

**PRESERVATION COVENANT
BETWEEN THE STATE OF WYOMING, DEPARTMENT OF STATE PARKS AND
CULTURAL RESOURCES,
STATE HISTORIC PRESERVATION OFFICE AND
LEAVERTON MARQUIS LLC**

1. **Parties.** The parties to this Preservation Covenant (Covenant) are the State of Wyoming, Department of State Parks and Cultural Resources, State Historic Preservation Office, (Department), whose address is 2301 Central Avenue, Cheyenne, WY 82002, and the Leaverton Marquis LLC (Owner), whose address is 403 Kilbourne Street, Sheridan, Wyoming 82801.
2. **Purpose of Agreement.** The purpose of this Covenant is to set forth the terms and conditions by which the Owner shall preserve The Leaverton (Property), Lots One (1) and Two (2) of Thurmond's First Addition to the Town, now City of Sheridan, Sheridan County, Wyoming and is located at 403 Kilbourne Street, Sheridan, Wyoming which is listed on the National Register of Historic Places as a contributing property of the Sheridan Main Street Historic District, Smithsonian Number 48SH686, which is owned fee-simple by the Owner.
3. **Term of Covenant.** This Covenant is effective when all parties have executed it (Effective Date). The term of this Covenant is through fifteen (15) years from the Effective Date.
4. **Payment.** No payment shall be made by either party to the other party as a result of this Covenant. Payment is handled by a separate grant agreement between the Department and the Leaverton Marquis LLC dated July 9, 2021, which is incorporated herein by this reference.
5. **Responsibilities of Owner.** The Owner agrees:
 - A. To assume the cost of the continued maintenance and repair of the Property so as to preserve the architectural, historical, or archaeological integrity of the same in order to protect and enhance those qualities that made the Property a contributing component of the National Register of Historic Places listed the Sheridan Main Street Historic District, Smithsonian Number 48SH686.
 - B. To ensure that no visual or structural alterations are made to the Property without the prior written permission of the Department.
 - C. That the Department, its agents, and designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether or not the conditions of this Covenant are being observed.
 - D. When the grant-assisted work, whether done to the interior or exterior (Improvements), is not clearly visible from the public right-of-way, the Owner agrees to provide public access to view the grant-assisted work or property no less than twelve (12) days a year on an equitably spaced basis. At the Owner's option, the property may also be open at other times by appointment. Nothing in this Covenant will prohibit a reasonable nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

The Owner further agrees that when the Property is not open to the public on a continuing basis, and when the Improvements are not visible from the public right-of-way, Owner



shall publish notification in newspapers or other media in general circulation in the community area in which the Property is located, giving dates and times when the Property will be open. Owner shall provide the Department documentation of such notice on a yearly basis during the term of this Covenant.

- E. To comply with Title VI of the Civil Rights Act of 1965 (42 U.S.C. § 2000(d)), the Americans with Disabilities Act (42 U.S.C. § 12204), and with the 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, Owner shall make reasonable accommodations to qualified disabled persons in consultation with the Department. To comply with the Americans with Disabilities Act, and with Section 504 of the Rehabilitation Act, the Owner is not required to make every part of the Property accessible to and useable by disabled persons by means of physical alterations. Rather, Owner may use videos, slide presentations, or other audio-visual material and devices to depict otherwise inaccessible areas or features.
- F. That if the Property is damaged by accidental or natural causes, or is damaged deliberately by Owner or through gross negligence of Owner during the term of this Covenant, the Owner shall, without direct National Park Service grant assistance, take all necessary steps, including legal action, if necessary, to restore, reconstruct, or stabilize the damaged Property. The Owner shall provide the Department all documentation including, but not limited to, damage reports, estimates of repair costs, and any other documentation required for the Department to fulfill its notice obligation to the National Park Service.
- G. If the Property is removed due to deliberate destruction by Owner or through gross negligence of the Owner, the Owner shall return, at a minimum, all grant funds distributed by the Department to Owner for the preservation of the Property to the Department, and may be liable for additional legal costs, if required.
- H. Under no circumstance can an/a Covenant be "bought out" by repaying the grant provided under the separate grant agreement.
- I. To record this Covenant in the real property records in the county in which the Property is located and to provide proof of such recordation to the Department.

