

DRAFT -October 3, 2002

**ASSIGNMENT AND TRANSFER OF THE
DALY FAMILY MANSION BY THE MONTANA HISTORICAL
SOCIETY TO THE UNIVERSITY OF MONTANA**

This Assignment and Transfer of the Daly Family Mansion and premises (Mansion), located as described in the attached Indenture Agreement between the Besseney Estate representatives and the Montana Historical Society (Attachment A), is made on this ___ day of _____, 2002 by the State of Montana, Historical Society, whose address is 225 North Roberts, P.O. Box 210210, Helena, Montana 59620-120 1 (Historical Society) to The University of Montana (University), whose address is 109 Main Hall, Missoula, Montana 59812.

WHEREAS, the Daly Family Mansion property, Hamilton, Montana, is listed in the National Register of Historic Places and was acquired by the State of Montana for its unique historic values that are to be preserved into an indefinite future for the enjoyment, education and benefit of Montanans and non-Montana visitors interested in Montana and U.S. Western history; and

WHEREAS, the Montana Historical Society currently has responsibility for exercising control and management rights of the Mansion on behalf of the State of Montana, the Mansion owner; and

WHEREAS, the Historical Society Board of Trustees wishes to assign and transfer all Mansion control and management rights to The University of Montana, and the University wishes to accept such rights for the purpose of exercising them in a manner intended to promote relevant academic program activities for University students and faculty in connection with the Mansion's historical and cultural importance; and

WHEREAS, the Historical Society Board of Trustees and the Montana Board of Regents have all reviewed and approved the proposed Mansion control and management rights to the University; and

WHEREAS, legal counsel for the Montana State Land Board has reviewed the proposed Mansion assignment and transfer, and determined, based on such review, that the Land Board should refrain from exercising jurisdiction over this matter because the Mansion title and ownership will remain with the State of Montana following the proposed transfer and assignment; and

WHEREAS, the University agrees to exercise Mansion control and management rights in full compliance with the State's purpose in acquiring the Mansion and with all laws applicable to State of Montana historical properties in consultation with the Montana Historical Society State Historic Preservation Officer; and

WHEREAS, the Daly Mansion Preservation Trust (Trust), which currently manages the Mansion pursuant to a Management Agreement between the Trust and the Historical Society, is also in agreement with the proposed Mansion assignment and transfer to the University and will continue to manage the Mansion pursuant to a new Management Agreement with the University.

NOW, THEREFORE, the Historical Society, for and in consideration of the Sum of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged by the Historical Society, does hereby assign and transfer to the University, all control and management rights of the Historical Society in and to the Mansion pursuant to the terms and conditions set forth below.

- I. Upon the execution of this Agreement by all parties below, this Agreement shall take immediate effect, and its duration shall be permanent.
- II. Neither the University nor the Montana University System may sell or otherwise permanently transfer the Mansion or other properties and premises subject to this Agreement to any other person or entity absent prior approval by the Montana Board of Regents (with advice from the University) and the Montana State Land Board (with advice from the Montana Historical Society).
- III. To the extent practicable and permissible by law, the University shall have the same legal requirements and obligations as the Historical Society regarding the Mansion. Such requirements and obligations include, but are not necessarily limited to, those involving Mansion property, casualty and liability insurance; Mansion use; nondiscrimination law compliance; procurement; historical preservation; Mansion construction and renovation; and public obligation indebtedness.
- IV. The University shall assume responsibility for obtaining and maintaining all necessary insurance on the Mansion as required by applicable state laws.
- V. Upon execution of this Agreement, it shall be duly recorded in Ravalli County as part of the Mansion's other property recordations with the County.

By: _____
GEORGE M. DENNISON
President

Date: _____

By: _____
ARNOLD OLSEN
Director, Montana Historical Society

Date: _____

DRAFT -October 7, 2002

DALY FAMILY MANSION MANAGEMENT AGREEMENT

Whereas, the Daly Family Mansion (Mansion) property, Hamilton, Montana, is listed in the National Register of Historic Places, and was acquired by the State of Montana for its unique historic values that are to be preserved into an indefinite future for the enjoyment, education, and benefit of Montanans and visitors interested in Montana and Western history.

