

Programmatic Agreement Among
The Advisory Council on Historic Preservation,
The Pennsylvania State Historic Preservation Officer,
The Delaware Nation,
The Delaware Tribe of Indians,
The Stockbridge-Munsee Community,
The City of Philadelphia,

and

The National Park Service

Regarding

The Land Exchange between the National Center for the American Revolution and
the National Park Service

WHEREAS, the National Park Service (NPS) in 2008 entered into a Programmatic Agreement with the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) which establishes an efficient process for compliance with Section 106 of the National Historic Preservation Act as amended (NHPA) (16 U.S.C. §470 *et seq.*) for daily operation, management, and administration activities and provides programmatic procedures and guidance for activities related to the Section 106 compliance process, including identification or resources, consultation, and planning; and

WHEREAS, the United States of America, Department of the Interior, National Park Service entered into an agreement with the National Center for the American Revolution (ARC), a private, non-profit entity, to initiate a land exchange that includes parcels at Valley Forge National Historical Park (VAFO) and Independence National Historical Park (INHP) (Attachment 1 - *the signed agreement*); and

WHEREAS, the NPS expects to receive from ARC clear and marketable title to the tract of land containing 78 acres, more or less, located within the boundaries of VAFO (Attachment 2 – *map showing VAFO parcel*) and, in exchange, NPS expects to convey to ARC clear and marketable title to the Independence Living History Center (ILHC) located at the southeast corner of 3rd and Chestnut Streets within the boundaries of INHP (Attachment 3 – *map showing INDE conceptual subdivision plan*); and

WHEREAS, the NPS has determined that this exchange is an undertaking subject to review under Section 106 of the NHPA (16 U.S.C. §470f), and its implementing regulations under 36 C.F.R. part 800 (2004); and

WHEREAS, the NPS, the Pennsylvania State Historic Preservation Officer (PASHPO),

ACHP, the Delaware Nation, the Delaware Tribe of Indians, the Stockbridge-Munsee Community, and the City of Philadelphia understand that after the parcel becomes a private holding, future parcel activities will not be subject to Section 106 of the NHPA (16 U.S.C. §470f) unless the project, activity, or program is funded in whole or in part under the direct or indirect jurisdiction of a Federal agency (see 16 U.S.C. § 470w(7)); and

WHEREAS, the NPS intends to relocate the public archeology lab and associated collections currently located within the ILHC to the First Bank of the United States where the NPS will ensure the continuation of public access to the lab, including the relocated collections, and continue current operations with minimal interruption or delay in order to complete compliance responsibilities related to the National Constitution Center archeological site; and

WHEREAS, INHP cultural resources staff have determined that the ILHC building, constructed circa 1975, does not meet the criteria for listing on the National Register of Historic Places; and

WHEREAS, the NPS has determined that the Area of Potential Effect (APE) for the undertaking at INHP, which extends east to west from 2nd Street to 6th Street and south from Ranstead Street to Walnut Street, includes Independence National Historical Park, a historic district as well as portions of three adjacent National Register Historic Districts: Society Hill Historic District, Old City Historic District and East Center City Commercial Historic District; several National Historic Landmarks, including the First Bank of the United States, the Merchants' Exchange Building, Carpenters' Hall, the Second Bank of the United States, and Philosophical Hall; as well as Independence Hall, a World Heritage Site (Attachment 4 – Area of Potential Effect site plan); and

WHEREAS, the NPS has determined that National Register eligible cultural resources, including archeological sites and Native American remains, may exist on the INHP land exchange tract itself; and

WHEREAS, the NPS has determined that possible unspecified development associated with the land exchange will potentially have adverse effects on National Register eligible cultural resources found on the INHP exchange parcel and the surrounding National Register Historic Districts; and

WHEREAS, the NPS has consulted with the PASHPO, ACHP, the Delaware Nation, the Delaware Tribe of Indians, the Stockbridge-Munsee Community, the City of Philadelphia and other identified stakeholders pursuant to 36 C.F.R. part 800 (2004).

WHEREAS the NPS completed an archeological sensitivity study in April, 2010, sometimes referred to as a Phase IA archeological assessment, to determine the potential for archeological resources contained within the INHP land exchange parcel and the said

study met the Secretary of the Interior's Standards for Archeological Documentation. And consulting parties had the opportunity to comment on it.

NOW, THEREFORE, the NPS, PASHPO, ACHP, the Delaware Nation, the Delaware Tribe of Indians, the Stockbridge-Munsee Community, and the City of Philadelphia agree that the undertaking will be carried out in accordance with the following stipulations and general provisions in order to take into account the effects of it on historic properties.

The NPS shall ensure that the following stipulations are carried out:

Stipulations

1. The NPS has developed and will execute legally binding deed restrictions that extend protection to cultural resources on the INHP land exchange parcel after the land is transferred into private ownership. Restrictions shall include adequate provisions to address archeological findings, tribal interests, and architectural scale. The deed restrictions are attached hereto as Attachment 5 .
2. The deed restrictions will be included in the deed of conveyance and run with the land.
3. During the thirty (30) day archeological workplan review period, as stipulated in the deed restrictions, the NPS will seek PASHPO and other consulting party review as appropriate on the proposed workplan and incorporate their comments into NPS comments. The NPS will keep the consulting parties who comment informed as the workplan develops and is finalized.
4. The NPS will accept as part of the exchange the parcel of land within the boundaries of VAFO and will preserve said parcel according to accepted standards outlined in the Secretary of the Interior's Standards for the Treatment of Historic Properties, NPS Management Policies (2006), and relevant Director's Orders addressing cultural resources.
5. Following the transfer, the Philadelphia City Planning Commission will conduct public reviews of future development on the land exchange parcel consistent with its normal procedures for major projects, including but not limited to: 1) an information-only presentation of the proposed design at a regularly scheduled meeting of the Commission; 2) a second review at a regularly scheduled meeting of the Commission, no sooner than the next such meeting, at which time Commission staff will make a recommendation for action by the Commission, and the Commission will act as it deems appropriate. There is public comment opportunity at each of these meetings and public comment is considered by the reviewing body.

