

Easement Template

Purpose and Disclaimer:

The National Park Service’s American Battlefield Protection Program (NPS ABPP) offers this easement template as an example of easement terms granted for lands protected with federal financial assistance under the Battlefield Land Acquisition Grant program that would generally be acceptable to NPS ABPP in fulfillment of program requirements for permanent protection of the federal interest in the acquired lands. Terms highlighted in yellow are required to be included in an easement acceptable to NPS ABPP per statutory and grant agreement requirements. A checklist of these terms may also be found in the NPS ABPP “Standard Easement Requirement Checklist” document. Please note, the language in the highlighted terms is meant to serve as a guide for what is required, but may need to be altered or edited to fit the circumstances of a particular easement.

This easement template satisfies requirements for acquisition project structures when a State or local government is the fee-simple landowner, or “Grantor,” and a nonprofit, or other government entity is the easement holder, or “Grantee.” This easement template also satisfies requirements for acquisition project structures when the SHPO is the Grantee, and a State or local government, or a nonprofit is the Grantor. Please note, in the cases where the SHPO is the Grantee, there is no need to include “and the SHPO” after stipulating Grantee review requirements.

For acquisition project structures in which there is a private or nonprofit Grantor, and a nonprofit Grantee, certain mandatory terms are required. These mandatory terms can be found in the NPS ABPP “Required Language for Easements with Nonprofit Grantees & Nonprofit or Private Grantors” document. For this project structure, these terms may not be excluded, or altered without prior NPS ABPP approval.

*This easement template **does not** constitute legal, accounting, or tax planning advice on the part of NPS ABPP. The Grantor and Grantee must craft easement terms that address the specific characteristics of the battlefield property, the interests of each party to the easement, and appropriate state or local legal requirements. Grantees are advised to seek out their own professional legal and/or accounting counsel when developing easements that satisfy NPS ABPP requirements and protect interests in the acquired property.*

Prepared under the supervision of:
[Name of Preparer/Entity]

Tax Map Number: [#]

GRANT OF BATTLEFIELD CONSERVATION EASEMENT and DECLARATION OF COVENANTS

[Name] Tract on the
[Name] Battlefield
[Name] County

EASEMENT FILE NO. _____

THIS DEED OF EASEMENT made this [#] day of [Month], [Year], by the [Name of Grantor] and its successors and assigns, whose address is: [Address of Grantor] (“Grantor”), and the [Name of Grantee], whose address is: [Address of Grantee] (“Grantee”).

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in [Name] County, [Name], State containing in the aggregate [#] acres, more or less, located near [Street Address], and more particularly described in **Exhibit A** attached hereto, and known as the [Name] Tract on the [Name] Battlefield (the “Property”).

R-2 Grantee is a qualified organization authorized under the [State Conservation Easement Enabling Legislation] to receive properties and easements in gross or other interests in properties for the purpose of, among other things, the protection of the Conservation and Preservation Values.

R-3 Grantor and Grantee desire to protect in perpetuity the battlefield landscape including the historic, archeological, open-space and scenic values and resources, located on the Property (collectively the “Conservation and Preservation Values”) identified in **Exhibit B** attached hereto, and the existing condition of these values, identified in Section 2.2 (a) – (b), more thoroughly described in the Baseline Documentation Report (the “BDR”), defined in Section 2.3, by restricting the use of the Property pursuant to the terms and conditions of this Deed of Easement and Declaration of Covenants (the “Easement”), and Grantor desires to grant and convey to Grantee a perpetual conservation easement over the Property.

R-4 The [*State Name*] State Historic Preservation Office’s (the “**SHPO**”) involvement and oversight of activities proposed at or conducted on the site is critical to protecting and preserving the interest of the State of [*State Name*].

R-5 [*Insert state-specific statute and language setting forth policy supporting preservation/conservation easements and enabling conservation easements to be created and held in perpetuity*].

R-6 The Property lies within the Battlefield Boundary of the [*Name*] Battlefield as determined by the Civil War Sites Advisory Commission (the “**CWSAC**”), which Commission was appointed by Congress and the Secretary of the Interior in 1990 to identify and evaluate the nation’s historically significant battlefield sites. The CWSAC has given the [*Name*] Battlefield [*Battlefield Code*] a Preservation Priority [#], Class [*letter*] Rating.

[OR]

R-6 The Property lies within the Battlefield Boundary of the [*Name*] Battlefield as determined by the National Park Service (the “**NPS**”) in the *Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States* of 2007, which identified and the nation’s historically significant Revolutionary War and War of 1812 battlefield sites pursuant to The Revolutionary War and War of 1812 Historic Preservation Study Act of 1996 (the “**Revolutionary War and War of 1812 Study**”), P.L. 104-333, as amended. The NPS has given the [*Name*] Battlefield [*Battlefield Code*] a Preservation Priority [#], Class [*letter*] Rating.

R-7 [*Brief statement on the historical significance of the property as it relates to the relevant war, noting any specific actions on this specific property.*]

R-8 Grantor acquired the [*Property or Easement*], in part, with grant funds awarded through the Battlefield Acquisition Grant Program, 54 U.S.C. §308103.