Whereas, Sections 22-3-601 through 22-3-603, MCA, allow the Montana Historical Society to contract with the Daly Mansion Preservation Trust, Inc. (Trust), for the operation, maintenance, repair, preservation, or renovation of any historic site owned by the State with the State retaining ownership of the site and buildings and control over decisions concerning their historic integrity and preservation for the benefit of the citizens of the State.

Whereas, the Society has transferred responsibility for Mansion legal control and management oversight to The University of Montana pursuant to approval by the Society Board of Trustees, Montana Board of Regents and the Montana State Land Board.

Whereas, the Society, the Trust and the University wish to ensure that site protection and management are accomplished efficiently, appropriately, and respectfully.

Now, therefore, it is hereby agreed by the parties as follows:

I. Parties

This Agreement is entered by and between: The University of Montana, whose address is 109 University Hall, Missoula, MT 59812 and the Daly Mansion Preservation Trust, Inc., whose address is P.O. Box 223, Hamilton, MT 59840. The University is an agency of the State of Montana. The University is the owner of the Mansion and the surrounding grounds located at Hamilton, Montana. The Trust is a duly constituted Montana non-profit corporation which was organized to preserve, protect and restore the Mansion. The Trust has been the subject of three Attorney General's opinions which are attached in Appendix 1.

II. Premises

This Agreement covers the Mansion, a three-story 24,000 square foot residence and the surrounding grounds and outbuildings, and related building fixtures that once comprised a portion of the summer residence for Marcus Daly's family located in Ravalli County, Montana hereinafter, the "Premises." The Mansion is a property listed on the National Register of Historic Places. It came into the possession of the State of Montana when the Montana Legislature accepted the deed to the property in lieu of taxes owed. By so doing, the Legislature recognized that the property is a significant piece of Montana history that should be preserved, and protected for the benefits of all Montanans. All such existing structures and improvements, in their present condition and as they may be restored or preserved under the terms of this Agreement are referred to collectively as the "Improvements." As used below, "Premises" includes the Improvements.

The University represents and warrants that: the Montana University System, acting for the State of Montana, is the sole fee owner of the Premises this Agreement addresses and that the officials signing this Agreement have all necessary authorizations to enter into this Agreement, including the authority to enter into this contract with a local non-profit corporation for the operation, maintenance, repair, preservation, and renovation of a historic site owned by the State.

III. Intention

In accordance with legislative intent of the local management of historic sites and buildings act, the University desires to engage and appoint the Trust as the sole and exclusive operations manager for the Mansion for the time period of this Agreement. The Trust desires to accept this responsibility, upon and subject to the conditions set forth herein. In so doing, the University recognizes that the Trust is a local non-profit corporation made up of concerned citizens. And the Trust recognizes that the University holds the property in trust for the people of the State of Montana. The overriding purpose of this Agreement is to provide for the preservation of the Mansion for future generations, and to educate the public on the Mansion and its rich history to the greatest extent possible within the financial capabilities of both organizations.

Within the framework of its legal responsibilities and its available resources, it is the intent of the University enthusiastically to assist the Trust and its employees and Board in their responsibilities for the operation, maintenance, preservation,

repair, or renovation of the Mansion. Within the framework of its legal responsibilities and its available resources, it is the intent of the Trust enthusiastically to carry out their management of the Mansion and to work cooperatively with the University in ensuring that the State's interest is represented.

