

1975 WL 28990 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 7, 1975

*1 Neither the South Carolina Department of Archives and History nor the Richland County Council are obligated to support the Richland County Historic Preservation Commission.

State Historic Preservation Officer

QUESTION PRESENTED:

What financial obligation of support does the State or Richland County Council owe to its Richland County Historic Preservation Commission which is empowered to acquire, restore, and maintain structures of historic significance in the event that the Commission lacks the necessary funds to properly maintain the historic property so acquired?

STATUTE INVOLVED

The Act creating the Richland County Historic Preservation Commission and describing its powers and duties are set forth in 53 STAT. 63 (1963).

DISCUSSION OF ISSUE

Pursuant to Section 8 of 53 STAT. 63 (1963),

The City of Columbia is authorized to participate in the functions of the Commission. The Commission shall have power and authority to borrow money and to mortgage or pledge its real and personal property; provided, that it shall not have the power to assume any obligation or incur any indebtedness binding upon the State of South Carolina or Richland County. [Emphasis supplied.]

Section 8 empowers the Commission to raise its own funds and specifically forbids the Commission to financially obligate the State of South Carolina or Richland County.

CONCLUSION

Since the Commission is statutorily prohibited from attempting to bind or incur indebtedness on behalf of the State or Richland County, it is the opinion of this Office that neither the State nor Richland County is financially obligated to support the Commission.

M. Elizabeth Crum

**COVENANT FOR GRANT TO ACQUIRE AND/OR DEVELOP HISTORIC
PROPERTY FOR PURPOSES OF HISTORIC PRESERVATION UNDER
THE NATIONAL HISTORIC PRESERVATION ACT OF 1966, AS AMENDED**

PART I

THIS AGREEMENT, consisting of this Part I and the Terms and Conditions forming PART II hereof (which Parts, together, are herein called the 'Contract'), effective on the date hereinbelow set out, by and between the _____ (herein called the Private Organization) and the South Carolina Department of Archives and History (herein called the 'State'),

WITNESSETH:

In consideration of the mutual covenants, promises, and representations contained herein, the parties hereto do agree as follows:

SECTION I. PURPOSE OF CONTRACT

The purpose of this Contract is to provide financial assistance to the Private Organization in the form of a grant (herein called the 'Grant') under the State Historic Preservation Plan for the purpose of developing the State's historic patrimony through the acquisition and/or development of _____ (herein called the 'Project') and to state the terms and conditions under which such assistance will be extended.

SECTION 2. THE PROJECT

(a) The Private Organization agrees to undertake, carry out, and complete _____ of the property which is described in detail by exhibit A attached hereto and expressly incorporated herein as part of this contract.

*2 (b) The Private Organization agrees to retain said Project, as acquired and/or developed, for historic preservation purposes.

(c) The Private Organization agrees to develop the project in the following manner described below:

SECTION 3. THE GRANT

In order to assist the Private Organization in carrying out the Project, the State agrees to make a Grant in an amount equal to _____ dollars.

SECTION 4. TIME OF PERFORMANCE

The Private Organization agrees that it will:

(a) Complete the acquisition of the Project within six (6) months after the date of this contract. (and/or)

(b) Initiate the development activities contemplated under this Contract and that it will complete such development activities within a reasonable period of time now estimated to be twenty-four (24) months.

PART II

TERMS AND CONDITIONS

SECTION I. RIGHT OF REFUSAL

If the Private Organization, its heirs, assigns and successors in interest, should, at any time during the maintenance period (as that term is defined in PART II, Section 2) to which it is obligated, wish to sell or otherwise dispose of the Project, the Private Organization shall grant to the State the first right to purchase or refuse to purchase the property described in detail in Exhibit A prior to offering the property to any other prospective purchaser.

SECTION 2. MAINTENANCE AND ADMINISTRATION

As a condition of this contract, the Private Organization agrees to maintain and administer the Project as historic property for a period beginning on the approval date of funding for not less than ____ years thereafter.