Note: It is the policy of the Commission to give members of the public the opportunity to offer their views at public meetings of the Commission. They may do so in person or in writing. The recommendation of the Commission goes either to the Zoning Board of Adjustment or City Council, depending on the nature of relief being sought by the applicant. Both the Zoning Board of Adjustment and City Council conduct public hearings on matters before them, consistent with their own rules and regulations.

6. Terms of Agreement. This Agreement shall become effective after the date of the last signatory. Once the land exchange has been completed (expected Summer 2010), parcel rezoning and redevelopment will take place in accordance with The Philadelphia Code.

This Agreement shall be null and void if its terms are not carried out within five years after the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms. Otherwise, this Agreement shall become null and void when the undertaking is complete, all of the above stipulations are fulfilled, and the SHPO has been provided with a written report as to the actions taken to fulfill the terms of the Agreement. This Agreement and any amendments shall be binding upon the parties, their successors, and assigns. The execution of this Agreement shall not be delayed due to changes in personnel.


7. Monitoring of Agreement. The NPS will review and discuss this Agreement during its annual meeting with the SHPO and the federally recognized tribes and will invite the City of Philadelphia to participate in that discussion. In addition, the NPS will inform the signatories of any planned activities on the parcel that relate to the terms of this Agreement.
8. Amendment of Agreement. The Agreement may be modified by amendment at any time by mutual written concurrence of the signatories.
9. Termination of Agreement. Any signatory to this Agreement may terminate it by providing thirty (30) calendar days notice to the other parties, provided that the parties will consult during the period prior to termination to seek amendments, per Stipulation 9 above, or other actions that would avoid termination. In the event of termination, the NPS will negotiate a new PA in accordance with 36 C.F.R. §800.14(b)(3) or request, consider, and respond to the comments of the ACHP in accordance with 36 C.F.R. Part 800.7[ac].
10. Dispute Resolution. Should any signatory object to implementation of the terms of this Agreement, that signatory shall notify the Agency and all other signatories in writing of the nature of the objection. The Agency shall, within 30 days after receipt of the objection, consult with the objecting party and other signatories to resolve the objection. If the Agency determines that the objection cannot be resolved, the

Agency shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (ACHP). Within 45 days after receipt of all pertinent documentation, the ACHP will either a.) provide the Agency and signatories with written comments and recommendation, or b.) notify the agency that it will comment in accordance with 35 CFR Part 800.7(c). Such response shall be taken into account by the Agency in reaching a final decision regarding the dispute.

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure be raised by a member of the public, the NPS shall take the objection into account and consult as needed with the objecting party and the SHPOs.

Execution and implementation of the terms of this Agreement evidences that NPS has taken into account the effects of this undertaking on historic properties and has afforded the ACHP an opportunity to comment, in compliance with Section 106. Implementation of the stipulations listed above indicates compliance with Section 106 of the National Historic Preservation Act as amended.

For the National Park Service:


Cynthia A MacLeod, Superintendent, INHP

07/15/10
Date


Final June 29, 2010


Michael Caldwell, Superintendent, VAFO

June 30, 2010
Date

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June 29, 2010

For the Advisory Council on Historic Preservation:


for _____ 7/27/10
John M. Fowler, Executive Director Date

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June 29, 2010

For the Pennsylvania State Historic Preservation Officer:

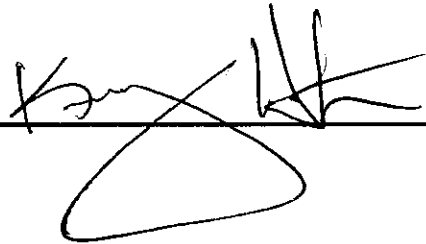


Barbara Franco, Pennsylvania State Historic Preservation Officer

7/7/2010
Date

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For the Delaware Nation:

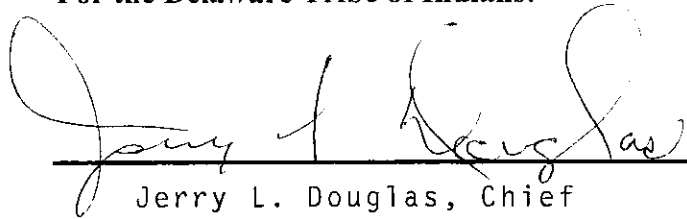


Kerry Holton, President

7-16-2010
Date

Programmatic Agreement Among The Advisory Council on Historic Preservation, The Pennsylvania State Historic Preservation Officer, The Delaware Nation, The Delaware Tribe of Indians, The Stockbridge-Munsee Community, The City of Philadelphia and The National Park Service Regarding The Land Exchange between the National Center for the American Revolution and the National Park Service
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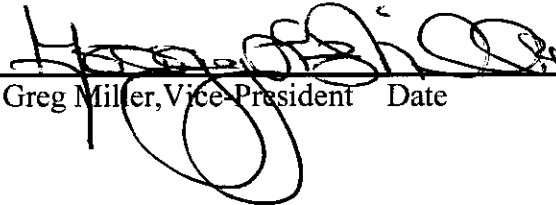
For the Delaware Tribe of Indians:

 CHIEF 7-12-10

Jerry L. Douglas, Chief Date

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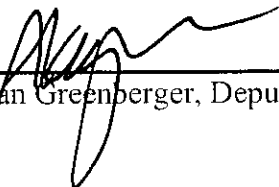
For the Stockbridge-Munsee Community:

 07/08/10

Greg Miller, Vice-President Date

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June 29, 2010

For the City of Philadelphia:



Alan Greenberger, Deputy Mayor for Economic Development

07.08.10
Date

References Cited:

Independence NHP Draft Archeological Overview and Assessment
List of Classified Structures
1994 Cultural Landscape Inventory
National Register of Historic Places Nomination Form

To view attachments, please go to:
<http://parkplanning.nps.gov/inde>

Programmatic Agreement Among The Advisory Council on Historic Preservation, The Pennsylvania State Historic Preservation Officer, The Delaware Nation, The Delaware Tribe of Indians, The Stockbridge-Munsee Community, The City of Philadelphia and The National Park Service Regarding The Land Exchange between the National Center for the American Revolution and the National Park Service
June 29, 2010

Attachment 1

**Agreement Between United States of America
U.S. Department of the Interior
National Park Service
And
National Center for the American Revolution**

AGREEMENT

BETWEEN

**UNITED STATES OF AMERICA
U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

AND

NATIONAL CENTER FOR THE AMERICAN REVOLUTION

This Agreement ("Agreement") to initiate a land exchange is between the National Center for the American Revolution, hereinafter referred to as ARC, and the United States of America, hereinafter referred to as the United States.

