State Historic Preservation Officer to engage in a comprehensive program of historic preservation and to carry out the duties assigned to the state historic preservation agency by law, it is hereby agreed to make this covenant a consideration in the conveyance of an Historic Preservation Fund grant to the City of Topeka for the preservation of the Summer School.

COVENANT

This Historic Preservation Covenant ("Covenant") is hereby entered into this 11th day of Sept., 2002, by and between the City of Topeka ("Owner") and the State Historic Preservation Officer ("State").

In consideration of the conveyance of the Historic Preservation Fund grant, the Owner hereby covenant for a period of 10 years to the State on behalf of themselves and their heirs, successors, and assigns, to maintain and preserve all those exterior and interior features of the property identified as Conservation Areas, in the following ways:

1. Conservation Areas:

Those portions of the property to be conserved under this covenant include every portion of the property except those features identified as non-contributing. Such non-contributing features are set forth in Exhibit A. Non-contributing portions of the property may be removed, altered or added to in ways that are compatible with the historic property.

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2. Maintenance:

The Owner agrees to assume the cost of continued maintenance and repair of the property so as to preserve the architectural, historical, and/or archeological integrity of the property and its materials for ___ years in order to protect those qualities that made the property eligible for listing in the National Register of Historic Places. Nothing in this agreement shall prohibit the subgrantee from seeking financial assistance from any source (including HPF Development grants) available to him/her."

3. Protection:

The Owner shall not undertake or permit to be undertaken any activity on the property which would affect the structural integrity or the architectural appearance of the property, without the express prior consent of the State, by written permission signed by a fully authorized representative thereof, in addition to any necessary permit required by local authorities. The Owner shall take appropriate measures to protect the site against willful damage or vandalism. "Appropriate measure" include whatever means are necessary to maintain the National Register eligibility of the property.

4. Repairs, Alterations and Additions:

All repairs, alterations, and additions to the property are subject to review by the State in accordance with K. S. A. 75-2715 to 75-2725, as amended and Section 106 of the National Historic Preservation Act of 1966, as amended.

5. Signs:

The Owner shall not affix, place or display permanent signs, billboards, or advertisements on the exterior or interior of the property without prior written consent of the State.

6. Damage or Destruction:

In the event of severe damage or total destruction to the property (defined, for purposes of this covenant, as sudden damage or loss caused by fire, earthquake, inclement weather, acts of God, acts of the public enemy, riot or other similar casualty), this covenant shall terminate as of the date of such damage or destruction.

7. Subdivision of Property:

The property shall not be subdivided, and the property shall not be devised or conveyed except as a unit, provided, however, that the Owner of said property shall be permitted to convert the property into cooperatives or condominium units, provided that the obligations of the Owner under this covenant shall be specifically assumed in writing by any successor or assign of the Owner.

The Owner shall promptly give written notice to the State of any covenant or conveyance by which the Owner divests itself of the fee simple title.

8. Disuse or Neglect:

The State may require such weatherproofing or structural repairs as may be necessary to prevent serious deterioration of the structure or the appearance of the property. After reasonable notice to and the failure of the Owner to provide such repairs, the State may gain entry for workers or contractors in its employ, execute repairs, and recover the costs of such repairs through a mechanic's lien.

9. Inspection:

The State, or a duly appointed representative of the State, shall be permitted to inspect the property at reasonable times in order to ascertain if the above conditions are being observed.

10. Public Access:

The Owner agrees to provide public access to the interior of the property, for the purpose of viewing HPF-assisted work, no less than 12 days a year on an equitably spaced basis, and at other times by appointment. Nothing in this agreement will prohibit the Owner or subgrantee from charging a reasonable nondiscriminatory admission fee, comparable to fees charged at similar fees in the area. The Owner will annually publish dates and times when the property will be open to the public in newspapers of general circulation in the community or area in which the property is located. Documentation of such notice will be furnished annually to the State during the term of the covenant.

11. Recovered Data Protection:

The Owner shall ensure that any data and material recovered from the property will be placed in a repository in which will care for the data in the manner prescribed in the Secretary of the Interior's "Standards for Archeology and Historic Preservation," or will comply with the requirements of the Native American Graves Protection and Repatriation Act.

12. Nondiscrimination Clause

The Owner agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 (d)), the Americans with Disabilities Act, and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the Kansas State Historical Society. The Owner and its successors-of-interest agree that discrimination on the basis of race, color, national origin, or disability will not occur in implementing the public access provisions in accordance with 43 CFR 17.260.

To comply with the Americans with Disabilities Act, and with Section 504 of the Rehabilitation Act when interior public access is required at least 12 days per year and at other times by appointment, it is not required that a recipient makes every part of the property accessible to and useable by disabled persons by means of physical alterations. That is, for at least during public access periods, videos, slide presentations, and/or other audio-visual materials and devices should be used to depict otherwise inaccessible areas or features.

13. Non-compliance:

In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the State may, following reasonable notice to the Owner, institute suit to enjoin said violation or to require the restoration of the property to its condition at the time of this covenant, or condition at the time of the most recent satisfactory State inspection. The State shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.

14. Assignment:

The Owner agrees that the State may at its discretion convey all or part of its rights and responsibilities contained herein to a third party without prior notice to the Owners, their successors or assigns.

15. Covenant to Run With The Land:

This covenant is binding on the Owner, its heirs, successors, and assigns in perpetuity. Restrictions and stipulations contained herein shall be inserted by the Owner either verbatim or by express reference in any deed or other legal instrument by which the Owner divests itself of either the fee simple title or any other lesser estate in the property or any part thereof.

16. Rights Not Waived:

The failure of the State to exercise any right or remedy granted under this instrument 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.

17. Amendments:

This covenant may be amended or released only by mutual written agreement and such amendment or release shall become effective upon its recordation in the Office of the Register of Deeds of the County Shawnee, State of Kansas.

This covenant shall be a binding servitude upon the Owner and shall run with the land. Execution of this covenant shall constitute conclusive evidence that the Owner agrees to be bound by all the foregoing conditions and restrictions and to perform all obligations herein set forth. In return for this agreement, the Owner will receive said Historic Preservation grant from the Kansas State Historical Society pursuant to a Historic Preservation Fund Project Agreement hereby attached.

By attachment hereto as Exhibit A, a description of the non-contributing features of Sumner School is made a part of this Historic Preservation Covenant.

Signature *Harry Felker* Date 8/29/02
Grant Recipient

City of Topeka, Kansas By Harry Felker, Mayor
Typed Name and Title of Signatory

Signature *Mary R. Allman* Date 9-4-02
State Historic Preservation Officer

Mary Allman
Typed Name of State Historic Preservation Officer

ATTEST:

Iris E. Walker
Iris E. Walker
City Clerk

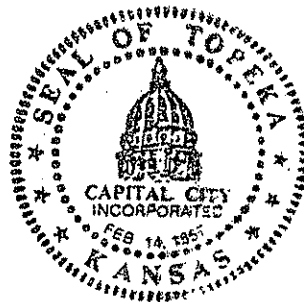
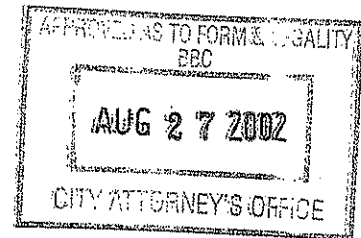


EXHIBIT A

Features of the property known as the Sumner School, Topeka, Kansas that do not contribute to the historic character of the property are listed below. At the State's discretion additional features omitted from this list may be considered non-contributing.

Non-contributing interior features

Basement and boiler room area

Non-contributing exterior features