IV. Operation

This Agreement is subject to the terms, conditions, and restrictions set forth herein as covenants between the parties and are not merely recitals:

1. The Trust shall, during the term of this Agreement, operate, maintain, preserve, repair, and renovate the Premises. The conditions and restrictions under which the Trust's program shall be operated include, but are not limited to, those enumerated below.
 - a) The Trust may provide tours of the Mansion and its grounds for the general public, as it in its sole discretion may determine is appropriate.
 - b) The Trust may charge fees for such tours which shall be based on the following guidelines: the fees shall be commensurate with reasonable value of a tour of a historic home appropriate to that market area and used to fund operations including but not limited to operate, maintain, repair, preserve, restore, or renovate the property.
 - c) The Trust may, in its discretion, hold such programs and special events or allow other entities to hold such programs and special events at the Mansion that are appropriate to celebrate or commemorate the history, architecture, or unique character of Premises or that complement such history, architecture, character, as long as the program or event is consistent with the overriding goal of preserving the qualities for which the site was listed in the National Register of Historic Places, are appropriate for a State-owned facility, and meet the Trust's mission. Fees may be charged for programs and special events or for contractual arrangements with other organizations to hold programs or special events in accordance with the terms of VII.
2. The Trust accepts the property and any improvements thereon "as is" in the condition they are in on the date of execution of the Agreement without any warranties, express or implied and without any obligation on the University's

part to make repairs, additions or improvements thereto.

3. The University shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs on, in or about the property, or any part thereof, during the term of this Agreement or any extension thereof but will assist in such endeavors to the extent practical.
4. At all times during the term of this Agreement, the Trust shall, at its sole cost and expense, keep and maintain the property and all improvements thereon and all facilities appurtenant thereto in good order and repair and safe condition; and the whole of the property, including all improvements and landscaping, in a clean, sanitary and attractive condition. The Trust shall make any and all additions to or alterations or repairs in and about the property which it may be required by, and shall otherwise observe and comply with, all public laws, ordinances and regulations which from time to time are applicable to the property or to the facility. All business operations conducted on the property shall comply with all applicable laws, statutes and ordinances. In no event shall the Trust undertake or suffer any activity to be conducted upon the property or within the facility which constitutes a nuisance, is immoral or obscene.
5. On the termination date of this Agreement whether or not this particular Agreement is renewed, the Trust shall leave the property and all improvements therein in the state of repair and cleanliness required to be maintained by the Trust for the term of the Agreement. If this Agreement is not renewed, the Trust shall peaceably surrender the same to the University.
6. The Trust shall not permit any claim of lien made by any mechanic, material man, laborer, or other similar liens to stand against the property or Premises for work or labor done, services performed, or materials used or furnished to be used in or about the above-described lands for use in construction, maintenance, or repair of any improvements made or permitted to be made by the Trust, its agents, representatives, or assigns.
7. The Trust shall provide and maintain fire and intrusion detection alarm systems in the Mansion, as if it were a private owner.

8. The Trust agrees, at its own expense and cost, to keep the land free from noxious weeds and to exterminate pests to the same extent as a private owner is required to do.
9. The Trust agrees to pay for all water, light, power, telephone services and other public utilities of any and all kind furnished to the Premises and all other costs and expenses associated with the use, operation, or preservation of the Premises, its contents or activities conducted thereon.
10. The Trust shall pay all taxes, assessments, license fees, or charges assessed on the Premises when they become due.
11. The Trust shall allow and the University shall have free access to the Premises at all reasonable times for the purpose of examining or inspecting the Premises with a minimum of 24 hour phone or email notice to the Trust's liaison, and, if at all possible, with 48 hour notice.
12. The University and the Trust, in all literature or signage regarding the Mansion, shall each ensure that The University of Montana is acknowledged as the site's owner and that the Trust is acknowledged as the site's manager.
13. The employees and volunteers who work for the Trust are the employees, volunteers, agents or representatives of the Trust only, not the University or the State of Montana. The Trust shall hire, direct, supervise, discipline, and discharge its own employees in accordance with all applicable State of Montana and federal laws. The University has no responsibility for, or liability for any act or omission of such an employee or volunteer.
14. Any change in the laws of Montana or of the United States of America that prohibits or materially impairs the Trust's existence or non-profit status shall constitute grounds for termination of the Agreement.
15. In the event of any damage to or destruction of the Premises or the above-described lands from any causes whatever, the Trust shall, within 48 hours, give written notice of such damage to the University. In the event that damage or destruction cannot be substantially repaired within the existing budget of the Trust or solely through the use of insurance proceeds, either the Trust or the University may elect by written notice to the other within 90 days of the damage, to terminate this Agreement. In the event both the University and Trust elect to restore the Premises, any insurance proceeds from the

insurance policies payable by reason of such damage shall be made available to pay the costs of such restoration.¹