A. ARC agrees to the following:

1. Convey to the United States clear and marketable title to the tract of land described in Exhibit "A," containing 78 acres, more or less. This land is located within the boundaries of Valley Forge National Historical Park and will hereinafter be referred to as Tract No. 101-60.
2. Grant permission to the United States, or its agents, to conduct all forms of due diligence as needed including but not limited to appraisals, title searches, surveys, environmental site assessments (ESA), public and congressional notifications, inspections for environmental assessments(EA) or environmental impact statements(EIS), and natural and cultural resources surveys.
3. Reimburse the United States for title and appraisal services on the property to be conveyed to ARC (as described in Paragraph B.1 of this Agreement).

and Secretarial Order 3127 of December 15, 1988, regarding Hazardous Substances Determinations.

4. Obtain title for the properties to be exchanged and conduct closing services for the exchange.
 5. Prepare and publish the Federal Register Notice and solicit public involvement by putting a notice of the proposed exchange in the local newspaper providing for a 45-day comment period.
 6. Prepare and provide to ARC a binding Exchange Agreement after all due diligence is performed on the properties, and an agreement is reached on the equalization of values.
 7. Upon acceptance by ARC of the Exchange Agreement, prepare a quitclaim deed from the United States to ARC for the ILHC, and a Special Warranty deed from ARC to the United States for Tract No. 101-60.
 8. Prepare closing documents and submit to ARC for review.
- C. Both parties agree to the following:
1. No later than 10 days from the date of executing this Agreement, the United States shall begin the due diligence process.
 2. The parties will use best efforts to reach mutual agreement on the values of the properties to be exchanged and any equalization of values that may be required. Subject to reaching such agreement in a timely manner and compliance with applicable law, the United States will complete the exchange within one year of the execution of this Agreement.
 3. This Agreement may be amended or terminated by written consent of the parties or by 30-days written notice by either party. Notice to either party shall be in writing and sent by certified mail, return receipt requested, to:

In witness whereof the parties have caused this instrument to be executed by their duly authorized representatives this 29th day of July, 2009. *mb*

*JUNE 5
DUE*

Attest

[Signature]

BY

UNITED STATES OF AMERICA

[Signature]

Daniel N. Wenk
Acting Director
National Park Service

Attest:

[Signature]

NATIONAL CENTER FOR THE
AMERICAN REVOLUTION

BY

[Signature]

Bruce Cole
President and CEO
American Revolution Center

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Attachment 2

Map Showing Valley Forge Parcel

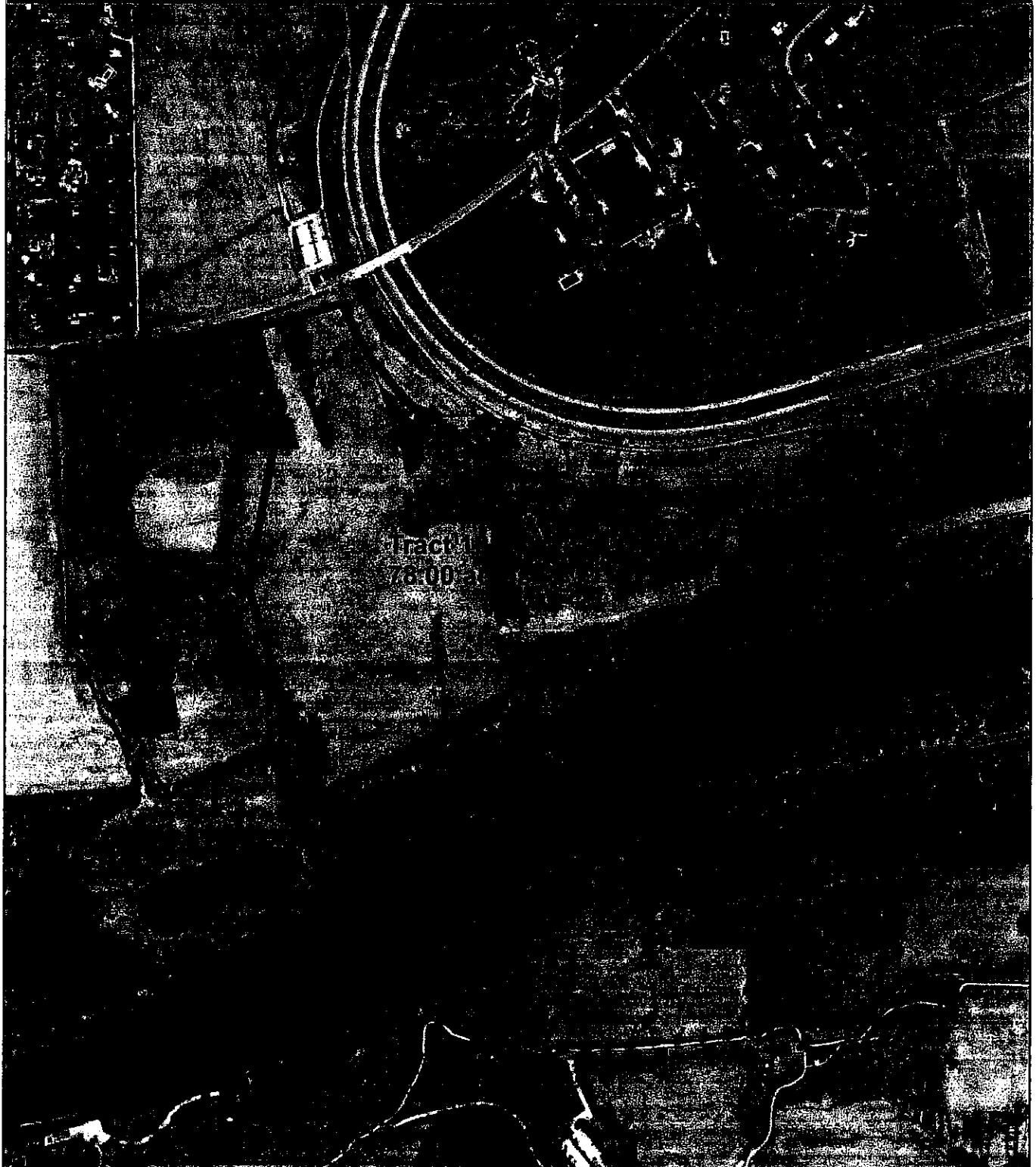
Independence-Valley Forge Exchange Valley Forge National Historical Park