R-9 Under the Battlefield Acquisition Grant Program and Section 6(f)(3) of the Land and Water Conservation Fund Act, 54 U.S.C. 200305(f)(3), lands and interests in land acquired with Land and Water Conservation Fund assistance from the National Park Service’s American Battlefield Protection Program (the “**NPS ABPP**”) can be converted to a use other than battlefield preservation and protection only upon the written permission of the Secretary of the Interior (the “**Secretary**”), acting through NPS ABPP, and only upon the substitution of other land of equal market value and usefulness for battlefield preservation and protection.

WITNESSETH:

NOW THEREFORE, in consideration of the foregoing recitals incorporated herein and made a part hereof and in consideration of the mutual covenants herein Grantor and Grantee hereby agree as follows:

ARTICLE I: EASEMENT

Grantor hereby grants and conveys to Grantee a preservation and conservation easement in gross over, and the right in perpetuity to restrict the use of, the Property, all as more particularly set forth in this Easement. The date upon which this Easement is recorded in the land records of [*Name*] County, [*State*], shall be the effective date (“**Effective Date**”) hereof.

ARTICLE II: PURPOSE AND CONDITION OF THE PROPERTY

2.1 PURPOSE: In accordance with [*Appropriate State Legislation*] the purpose of the Easement is to preserve and protect the Conservation and Preservation Values of the Property in perpetuity by restricting the development, alteration, division, and use of the Property and by providing for the enforcement of those restrictions. The covenants, restrictions, and enforcement rights set forth in the Easement apply to the parcel, regardless of any future division of the Property, and bind all successors in interest of the Property in perpetuity.

2.2 EXISTING RESOURCES: For the purpose of this Easement, the Existing Historic Resources, the Existing Natural Resources, Existing Agricultural Resources, and the Existing Non-Historic Resources, to the extent each of these are present, are collectively defined as the “Existing Resources”. The existing condition of the Conservation and Preservation Values is identified in (a) Existing Historic Resources and (b) Existing Natural Resources, and more thoroughly described in the BDR.

(a) [*if applicable*] Existing Historic Resources. The following historic buildings, structures, amenities, and features exist on the Property as of the Effective Date (collectively, the “**Existing Historic Resources**”):

1. [*List historic buildings/structures/amenities/features, including core and study battlefield areas and all known archeological sites and features.*]

(b) [*if applicable*] Existing Natural Resources. The following natural features exist on the Property as of the Effective Date (collectively, the “**Existing Natural Resources**”):

1. [*List natural resources including buffers, forest, and wetlands.*]

(c) [*if applicable*] Existing Non-Historic Resources. The following non-historic buildings, structures, amenities, and features exist on the Property as of the Effective Date (collectively, the “**Existing Non-Historic Resources**”):

1. [*List non-historic buildings/structures/amenities/features.*]

(d) [*if applicable*] Existing Agricultural Resources. The following agricultural, silvicultural, or horticultural resources and features exist on the Property as of the Effective Date (collectively, the “**Existing Agricultural Resources**”):

1. [List agricultural resources including horticulture and silviculture.]

2.3 CONDITION OF THE PROPERTY:

- (a) Maintenance and Preservation of the Property. From and after the Effective Date (hereinafter defined) the conditions of the Property shall be maintained, preserved, and protected in the same or better condition and state of repair (consistent with the purpose of this Easement) as documented in the BDR dated the [#] day of [Month], [Year], except for changes or modifications permitted under this Easement.
- (b) Baseline Documentation Report. The BDR contains, among other items, (i) a written report describing the Property (including all Existing Resources), and (ii) aerial, topographic, and photo-point maps, a site plan, and photographs. Grantor hereby acknowledges that it has received a copy and accepts the findings of the BDR. The BDR is hereby incorporated by reference into this Easement and may be used in determining compliance with and enforcing the terms of this Easement.
- (c) *[If applicable] Preservation Plan. [Only applicable for projects with nonprofit Grantees and nonprofit or private Grantors. Please see NPS ABPP's 'Required Easement Language for Easement's with nonprofit Grantees and nonprofit Grantors' document.]*

2.4 DIVISION: The Property shall not be divided or subdivided. The Property shall not be conveyed in fee other than as a single tract, and any such conveyance shall be subject to the terms, conditions, and restrictions of the Easement.

ARTICLE III: **LIMITATIONS ON USES AND** **CONVEYANCES OF INTERESTS IN REAL PROPERTY**

3.1 GENERAL AND RESIDENTIAL ACTIVITIES: There shall be no residential, commercial, or industrial uses or activities on the Property, except for the activities permitted herein. Permitted activities shall be limited to those related to the preservation, maintenance, exhibition, and interpretation of the Property that do not compromise the Property's Preservation and Conservation Values; and those in the accompanying BDR. The Grantor may reserve the right to reside on the Property, to house a caretaker, or to lease the Property to tenant(s), provided that the proposed residential activities sustain the Preservation and Conservation Values identified herein.

