

FILED IN OFFICE  
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STATE OF GEORGIA

**PROTECTIVE COVENANTS AGREEMENT**

DEC 23 4 42 PM '92

STATE OF GEORGIA  
COUNTY OF CHAMBERLAIN

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12-23-92

THIS AGREEMENT is made and entered into as of the 17<sup>th</sup> day of December, 1992, by and between the GEORGIA TRUST FOR HISTORIC PRESERVATION, INC., a nonprofit corporation organized under the laws of Georgia (the "Georgia Trust"), and WINBURN, LEWIS & BARROW, P.C. ("Purchaser").

**WITNESSETH**

WHEREAS, the Georgia Trust and Purchaser have entered into that certain Contract to Purchase dated October 30, 1992, for the purchase of the real property described on Exhibit "A" attached hereto and made a part hereof by this reference, together with all buildings and improvements located thereon (collectively, the "Property"); and

WHEREAS, the Property contains a building or buildings ("structure" or "structures") of publicly recognized historical, cultural and architectural significance; and

WHEREAS, the Georgia Trust and Purchaser each recognize the historical, cultural, and aesthetic value and significance of the Property, and have the common purpose of conserving and preserving the aforesaid value and significance of the Property for private and public benefit; and

WHEREAS, the Georgia Trust and Purchaser each desire that the historic structures be adapted where necessary, to provide for contemporary conveniences and to accommodate contemporary uses, while at the same time retaining its historically and architecturally significant features; and

WHEREAS, the Georgia Trust is a charitable organization which acquires certain rights pursuant to historic preservation agreements to ensure that structures located within the State of Georgia of recognized historical and architectural significance are preserved and maintained for the benefit of future generations.

NOW, THEREFORE, for and in consideration of the Deed to the Property and the mutual benefits to all parties to preserve the historic improvements thereon for the use and the benefit of the public in having the historic Property preserved in an historically authentic condition, the parties hereto agree as follows:

1. In order to make more certain the full extent of Purchaser's obligations and the restrictions on the Property, and in order to document the exterior and interior nature of the structures as of the date hereof, attached hereto as Exhibit "B" and

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incorporated herein by this reference is a set of photographs depicting the exterior and a portion of the interior surfaces of the structures and the surrounding property. It is stipulated by and between the Georgia Trust and Purchaser that the exterior and interior nature of the structures as shown in Exhibit "B" is deemed to be the exterior and interior nature of the structures as of the date hereof and as of the date this instrument is first recorded in the public real estate records of the County where the Property is located. Exhibit "B" is permanently on file at the main offices of the Georgia Trust in Atlanta, Georgia.

2. These covenants shall be administered and enforced solely by the Georgia Trust, its successors and assigns; and in all subsequent conveyances of the Property, the Georgia Trust, its successors and assigns, shall be the sole party entitled to administer and enforce these covenants. In the event that the Georgia Trust, or its successors in interest by corporate merger, shall cease to exist, then in such event the Georgia Trust shall assign all of its rights and interests in these covenants and conditions subject to such duties and obligations which it assumes hereby to a nonprofit corporation or entity which exists for substantially the same reasons as the Georgia Trust (as described hereinabove); if no such corporation or entity be available for such assignment then, under such circumstances, such assignment shall be made to the State of Georgia which shall be entitled to administer and enforce the covenants herein contained.

3. Purchaser covenants and agrees to rehabilitate the structures according to the terms, conditions, and deadlines of a Rehabilitation Agreement of even date, and after rehabilitation continuously to maintain, repair and administer the Property herein described in accordance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, (in effect as of 1990) and as hereafter amended) so as to preserve the historical integrity of features, materials, appearance, workmanship and environment of the Property. Maintenance shall be continuously provided. A ten-point synopsis of said standards is attached hereto as Exhibit "C" and incorporated herein by reference.

4. No alteration and no physical or structural change and no changes in the material or surfacing shall be made to the exterior of the structures without the prior written approval of the Georgia Trust. Such approval shall be based on plans and specifications provided by Purchaser at Purchaser's expense.

5. No additions or additional structures, including but not limited to satellite receiving dishes, swimming pools, camping accommodations or mobile homes, shall be constructed or permitted to be built upon the Property unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the Georgia Trust. The Georgia Trust in reviewing the plans and designs for any addition or additional structure shall consider the following criteria: exterior building materials; height; fenestration; roof shapes, forms, and materials; surface textures; expression of architectural detailing; scale; relationship of any additions to the main structure; general

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form and proportion of structures; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural traditions; and effect on archaeological resources. Contemporary designs for additions or additional structures shall not be discouraged when such alterations or additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, color, material and character of the Property and its environment.

