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ARE EASEMENTS AN EFFECTIVE PRESERVATION INCENTIVE? AN EVALUATION OF FAÇADE EASEMENT PROGRAM MANAGEMENT IN NON-PROFIT ORGANIZATIONS.

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Chapter 1: Introduction

Properly managed, façade easements are an effective preservation incentive. Effective management of façade easements relies on the stewardship of the easement-holding organization. To qualify as an incentive, preservation easements must comply with the restrictions set forth by the Internal Revenue Service (IRS) in the Internal Revenue Code (IRC) Section 170(h) (§170(h)). These requirements allow the easement donor to claim a charitable contribution deduction on their Federal Income Tax Return. Easement-holding organizations must address the challenges posed by the IRS regulations and satisfy the needs of the property owner while keeping the preservation goals of the easement constantly in focus.[1] A concise and thorough easement document, comprehensive stewardship program backed by sufficient resources, and clear preservation objectives all contribute to a successful easement program. Solid valuation principles ensure that property owners can claim their incentive unchallenged by the IRS.

A façade, or historic preservation, easement is a voluntary preservation tool, protecting a historic, cultural, or archeological resource. Façade easements can work in conjunction with other preservation tools, including other forms of easements. Properties have bundles of rights, called "fee simple interests."

Preservation easements, particularly those subject to the IRS regulations, must satisfy the needs of several different groups of people. For qualified conservation contribution façade easements to be successful preservation incentives, three groups

must be satisfied: the Internal Revenue Service, the property owner, and the qualified easement-holding organization. Requirements of the Internal Revenue Service have been discussed throughout this thesis as they relate to preservation/façade easements and are highlighted in the Treasury Regulations.[2] Easement-holding organizations want easements to successfully work as preservation tools in order to satisfy their educational and/or conservation mission. The property owner needs enticement to donate an easement on his/her property. This incentive can come in two ways: a guarantee that the resource will be protected in perpetuity, as well as a financial incentive. Not all property owners are concerned with both of these incentives. Some donate preservation easements solely because it will preserve their property in perpetuity, others donate preservation easements to make a project more financially attractive, or to supplement other preservation incentives.

Through an easement, the property owner gives up one of his rights, referred to as a "less-than-fee interest," in the bundle to an easement-holding organization. This benefits both the property owner and the easement-holding organization by providing permanent protection of the historic resource. The property owner loses only one of his property rights and can continue using the property as he wishes, in accordance with the easement document. The easement-holding organization gains an asset in the value of the acquired easement through the increased revenue obtained by accepting the easement, and can actively preserve the historic structure without taking the full

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[1] For the purposes of this thesis, an "easement-holding organization" refers specifically to a non-profit easement-holding organization, although the observation may not be exclusive to that type of organization.

[2] See Appendices E and F for copies of pertinent Treasury Regulations.

responsibility and liability of total ownership. Property owners have the right to give away any of their less-than-fee interests, as long as the gift does not violate state laws and other government regulations such as zoning. After transfer of the right, or less-than-fee interest, the easement-holding organization then monitors the property, making certain that the donor and all future property owners follow the terms of the easement document. Conservation easements can be donated, purchased, or acquired by a non-profit organization or governmental agency.

Congress established Section (§) 170 (h) of the Internal Revenue Code (referred to as IRC) in the Tax Treatment Extension Act of 1980 to permanently authorize a charitable contribution tax deduction for the qualified contribution of a conservation easement. This Act, in addition to § 1.170A-14 of the 1986 Treasury Regulations, added a financial incentive to conservation easements by giving easement donors an income tax deduction.

In order for facade easements to effectively preserve historic structures, several issues must be clarified. Façade easements that incorporate the charitable donation tax deduction provide a financial incentive to property owners who own historic properties. This incentive can entice property owners to donate conservation easements on their properties to qualifying organizations, which must be either non-profit or governmental agencies. Easement programs further the preservation mission of those organizations, in addition to preserving significant structures.

Façade easements fall under the general guidelines of conservation easements, which can encompass open-space, scenic, farmland, or preservation easements for the building's façade, interior, or both. These types of easements generally fall into two

categories: land conservation and building preservation. Although grouped together by the Internal Revenue Service, each category has a unique set of problems and tax implications within the overall concept of conservation easements. This thesis primarily focuses on building preservation easements. Stewardship of land conservation easements differs from that of building preservation easements. For example, buildings have a finite life span that is difficult to reconcile with provisions within the IRS regulations such as the "in-perpetuity" clause.

Management of all conservation easement programs should include certain basic elements. First, at the time of donation, the easement document must include the preservation objectives for that property, provisions for insurance and mortgage subordination, restoration and maintenance requirements, and any other specifications that relate to perpetual maintenance of the easement. The easement document should be drafted with a hostile property owner in mind, trying to account for any foreseeable future conflict. Regular inspection of easement properties and communication with the property owner is critical to ensuring that the original agreement between the property owner and easement-holding organization has been maintained. Of course, if the property owner claimed the charitable contribution deduction for the easement donation, he is subject to Internal Revenue Service regulations governing the easement-holding organization's policies, which include perpetual maintenance of the eased property.

Qualified easements, subject to IRS regulation and scrutiny, also act as a financial incentive for property owners. Preservation easements can thus act as a voluntary preservation incentive. Compared to legal mechanisms such as preservation

ordinances, which do not always include an incentive for the property owner, preservation easements allow the property owner to take an active role in preserving his property. The Rehabilitation Tax Credit, another federal preservation incentive, only controls the preservation of a building through the five-year recapture period built into that credit. Additionally, the Rehabilitation Tax Credit is only applicable to income-producing properties. However, a tax credit gives the taxpayer a dollar-for-dollar reduction of his required tax payment, and therefore is typically worth considerably more to the taxpayer than the deduction resulting from an easement donation. A deduction reduces the taxpayer's taxable income, giving the taxpayer an actual discount of only a percentage of the amount claimed as a deduction. As of 1999, the Qualified Conservation Contribution is the only federal preservation incentive that can be used for both non-income and income producing properties, and offers protection beyond five years.