The following activities are permitted:

- (a) Preservation Activities. Activities that foster the preservation, maintenance, exhibition, and interpretation of the Property as a historic battlefield. Additionally, activities that accommodate public amenities.

- (b) *[if applicable]* Existing Agriculture. Agriculture, timber harvesting, or horticulture at the same or smaller scale and intensity than existing resources at the Effective Date. There shall be no timbering without a Forestry Plan. The Forestry Plan must receive prior written approval by the SHPO.
- (c) Temporary Activities. Temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and do not diminish the Conservation and Preservation Values herein protected. Temporary repeated activities, such as battlefield reenactments and large guided tours, that may have the potential to alter the Property's landscape are permitted, provided that the affected areas are surveyed at the appropriate level by a qualified archeologist meeting or exceeding the *Secretary of the Interior's Standards* (the "**Secretary's Standards**"), hereinafter defined in Section 6.3(b), and all archeological sites and features identified by survey are preserved in place and avoided during permitted activities. All such survey work and activities permitted under this paragraph shall be reviewed and approved by the Grantee and the SHPO in writing prior to implementation.

3.2 GROUND DISTURBING ACTIVITIES: There shall be no Ground Disturbing Activities, without prior written approval of the Grantee and the SHPO. Ground Disturbing Activities include but are not limited to any and all grading, topographic changes, blasting, and earth removal, other than routine ground keeping and planting.

3.3 PERMITTED NEW IMPROVEMENTS: No new building, structure, amenity, or feature may be built or maintained on the Property after the Effective Date, other than the following (collectively, the "**Permitted Improvements**"):

- (a) Reconstruction. Reconstruction of historic buildings or structures which are documented through professional historical or archeological investigation to have been located on the Property, which shall be consistent with and evaluated according to the *Secretary's Standards* and the prior written approval of the Grantee and SHPO.
- (b) Amenities. Amenities including without limitation walking trails, footpaths, signs, and markers appropriate for the preservation, maintenance, exhibition, and interpretation of the Property as a battlefield. No building, structure, or amenity shall be constructed, altered, restored, renovated, or extended except in a way that would be in keeping with the Conservation and Preservation Values of the Easement and consistent with the *Secretary's Standards* and the prior written approval of the Grantee and SHPO.
- (c) Total Area. The location, size, and design of any new building, structure, or amenity are subject to the prior written approval of Grantee and the SHPO and shall not harm the Conservation and Preservation Values. The collective area of any permitted buildings and structures on the Property, excluding roads, shall not exceed one percent (1%) of the total area of the Property and the collective height of any permitted buildings or structures shall not exceed two stories.

3.4 WORK ON EXISTING RESOURCES AND DEMOLITION: Any work involving the construction, alteration, rehabilitation, restoration, renovation, replacement, extension, demolition, or removal, in whole or part, of Existing Resources documented in the BDR shall be permitted only with prior written permission of the Grantee and the SHPO, and SHPO approval of a Demolition Plan. Prior to the demolition of any building or structure on the Property the Grantor and Grantee will consult with the SHPO to evaluate its eligibility for the National Register of Historic Places (36 C.F.R. 60.4).

3.5 TEMPORARY STRUCTURES:

- (a) Temporary Buildings. Temporary buildings and structures not requiring trenching, footers, a pad, or other Ground Disturbing Activities and erected for no more than sixteen (16) consecutive calendar days for use by Grantor or Grantor's designees, not to exceed a maximum of one-hundred sixty (160) days per calendar year may be placed on the Property. Any extension of the sixteen (16) day duration must be reviewed and approved in advance in writing by Grantee and the SHPO.
- (b) Temporary Signs. Temporary signs not requiring any Ground Disturbing Activities that may be readily moved and are displayed for no more than sixteen (16) consecutive calendar days for use by Grantor or Grantor's designee(s) may be placed on the Property. Any extension of the sixteen (16) day duration must be reviewed and approved in advance in writing by Grantee and the SHPO.

3.6 TREES AND VEGETATION MANAGEMENT: Trees and vegetation on the Property shall be managed in accordance with established arboreal and horticultural practices and in a manner that will prevent damage to Existing Resources and Permitted New Improvements consistent with the Conservation and Preservation Values. The following activities are permitted without the prior written approval of Grantee: (a) non-commercial, *de minimis* harvest of trees for trail clearing, firewood, or Grantor's personal use; (b) removal of individual dead, diseased, or dying trees or invasive species; and (c) removal of trees that pose an imminent hazard (i) to human health or safety or (ii) to buildings, structures, facilities, amenities, livestock, or other domesticated animals maintained on the Property.

3.7 MINING, EXCAVATING, AND DRILLING: There shall be no mining, excavating, dredging, or removing from the Property of soil loam, peat, gravel, sand, rock or other mineral resource or natural deposit. There shall be no drilling for oil, gas, or any other natural deposits on the Property.