NATIONAL
PARK
SERVICE



Exchange Tract (Tract 101-60)

December 17, 2009



Programmatic Agreement Among The Advisory Council on Historic Preservation, The Pennsylvania State Historic Preservation Officer, The Delaware Nation, The Delaware Tribe of Indians, The Stockbridge-Munsee Community, The City of Philadelphia and The National Park Service Regarding The Land Exchange between the National Center for the American Revolution and the National Park Service
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Attachment 3

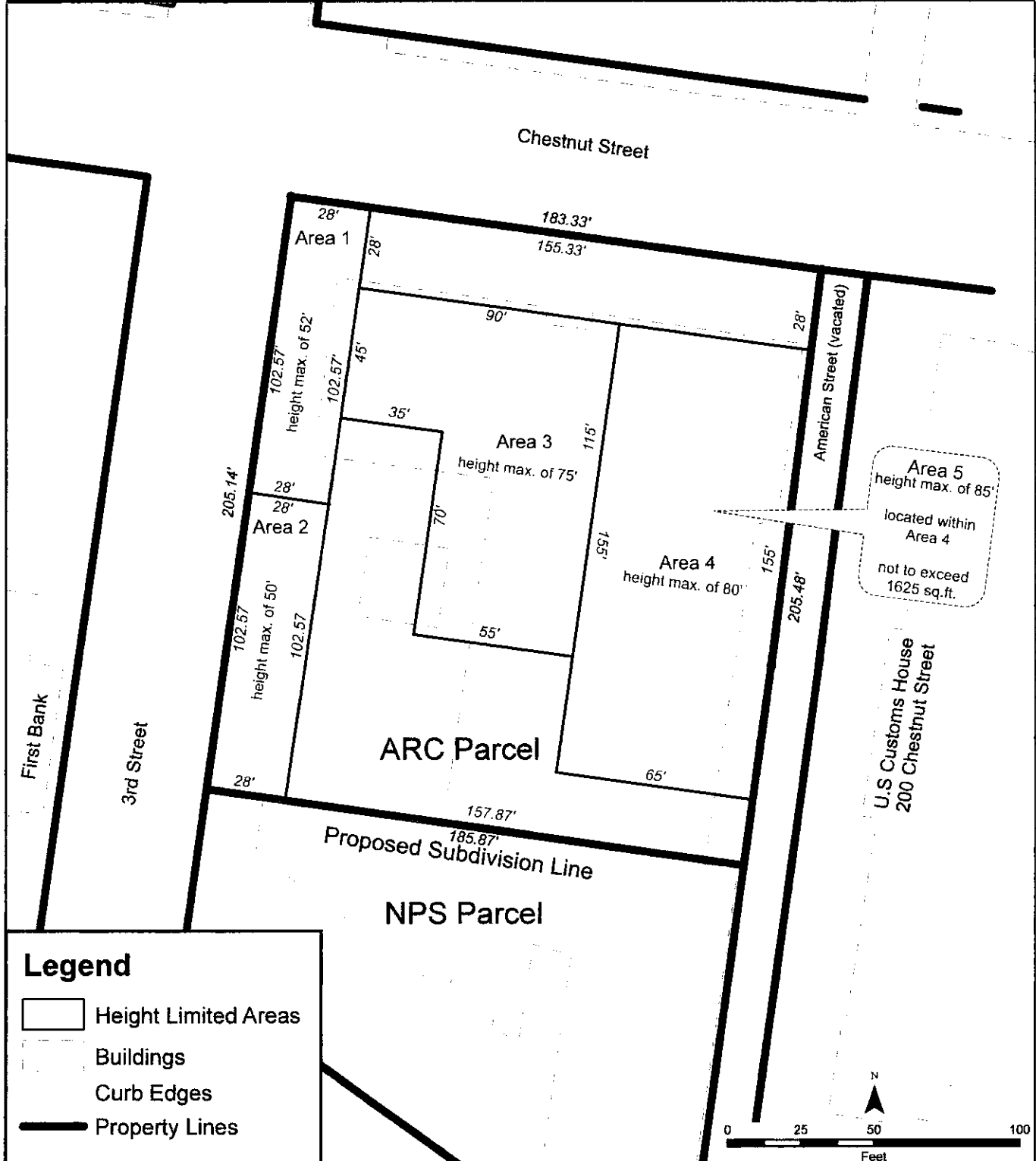
Map Showing INDE Conceptual Subdivision Plan