V. Consideration

The University shall pay the Trust the sum of \$10.00 per year for managing the Premises.

VI. Term and Renewal

The term of this Agreement is five (5) years from May 1, 2002 to May 1, 2007. Either party shall have the right to elect to renew for one additional year provided the Agreement is still in effect.

VII. Audit, Records, Record Retention and Access to Records

The Trust agrees to maintain records of the activities covered by this Agreement and to allow access to them by the University, representatives of Ravalli County, the Legislative Auditor and the Legislative Fiscal Analyst, as may be necessary for audit purposes and in determining compliance with the terms of this Agreement.

Financial records, supporting documents, statistical records, and all other records documenting the services provided by the Trust under this Agreement must be retained for a period of seven (7) years.

On an annual basis, the Trust shall submit to the University a report detailing the revenues, in-kind donations and expenses (related to operations, maintenance, preservation, renovation, and repair). The Trust will cooperate with the University during audits, providing records and financial information as needed.²

The Trust agrees to perform as a nonprofit organization in conformance with federal and State of Montana laws and will provide the University annually with a copy of IRS Form 990.

The Trust shall deposit all revenues, profits, royalties, fees received, grants, gifts, bequests or other contributions collected by the corporation for the benefit of the property in a local financial institution. All such sums received shall be used to repair, preserve, operate, maintain, manage or renovate the Premises.

¹See note 1

²See note 2.

VIII. Relationship Responsibilities & Communications

1. Both the University and the Trust shall make every effort to work together to benefit the purposes of this Agreement, through frequent and systematic sharing of information. In particular, the University and the Trust shall ensure that the liaisons for each agency named below in XVII will communicate regularly with each other.
2. To the extent that funding and other duties permit, the University shall make various members of its staff available to the Trust for technical assistance, advice, and referrals to other sources of assistance.
3. The University President or President's designee shall be a voting member of the Trust Board of Directors. The President or President's designee, if any, shall have the same rights and responsibilities as all other Trust Board Directors. Representatives of both organizations are welcome and encouraged to attend each other's additional meetings to the extent practicable.
4. The parties to this Agreement will make every effort to keep each other informed as to current operations, and future goals and plans for the Premises, including but not limited to ensuring that each party is invited to participate in the other party's long range planning efforts, goal-setting activities, and development of broad fundraising plans that will affect the Mansion and its potential preservation, use, and public understanding. In addition, the Trust, the University and The University of Montana Foundation (Foundation) will agree annually on a mutually acceptable fundraising plan for the Mansion. This fundraising plan will identify all annual fundraising activities, along with the respective goals of the Trust, the University and the Foundation in implementing the plan. It is anticipated, except to the extent the parties and the Foundation agree otherwise, that the Foundation will manage all Mansion capital campaign and major gift receipts as a Foundation account specifically designated for Mansion support. Funds to be deposited and managed by the Foundation shall not include Mansion member dues and other sources of Mansion operating revenues generated by the Trust.

5. The University shall extend training opportunities to the staff and Board of the Trust which it offers for its own employees to the maximum extent possible. The University will cover actual training expenses, with the Trust covering travel and per-diem expenses. Examples of such training include but are not limited to disaster planning, docent/tour guide strategies, artifact handling.
6. At least annually, the Board of Directors of the Trust or the Board's designees shall meet with the President of the University or the President's designees at a mutually convenient time to review any proposed changes to the Premises for the upcoming year and any significant events, planning processes, development processes, or decisions. This meeting may occur in conjunction with a regularly scheduled Trust Board meeting or with a regularly scheduled University meeting, or not, as is convenient. At this time, any changes to the Premises that fall within section IX below may be discussed and reviewed.