3.8 UNPLANNED OR EMERGENCY ACTIVITIES: In the case of an unplanned or emergency Ground Disturbing Activity the Grantor will notify the Grantee and the SHPO as soon as practicable to consult on restoration or mitigation of any potential damage to the Conservation and Preservation Values.

3.9 UTILITIES: The Grantor shall not place upon the Property any electrical, telephone, water or sewer or other utilities or utility easements without the prior written consent of the Grantee and the SHPO. Utilities or utility easements that do not serve the Property, including

utilities from an adjacent or separate property that pass through the Property, are strictly prohibited. If the Grantor receives notification from any utility company, governmental agency, or other entity of proposed utilities or utility easements to be placed upon the Property it shall notify the Grantee and the SHPO as soon as practicable to do so.

3.10 PUBLIC ACCESS: The parties hereby acknowledge that the Property is visible from [*Road Name*], which is publicly accessible. The Grantor must ensure that the property remains visible from this road, and that members of the general public may view the Property from said road. At other reasonable times, upon request of Grantee made with reasonable notice to Grantor, persons affiliated with educational organizations, professional associations, and historical societies shall be admitted to study and examine the property at a date and time convenient to Grantor. In addition, Grantee may take photographs, drawings, or other representations documenting the significant historical, archeological, and cultural 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. Although this Easement in gross will benefit the public in the ways recited above, nothing herein shall be construed to convey a right to the public of access to or use of the Property and Grantor shall retain exclusive right to such access and use, subject only to the provisions herein recited.

3.11 TRASH: The accumulation or dumping of (a) trash, refuse, junk, or other unsightly material, or (b) any toxic or hazardous material or substance as defined by federal or state law is prohibited on the Property. Grantor shall be responsible for the removal of trash, refuse, junk, and other unsightly materials present on the Property as of the Effective Date or at any point thereafter, in compliance with applicable laws and regulations.

3.12 CONVEYANCE OF INTEREST IN REAL PROPERTY: Grantor shall notify Grantee and NPS ABPP in writing within no less than ninety (90) calendar days prior to any transfer of fee simple title of the Property. All conveyances by Grantor of any interest in the Property less than fee simple, excluding deeds of trust given for the purpose of securing loans, requires the prior written approval of Grantee. After the Effective Date, this Easement shall be referenced by deed book and page number, instrument number, or other appropriate reference in any deed conveying an interest in the Property, but failure of Grantor to comply with this requirement will not impair the validity of the Easement or the conveyance, nor limit the enforceability of this Easement in any way.

3.13 SIGNS: Grantor shall place a sign readable from the Property's public right-of-way, stating that the Property is being preserved with Federal funds from the American Battlefield Protection Program, administered by the National Park Service and briefly identify the Property's historical significance, with Grantee's prior written approval. All signs may not exceed nine square feet in size, without the prior approval of the Grantee and the SHPO. [*if applicable*] Grantor reserves the right to post signs (i) to state the name of the Property and the name and/or address of the owners, (ii) to provide interpretation of the battle that occurred on the Property, or (iii) to provide notice necessary for the protection of the Property, including "no trespassing" signs, and for giving directions to visitors.

ARTICLE IV: ARCHEOLOGY

4.1 RIGHT TO CONDUCT ARCHEOLOGICAL SURVEY AND INVESTIGATION:

For the purposes of this Easement, all pedestrian, shovel testing and test unit excavation, and remote sensing survey techniques to identify, protect, preserve, and document all archeologically significant deposits, sites, features, and artifacts in areas of proposed Ground Disturbing Activities are defined as “**Archeological Survey and Investigation**”. Archeological Survey and Investigation on the Property are permitted, provided, that (i) archeologically significant deposits, sites, features, or artifacts present on the Property shall not be intentionally disturbed, demolished or excavated or otherwise defaced or altered except by or under the supervision of a professionally qualified archeologist meeting or exceeding the *Secretary's Standards*, with training or experience that is acceptable to the Grantee and the SHPO; (ii) a scope of work shall be completed and approved by the Grantee and the SHPO prior to any said survey or excavations; (iii) during any such survey or excavations the Grantor shall allow in attendance on the Property at all times a designee of the Grantee; (iv) any such research or excavation shall be done only during daylight hours; and (v) the topography and all visible surface features of the Property disturbed by any such research or excavation shall be restored to its prior condition and appearance once such research or excavation is complete. Any such field investigations, explorations, or recovery operations conducted pursuant to such approval shall be carried out in consultation with the Grantee and the SHPO and in accordance with the *Secretary's Standards* and in a manner to ensure that the appropriate amount of historic, scientific, archeological, and educational information be recovered and preserved in addition to the physical recovery of objects.

4.2 TREATMENT OF ARCHEOLOGICAL RESOURCES: The Grantor shall take all reasonable precautions to ensure that all archeological resources, features, deposits, and artifacts, whether known or unknown from the Effective Date of this Easement, are protected from vandalism, erosion, mutilation, or destruction from any cause. Grantor shall notify the Grantee and the SHPO of any known instances of vandalism or theft of archeological resources on the property as soon as is practicable to do so, but no later than 30 days after the event.