Valuation of easements is critical to their success as a preservation incentive. If the IRS questions valuation procedures and results, then property owners will hesitate to donate easements, decreasing their effectiveness as preservation incentives. Three traditional valuation techniques—sales comparison, income, and cost approaches—can be used to appraise historic properties for easement valuation. A combination of the sales comparison and cost approaches is typically used for easements on non-income producing properties, while appraisers have found that the income-based approach works well for income producing properties.

Methodology

The research material has come from conference proceedings, professional resources, and interviews with practicioners who have experience dealing with preservation easements. A significant amount of material on the Qualified Conservation Contribution deduction was published in the 1980s, following passage of the Tax Treatment Extension Act in 1980. Recently, easement professionals have begun revising earlier material with new information obtained through more experience with easement program management. As a result of legal and professional developments related to the Qualified Conservation Contribution easement, much of the material written in the early 1980s is now outdated. Several conferences, including the National Trust Preservation Law Symposium at the National Trust for Historic Preservation Annual Conference in Savannah, Georgia in 1998, have included presentations on current preservation easement policy.

A large component of the research consisted of interviewing directors of easement programs in non-profit preservation organizations. In choosing organizations to interview, I attempted to find a cross-section of easement-holding organizations across the country. These organizations vary in size from local to national, with large and small easement holdings. Although my primary concern was with preservation easements that fell under the category of the Qualified Conservation Contribution, several organizations accept and manage multiple types of easements. Preservation North Carolina and the Utah Heritage Foundation have extensive revolving loan programs that attach easements to participating properties. Other organizations, such

as the National Trust for Historic Preservation, receive properties as gifts, and resell them with easements.

Large and prestigious regional and national organizations maintain a higher quality easement portfolio than smaller state and local programs. Easements accepted by the Frank Lloyd Wright Building Conservancy, National Trust for Historic Preservation, and Society for the Preservation of New England Antiquities (SPNEA) generally have donors whose motivation for donation relates more to ensuring perpetual protection of the property than to receiving tax benefits. According to Tom Schmidt, board member of the Frank Lloyd Wright Building Conservancy, only one of the five easements they hold was donated expressly for the financial benefit of the donor.[3] As previously mentioned, the National Trust for Historic Preservation will receive properties as gifts, often as bequests. Their "Gifts of Heritage" program assures permanent protection for the private property owner who is planning their estate. With this program, the property is given in whole to the National Trust, who then sells it with an easement. Prominent organizations such as the National Trust can attract these types of gifts, which do not qualify the property owner for a tax deduction under Internal Revenue Code § 170(h)—a "Qualified Conservation Contribution"—as they have already given the property to the non-profit organization, in this instance the National Trust. By donating all of their property rights to an organization, these property owners receive an tax deduction for the entire value of the property.

In addition to size of program, type of easement, and prestige of organization, regional variation is another factor that differentiates easement programs. The Historic

Santa Fe Foundation began its easement program two years ago and at the time of the interview had one easement, with another in process. Their staff member commented that façade easements are a new concept for Santa Fe and New Mexico, although land conservation easements are common.[4] Kirk Huffaker of the Utah Heritage Foundation observed that, in Utah, people are not as interested in preservation easements as a "Qualified Conservation Contribution."[5] The majority of the Utah Heritage Foundation's easements relates to its revolving loan program and is not subject to IRS regulation. San Francisco Architectural Heritage does not even consider themselves to have an active easement program; they only maintain their current easements and do not market new ones.[6] Perhaps a reason for this geographical discrepancy is the western sensitivity regarding property rights.

Case Studies

Two case studies illustrate the difficulties associated with the IRS's "in-perpetuity" requirement. Both are preservation easements held by the Preservation Alliance for Greater Philadelphia. The first case study, the Mayfair House, highlights an easement property that has lost its economic viability and now has a pending application for demolition. Alden Park, the second example, demonstrates a successful integration of the Rehabilitation Tax Credit with a preservation easement, and provides a positive example of how an easement-holding organization can effectively manage a challenging property.

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[3] Conversation with Tom Schmidt, 12 February 1999.
[4] Conversation with Historic Santa Fe Foundation, 9 March 1999.
[5] Conversation with Kirk Huffaker, 9 March 1999.
[6] Conversation with Bill Beutner, 12 February 1999.

Donated in 1981 as a "Qualified Conservation Contribution" to the Philadelphia Historic Preservation Corporation (PHPC)—one of the predecessors to the Preservation Alliance for Greater Philadelphia, the Mayfair House is a large apartment building in the Mount Airy section of Philadelphia, and is scheduled for demolition by its current owners, the City of Philadelphia. The history of this easement highlights the vulnerability of façade easements, even those protected by the IRS regulations. Issues such as the in-perpetuity requirement, accountability of the original and subsequent property owners to the easement, and effectiveness of the easement document are all illustrated through this case study. Hopefully, the result of current negotiations between the Preservation Alliance and the City of Philadelphia will demonstrate how a non-profit organization can effectively resolve a "worst case" easement scenario.

After donation of the easement in 1981, later property owners were no longer financially able to maintain the property, let alone the terms of the easement. That left the Mayfair House vacant from 1982 to 1991, to the detriment of the surrounding community, made up of large single-family residences.[7] Many failed attempts were made at redevelopment of this property, which repeatedly proved not to be economically viable. The third owner of the Mayfair House after placement of the easement, Mayfair Renaissance, Inc., began the rehabilitation project that ultimately led to the abandonment of the Mayfair House. Mayfair Renaissance, Inc. overestimated the income projection for the Mayfair House and overinvested in the

[7] Preservation Alliance for Greater Philadelphia, Abbreviated Mayfair House Chronology, 21 January 1999.

property. Mayfair Renaissance, Inc. was also a victim of the down turn in the real estate market in the late 1980s. In addition to the property owner and poor management, the mortgagee, Arnav Industries, Inc. Employee Retirement Trust (Arnav), contributed to the problem of the Mayfair House. Arnav invested too much of its assets into one property, without assessing the viability of the investment. Because of Arnav's original overinvestment, in violation of its fiduciary responsibilities, it could not invest further to rescue the project when Mayfair Renaissance, Inc. encountered financial difficulties.[8]