Independence National Historical Park

National Park Service
U.S. Department of the Interior



Exhibit A - Height Limitations Independence Exchange Parcel March 4, 2010



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June 29, 2010

Attachment 4

Area of Potential Effect Site Plan

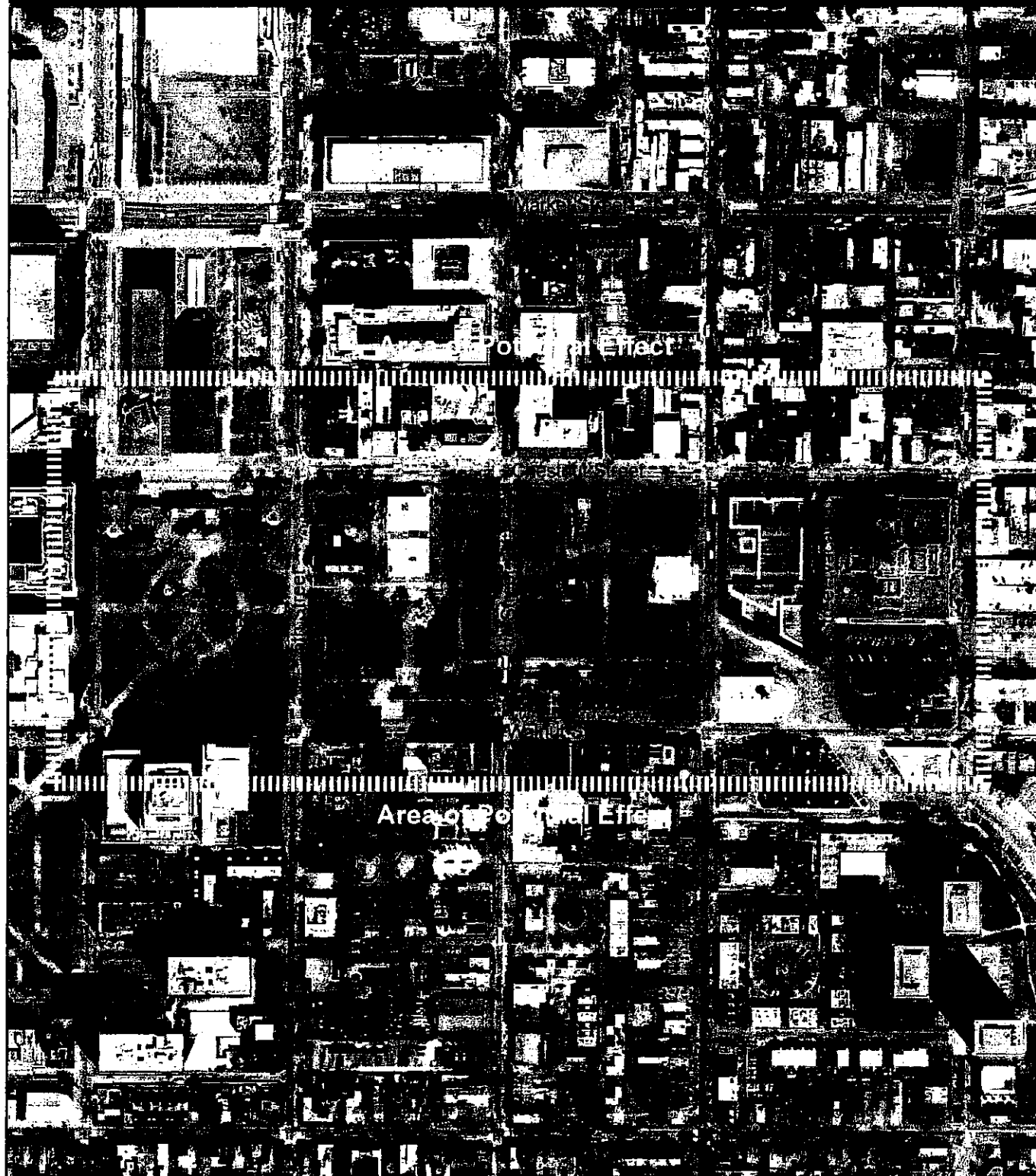
Independence-Valley Forge Exchange Independence National Historical Park

NATIONAL
PARK
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Area of Potential Effect

December 17, 2009



Programmatic Agreement Among The Advisory Council on Historic Preservation, The Pennsylvania State Historic Preservation Officer, The Delaware Nation, The Delaware Tribe of Indians, The Stockbridge-Munsee Community, The City of Philadelphia and The National Park Service Regarding The Land Exchange between the National Center for the American Revolution and the National Park Service
June 29, 2010

Attachment 5

Deed Restrictions

INDE Deed Restrictions and Rights Reserved by USA

TO HAVE AND TO HOLD the above premises, subject to the following specified easements, exceptions, restrictions, conditions, covenants, and reservations reserved in and to the United States of America, herein enumerated and set forth, unto the Grantee, its successors and assigns, forever.

A. Restrictions imposed by the United States of America:

Height Limitation: The maximum building height of any replacement or new structure is limited to a height of not greater than sixty five feet (65') with the exception of the following areas, as depicted on the attached Exhibit A. All references herein to height measurements shall be measured vertically starting from the average grade of the centerline of Third Street between Chestnut and Dock Streets:

Area 1: The maximum height shall be no greater than fifty-two feet (52'). Area 1 begins at the northwest corner of the property and runs southerly along the 3rd Street property line for one hundred two and fifty-seven hundredths feet (102.57'), to a point; then turning and running east at a 90 degree angle for twenty-eight feet (28'), to a point; then turning and running north at 90 degree angle for one hundred two and fifty-seven hundredths feet (102.57') to a point; then turning and running west at a 90 degree angle along Chestnut St. twenty-eight feet (28'), to the point of beginning.

Area 2: The maximum height shall be no greater than fifty feet (50'). Area 2 begins at the southwest corner of Area 1 and continues southerly along the 3rd Street property line for one hundred two and fifty-seven hundredths feet (102.57'), to a point; then turning east at a 90 degree angle and running for twenty-eight feet (28'), to a point; then turning north at a 90 degree angle and running one hundred two and fifty seven hundredths feet (102.57') to a point; then turning west at a 90 degree angle and running for twenty-eight feet (28') to the point of beginning .

Area 3: The maximum building height shall be no greater than seventy-five feet (75'). Area 3 begins at a point which is setback twenty-eight feet (28') south of Chestnut and twenty-eight feet (28') east of Third Street; then running easterly parallel to Chestnut Street ninety feet (90'), to a point; then turning southerly at a 90 degree angle for a one hundred-fifteen feet (115'), to a point; then turning west at a 90 degree angle for a distance of fifty-five (55') feet, more or less, to a point; then turning north at a 90 degree angle for a distance of seventy feet (70') to a point; then turning west at a 90 degree angle for a distance of thirty-five feet (35'), to a point; then turning north at a 90 degree angle for a distance of forty-five feet (45'), to the point of beginning.