4.3 TREATMENT OF ARTIFACTS: Artifacts, both pre-contact and historic, recovered from Archeological Survey and Investigation of the Property shall remain the personal property of the Grantor, unless otherwise provided by law. The Grantor is permitted to sell or donate archeological collections recovered from the Property to licensed archeological repositories or accredited collections management organizations. If the Grantor chooses to transfer ownership of artifacts to a repository, the Grantor must provide written notice of the donation or sale to the Grantee and the SHPO. This notice must provide the name of the facility, its qualifications, the location where the artifacts will be stored, treated, or managed, and confirmation that the organization adheres to all appropriate state guidelines on archeological artifact treatment and the *Secretary's Standards*.

4.4 TREATMENT OF HUMAN REMAINS: The Grantor is responsible for the protection of all human remains discovered on the Property from vandalism, mutilation, and destruction by any cause. If human remains are discovered on the Property during approved Archeological

Survey and Investigation or during any other Ground Disturbing Activity, then Grantor shall immediately cease all activities at the specific location(s) where human remains and/or inadvertent discoveries have been found and notify the Grantee, the SHPO, and the [*Federally Recognized Indian Tribe, if applicable*] within [#] of hours. The Grantor shall comply with all laws and guidelines applicable to the discovery and treatment of human remains, including without limitation, notifying local law enforcement and obtaining any necessary permits or authorizations for treatment of human remains. Grantor shall be responsible for all costs and expenses associated with the treatment and/or removal of human remains discovered on the Property.

ARTICLE V: **INSPECTION, APPROVALS, AND ENFORCEMENT**

5.1 INSPECTION:

- (a) **Right of Entry.** Grantee and its representatives and agents have the right to enter onto the Property once per calendar year, upon not less than ten (10) days' notice to Grantor, to inspect and document the condition of the Property, including [*if applicable*] the interior of any Existing Historic Resources. Grantee and its representatives and agents otherwise have the right to enter onto the Property, upon reasonable notice to Grantor, to inspect the Property and to enforce the terms, conditions, and restrictions of this Easement. Grantor's consent is not a necessary condition to the right of entry by Grantee and its representative and agents; however, the parties agree to cooperate in determining a mutually agreeable time to access the Property. Grantee may take photographs, drawings, or other representations documenting the historical, [*if applicable*] architectural, archeological, and cultural character and features of the Property and may use or publish them for general public educational purposes.
- (b) **Emergency Access.** No notice to or consent of Grantor is required if, in the reasonable opinion of Grantee, emergency access is necessary to prevent irreversible damage to the Conservation and Preservation Values of the Property. Following such emergency access, Grantee shall provide Grantor with a written explanation of the reason for such emergency access and the actions taken by Grantee on the Property during such emergency access. Grantee shall limit its actions during such emergency access to those necessary to prevent irreversible damage to the Conservation and Preservation Values.

5.2 APPROVALS: Whenever Grantee's approval is necessary under this Easement for a proposed use or activity, Grantor shall submit in writing to Grantee, for Grantee's evaluation: (i) Grantor's specific request identifying a proposed activity or use; (ii) relevant information about the proposed activity or use (including without limitation plans, specifications, and designs, as applicable); (iii) a timetable for the proposed activity or use sufficient to permit Grantee to monitor it, and (iv) such other information as Grantee may reasonably request. Grantor shall not make any changes to the proposed activity or use without Grantee's written authorization. Grantee will use reasonable efforts to respond to any written request of Grantor within thirty (30) business days after Grantee's receipt of such request. Nothing herein should be construed, however, to require Grantee

to issue a final decision on such request within such thirty (30) business day period, provided that a final decision is issued as timely as is practicable under the circumstances. Such circumstances may include, but are not limited to, the complexity of the activity or use, the adequacy of the information submitted with the written request, the degree to which the activity or use complies with the terms of the Easement, whether the activity or use is consistent with the *Secretary's Standards*, the need for Archeological Survey and Investigation, the need for on-site inspections, or the need for consultation. In the event that Grantee does not respond in writing to Grantor's written request within thirty (30) business days of receipt of such request, then Grantee will be deemed to have denied the request, and Grantor may proceed with any appeal for reconsideration of such request in accordance with Grantee's written policies. Grantee is not liable to Grantor or any third party for any damage, injury, liability, or consequence arising out of or resulting from Grantor's failure to obtain Grantee's prior, written approval as required under this Easement. Nothing herein shall be construed to affect the authority of the Secretary of the Interior under Section 6(f)(3).