6. Purchaser and the Georgia Trust hereby agree that the interior architectural features listed on Exhibit "D" attached to hereto and made a part hereof are elements which contribute to the architectural significance of the historic Property. No removal, relocation, or alteration of the above-mentioned architectural features shall be made without the prior written approval of the Georgia Trust.

7. Neither the building nor any rooms or parts thereof may be removed or demolished without the prior written approval of the Georgia Trust.

8. The Property shall be used only for office space or for single family residential use and consistent with the preservation purposes of the covenants contained herein, unless a change in such purpose is agreed to in writing by the Georgia Trust and recorded in the County real estate records.

9. The Property shall not be subdivided and the Property shall not be devised or conveyed except as a unit.

10. The Property shall be landscaped in a manner compatible with the style and period of the structures. No living trees greater than 12 inches in diameter at a point 4 feet above the ground within 150 feet of the structures shall be removed without the express written approval of the Georgia Trust unless immediate removal is necessary for the protection of any persons coming onto the Property or of the general public; for the prevention or treatment of disease; or for the protection and safety of the structures or other permanent improvements on the Property. Any tree of the aforementioned size which must be removed shall be replaced within a reasonable time by a new tree of the same species. If so requested, the Georgia Trust may approve the use of an alternative species.

11. No grading, excavation or other disturbance of the ground on the Property will be undertaken without the written approval of the Georgia Trust. Any such disturbance of the existing grade level will require qualified archaeological investigation if, in the judgment of the Georgia Trust, such disturbance might affect significant archaeological resources on the Property.

12. When seeking approvals under paragraphs 3, 4, 5, 6, 7, 8, 10 and 11, Purchaser shall give written notice pursuant to paragraph 24 herein to the Georgia Trust

prior to beginning any work on the Property. If the Georgia Trust fails to respond within thirty (30) days, then Purchaser shall have the right to proceed according to its plans. The Georgia Trust's decisions under paragraphs 3, 4, 5, 6, 7, 8, 10 and 11, shall be based on the Secretary of the Interiors' Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and shall not be unreasonably withheld.

13. Purchaser shall abide by all federal, state, and local laws and ordinances regulating the rehabilitation, maintenance and use of the Property. However, nothing contained in this instrument shall be interpreted to authorize, require or permit Purchaser to violate any ordinance relating to building materials, construction methods or use. In the event of any conflict between any such ordinance and the terms hereof, Purchaser shall promptly notify the Trust of such conflict, and the Trust shall agree upon such modifications to Purchaser's obligations which are consistent with sound preservation practices and such ordinance.

14. In case of any contemplated sale of the Property or any portion thereof by Purchaser or any successor in title thereto, the right of first refusal as to any bona fide offer of purchase must be given in writing to the Georgia Trust, its successors or assigns, pursuant to the notice provisions set forth in paragraph 24 herein. If the Georgia Trust so decides to purchase, it shall notify the then owner of its willingness to buy upon the same terms within thirty (30) days of receipt of written notice of such bona fide offer. Failure of the Georgia Trust to notify the then owner of its intention to exercise this right of first refusal within such thirty (30) day period shall free the owner to sell pursuant to the bona fide offer.

15. In the event of a violation of covenants contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 10 and 11, hereof, the Georgia Trust then shall have an option to purchase the Property, provided that it shall give Purchaser written notice of the nature of the violation and Purchaser shall not have corrected same within the ninety (90) days next following the giving of said notice. The purchase of the Property, pursuant to the exercise of the option retained hereby, shall be at a price equal to the then market value of the Property, subject to restrictive covenants, as determined by agreement of the owner and the Georgia Trust, or, in the absence of such agreement, by a majority vote of a committee of three qualified appraisers, one to be selected by the Georgia Trust, one to be selected by the then owner, and the other to be designated by the two appraisers selected by the Georgia Trust and the owner respectively. If there are any outstanding security deeds or other encumbrances against the Property, any right to purchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

16. Representatives of the Georgia Trust shall have the right and a non-exclusive easement to enter the Property at reasonable times, after giving reasonable notice, for the purpose of inspecting the structures and grounds to determine if there is

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compliance by Purchaser with the terms of these covenants, and to ensure the preservation and maintenance of the Property.

17. Researchers, scholars and other persons or groups interested in historic preservation shall have access to view the interior of the rehabilitated property by special appointment.