In January 1999, the City of Philadelphia purchased the Mayfair House through Sheriff's Sale and scheduled its demolition. Purchase of the Mayfair House through the Sheriff's Sale extinguished all liens on the property. At issue between the Preservation Alliance and the City of Philadelphia is whether the Sheriff's Sale extinguished the easement. An easement is not a lien, but rather an interest in the property that runs with the land. If easements are extinguished every time a property owes back taxes and is sold via Sheriff's Sale, then easements will lose all credibility and not satisfy the in-perpetuity test of the IRS. The Preservation Alliance wants to hold the City of Philadelphia to the same standard as every other property owner and takes the position that the owner, the City, should follow standard regulatory procedures by submitting a request for demolition to the Historical Commission. The City of Philadelphia will likely go to the Historical Commission and argue for a "financial hardship" variance to permit demolition. Following this decision, the Preservation Alliance will go to the Orphan's Court of Pennsylvania and request the

[8] Ibid.

court to either compel the owner to comply with the terms of the easement or extinguish the easement based on the frustrated circumstances of the easement.[9] Extinguishment of the easement, or failure in title, as per terms in the easement, would entitle the Preservation Alliance to a percentage of the proceeds equal to their interest in the property.[10] Since this property will incur a liability due to its demolition, the Preservation Alliance asks for reimbursement for a portion of expenses accrued during defense of the easement.

Almost across the street from the Mayfair House, Alden Park is also a unique easement property, a complex compound of structures with complicated rehabilitation requirements. Alden Park is an easement property whose donor received the tax deduction and sold the property prior to completing the terms of the easement. Both the Mayfair House and Alden Park are atypical examples of a donor's failure to comply with the easement; however, subsequent owners of Alden Park managed to complete the restoration envisioned in the easement document, and is once again a thriving apartment community. The subsequent property owners completed the property restoration as required under the terms of the Rehabilitation Tax Credit and easement document, without receipt of the easement tax incentive given to the donor.

Alden Park's use of the Rehabilitation Tax Credit far exceeded any impact that the easement had on the property, typically the situation in projects using both the tax credit and easement deduction. Both Alden Park and the Mayfair House were victims

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[9] The Preservation Alliance will present to the Orphan's Court both the Historical Commission decision regarding the financial hardship variance and additional evidence such as architectural feasibility studies showing exorbitant rehabilitation costs, when asking for the judiciary's decision.
[10] Preservation Alliance for Greater Philadelphia, Draft—Deed of Preservation Easement, 29 July 1998, Paragraph 12 (c).

of the real estate market turmoil of the 1980s; however, Alden Park used other federal preservation incentives and its owners were able to adapt to a new market. Working in conjunction with the Rehabilitation Tax Credit, Alden Park was successfully rehabilitated.

An important point in using any government incentive is that mechanisms intended to spur projects for the public good do not guarantee success. As with all real estate transactions, success is judged by the market forces; therefore, the project must ultimately be a good business deal.[11] Perhaps a reconciliation between the preservation goals of the easements and the market forces that drive the project's—and sometimes ultimately the building's—success would be for the non-profit organization in receipt of the easement to request the same type of information as a lender. This would ascertain the economic viability of the project. Currently, non-profit organizations can only protect themselves during easement acquisition by requesting the mortgage subordination and making certain that the deed is properly recorded.

Economic viability of the property at the time of easement donation, as well as in the years following easement donation, is critical to continued success of the easement, as is the immediate investment in the property that many easement deeds anticipate. A danger in accepting easements on properties that have not yet been rehabilitated is that the donor could default and/or the real estate market could change, leaving no economically viable use for the property and significantly decreasing the likelihood for capital improvements to the building. Requiring the donor or property owner to place the money necessary for all restoration requirements in an escrow

account—a tactic used by other organizations—would help to minimize this risk, still allowing the property owner flexibility to complete the property rehabilitation and also receive the tax deduction. This would not only ensure the donor's accountability, but also fulfill the preservation objective of façade easements by protecting the building.

Organizations with effective preservation easement programs must have a thorough easement document, consistent inspection routine, sufficient resources to protect the easement, and a knowledgeable staff to educate potential easement donors. For preservation easements to be effective incentives, valuation procedures must be solid and defensible. The easement-holding organization must make certain all legal requirements under Treasury Regulation §1.170A-14 are in compliance. As the above case studies demonstrate, no matter how strong an easement program an organization has, the real estate market will ultimately influence the fate of easemented properties, particularly those that are income-producing. Given this unknown and powerful factor, can a preservation easement really be protected "in-perpetuity?"

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[11] Conversation with J. Randall Cotton. 29 March 1999.

Chapter II: Easement Definition and Overview

As a legal agreement between the property owner and holder of the easement, an easement governs the present and future uses of the property it affects, "an interest or right in a property that falls short of outright ownership."[12] Easements allow property owners concerned with preserving their property to maintain ownership and ensure the continued protection of their historic property. Private and voluntary protection of a historic property places stewardship in non-governmental hands chosen by the property owner at the time of easement donation. The addition of a tax deduction for this donation and the ensuing IRS regulations provides a standard for easements that have incorporated a tax expenditure and public funds. Easements, a type of incorporeal hereditament, must have very clear regulations specified in the easement document, to make certain the purposes of the easement do not become frustrated, and also to justify the tax deduction for this "not tangible or visible" right.[13]

The use of easements applies to both land conservation and historic preservation. Those property owners who choose to take the tax deduction for their easement contribution must abide by the definitions of the IRS. For the purposes of this thesis, the term "conservation easement" could refer to any of the types of easements that apply to the conservation of land or preservation of historic structures.

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[12] Elizabeth Watson and Stefan Nagel, "Establishing an Easement Program to Protect Historic, Scenic, and Natural Resources" *Preservation Information Booklet* (Washington, D.C.: National Trust for Historic Preservation, 1991) p. 3.