5.3 STANDARDS FOR REVIEW:

- (a) Sole Determination by Grantee. Any determination made by Grantee in exercising its rights of inspection, approval, or review under this Easement, except where otherwise noted, is made in Grantee's sole discretion, and Grantee, in making such a determination, may consider, without limitation, whether the activity or use (i) is consistent with the historic character of the Property; (ii) is consistent or compatible with the Conservation and Preservation Values; (iii) complies with the terms of this Easement; or (iv) complies with the *Secretary's Standards*.
- (b) Secretary's Standards. The following standards promulgated by the Secretary of the Interior are collectively referred to in this Easement as the "*Secretary's Standards*":
 - (1) *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 F.R. 44716 (1983)).
 - (2) *Secretary of the Interior's Professional Qualifications Standards* (48 F.R. 44716(1983)).
 - (3) *Secretary of the Interior's Standards for Rehabilitation* (36 C.F.R. § 67.7, 1990).
 - (4) *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 C.F.R. Part 68, 1995).
 - (5) *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (National Park Service).
 - (6) *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (National Park Service).

5.4 ENFORCEMENT:

- (a) Grantee's Enforcement Rights. Grantee has the right to bring an action at law or in equity

to enforce the covenants and restrictions contained in this Easement, including without limitation, the right to: (i) require restoration of the Property to comply with the terms of this Easement; (ii) recover any damages arising from non-compliance, including but not limited to disgorgement of any monies received by Grantor connected with such non-compliance; (iii) enjoin non-compliance by *ex parte* temporary or permanent injunction; and (iv) pursue any other appropriate remedy in law or equity.

- (b) Reimbursement of Costs. If a court determines that Grantor has failed to comply with this Easement, Grantor shall reimburse Grantee for all reasonable costs of enforcement, including costs of restoration, court costs, expert-witness costs, and reasonable attorneys' fees, in addition to any other payments ordered by such court.
- (c) No Rights in Public. Nothing in this Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee or to enforce this Easement through any means including, but not limited to, judicial action.

ARTICLE VI: GENERAL PROVISIONS

6.1 GRANTOR'S RESERVED RIGHTS: Grantor reserves the right to use and enjoy the Property to the extent consistent with the Conservation and Preservation Values and the terms and conditions of the Easement.

6.2 GRANTEE'S PROPERTY INTEREST: Grantor agrees that the conveyance of this Easement gives rise to a property interest, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the conveyance bears to the fair market value of the Property as a whole at that time.

6.3 CONVERSION: No part of the Property may be converted from battlefield preservation and/or conservation uses except with the written approval of the Secretary acting through the NPS ABPP in accordance with the requirements of Section 6(f)(3) of the Land and Water Conservation Fund Act and the American Battlefield Protection Program statute (54 U.S.C. § 3081). There is no remedy in the event of a breach of Section 6(f)(3) other than immediate compliance with Section 6(f)(3), nor can grant funds be repaid to nullify the requirements of Section 6(f)(3).

6.4 EXTINGUISHMENT: Should an attempt be made to extinguish this Easement such extinguishment can be carried out only by a judicial proceeding that finds the Conservation and Preservation Values of this Property to have been rendered impossible or impracticable by unforeseen changed circumstances, and only in compliance with Section 6(f)(3). In any sale, exchange, or involuntary conversion of the Property or portion of the Property subsequent to such extinguishment, Grantee shall be entitled to a portion of the proceeds equal to the proportionate value of the perpetual conservation restriction computed as set forth in Section 7.2. Grantee shall use this portion of the proceeds in a manner consistent with the Conservation and Preservation Values of this Easement and the requirements of Section 6(f)(3).

6.5 SEVERABILITY: The invalidity or unenforceability of any provision of this Easement

shall not affect the validity or enforceability of any other provision of this Easement.

6.6 AMENDMENT: Grantee and Grantor may amend this Easement to enhance the Property's Conservation and Preservation Values or to increase the amount of real property subject to this Easement. No amendment to this Easement shall:

- (a) Affect this Easement's perpetual duration
- (b) Conflict with or be contrary to or inconsistent with the purpose of this Easement as set forth in Section 2.1; or
- (c) Reduce the protections to the Conservation and Preservation Values

No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of [Name] County, [State]. Grantee shall notify NPS ABPP and the SHPO in writing of any proposed amendment at least thirty (30) business days prior to the recordation of any such amendment.

6.7 DURATION; SUCCESSORS IN INTEREST: This Easement is perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations contained in this Easement of an owner of the Property, or any portion thereof, terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

6.8 GRANTOR'S REPRESENTATIONS AND WARRANTIES: Grantor hereby represents, covenants, and warrants that: (a) Grantor has good, fee simple title to the Property; (b) the Property is free and clear of all encumbrances, other than restrictions, covenants, conditions, and utility and access easements recorded in the land records of [Name] County, [State], prior to the Effective Date including, but not limited to, any mortgages, liens, leases, or option contracts not subordinated to this Easement; (c) Grantor has all requisite power and authority to enter into this Easement and to grant and convey the Easement; (d) no consents of any lender or any third party are required for Grantor to enter into this Easement that have not already been obtained and made known to Grantee; (e) *[if applicable]* Grantor is and shall be duly organized and legally existing under the laws of the state of its formation; and (f) *[if applicable]* each person and/or entity signing on behalf of Grantor is authorized to do so.