1X. Repairs and Renovation

At any time during the term of this Agreement, the Trust may make, at its sole cost and expense, repairs to or conduct maintenance of the existing Premises. Given the unique character of the Premises, its designation in the National Register of Historic Places, and the intent of the State Antiquities Act (Sections 22-3-401 through 22-3-442, MCA) the Trust shall join the University in ensuring that all operation, preservation, repair, restoration, and maintenance affecting the site, the Mansion, and associated improvements shall be undertaken in conformance with the "Secretary of Interior's Standards for Treatment of Historic Properties" (Standards) and with standard museum practices and ethics established by the American Association of State and Local History and the American Association of Museums.

The Trust shall not undertake work of any kind which affects the qualities that make it eligible for listing in the National Register of Historic Places or that threatens the long-term preservation of its State-owned fixtures without written concurrence from the University. However, such concurrence may—for some categories of work—be provided through a programmatic agreement that becomes an addendum to this document

The University will in turn draw upon its expertise and programs in fields such as history, anthropology and archaeology in its faculty and staff to consult and work cooperatively with the Montana Historical Society State Historic Preservation

Office to ensure that University actions, including University approval of Trust actions, result in work that meets U.S. Secretary of Interior Standards for Treatment of Historic Properties.

In addition, all changes to the Premises shall be subject to the following conditions:

1. No contract may be entered or any other obligation incurred for the purposes of maintenance, repair, preservation or renovation until the money to pay for the project has been appropriated by the legislature or is otherwise available pursuant to Section 22-3-603(3), MCA. The Trust shall provide the University with the total estimate of the cost of the project and the cost of each phase of the project if relevant and the amount of funding available to the Trust for the project and its sources. In addition, the Trust shall provide a statement as to whether Title 18, Chapter 2, Parts 1, 3, and 4, MCA, apply to the project and a statement listing which bonding requirement under Section 18-2-201, MCA, the Trust requests State approval for. Within 30 days of receiving all necessary information from the Trust, the University shall approve the bonding option the Trust requested under Section 18-2-201, MCA, or require a different bonding requirement as allowed by Section 18-2-201, MCA.
2. The plans or specifications for such changes or alterations, including amendments of such plans or specifications, shall be submitted to the University for its prior written approval. All plans for changes or alterations must comply with the State Antiquities Act, the Standards, and all other applicable State of Montana and federal preservation standards.
3. Prior to beginning a public solicitation for funds or submission of a grant application for change or alteration to the property, the Trust shall ensure that the University has approved in writing its proposed plans for such changes or alterations to the Premises.
4. No changes, alterations or construction shall be made except under the supervision of an architect, engineer or other representative selected by the Trust and approved in writing by the University
5. If the Trust enters into a contract for maintenance, repair, preservation, or renovation for less than \$50,000.00 the State waives the bonding requirements in Section 18-2-201, MCA, pursuant to Section 18-2-201(4),

MCA.³ For anticipated contracts for over \$50,000 for maintenance, repair, preservation, or renovation, the Trust will ensure that all funds required to pay for the contract or agreement are otherwise available and that it has negotiated an addendum to this contract with the University spelling out any State of Montana contracting requirements not identified in this document.⁴

6. No change, alteration or construction shall be undertaken until the Trust has procured and paid for all required permits, licenses, and authorizations and shall have furnished evidence of such to the University. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements.