[13] *Black's Law Dictionary* defines an incorporeal hereditament as: "Anything, the subject of property, which is inheritable and not tangible or visible. A right issuing out of a thing corporate (whether real or personal) or concerning or annexed to or exercising within the same. A right growing out of, or concerning, or annexed to, a corporeal thing, but not the substance of the thing itself." Henry Campbell Black, *Black's Law Dictionary* (St Paul, MN: West Publishing Company, 1990) p. 726.

This thesis specifically addresses management of conservation easements related to historic structures, which could include the structure's façade or interior space, in addition to the open space related to the historic structure. Façade easements present similar obligations as other types of conservation easements, but since they deal with structures instead of open space, issues of maintenance and alteration are more sensitive than with land conservation easements.

Regulations for easements under IRS jurisdiction provide a constant for comparison of easement programs in non-profit organizations. These regulations introduce issues of easement valuation methodology, problems with the in-perpetuity requirement, as well as adding an incentive to easement donation, which in itself could lead to property owners donating properties for mercenary reasons. Organizations that manage these easements must also follow standards set forth by the IRS, which regulate the easement-holding organization as a "qualified organization."

The Tax Reform Act of 1976 formally recognized conservation easements, permitting deductions for easements limited to a term of years. In 1977, the Tax Reduction and Simplification Act added the in-perpetuity requirement to the easement law, placing an expiration date of June 14, 1981 for the taking of easements. Three years later, in the Tax Treatment Extension Act of 1980, the expiration date was eliminated and a new Internal Revenue Code (IRC) was added, Section (§) 170 (h).[14] This section defined the requirements for a Qualified Conservation Easement. From 1984 to 1997, additional regulations have further clarified easement regulations. The Tax Reform Act of 1984 set up substantiation requirements for easement appraisal and

increased the penalties for the overstatement of easement valuation. IRC § 170 (h) did not change in the Tax Reform Act of 1986; however, when computing the alternative minimum tax, the donation of appreciated property became treated as a tax preference item. The 1997 Taxpayer Relief Act provided an additional estate tax benefit only to land subject to a qualifying conservation easement.

These regulations applied to all the easement types allowed under the "Qualified Conservation Contribution" deduction. As IRC § 170 (h) states, the "Qualified Conservation Contribution" must include a contribution of a "qualified real property interest" to a "qualified organization" and be "exclusively for conservation purposes."[15] A qualifying preservation easement is a real property interest that places a perpetual restriction on the permitted use of the real property.[16]

Responsibility for monitoring of this perpetual restriction is given to the "qualified [easement-holding] organization." IRC § 501(c)(3) describes the particular type of "qualified organization" relevant to this discussion of preservation easements. Most non-profit preservation organizations meet this criteria for a "qualified organization." Treasury Regulation § 1.170A-14 (c) elaborates on requirements for eligible "qualified organizations."[17] The Treasury Regulations specify that the "qualified organization" must have the resources and commitment to enforce the perpetual restrictions that make up the real property interest donation of the

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[14] See Appendix D.
[15] IRC § 170 (h)(1).
[16] IRC § 170 (h)(2)(C).
[17] Treasury Regulation §1.170A-14(c). Treasury Regulations elaborate upon restrictions of the Internal Revenue Code.

preservation easement.[18] Further, the "qualified organization" must have as one of its missions one or more of the conservation purposes listed in IRC § 170 (h)(4)(B)—preservation of land areas for recreational purposes, protection of a natural habitat or ecosystem, preservation of open space (including farmland or forest land), or preservation of a historically important land area or certified historic structure.[19] The IRS does not, however, place a quantifiable quality control on the easement-holding organization. Flexibility in the definition of the "qualified organization" allows for the varying types of eased properties throughout the United States, some of which could require an atypical easement steward.

The Internal Revenue Code defines a "certified historic structure" as listed on the National Register of Historic Places, either as a landmark or as a significant building within a historic district, and/or listed in a registered historic district (i.e. under the jurisdiction of a certified local government) and certified as historically significant to the district.[20] An easement deduction can be claimed on a property not on the National Register at the time of donation, so long as it is listed before the donor claims the tax deduction. This can be as late as November 15th of the year following the donation year. This definition of a certified historic structure eliminates two types of governmentally recognized historic properties: individually designated landmarks within certified local governments and properties eligible for the National Register (and therefore subject to Section 106 review). Research did not find any direct implications of these omissions, many locally designated properties are also listed on

[18] Treasury Regulation §1.170A-14(c)(1).
[19] IRC § 170 (h)(4)(A).

the National Register so that the property owner may take advantage of the Rehabilitation Tax Credit and other Federal preservation incentives.

Conservation v. Preservation Easements

Preservation and land conservation easements may have similar qualifications and principles according to IRC § 170(h) and Treasury Regulation §1.170A-14, but outside of the "qualified conservation contribution" they have differing tax and maintenance implications. Generally, land conservation easements give the owner increased tax benefits, acting as a stronger incentive than for historic structures. For example, land conservation easements have an estate tax incentive, as well as the qualified conservation contribution deduction. The Taxpayer Relief Act of 1997, IRC Section 2031 allows an exclusion from estate taxes for land restricted under a qualified conservation contribution, yet explicitly excludes historic preservation easements.[21] The value of the land subject to the easement can be excluded from estate taxes, up to forty percent.

In addition to the estate tax benefit for conservation easements, typically land conservation easements themselves have a higher benchmark valuation than preservation easements. A benchmark appraisal determines the rough standard for easement valuation. Extreme examples of the valuation differences between preservation and conservation easements are found in the *Stanley Works v. Commissioner* (1986) and *Stotler v. Commissioner* (1987) decisions regarding land

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[20] IRC § 170 (h)(4)(B).

[21] "Estate Tax Break Created for Conservation Easement Donors; ISTEA Reauthorization Delayed." 16 *Preservation Law Reporter* 1223.

conservation easements.[22] The judgment reached in the *Stanley Works v. Commissioner* (1986) decision allowed a valuation of the easement at seventy-five percent of the property's fair market value prior to the time of donation. The following year, *Stotler v. Commissioner* (1987) allowed a ninety-one percent easement valuation. These decisions exemplify the upper limits of land conservation easement valuation; however, they far exceed the standard ten to twenty percent preservation easement benchmark valuation. The valuation discrepancies between land conservation and preservation easements translate into a lower allowable deduction for donors of preservation easements. Chapter IV further elaborates on the valuation of easements.