6.9 ASSIGNMENT: Grantee may assign this Easement after approval and notification by NPS ABPP that the successor organization fits NPS ABPP's easement holder qualifications, and consultation with Grantor and the SHPO, if:

- (a) All restrictions, covenants, and Conservation and Preservation Values set forth in this Easement are to be continued in perpetuity.
- (b) The assignment is approved in accordance with the requirements of Section 6(f)(3) and the American Battlefield Protection Program statute (54 U.S.C. § 3081).

Such assignment shall be in writing with all signatures notarized and shall be recorded in the Clerk's Office of the Circuit Court of [*Name*] County, [*State*].

6.10 NO MERGER: Grantor and Grantee agree that in the event that Grantee, or any agency or entity of the State of [*Name*] or Federal Government, acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property. [*Note – this is not applicable when the grantee is a nonprofit*]

6.11 RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS: In the event that any of the statutes or regulations cited in this Easement are re-codified or amended, this Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.

6.12 INTERPRETATION: Pursuant to the public policy of the State of [*Name*] favoring land conservation, and notwithstanding any contrary rule of interpretation or construction (including the common-law rule that covenants restricting the free use of land are disfavored), it is the intent of Grantor and Grantee that this Easement and all language contained herein shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policies and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation that is consistent with the purposes of this Easement (to protect the Conservation and Preservation Values and prevent the exercise of reserved rights in a way that would impair such values) and that would render the provision valid will be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purposes of and not expressly prohibited by this Easement are permitted on the Property.

6.13 NO LACHES, WAIVER, ESTOPPEL: In recognition of the public benefit provided by this perpetual Easement and the Conservation and Preservation Values protected herein, the Grantor hereby agrees to waive any defenses of laches, waiver, and estoppel with respect to any enforcement by Grantee of the terms of the Easement.

6.14 EXTINGUISHMENT OF DEVELOPMENT RIGHTS: Any and all development rights, subdivision rights and other rights affecting the future development (collectively, the “**Development Rights**”) of the Property are hereby extinguished. Grantor unconditionally and irrevocably relinquishes the right to transfer the Development Rights to any other real property or to use them for purposes of calculating lot yield, density allowances, increases or decreases, and/or development potential of the Property or any other property. Grantor warrants and covenants that neither the Property, nor any portion of it, has been or will be dedicated as open space within, or as part of, a residential subdivision or any other type of real estate development plan or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No Development Rights that have been encumbered or extinguished by this Easement will be transferred to any other real property pursuant to a transfer of Development Rights or purchase of Development Rights program, cluster development plan, planned unit development, or other similar type of land use program or regulation.

6.15 RECORDING: This Easement shall be recorded in the land records in the Clerk's Office

of the Circuit Court of [*Name*] County, [*State*], and Grantee may re-record it at any time to preserve its rights under this Easement.

6.16 COUNTERPARTS: This Easement may be executed in one or more counterparts, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

6.17 NOTICE: All notices and communications under this Easement shall be directed as follows:

Grantor:

[*Mailing Address*]

Grantee:

[*Mailing Address*]

SHPO:

[*Mailing Address*]

NPS ABPP:

National Park Service
American Battlefield Protection Program
1849 C Street, NW, Room 2287
Washington, D.C. 20240

[*if applicable*] **Subordinated Parties:**

[*Mailing Address*]

6.18 ENTIRE AGREEMENT: This instrument, the exhibits attached hereto, and the documents incorporated herein by reference set forth the entire agreement of the parties hereto with respect to this Easement and supersede all prior discussions, negotiations, understandings, documents, drafts, and agreements relating to the conveyance of this Easement.

6.19 RECITALS AND EXHIBITS: All recitals set forth above and exhibits attached hereto are hereby incorporated into and made a part of this Easement.

6.20 HEADINGS: The headings and titles to the articles, sections, and subsections of this Easement are for convenience only and have no effect upon the construction or interpretation of any part of this Easement.

6.21 SUBORDINATION OF DEED OF TRUST: As evidenced by the signatures hereto of the Grantor and the Creditor, Creditor consents to the terms, conditions, and restrictions of this Easement and hereby subordinates the lien represented by *Deed of Trust* to this Easement and directs Trustee to execute this Easement to give effect to the subordination.

[*If applicable, modify as needed for mortgages.*]

Witness the following signatures and seal:

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

[Remainder of page intentionally left blank]

Exhibit A

Legal Description

[Insert legal property description from source deed.]

BEING the same Property shown on the survey/plat entitled “[Survey Title]”, prepared by [Preparer Name], dated [Date], which is attached hereto as **Exhibit A-1**.

[OR]

BEING the same Property shown on the survey/plat entitled “[Survey Title]”, prepared by [Preparer Name], dated [Date], which is recorded in the Clerk’s Office of the Circuit Court of [Name] County, [State Name] on [Date], as Instrument #[Number].