Where this section calls for the prior written approval of the University, the University shall be contacted in writing with specific plans or proposals no less than 60 days prior to proposed commencement of work to review and evaluate the proposal and shall respond in writing to the Trust within 30 days of receipt of the proposal—unless such time tables are altered by the processes and programmatic agreements identified that may be developed modifying this section. The University’s failure to respond within specified time periods shall be understood to serve as concurrence with proposed Trust plans. The Trust is strongly encouraged to contact the University as early as possible with written preliminary proposals or to contact the University as project phases are developed to ensure that project changes requested by the University do not unnecessarily delay project timelines.

Also, the University and the Trust may develop additional written procedures, time tables, and processes through the adoption of programmatic agreements that become addenda to this document for the reviews and approvals required by this agreement—especially for the review of routine maintenance work.

X. New Construction

The University has no authority to approve or deny construction of new facilities, buildings, or roads on the Premises. The Trust will be responsible for securing appropriate approvals for any proposed new construction projects with all relevant State agencies. The University’s role in review of proposed new construction will be to ensure that proposed construction does not adversely affect the qualities that render the property eligible for listing on the National Register of Historic Places

³See note 3

⁴See note 4

or adversely affect Montana citizens' ability to realize the greatest benefit from the property.

XI. Termination

If either party to this Agreement cancels the Agreement, it shall do so on 10 working days notice.

On the termination or cancellation of this Agreement, the Trust, at its option, may remove any of its personal property that is not affixed to the Premises and can be removed from the Premises without damage. In the event of termination the Trust will be given 30 days to vacate the premises

XII. Hold Harmless and Indemnification

The Trust agrees to protect, defend, and save the State of Montana, its elected and appointed officials, agents, and employees and the University, its administrators, Board of Regents members, officers, agents and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action (including contractual liability) of any kind or character, including the cost of defense thereof, arising in favor of the University's or Montana University System's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Trust and/or its agents, employees, representatives, assigns, subcontractors, under this agreement.⁵

XIII. Insurance

The Trust shall maintain for the duration of this Agreement, at its own cost and expense, the following insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the activities under this Agreement by the Trust, agents, employees, volunteers, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

⁵ See note 5.

1. General Liability: The Trust shall purchase occurrence coverage with combined single limits for bodily injury, personal injury and property damage of \$1 million per occurrence/\$2 million aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Trust or its officers, agents, representatives, assigns, servants, or subcontractors.
2. Worker's Compensation: Trust is required to maintain Worker's Compensation Insurance or an Independent Contractors Exemption covering the Trust and/or its employees during the term of this Agreement. Neither the Trust nor its employees are employees of the State. This insurance must be valid for the entire Agreement period.

That insurance shall be subject to these conditions:

- a) The Trust's insurance coverage shall be primary insurance as respects the University and the Montana University System, and their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the State of Montana, its officers, officials, employees or volunteers shall be excess of the Trust's insurance and shall not contribute to it.
- b) Insurance is to be placed with an insurer with a Best's rating of no less than A-. All certificates and endorsements are to be received by the University prior to the execution of the Agreement. The University reserves the right to require complete copies of all insurance policies at any time.
- c) The University and the University System and their officers, employees, and volunteers are to be covered as additional insured for liability arising out of activities performed by or on behalf of the Trust.
- d) Any deductible or self-insured retention must be declared to and approved by the University.

The University shall maintain for the duration of this Agreement, at its own cost and expense, the following insurance:

1. General Casualty Insurance on the Premises against risk of loss, with the contents insured at replacement cost.

2. Fine Arts Insurance for objects owned by the State of Montana insured to current market value. The Trust shall provide a list annually of all fine arts contents of the Premises, noting those owned by the State and those owned by the Trust. It is understood that the contents in University ownership are overwhelmingly building fixtures.⁶

XIV. Assignment, Transfer and Subcontracting

The Trust shall not assign or transfer any portion of this Agreement without the University's express prior written consent. In addition, the Trust shall not sublet any of the Mansion premises to any other person or entity without the University's express prior written consent.