Area 4: The maximum building height shall be no greater than eighty feet (80'). Area 4 begins at a point on the property line of American Street which is fifty-three feet (53') south of Chestnut Street; then running south along the American Street property line for one hundred-thirty feet (130'), to a point; then turning west at a 90 degree angle for sixty-five feet (65') to a point; then turning north at a 90 degree angle for one hundred-thirty feet

(130'), to a point; then turning east at a 90 degree angle for sixty-five feet (65'), to the point of beginning.

Area 5: This area shall consist of a **Building Accessory Area** of not more than 1,625 gross square feet with a maximum height of no greater than eighty-five feet (85') which shall be used to provide a screened exterior rooftop wall for cooling towers, generator, mechanical/electrical rooftop appurtenances, and other accessory uses. The actual location of the **Building Accessory Area** shall require the Grantor's written approval.

2. **Signage:** No exterior signs shall be placed on the premises without the prior review and approval in writing of the Grantor. Approval or comments will be provided within 30 days of submission of a proposed sign design package which will include specifications with respect to size, materials and location. In the event that the Grantor fails to provide notice of its approval or disapproval within thirty (30) days, the signs shall be deemed approved by Grantor. In the event that the Grantor does not approve a sign package submitted for approval, the Grantee may appeal to the National Park Service, Regional Director of the Northeast Region, who will review the sign submission package and the reasons for disapproval and attempt to resolve any differences.
3. **Subdivision Limitation:** The above premises shall not be subdivided for any purpose at any time provided that nothing contained herein shall be interpreted to apply to a lease or creation of a condominium within the premises hereby conveyed provided that the exterior surface of any structure or structures constructed or erected thereon shall either (i) be under the ownership, management and control of a single legal entity, or (ii) if under separate ownership, any instrument creating such separate ownership shall provide that all owners shall designate, in writing delivered to Grantor, a single agent or representative (who may but need not be an owner) expressly authorized to bind and act on behalf of all such owners with respect to all matters arising under these covenants.

B. Rights reserved by the Grantor:

1. **Right of First Offer:** (a) If at any time the Grantee, elects, in its sole discretion, to convey the Property to an independent third party unrelated to Grantee, then, except as hereinafter provided, Grantee shall notify the Grantor by notice to the Superintendent of Independence National Historical Park, or its successor agency, in writing (the "Offer Notice") that the Property will be available for sale, which Offer Notice shall set forth the Purchase Price for the Property and the other terms and conditions to which the prospective purchasers shall be asked to agree.

(b) Within ten (10) days following receipt by Grantor of an Offer Notice, or within ten (10) days following receipt by Grantor of a writing notifying Grantor that Grantee expects to provide an Offer Notice and requesting Grantor's response under this section B.1.(b), Grantor may request in writing that Grantee provide Grantor an appraisal (an "Appraisal") of the fair market value of the Property prepared by an MAI appraiser or an appraiser who has similar experience and education, provided that Grantor shall agree in such request to pay the fees and costs charged by such appraiser. Such Appraisal shall be prepared in accordance with the Interagency Land Acquisition Conference Uniform Standards for Federal Land Acquisitions (USFLA) or the current Federal Land Acquisition appraisal standard. Grantee

shall not be obligated to provide such Appraisal unless (i) Grantor issues its written request within such 10-day period, and (ii) agrees in writing to pay the fees and costs charged by such appraiser (collectively, a "Qualifying Request").

(c) The Grantor may elect to purchase the Property upon the same terms and conditions as contained in the Offer Notice. If the Grantor shall elect to purchase the Property on the terms and conditions contained in the Offer Notice, the Grantor shall notify Grantee in writing ("Park Service Election Notice") within forty-five (45) days after the later of (i) receipt of the Offer Notice or (ii) receipt of the Appraisal if a Qualifying Request shall have been issued by Grantor, time being of the essence, of its election to so purchase the Property. If the Grantor timely delivers a Park Service Election Notice, then, subject to section B.1. (d) below, the Grantor shall be irrevocably obligated to purchase the Property in accordance with the provisions of this section. If the Grantor shall fail to notify Grantee of such election within such applicable forty-five (45) day period, the Grantor shall be deemed to have irrevocably waived its right to purchase the Property and Grantee shall have the right to offer the Property to a third party, on substantially the same terms as contained in the Offer Notice. Grantee shall have the right to sell the Property to a third party on such terms as Grantee may elect in its sole discretion; provided, however, such terms may include a Purchase Price of ninety percent (90%) of the Purchase Price contained in the Offer Notice and Grantee may sell the Property at a Purchase Price of ninety percent (90%) or more of the Purchase Price without Grantee first reoffering the Property to the Grantor pursuant to the terms and conditions contained in this section.

(d) If the Grantor elects to purchase the Property, then the parties shall close on the sale of the Property within one hundred and twenty (120) days after the date of the notice from the Grantor to Grantee so electing to purchase the Property, time being of the essence. Notwithstanding anything contained in this Agreement, if the Grantor shall fail to close on the purchase within the one hundred and twenty (120) day period, the Grantor shall be irrevocably deemed to have waived its rights to any other first offer of the Property from Grantee to the Grantor.

(e) Should Grantee fail to enter into a contract to sell the Property at the purchase price permitted hereunder within a period of nine (9) months from the date that the Grantor fails to timely elect to purchase the Property at the Purchase Price contained in the Offer Notice, and if Grantee is still desirous of selling the Property, Grantee shall then be obligated to re-offer the Property to the Grantor with a revised Offer Notice (Revised Offer Notice) at a price and on terms and conditions solely determined by Grantee which price may be the lower, the same or higher than that contained in the original Offer Notice. Thereafter, Grantee and the Grantor shall be obligated to repeat the process contained herein within the same time frames (time being of the essence) until the Grantor purchases the Property or Grantee sells the Property to an independent third party.