Organizations can coordinate façade and land conservation easements when the usage of both could maximize the preservation of the property. Combination of these two types of easements could also provide different types of income tax benefits to the donor. Currently, the Preservation Alliance of Greater Philadelphia uses three easement documents: strict building preservation easements, preservation easements that include open space as it relates to the historic building, and open space conservation easements. According to Robert Shusterman, Esq., attorney for the Preservation Alliance, an easement-holding organization can combine preservation and open space easements by either carving out the façade easement around the open space or having an overlay façade easement on top of the open space easement.[23] Open space easements or façade/open space easements will have some different deed

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[22] *Stanley Works v. Commissioner*, 87 T.C. No22 (1986) and *Stotler v. Commissioner*, T.C. Memo 1987-275 (1987).

[23] Robert Shusterman, Esq., "Façade Easements and Other Qualified Conservation Contributions," in Pennsylvania Bar Institute, *The Law of Historic Preservation* (Harrisburg: Pennsylvania Bar Institute, 1996) p. 345.

requirements from regular preservation easements: a base line survey, maintenance provisions for the land, subdivision and assemblage prohibitions, archeological protection, and waste and hazardous material dumping prohibitions.[24]

The Process of Façade Easement Donation

When a donor decides to donate a qualified conservation contribution in the form of a preservation façade easement, both the donor and donee must make certain to follow the regulations set forth in IRC §170 (h). This includes confirming that the donated property qualifies as a certified historic structure under the Tax Code. Compliance with these regulations protects both the donor and the easement-holding organization. Besides following the IRS regulations, all easement-holding organizations should have a clear criteria for accepting easements.[25] Some organizations ask potential donors to complete an application, allowing the organization to determine which easements best fit their criteria.

The Conservation Easement Handbook recommends obtaining a mortgage subordination before negotiating the easement document. Treasury Regulations state that the mortgagee must subordinate their property rights to the easement-holding organization's ability to enforce the easement purposes in perpetuity.[26] This regulation went into effect after February 13, 1986. Besides ensuring the perpetuity of the easement, mortgage subordination gives an indication of the economic viability of the

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[24] Shusterman, p. 345.
[25] Janet Diehl and Thomas S. Barrett, *The Conservation Easement Handbook* (Washington D.C.: The Land Trust Alliance, 1988) p. 61.
[26] Treasury Regulations § 1.170A-14(g)(2).

property—a factor that could lead to a neglected or abandoned building, as with the Mayfair House in Philadelphia.

Satullo v. Commissioner (1993) confirmed the Tax Court's opinion regarding mortgage subordination.[27] In this instance, Easements Atlanta accepted an easement on a condominium building in Atlanta, Georgia, without obtaining the subordination agreements from all lien holders.[28] Although the easement became effective on December 27, 1985, Easements Atlanta did not record the easement deed until January 19, 1988, at which point the mortgage subordination regulations were in place.[29] Georgia law requires recordation of the easement deed in order for the easement to be legally enforceable. Because Easements Atlanta did not record the deed until 1988, the mortgage holder's interest "stands in priority" to the easement under Georgia law.[30]

Satullo v. Commissioner brings forth several important points related to mortgage subordination and easement deed recording. First, it is necessary for the easement-holding organization to obtain mortgage subordination so that in case of foreclosure, the mortgagee cannot extinguish the easement. If the mortgagee has the ability to foreclose on the easement, then the easement does not qualify as perpetual under the IRS regulations. Easements Atlanta had lost between thirty-eight and forty-five percent of their easements due to foreclosure proceedings, where the lien-holder had not subordinated their rights to the easement, emphasizing the need for mortgage

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[27] *Satullo v. Commissioner*, T.C. Memo 1993-614 (1993).
[28] The Atlanta directory did not have a current listing for Easements Atlanta at the time I conducted my interviews. The phone number listed in the National Park Service's Directory of Easement-Holding Organizations is incorrect.
[29] *Satullo v. Commissioner*, p. 13-14 (1993).
[30] *Satullo v. Commissioner*, p. 14 (1993).

subordination under Treasury Regulation §1.170A-14(g)(2) "as a means of assuring that easements on mortgaged property are protected in perpetuity."[31]

In addition to the necessity for mortgage subordination, timely recordation of the easement document would have eliminated the IRS's claim in this case, as the easement was placed prior to 1986. Regardless of the date of easement placement, the easement-holding organization must record the easement document in order to legally enforce the easement.

Some potential donors are concerned they will be unable to find mortgage holders willing to subordinate to a façade easement. However, fifty-three different mortgage holders agreed to subordinate their rights to the Preservation Alliance for Greater Philadelphia. To aid the mortgagee in their understanding of preservation easements and the necessity for mortgage subordination, the easement-holding organization can take certain steps to educate the lender about preservation easements. The easement-holding organization can emphasize the charitable nature of easements, that they benefit the whole community by preserving important resources. In addition to the charitable aspect of the easement, the legal requirement for mortgage subordination can also be highlighted. The organization could explain that the IRS requires mortgage subordination to secure the perpetual nature of the easement, when the easement is a qualified conservation contribution.[32]

Perhaps one of the greatest differences among façade easement programs is the determination of restrictions for the easement deed—also referred to as the "easement

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[31] *Satullo v. Commissioner*, p. 15 (1993).
[32] Diehl and Barrelt, p. 65.

document." At this point, the donor and donee organization can tailor the requirements of the easement to the individual property. The severity of the easement restrictions impacts the valuation of the easement and therefore the amount that the donor can claim as a deduction.