Exhibit B

Conservation and Preservation Values

B-1 *[Include description of Property and historic and archeological resources in sequential recitals. Should reference all historic buildings, structures, features and amenities including landscape features and archeological sites, deposits or features in individual recitals. Should also reference any evaluation of eligibility for the National Register of Historic Places for any historic properties on the Property or the battlefield itself.]*

B-2 The Property, as of the Effective Date, contains approximately [#] acres of land that lie within the [core or study] area of the [Name] Battlefield as determined by the [CWSAC or Revolutionary War and War of 1812 Study], which has given the battlefield a Preservation Priority [#] Class [letter] Rating.

B-3 The [CWSAC or Revolutionary War and War of 1812 Study] defines Priority [#] battlefields as [Insert definition explanation].

B-4 [Brief statement on the historical significance of the property as it relates to the relevant war, noting any specific actions on this specific property.]

B-5 *[if applicable]* A portion of the Property also lies within the [core or study] area of the [Name] Battlefield as determined by the [CWSAC or Revolutionary War and War of 1812 Study], which has given the battlefield a Preservation Priority [#] Class [letter] Rating.

B-6 *[if applicable]* The [CWSAC or Revolutionary War and War of 1812 Study] defines Priority [#] battlefields as [Insert definition explanation].

B-7 *[if applicable]* [Brief statement on the second battle's historical significance of the property as it relates to the relevant war, noting any specific actions on this specific property.]

B-8 *[if applicable]* The Property contains known archeological site(s), either pre-contact or historic, which contain(s) a [site or deposit or feature] [associated with or representative of] [insert description of resource and cite specific historic or cultural context].

B-9 *[if applicable]* The previously identified archeological site(s) on the Property also serve as indication that the Property as a whole is likely to contain additional sites, deposits or features associated with its [pre-contact and] historic use and occupation.

B-10 *[if applicable]* The Property is further significant for its archeological potential as a [Civil War/Revolutionary War/War of 1812] battlefield. Although the Property has not been subjected to professional archeological survey, in the opinion of the SHPO, the Property has the potential to contain archeological sites, deposits and features associated with the [Civil War/Revolutionary War/War of 1812], specifically the Battle(s) of [Name] and [Name], based on [insert reason why the potential archeological site/deposit might be present] on the Property.

B-11 *[if applicable]* The Property contains approximately [#] acres of forested cover, [*forest cover age/type*] as of the Effective Date.

B-12 *[if applicable]* The Property contains approximately [#] acres of fields and meadows used for [*purpose of fields, if agriculture*] as of the Effective Date.

B-13 *[if applicable]* The Property contains approximately [#] acres of [*streams, or ponds, or river frontage, or wetlands*] as of the Effective Date.

B-14 *[if applicable]* [*Insert any other Conservation and Preservation Values.*]

B-15 The Property is visible from [*Name of road, or State/County route number, or navigable waterway*], which is a [*public transportation corridor, or navigable waterway accessible to the public*]. The Property represents publicly significant open space in this corridor, and the Property's historic [*and natural, and/or open-space*] resources contribute to the historic, cultural, and open-space features that define the existing [*rural, or suburban, or urban*] character and landscape quality along this [*roadway, or waterway*].

B-16 *[if applicable]* [*Describe property location within established heritage areas, heritage trails, byways, scenic areas, etc.*].

B-17 *[if applicable]* The Property lies adjacent to or nearby lands protected by Easements held by Grantee in [*Name*] County and recorded in the land records of the Clerk's Office of the Circuit Court for [*Name*] County including: [*list each property easement by name, acreage, address, instrument number/deed book and page numbers*].

B-18 This Easement is in furtherance of and pursuant to clearly delineated governmental policies and documents set forth below:

- a. Land conservation policies and documents of the United States of America as set forth in:
 1. The "American Battlefield Protection Program Act of 1996," authorized under 16 U.S.C. § 469k, as amended by the "The Civil War Battlefield Protection Act of 2002," authorized under 16 U.S.C. § 469k-1, as amended.
 2. The "American Battlefield Protection Program Authorization of 2009," 54 U.S.C. § 308103, as amended.
 3. The Land and Water Conservation Fund Act, 54 U.S.C. §§ 200301 – 200310, as amended.
 4. *[if applicable]* The CWASC, authorized under 54 U.S.C. § 100507, as amended.
 5. *[if applicable]* The Revolutionary War and War of 1812 Study, P.L. 104-333, as amended.
 6. *[if applicable]* [*Designation on or eligibility of the National Register of Historic Places or National Heritage Area legislation.*]
- b. Land conservation policies and documents of the [*State Name*] as set forth in:

1. [Applicable state policy.]
 2. [Applicable state policy.]
 3. [Applicable state policy.]
- c. Land use policies of the County of [Name] as delineated in:
1. [if applicable] The [Title of Comprehensive Plan], adopted by the Board of Supervisors [date], [Reference to any amendments or attachments] to which plan the restrictions set forth in this deed conform as follows:
 - (i) [Applicable statements in support of conservation, open-space preservation, agricultural use, and the use of easements in the County and in the zone, district or area where the Property is located, including Chapter/page numbers].
 2. [if applicable [County level land-use and/or historic resource plans pertinent to this easement].]