(f) If Grantee does not desire to sell the Property after any such period, unless the Grantor has irrevocably waived its rights hereunder, Grantee shall nonetheless continue to provide the Grantor with a Right of First Offer in accordance with the terms and conditions of this Agreement.

(g) This section B.1., and the rights of Grantor and obligations of Grantee under this section B.1., shall be applicable only to a sale of the Property in its entirety, and specifically but without limitation shall not apply to (i) the granting of any mortgage, deed of trust or other security device or security interest in the Property or any part thereof, (ii) the creation of any lease and leasehold estate in all or any part of the Property, (iii) the granting of any easement(s) on or affecting the Property or any part thereof, (iv) the establishment of any condominium regime of ownership pertaining to the Property or any part thereof, or the conveyance of any common elements of any such condominium to any condominium association or similar entity, and (v) the sale of any one or more condominium units within such condominium unless such sale shall be a sale of all such condominium units, comprising all of the Property, to a single purchaser in a single transaction or a series of related transactions intended to result in the ownership of all such units by the single purchaser thereof.

(h) The rights granted to Grantor under this section B.1. are personal to and may be exercised only by Grantor. The rights granted to the Grantor under this section B.1 shall be extinguished automatically and in their entirety by and upon any foreclosure or exercise of any power of sale or similar right under or deed or other conveyance in lieu to the holder of any present or future mortgage or deed of trust upon the interest of Grantee in the Property (or to the assignee or designee of such holder or purchaser at any such foreclosure or sale), provided that the foregoing shall not apply if Grantee or any affiliate controlling, controlled by or under common control with Grantee is the holder of such mortgage or deed of trust at the time of such foreclosure, or the recipient of such deed in lieu of foreclosure.

2. **Right to Access Bell Tower:** As long as the Bell Tower is retained by the Grantee, the Grantor reserves the right to access the premises for the purpose of normal maintenance, repair and removal of the Bicentennial Bell, Portrait Plaque and Commemorative Plaque as described in Attachment A, but is not required to repair or maintain the "Bicentennial Bell", Portrait Plaque and "Commemorative Plaque. The Grantor will provide the Grantee with twenty-four (24) hours advanced notice of said access, except in event of an emergency situation that requires immediate access. The Grantee shall provide the Grantor not less than sixty (60) days notice in writing of Grantee's intention to remove the Bell Tower.
3. **Archeological Resources:** In the event the Grantee plans an undertaking requiring ground disturbing activities to a depth of greater than eight (8) inches, the Grantee shall identify all significant archeological resources which may be affected by these actions. The Grantee will determine if any identified or suspected archeological resources would meet the eligibility requirements for listing on the National Register of Historic Places. The Grantee will consider ways to avoid the effects of ground disturbing activities on those archeological resources that are found to be eligible for listing on the National Register. If avoidance is not feasible, the Grantee will mitigate the adverse effects of the proposed ground disturbing activities through archeological excavation and documentation, or other suitable alternative methods consistent with the definition of "mitigation" as used in the National Environmental Policy Act regulations of the Council on Environmental Quality [Section 1508.20(c)-(e)].

The aforementioned archeological review and evaluation will be conducted at the Grantee's sole expense by individuals meeting or exceeding the minimum professional qualifications in archaeology published in Secretary of the Interior's Standards and Guidelines for

Archaeology and Historic Preservation (48 FR 44716), as amended or updated. The review and evaluation produced by the Grantee will include a written and well documented assessment of potential impacts on significant archeological resources (as defined above) and will include a written plan, hereinafter referred to as the work plan, specifying proposed testing, mitigation, cataloging, and conservation of archeological resources within the affected area. All proposed actions will adhere to guidance provided in Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-740) and will result in avoidance or mitigation of potential adverse effects. Grantee shall provide copies of the work plan and any documentation prepared pursuant to the work plan and its execution to Grantor no less than thirty (30) days in advance of the execution of any mitigation measures outlined in the work plan. Grantor may provide to Grantee its comments on the work plan and any documentation prepared pursuant to the work plan.

In the event of a disagreement between Grantee and Grantor on any action contained in the work plan, Grantee and Grantor shall endeavor in good faith to resolve the disagreement. In the event that Grantor and Grantee are unable to reach agreement upon the potential effect of proposed actions on archeological resources or on a mutually satisfactory plan to mitigate these effects, the Grantor or Grantee may initiate arbitration proceedings pursuant to the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that a party initiating arbitration shall have first given written notice to the other party of an irreconcilable disagreement within a reasonable time of having discovered the irreconcilable disagreement and, further provided, that the party initiates arbitration within thirty (30) days of said notice. In these circumstances, the Grantor and Grantee shall each select an arbiter. The two arbiters, within ten (10) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. To the extent applicable to the matter presented for arbitration, the arbitration panel shall give effect to the requirement, set forth above, that all proposed actions will adhere to guidance provided in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-740).

4. Native American Resources:

(a) Consultations regarding potential adverse effects on Native American archeological resources that may be discovered on the property:

Native American archeological resources shall be defined as archeological resources previously referenced herein that are, or may be, of Native American origin. In addition to the procedures described above with respect to archeological resources, this provision shall apply with respect to Native American archeological resources.

The Grantee will provide the federally recognized Indian Tribes of Lenape/Delaware descent (the Delaware Tribe of Indians, the Delaware Nation, and the Stockbridge-Munsee Community) with the opportunity to consult and to comment on documentation produced during review, identification and mitigation of ground disturbing activities involving Native American archeological resources. The Grantee will provide to the federally-recognized Delaware tribes copies of the work plan for any proposed archeological mitigation measures relating to such resources at least thirty (30) calendar days in advance of execution of the mitigation measures, and the federally-recognized Delaware tribes may review and provide comments on the work plan to Grantee. The Grantee and the federally-recognized Delaware

tribes will endeavor in good faith to resolve any disagreement concerning any proposed action included in the work plan affecting Native American archeological resources and the proposed mitigation of such actions.