Easement guidelines contained within the easement document have several purposes: to prohibit change in the form of alteration, subdivision, construction, or demolition; to limit or restrict uses of the building; to set up restoration and maintenance requirements for the eased building. Suggested issues for easement documents to address are: "casualty destruction, insurance, mechanics (construction) and other liens, possible interior access by the public and representatives of the easement holding organizations, property maintenance, [and] indemnification for injuries."[33] In the 1996 *Model Conservation Easement and Historic Preservation Easement*, Stefan Nagel cites several elements of the easement document:[34]

1. The Recitals, or "Whereas" Clauses
2. Legal Description
3. Baseline Documentation
4. Purpose
5. Grantor's Covenants
6. Grantor's Conditional Rights
7. Public Access
8. Grantor's Reserved Rights
9. Casualty Damage or Destruction
10. Indemnification and Taxes
11. Written Notice
12. Evidence of Compliance
13. Inspection
14. Grantee's Remedies
15. Notice from Government Authorities
16. Liens
17. Plaque
18. Runs with the Land
19. Assignment
20. Recording and Effective Date

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[33] Diehl and Barrett. p. xi.
[34] Thomas S. Barrett and Stefan Nagel. *Model Conservation Easement and Historic Preservation Easement, 1996: Revised Easements and Commentary from The Conservation Easement Handbook* (Washington D.C.: The Land Trust Alliance, 1996) p.108-20.

21. Extinguishment and the Stipulated Percentage Value of the Easement
22. Interpretation
23. Amendment
24. Supplementary Mortgage Subordination Provision

Many of these provisions are standard for easement documents and required by the IRS regulations for qualified conservation contributions, although easement-holding organizations have some flexibility with certain elements of the easement document. The Grantor's Covenants set up some of the most important elements of the easement document, including the maintenance responsibilities of the property owner, subdivision restrictions, and public access rights. This provision must make clear which actions the easement document prohibits and which standards the property owner must follow.

Philadelphia's Affirmative Maintenance Clause requires a regular maintenance schedule to be written into each easement document, providing additional justification for the income tax deduction taken by the easement donor.[35] The Affirmative Maintenance Clause adds an additional protection to eased buildings by setting up a regular maintenance routine. The Frank Lloyd Wright Building Conservancy is the only other easement-holding organization out of those interviewed that requires a minimum maintenance program "so as to prevent deterioration of the Facades."[36] Preservation North Carolina requires continuous maintenance of the eased property in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.[37] Other organizations simply require that the property owner maintain the façade in a "good and sound state of repair."[38] The 1996 Model Historic Preservation

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[35] Conversation with Richard Cohen, 8 April 1999.
[36] The Frank Lloyd Wright Building Conservancy, Preservation and Conservation Easement, 1997, Paragraph 2(c).
[37] Preservation North Carolina, Historic Preservation Agreement, 1999, Paragraph 2.
[38] Preservation North Carolina, Historic Preservation Agreement, 1999, Paragraph 2 and Utah Heritage Foundation, Grant of Preservation Easement, 1997, Paragraph 6. The L'Enfant Trust's Conservation

Easement, published by the Land Trust Alliance, requires the property owner to maintain the eased building "in substantially the same structural condition and state of repair as that existing on the date of this Easement."[39] The 1998 National Trust for Historic Preservation's Model Historic Preservation Easement uses similar language in its maintenance requirements. Generally, it is in the best interest of the easement-holding organization to specify a regular maintenance routine in the original easement document. By laying out the maintenance requirements in the original easement document, the donor and future property owners have a clear understanding of their obligations.

Treasury Regulations state that any permissible changes to buildings must comply with "appropriate local, state, or Federal standards for construction or rehabilitation within the district."[40] Generally, these standards reflect the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Marilyn Meder-Montgomery provides two sample easement documents in *Preservation Easements: A Legal Mechanism for Protecting Cultural Resources* which use the Secretary of the Interior's Standards for Rehabilitation as guidelines for any repair or reconstruction on an eased building.[41] Among the other organizations that use the Secretary of the Interior's Standards for Rehabilitation are the L'Enfant Trust, Frank Lloyd Wright Conservancy, and the Model Easement for the National Trust for

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Easement Deed of Gift. Paragraph 3(B) and 1991 National Trust for Historic Preservation's Preservation and Conservation Easement use similar language for their maintenance requirements.

[39] Barrett and Nagel, p. 96.

[40] Treasury Regulation §1.170A-14(d)(5)(i), as quoted in Barrett and Nagel, p. 109.

[41] Marilyn Meder-Montgomery, *Preservation Easements: A Legal Mechanism for Protecting Cultural Resources* (Denver, CO: The Colorado Historical Foundation, 1983) Appendix D2, p. 4 and Appendix D3, p.3.

Historic Preservation. The L'Enfant Trust and Frank Lloyd Wright Building Conservancy use other standards in addition to the Secretary of the Interior's—the L'Enfant Trust uses the District of Columbia Landmarks Preservation Ordinance and the Frank Lloyd Wright Building Conservancy suggests usage of applicable state and/or local standards.[42] Preservation North Carolina uses *all* of the 1992 Secretary of the Interior's for the Treatment of Historic Properties as guidelines not only for maintenance, but also for repair and administration of the historic property.[43]

Subdivision is among one of the "most contentious" issues among those addressed in the Grantor's Covenants. Currently, easement-holding organizations are debating whether subdivision of a property negatively affects the preservation or conservation values of the property or has a neutral impact.[44] *Sagalyn v. Foundation for Preservation of Historic Georgetown* (1997) brought up the question of whether the terms "subdivision" and "assemblage" are synonymous in the easement document.[45] The easement deed stated that "The property shall not be subdivided, nor shall it ever be devised or conveyed except as a unit;" the property owners wanted to assemble lots in order to construct an addition to their existing structure.[46] Enforcement provisions within the deed allowed the organization to enjoin the property owner if he/she violates the terms of the deed, leading to the injunction suit against the Sagalyns.[47] Ultimately, the Tax Court decided that subdivision and

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[42] The L'Enfant Trust, Conservation Easement Deed of Gift, 1998 and Frank Lloyd Wright Building Conservancy, Preservation and Conservation Easement, 1997.
[43] Preservation North Carolina, Historic Preservation Agreement, 1999.
[44] Barrett and Nagel, p. 110.
[45] *Sagalyn v. Foundation for Preservation of Historic Georgetown*, 691 A.2d 107 (D.C. App. 1997).
[46] *Sagalyn v. Foundation for Preservation of Historic Georgetown*, 691 A.2d at 109 (1997).
[47] *Sagalyn v. Foundation for Preservation of Historic Georgetown*, 691 A.2d at 109 (1997).

assemblage were considered equivalent under the District of Columbia Planning and Development regulations, which define "'subdivision'" as "'the division or assembly of land into one or more lots of record.'"[48] This case demonstrates both the need for precise terminology in easement documents and the volatile nature of the subdivision debate.