6. **Responsibilities of Department.** The Department agrees:

- A. To maintain an up-to-date list of Department covenants or preservation easements or both that affect the Property, including the addresses, names of property owners, expiration dates of agreements, and dates of any on-site visit. Occasional site visits and correspondence to owners reminding them of their responsibilities under such covenant or preservation easement shall be documented in the Department's files, if necessary.
 - (i) That in the event of the non-performance or violation of the terms of this Covenant by the Owner (or any successor-in-interest) during the term of this Covenant, the Department shall notify the Owner in writing of its obligation to restore the Property to the condition existing at the time grant-in-aid assistance from the National Park Service, United States Department of the Interior work is completed.
- B. **Property Damage.**



- (i) If the Property is damaged by accidental or natural causes, or is damaged deliberately or through gross negligence during the period of this Covenant, the Department shall inform the National Park Service in writing of the damage to the Property, including: 1) an assessment of the nature and extent of the damage; and 2) an estimate of the cost of restoration work necessary to return the Property to the condition existing at the time of grant-assisted project's completion.
- (ii) If the Property is destroyed or irreparably damaged by accidental or natural causes, that is, if the historical integrity of the features, materials, appearance, workmanship and environment which made the Property eligible for listing as a contributing property of the Sheridan Main Street Historic District, Smithsonian Number 48SH686, has been lost or so damaged that its continued National Register listing is in question, the Department shall notify the Keeper of the National Register in writing of the loss. The Keeper of the National Register will evaluate the findings and notify the Department in writing of any decisions to remove the Property from the National Register. If the Property is to be so removed, the Department shall then notify the Owner that this Covenant is terminated.
- (iii) If the Property has been severely damaged or destroyed deliberately by Owner or through gross negligence by Owner, that is, if the historical integrity of the features, materials, appearance, workmanship and environment which made the property eligible for listing as a contributing property of the Sheridan Main Street Historic District, Smithsonian Number 48SH686, has been lost or so damaged that its continued National Register listing is in question, the Department shall notify the Keeper of the National Register in writing of the loss. The Keeper of the National Register will evaluate the findings and notify the Department in writing of any decisions to remove the Property from the National Register.

7. **Special Provisions.**

- A. **Monitoring Activities.** Department shall have the right to monitor all activities related to this Covenant that are performed by the Owners. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Covenant; and to observe personnel in every phase of performance of Covenant related work.
- B. **Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Owner and related to the services and work to be performed under this Covenant, shall identify the Department and the National Park Service, Department of the Interior as the sponsoring agencies.

8. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Covenant which are mutually agreed upon by the parties to this Covenant shall be incorporated by written instrument, executed by all parties to this Covenant.

- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Covenant shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms "hereof," "hereunder," "herein," and words of similar import, are intended to refer to this Covenant as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Covenant and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment Prohibited and Covenant Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Covenant without the prior written consent of the other party. The Owner shall not use this Covenant, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Department.
- D. Audit and Access to Records.** The Department and its representatives shall have access to any books, documents, papers, electronic data, and records of the Owner which are pertinent to this Covenant.
- E. Compliance with Laws.** The Owner shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Covenant.
- F. Confidentiality of Information.** Except when disclosure is required by the Wyoming Public Records Act or court order, all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Owner in the performance of this Covenant shall be kept confidential by the Owner unless written permission is granted by the Department for its release. If and when Owner receives a request for information subject to this Covenant, Owner shall notify Department within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Department.
- G. Entirety of Covenant.** This Covenant, consisting of eight (8) pages; and the Grant Agreement between the Department and the Leaverton Marquis LLC, consisting of eleven (11) pages dated July 9, 2021, represent the entire and integrated Covenant between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Covenant and the language of any attachment or document incorporated by reference, the language of this Covenant shall control.
- H. Extensions.** Nothing in this Covenant shall be interpreted or deemed to create an expectation that this Covenant will be extended beyond the term described herein. Any extension of this Covenant shall be initiated by the Department and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Covenant or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Covenant.
- I. Indemnification.** Each party to this Covenant shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
- J. Independent Contractor.** The Owner shall function as an independent contractor for the purposes of this Covenant and shall not be considered an employee of the State of



Wyoming for any purpose. Consistent with the express terms of this Covenant, the Owner shall be free from control or direction over the details of the performance of services under this Covenant. The Owner shall assume sole responsibility for any debts or liabilities that may be incurred by the Owner in fulfilling the terms of this Covenant and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Covenant. Nothing in this Covenant shall be interpreted as authorizing the Owner or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Department or to incur any obligation of any kind on behalf of the State of Wyoming or the Department. The Owner agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Owner or the Owner's agents or employees as a result of this Covenant.