(b) Intentional Excavations and Inadvertent Discoveries:

Planned Excavations: In the event the Grantee plans to carry out any ground disturbing activities to a depth of greater than eight (8) inches, the Grantee shall determine whether this activity may result in the excavation of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act of 1990. Prior to initiating any ground disturbance, the Grantee shall notify and consult with present-day Indian tribes which would most likely be culturally affiliated with the items (Delaware Nation, Delaware Tribe of Indians, and Stockbridge-Munsee Community). Following consultation, the Grantee shall complete a written Plan of Action regarding the proposed treatment and disposition of such items that may be excavated and provide a copy of the Plan of Action to the federally-recognized Delaware tribes. Consultations and written Plans of Action will be carried out as described in 43 CFR 10.5. The Grantee shall give custody of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally to the appropriate federally-recognized Delaware Indian tribes as described in 43 CFR 10.6.

Inadvertent Discoveries: In the event of an inadvertent discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act of 1990, the Grantee will provide immediate telephone notification, followed by written confirmation, to the Superintendent of Independence National Historical Park and the responsible tribal officials of the federally recognized Delaware tribes (Delaware Nation, Delaware Tribe of Indians, and Stockbridge-Munsee Community). The Grantee shall cease the activity in the area of the inadvertent discovery and take immediate steps to secure and protect the human remains and cultural items discovered there, including, as appropriate, stabilization or covering. Prior to resuming activity in the area of the inadvertent discovery, the Grantee must initiate consultations with the federally-recognized Delaware Indian tribes. The activity that resulted in the inadvertent discovery may not resume until 30 days after the Grantee certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, except that a recovery plan adopted as a binding agreement between the Grantee and the federally-recognized Delaware Indian tribes may provide for earlier resumption of the activity. The Grantee shall give custody of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently on the above premises to the federally-recognized Delaware Indian tribes as described in 43 CFR 10.6.

(c) Consultation with federally recognized tribes. The Grantee will use its good faith efforts to involve the federally recognized tribes in the planning, development, and presentation of interpretive programs relating to the histories and cultures of Native Americans. Where appropriate, Grantee will inform federally recognized tribes and give opportunity to the tribes to provide comments and insights.

C. No Third Party Beneficiary

The provisions of this Agreement are for the benefit only of the parties expressly named herein, and their respective successors and assigns, and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement.

D. Definitions:

1. The term "GRANTOR" wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above named GRANTOR and its designate, representatives, successors, and assigns. For the purposes of notifications and approvals required herein, the Grantor shall be represented by the Superintendent of Independence National Historical Park. The term "GRANTEE" wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above named GRANTEE and its authorized representatives, successors and assigns.
2. The words "Archeological Resources" as referenced herein shall mean any material remains of past human life or activities that are of archeological interest. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found or human skeletal materials or graves.
3. The words "ground disturbing activities" as referenced herein shall mean actions that dig into the soil more than eight (8) inches.
4. The word "significant" as referenced herein, is the meaning or value ascribed to a structure, landscape, object, or archeological site based on the National Register criteria for evaluation. Such a property or resource is associated with events, activities, or developments that were important in the past, with the lives of people who were important in the past, with significant architectural history, landscape history, or engineering achievements or it has the potential to yield information through archeological investigation about our past.
5. The words "adverse effect" as referenced herein, is found when an activity diminishes, either directly or indirectly, any of the characteristics of a historic building, structure, object, landscape, or archeological site that qualifies the property for inclusion on the National Register of Historic Places.
6. The term "conveyance" as it is used herein in section B, Right of First Offer, shall include any leasehold interest of the entire real property including improvements.
7. The term "Sculptures", "Bicentennial Bell", "Portrait Plaque", and "Commemorative Plaque" wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the contract, those items described herein and shall be considered USA personal property and are identified in the INDE museum catalog:

Attachment A

Sculptures Description:

- Three (3) fiberglass sculptures of site plans of the park, "A Gift of the Guild of Prescription Opticians of Philadelphia as Executed by the Philadelphia Architects' Workshop," for the sight impaired
- Sculptures are mounted on brick plinths which will also be removed

Bicentennial Bell Description:

- Cast at the Whitechapel Foundry in London, England
- Weighs 12,466 pounds
- Comprised predominantly of copper and tin
- Diameter 6 feet 10 inches; height 5 feet 6 inches
- Tuned to G below middle C
- Inscribed "For the People of the United States from the People of Britain 4 July 1976 Let Freedom Ring" and "Proclaim Liberty Throughout All the Land Unto All the Inhabitants Thereof"
- Installed 6/16/1976
- Dedicated by Queen Elizabeth II on 7/6/1976

Portrait Plaque Description:

- Bronze plaque measuring 28" wide x 33.5" high x 2 1/8" deep
- Haut relief, bust portrait in profile of Queen Elizabeth II. Subject faces left, wears crown, earring, necklace and draping below shoulder. Mottled background.
- Installed to commemorate the Queen's presentation of the Bicentennial Bell, July 16, 1976.

Commemorative Plaque Description:

- Bronze plaque measuring approximately 96" wide x 33.5" high x 2 1/8" deep.
- Installed to commemorate the Queen's presentation of the Bicentennial Bell, July 16, 1976.
- Queen Elizabeth II's remarks at the presentation are cast in base relief on the plaque:

HERE ON JULY 6, 1976, HER MAJESTY QUEEN ELIZABETH II OF GREAT BRITAIN PRESENTED THE BICENTENNIAL BELL TO THE PEOPLE OF THE UNITED STATES, IN THESE WORDS:

"I speak to you as the direct descendant of King George III. He was the last Crowned Sovereign to rule in this country, and it is therefore with a particular personal interest that I view those events which took place 200 years ago.

It seems to me that Independence Day, the Fourth of July, should be celebrated as much in Britain as in America. Not in rejoicing at the separation of the American colonies from the British Crown but in sincere gratitude to the Founding Fathers of this great Republic for having taught Britain a very valuable lesson.

We lost the American colonies because we lacked that statesmanship “to know the right time, and the manner of yielding, what is impossible to keep.”