Two cases decided in 1994 highlight the need for unambiguous terminology in the easement document and demonstrate that even the same organization can encounter opposite results regarding similar issues brought to trial in Tax Court. Frequently, the expertise of the lawyers involved and individual circumstances of the case factor as much into the outcome as the easement document; however, the document must not be overlooked as a critical factor in easement enforcement. Terms of the document must be clear and as non-subjective as possible. *Bagley v. Foundation for the Preservation of Historic Georgetown* (1994) and *Foundation for the Preservation of Historic Georgetown v. Arnold* (1994) both involve property owners who altered their eased property in violation of the easement document.[49] The different outcomes of these two cases highlight the legal impact of easement document terminology.

In *Bagley v. Foundation for the Preservation of Historic Georgetown* (1994), the Court agreed with the easement-holding organization, Foundation for the Preservation of Historic Georgetown (the Foundation), that the property owner had erred by constructing an addition on the rear of the house without either a building

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[48] *Sagalyn v. Foundation for Preservation of Historic Georgetown*, p. 112 (1997).

permit or permission of the Foundation.[50] Of particular importance in this case is the denial of the petitioner's (Bagley's) claim against the Foundation for due process violations. The District of Columbia Court of Appeals called the petitioner's claims of due process violations and "selective enforcement" of the easement document "patently frivolous."[51] A significant factor in the Court's ruling was the clear and unambiguous easement document, containing explicit prohibitions and making the procedure for obtaining alteration approval well known.[52]

In December 1994, the District of Columbia Court of Appeals decided the case of *Foundation for the Preservation of Historic Georgetown v. Arnold* (1994) in favor of the appellee (Arnold).[53] Both *Bagley v. Foundation for the Preservation of Historic Georgetown* and *Foundation for the Preservation of Historic Georgetown v. Arnold* involved the Foundation seeking injunctive relief to force the removal of unpermitted additions to the eased building. Where the Court found that the deed clearly expressed the prohibitions in *Bagley v. Foundation for the Preservation of Historic Georgetown*, they concluded that the Foundation ambiguously interpreted the term "extension" in the easement document. The Arnolds had enclosed the space between two dormers and added a seasonal awning, arguing that the enclosure did not "extend the footprint or envelope of the residence upward or outward in height, length, or width."[54] According to the Foundation, the term "extension" meant any exterior addition that

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[49] *Bagley v. Foundation for the Preservation of Historic Georgetown*, 647 A.2d 1110 (1994) and *Foundation for the Preservation of Historic Georgetown v. Arnold*, 651 A.2d 794 (1994).
[50] "Court Affirms Order Requiring Removal of Addition Constructed in Violation of Easement Agreement; Attorney's Fees Award Also Upheld." 13 *Preservation Law Reporter* 1135.
[51] *Bagley v. Foundation for the Preservation of Historic Georgetown*, 647 A.2d at 1115 (1994).
[52] 13 *Preservation Law Reporter* 1137.
[53] *Foundation for the Preservation of Historic Georgetown v. Arnold*, 651 A.2d 794 (1994).

added "interior space or 'density' to the residence."[55] The Court cites the *Bagley v. Foundation for the Preservation of Historic Georgetown* (1994) case as justification for the definition of extension as increasing the area or footprint of the existing building.[56] Because no other provision in the deed clarified the ambiguity of the term "extension" and based on the rules of free use and construction that state "ambiguities in the deed will be resolved against the drafter of the instrument," the Court decided in favor of the property owner.[57] This precedent emphasizes the importance of careful easement document drafting to prevent future challenges.

Although the primary provision regarding liens in the easement document occurs with the mortgage subordination, other liens must also subordinate to the easement in order for it to be effective. A developer in Kansas City is challenging an easement on a historic building based on the premise that foreclosure of a mechanic's lien on the property invalidated the easement. If the Historic Kansas City Foundation failed to obtain subordination of the lien, then the easement could legally be invalid.[58]

The model document outlined earlier in this chapter does not represent all the possible provisions within an easement document; however, the document provides an example of how easement policy has changed since the early 1980s, eliminating some provisions that have been deemed unnecessary or problematic. The ability of easement-holding organizations to enter an eased property and correct an easement violation—the "self-help" provision in easement deeds—has been eliminated by

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[54] *Foundation for the Preservation of Historic Georgetown v. Arnold*, 651 A.2d at 796 (1994).
[55] *Foundation for the Preservation of Historic Georgetown v. Arnold*, 651 A.2d at 796 (1994).
[56] *Foundation for the Preservation of Historic Georgetown v. Arnold*, 651 A.2d at 796, N3 (1994).
[57] *Foundation for the Preservation of Historic Georgetown v. Arnold*, 651 A.2d at 797 (1994).

Stefan Nagel in the 1996 Model Historic Preservation Easement. Nagel gives three reasons for this elimination: evidence has demonstrated that donors typically reject this provision, entry rights are not always allowed by the state law, and "self-help" rights could expose the easement-holding organization to liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[59] Earlier model easement documents included this provision, and some organizations continue to use the "self-help" provision in 1999.[60]

Following drafting of the easement document, the next step in preservation easement acquisition is obtaining an appraisal of the easement value. The IRS requires this procedure for qualified conservation contributions, discussed later in the thesis.[61] All the easement restrictions set forth in the easement document will not achieve their purpose of preserving the cultural resource without effective easement stewardship, outlined in the following chapter.