18. The covenants to carry out the duties specified herein and these restrictions shall be covenants and restrictions running with the land, which Purchaser and Purchaser's heirs, successors, and assigns covenant and agree, in the event the Property is sold or otherwise disposed of, will be described in the deed conveying or disposing of the Property, and if not so described, shall nevertheless run with the land and be binding upon all heirs, successors and assigns.

19. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to the Georgia Trust. No failure on the part of the Georgia Trust to enforce any covenant or restriction herein nor the waiver of any right hereunder by Georgia Trust shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Georgia Trust to enforce the same in event of a subsequent breach or default.

20. Unless otherwise provided, the covenants and restrictions set forth herein shall run in perpetuity and shall terminate and be of no further force or effect only in the event that the main building on the Property is damaged beyond restoration as a result of fire or other catastrophe. Damage beyond restoration is defined as damage to an extent exceeding 75 percent of the value of said structure. The percent of damage is the amount agreed to by the Georgia Trust and the then owner, or, in the absence of such agreement, by a majority vote of a committee of three qualified appraisers, one to be selected by the Georgia Trust, one to be selected by the then owner, and the other to be designated by the two appraisers selected by the Georgia Trust and the owner respectively. Damage to one of said structures shall not effect applicability of the covenants and restrictions to the other said structures.

21. The above conditions and covenants are intended to be separable and if any is found to be void or invalid, such a finding shall not affect the validity or enforceability of those remaining.

22. These covenants are for the benefit of and binding upon the parties hereto and their respective successors, assigns, heirs, legal representatives and mortgagees.

23. No substances deemed environmentally hazardous under any law relating to environmental conditions, including Federal, state and local environmental statutes, ordinances and regulations, shall be generated, treated, processed, stored or disposed of,

or otherwise present in, on or under the Property in such a way as to violate any law relating to any such substance; and no activity shall be undertaken on the Property which would cause a release or threatened release of hazardous material into the Property. Purchaser and Purchaser's successors and assignees, hereby agree unconditionally to indemnify, defend, and hold the Georgia Trust, its successors and assignees, harmless against any loss, liability, damage, expense or claim arising from any type of clean up, detoxification, repair or removal demanded by any Federal, state or local authority under any hazardous material law with respect to the Property, and against any liability to any third party in connection with any violation of a hazardous material law arising from the generation, treatment, processing, storage, removal, clean up or disposal of any hazardous material.

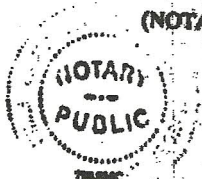
24. Any notice or demand required hereunder shall be given in writing and may either be personally delivered or sent by certified mail or registered mail or by an overnight courier that provides a receipt of delivery to the address given below and shall be deemed effective on the date that it is so deposited for delivery. A party may change its address for notice purposes by sending the other parties a notice containing the changed address.

25. Whenever this Agreement provides herein that an approval, consent or other agreement is needed from the Georgia Trust, such approval, consent or agreement shall be given by the President of the Georgia Trust, or by another officer or designee duly authorized to give such approval, consent or agreement by the President or by the Board of Trustees of the Georgia Trust.

Signed, Sealed and  
Delivered in the Presence  
of:

  
Witness

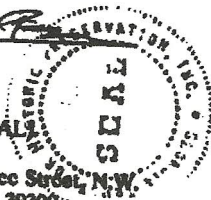
  
Notary Public  
Commission Expires: \_\_\_\_\_



THE GEORGIA TRUST FOR HISTORIC  
PRESERVATION, INC. A GEORGIA  
CORPORATION

By:   
President

(CORPORATE SEAL)



Address: 1516 Peachtree Street, N.W.  
Atlanta, GA 30309  
Attention: President

Signed, Sealed and  
Delivered in the Presence of:

*Barbara L. Williams*  
Witness

*Kellie A. Evans*  
Notary Public  
Commission Expires: May 1, 1995

(NOTARY SEAL)

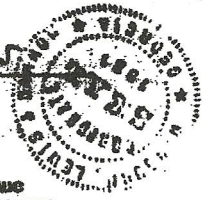


PURCHASER:

WINBURN, LEWIS & BARROW, P.C.

By: *Bob Barrow*  
Title: V.P.

(CORPORATE SEAL)



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Athens, Georgia 30601  
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CLERK'S OFFICE, SUPERIOR COURT OF  
ATHENS-CLARKE COUNTY, GEORGIA  
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BY *[Signature]* CLERK