- K. Notices.** All notices arising out of, or from, the provisions of this Covenant shall be in writing either by regular mail or delivery in person at the addresses provided under this Covenant.
- L. Prior Approval.** This Covenant shall not be binding upon either party, and no services shall be performed, until this Covenant has been fully executed, and approved as to form by the Office of the Attorney General.
- M. Severability.** Should any portion of this Covenant be judicially determined to be illegal or unenforceable, the remainder of the Covenant shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- N. Sovereign Immunity and Limitations** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and the Department expressly reserve sovereign immunity by entering into this Agreement and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- O. Time is of the Essence.** Time is of the essence in all provisions of this Covenant.
- P. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Covenant.
- Q. Waiver.** The waiver of any breach of any term or condition in this Covenant shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- R. Counterparts.** This Covenant may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Covenant. Delivery by the Owner of an originally signed counterpart of this Covenant by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Department.

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9. **Signatures.** The parties to this Covenant, either personally or through their duly authorize representatives have executed this Covenant on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Covenant.

The Effective Date of this Covenant is the date of the signature last affixed to this page.

DEPARTMENT:

State of Wyoming, Department of State Parks and Cultural Resources, State Historic Preservation Office


Sara Needles
State Historic Preservation Officer

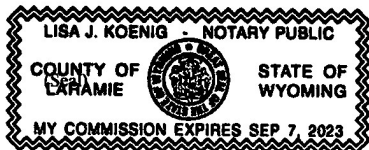
10/28/21
Date

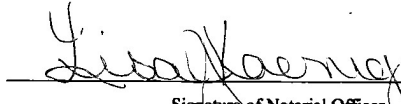
State of Wyoming

County of Laramie

This Preservation Covenant signed or attested before me on
Title of document being signed or attested to

October 28, 2021 by Sara Needles
Date Names(s) of Person(s)




Signature of Notarial Officer

Notary Public
Title (e.g. Notary Public) or Rank (Rank if officer in active military)

My commission expires: 9/7/23



OWNER:

Leaverton Marquis LLC

Louise M. Morand
Louise M. Morand, Owner

OCTOBER 25TH 2021

Date

State of Wyoming

County of Sheridan

This Preservation Covenant Between The State of Wyoming and Leaverton Marquis signed or attested before me on
Title of document being signed or attested to

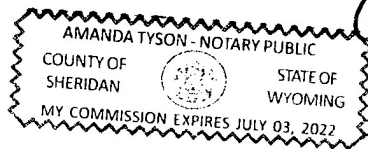
October 25th 2021

Date

by Louise M. Morand

Names(s) of Person(s)

(Seal)



Amanda Tyson

Signature of Notarial Officer

Notary

Title (e.g. Notary Public) or Rank (Rank if officer in active military)

My commission expires: July 03, 2022

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

Meg Pope # 216840
Megan Pope, Senior Assistant Attorney General

10/8/21
Date

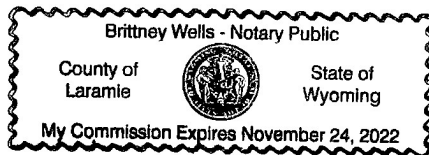
State of Wyoming

County of Laramie

This Preservation Covenant signed or attested before me on
Title of document being signed or attested to

October 8, 2021 by Megan Pope
Date Names(s) of Person(s)

(Seal)



Brittney Wells
Signature of Notary Officer

Notary Public
Title (e.g. Notary Public) or Rank (Rank if officer in active military)

My commission expires: 11/24/22

NO. 2021-775262 AGREEMENT - LEGAL

EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK
LOUISE MORAND
SHERIDAN WY 82801