The Private Organization, its heirs and assigns and successors in interest also agree to encumber Title to the Project with a covenant running with the land, in favor of and enforceable by the State of South Carolina through its Attorney General, that the Private Organization, its heirs and assigns, shall repair, maintain and administer the Project during the covenant period of ____ years so as to preserve the historical integrity of the Project's features, material, appearance, workmanship and environment.

SECTION 3. PRESERVATION OF VALUES

Without the express written permission of the Grantee signed by its duly authorized representative, no construction, alteration, or remodeling or any other thing shall be undertaken on the subject premises which would affect either the lot herein described or the ____ of the building or other improvements located thereon, as depicted by the written descriptions and photographs to be attached hereto upon the completion of the project and referred to as Exhibit B, attached hereto and expressly incorporated herein as part of this contract; provided, however, that the reconstruction, repair, repainting, or refinishing of presently existing parts or elements of the lot, building, and improvements damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted provided that such reconstruction, repair, repainting or refinishing is done in a manner which would not alter the appearance of the lot and building as they are _____. In all events, the Grantor, in painting the exterior of any building or improvement on the premises agrees to obtain the prior written consent of Grantee as to the quality and color of paint to be used.

SECTION 4. PUBLIC BENEFIT

*3 As a condition of this contract, the Private Organization agrees to open the Property ____ for a period beginning on the approval date of funding for not less than ____ years thereafter and allow access to the public for a period of not less than twelve (12) days a year on an equitably spaced basis and to be open to the public at other times by appointment. The Private Organization further agrees that failure to open the Project to the public after subsequent warning by the State shall give the State the right to enter the Project and provide for opening the Project to the public.

SECTION 5. ENFORCEMENT

In the event of a violation of any covenant or restriction herein, the State of South Carolina through its Attorney General may, following reasonable notice to the Grantor, institute a suit to enjoin such violation and to require the restoration of the premises to their prior condition, or in the alternative, representatives of the State may enter upon the premises correct any such violation, and hold Grantor, his successors and assigns responsible for the cost thereof. The State of South Carolina through its Attorney General shall have available all legal and equitable remedies to enforce the Grantor's obligations hereunder.

SECTION 6. FLOOD INSURANCE

Grantee agrees to purchase flood insurance in compliance with the National Flood Disaster Protection Act of 1973 (Public Law 92-234, December 31, 1973) and maintain such insurance for ____ years from the approval date of funding. Grantee also agrees to name the National Park Service as a loss payee of the policy.

SECTION 7. APPROVAL DATE OF FUNDING

For purposes of this contract, the approval date of funding shall be deemed ____.

IN WITNESS WHEREOF, the Private Organization has caused this Contract to be duly executed in its behalf and its seal to be hereunto affixed and attested; and, its seal to be hereunto affixed and attested; and, thereafter, the State has caused the same to be duly executed in its behalf this ___ day of _____, 19__.

PRIVATE ORGANIZATION

By _____

(Title)

ATTEST:

(Title)

STATE OF SOUTH CAROLINA

Department of Archives and History

By _____

State Historic Preservation Officer

_____ (Seal)

(SEAL)

By _____

STATE OF SOUTH CAROLINA)

CITY/COUNTY OF) To-wit:

I, _____, a Notary Public in and for the jurisdiction aforesaid, hereby certify that _____ and _____ whose names are signed to the foregoing contract bearing date the ___ day of _____, 19___, have acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this ___ day of _____, 19___.

My commission expires _____.

*4 Certain of the attachments referred to as Exhibit B are not recordable. Accordingly, none of the attachments referred to as Exhibit B have been recorded but they are available for inspection upon reasonable request at the South Carolina Department of Archives and History, 1430 Senate Street, Columbia, South Carolina.

Exhibit B

Mailed to _____

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End of Document

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