XV. Interpretation

The section headings used in this Agreement are inserted for convenience only and shall not be construed to limit or extend the meaning of any portion of this Agreement. This Agreement and its attachments constitute the entire agreement between the University and Trust and there are no other agreements or terms oral or written. This Agreement supercedes all previous communications, representations, and agreements, oral or written, between the University and the Trust, or between the Society and the Trust. Any amendments or additions to this Agreement shall be made in writing and executed by both the University and Trust. Neither the University nor the Trust is to be bound by any verbal or implied agreement. The waiver by the University of any remedy for the Trust's breach of any term, covenant, or condition shall not be construed to constitute a waiver of any other contractual or statutory right held by the University. In determining the reasonableness of any action or consent by the University, the Trust acknowledges that the University is acting as a trustee for people of the State of Montana and that the State must act with the utmost good faith toward the people of Montana. The Trust acknowledges that it too is subject to the trust by which the property is held for the benefit of the people of Montana. Time is of the essence in the execution of every duty under this Agreement. If any provision of this Agreement shall prove to be invalid, void, or illegal, it shall in no way affect, impair, or invalidate any other provision of this Agreement.

XVI. Litigation Venue

⁶ See note 6.

In the event of litigation concerning this Agreement, venue shall be in the Missoula County, Montana, and this Agreement shall be governed by the laws of the State of Montana both as to interpretation and performance.

XVII. Liaison and Service of Notices

The University of Montana President will be the liaison for the University.

The Chairperson of the Daly Mansion Preservation Trust Board will be the liaison for the Trust.

Written notices, requests or complaints will be directed first to the liaison.

Any notice this Agreement requires must be in writing and will be effective only if hand-delivered to the liaison or sent by certified U.S. mail, return receipt requested, to the party entitled to receive the notice at the party's address first stated above or at such other address as that party may later give written notice to the other party. Each party agrees to accept service of process in any action brought to enforce or to interpret this Agreement.

XVIII. Modification

This Agreement shall not be enlarged, modified, amended, or altered, except upon written agreement signed by all parties to the Agreement.

XIX. Severability

If any single part, or parts, of this Agreement are determined void, the remaining parts remain valid and operative.

XX. Integration

This Agreement consists of these sixteen numbered pages. This document contains the entire agreement of the parties. Any enlargement, alteration, or modification requires a written amendment signed by both parties.

The parties through their authorized agents have executed this agreement on the dates set out below.

IN WITNESS WHEREOF, The University of Montana and the Daly Mansion Preservation Trust have caused this Agreement to be executed in duplicate.

THE UNIVERSITY:

The President of The University of Montana University, pursuant to the authority granted him by the Board of Trustees, has hereunto set his hand this ___ day of _____, 2002.

George M. Dennison, President
The University of Montana

THE TRUST:

The President of the Daly Mansion Preservation Trust pursuant to the authority granted to her by the Board of Directors, has set her hand this ___ day of _____, 2002.

Jeannette McKee, President
Daly Mansion Preservation Trust

Note 1

The University, through the State of Montana carries insurance on the Daly and its outbuildings. The insurance is through a third party carrier. The Building is insured for replacement cost, but in the case of some types of disaster, i.e. earthquake or flood, there are substantial self-insured retentions that the State carries. (Earthquake is \$1 million, and flood is \$500,000.) The University is happy to use the insurance proceeds to rebuild the Daly in the event of its destruction, but it cannot commit that it will be able to pay the self-insurance retentions for the more costly types of disaster. That is why this section is drafted as it is.

Note 2

The auditing requirements are the Legislative Auditor's, not the University's. The University reserves the right to see all books and records at any time. The University does not envision any new auditing requirements here, but cannot abridge the Legislative Auditor's rules.

Note 3

Section 22-3-603(3), MCA requires surety bonding for maintenance or repair if the money is "otherwise available." Section 18-2-201(4), MCA allows the State of Montana, including the University, to waive that requirement for projects under \$50,000.00.

Note 4

This section mimics the language of Section 22-3-603(3), MCA.

Note 5

This was redrafted at the Trust's request. The hold harmless provision is standard for all State of Montana contracts.

Note 6

These insurance provisions are standard in State of Montana contracts. The University is requesting an annual list of the fine arts property owned by the Trust and the State because the State's insurance policy requires an annual listing of the property insured by the State. If there is fine arts property owned by the State, it should be insured by the State under its general policy. The State cannot insure fine arts property owned by the Trust. The Trust carries its own insurance on the fine arts property it owns at the Mansion..

Doc.785

**DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION**



JUDY H. MARTZ, GOVERNOR

1625 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

PO BOX 201601
HELENA, MONTANA 59620-1601

September 24, 2002

Prof David Aronofsky
U of M Legal Counsel
133 Main Hall
Missoula, MT 59812

RE: State title to the Daly Mansion

Dear David:

You've inquired as to whether the State of Montana holds title to the Daly Mansion by virtue of the conveyance of the Daly Mansion to the Montana Historical Society, as the "receiving entity" under Title 77, Chapter 16, Part Four of the Montana Code Annotated (1991). This statute was subsequently repealed by the 2000 Legislature. See, §36, Cli. 9, Sp.L. 2000 (House Bill 7).

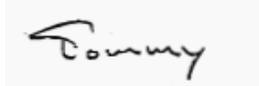
The definition of "state land" subject to the oversight, ownership, and approval of disposition by the State Board of Land Commissioners is found in Section 77-1-101(6), MCA, which provides that:

- (6) (a) "State land" or "lands" means:
 - (i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands
 - (ii) lands deeded or devised to the state from any person; and
 - (iii) lands that are the property of the state through the operation of law.
- (b) The term does not include:
 - (i) lands that the state conveys through the issuance of patent;
 - (ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;
 - (iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or
 - (iv) lands acquired through investments under the provisions of 17-6-.201.

Pursuant to Section 22-3-101, MCA, the Historical Society is an agency of State government. I can find no independent statutory authorization allowing the Historical Society to dispose of fee simple title to real property. To the contrary there is a legislative expression that historic buildings are to be retained by the state of Montana.

See, Mont. Code Mn. §22-3-602(4), MCA. Because the Daly Mansion fits within the definition of “state lands” under Mont. Code Ann. §77-1-101(6)(a)(ii), I would conclude that title to the Daly Mansion is held by the State of Montana as a variety of sovereign land, administered by the Montana Historical Society. As such, the Montana Historical Society would possess the authority to enter into contracts for the control and management of the real property. However, any disposition of fee simple title to the Daly Mansion would require approval by the State Board of Land Commissioners. Mont. Constitution Art. X, §4; Mont. Code Ann. §77-1-202; Mont. Code Ann. §77-1-101(6).

Sincerely,

A handwritten signature in cursive script that reads "Tommy". The signature is written in black ink on a light-colored background.

TOMMY H. DANIEL
Trust Lands Attorney
DNRC

**DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
TRUST LAND MANAGEMENT DIVISION**



JUDY H. MARTZ, GOVERNOR

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PO BOX 201601
HELENA, MONTANA 59620-1601

August 28, 2002

David Aranofsky, Legal Counsel
University of Montana
32 Campus Dr., UH-109
Missoula, MT 59812

RE: Daly Mansion

Dear Mr. Aranofsky,

Reference our conversation this date regarding the pending transfer of administrative and management responsibility affecting the Daly Mansion from the Montana Historical Society to the University of Montana. While 77-1 -202, MCA, states that the Land Board is empowered to exercise general authority over care, management and disposal of state lands, in transactions involving administrative and management responsibility, Board consideration and approval is not required. Their authority and involvement generally applies to disposal and acquisition of state property.

As such, while Board participation is not necessary in this transaction, in the future, if the Historical Society were to decide to sell or transfer this property in fee title, Land Board approval would be required.

If you have any questions, please feel free to call me at 406 444 3544. Sincerely,


Jan Ward
Land Use Specialist
Trust Land Management Division

Jlw

cc: Arnold Olsen, MT Historic Society