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[58] Rick Montgomery, Downtown Developer Sue Kansas City Historic Foundation; Chanute Building Fate and Parking Lot are in Question," *Kansas City Star* (21 October 1994) p. C2.
[59] Barrett and Nagel, p. xii.
[60] Meder-Montgomery, Appendix D2, p. 9—model easement document. Organizations that currently include the self-help provision within their easement document are: The L'Enfant Trust, Frank Lloyd Wright Building Conservancy, Utah Heritage Foundation, and the Preservation Resource Center of New Orleans.
[61] Treasury Regulation §1.170A-13(c).

Chapter III: Easement Stewardship

All easement-holding organizations must establish and follow monitoring and enforcement procedures in order for successful preservation of the easement properties. Approaches to monitoring can vary among organizations, based on factors such as the size and location of the easement, staff availability, and monitoring budget. Effective monitoring is a legal necessity for properties eligible as qualified conservation contributions; however, it is important for all property owners to have confidence that the easement-holding organization has a reliable monitoring system in place.

All easement programs, regardless of the primary method of donation—charitable contribution, stipulation attached to a revolving loan, or property purchase—need funds to effectively manage their program. These funds pay for monitoring expenses, acquisition expenses, and routine operating costs. How these funds are managed varies from organization to organization. Typically, if fees are collected from the easement donor, they are placed in a reserve specifically for easement program maintenance.[62] This reserve can be called by one of several different terms: monitoring fund, stewardship fund, enforcement fund, endowment, administrative expense fund.[63] The National Trust for Historic Preservation suggests that "an easement donor contribute to an 'easement endowment' or administration

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[62] Janet Diehl and Thomas Barrett, *The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs*. (Washington D.C.: Land Trust Alliance, 1988) p.102. Marilyn Meder-Montgomery, *Preservation Easements: A Legal Mechanism for Protecting Cultural Resources*. (Denver, CO: The Colorado Historical Foundation, 1983) pp. 49-50.
[63] Ibid.

fund."[64] Two separate funds can also be established; one as a stewardship endowment, where the interest alone is available, and another as a legal defense fund, whose principal can be drawn from when needed.[65] Of course, the ability to differentiate between the two funds implies a significant fee intake, with a large enough principal available to create adequate income for the stewardship fund. Many organizations do not have the capital for that sort of endowment fund.

Easement-holding organizations can collect fees several ways, as either a percentage of the easement value, a portion of the property value, or a flat/fixed recommended amount.[66] If the fee is not associated with the property or easement value, then there are various ways that the contribution can be calculated: as a fee based on projected costs of maintenance, a flat fee based on average administrative costs for each easement, or a fee based on the "complexity of restrictions and nature and size of property or building protected."[67] Fees can also be established though a combination of the above methods.

In addition to their own methods of financial organization, every organization has an individual method of easement inspection and enforcement. Those organizations that must meet the Treasury Regulation's requirement for a commitment to "protect" the donation must also have the "resources" to do so.[68]

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[64] Elizabeth Watson and Stefan Nagel. "Establishing an Easement Program to Protect Historic. Scenic. and Natural Resources." in National Trust for Historic Preservation. *Easements and Other Private Preservation Techniques*. (Washington D.C.: National Trust for Historic Preservation. 1997) p.16.
[65] Brenda Lind. *The Conservation Easement Stewardship Guide*. (Washington D.C.: Land Trust Alliance. 1991) p. 71.
[66] Diehl and Barrett. p. 105.
[67] Watson and Nagel. p.16.
[68] Treasury Regulation §1.170A-14(c)(1).

The research and interview process yielded some answers regarding how easement programs may differ in their respective approaches to monitoring, enforcement, and funding. Results of the interviews have also raised some questions about the various options available to easement-holding organizations. No definitive answers were obtained; rather, the concept that easement programs must adapt to their individual circumstances and easement holdings has been affirmed. There is no one "ideal method" of managing an easement program. Organizations that obtain easements through methods other than the charitable tax contribution are included in the discussion, as they have similar issues of enforcement and inspection, and tend not to differentiate among the methods of donation when managing the easement program.

Regardless of how obtained, easements must still be properly enforced in order to qualify for a deduction under IRC § 170(h) and to maintain the integrity and visibility of the organization. Interns, staff members, independent contractors, or volunteers are all potential inspectors of easement properties. A consistent and strong inspection program has several benefits. Although not the primary vehicle for doing so, correspondence with the property owner regarding the inspection reminds him/her of the existence of the easement, beyond simply informing the property owner of necessary maintenance issues. Regular inspection also assures the property owner that the easement-holding organization is doing its job maintaining the easement. If the property owner knows that the easement-holding organization is accessible and actively maintaining its easement program, he will more likely inform or consult with the organization before making any changes to the property. In case of violations, regular inspection reports provide a consistent record of the property's condition, as

well as providing a record of the easement violation. Annual inspection can also save time and money if the violation is caught early and the property owner made aware; thereby preventing the occurrence of further, more expensive damage to the building.[69]

Consistent inspection methods and clear inspection forms make it easy for the property owner to anticipate maintenance requirements and holding organization's expectations. Eight of the fourteen interviewed organizations use staff members to perform inspections, enabling the inspector and property owner to develop a relationship.[70] Even if an organization has frequent staff turnover, usage of a staff member still provides more continuity than use of annually rotating interns.

Organizations that use interns to inspect their easement properties also have some ability to develop a continuous personal relationship with property owners, as the intern would report to a staff member, who would act as liaison between the inspector and property owner. Interns, however, do not have as much experience with the easement property as a staff member may, and their inspection skills and practices could vary widely from year to year. For organizations with limited resources, interns provide an inexpensive way for properties to be inspected on a regular basis. Use of intern inspections as a trigger for more in-depth professional ones, allow organizations with limited funds to more efficiently use their resources.

Independent consultants have the professional expertise that interns lack, but also have similar problems concerning property familiarity and inspection consistency. For understaffed organizations independent consultants are an alternative to taking

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[69] Lind. p. 27.
[70] See Appendix A.

valuable staff time to perform inspections. The L'Enfant Trust, with only one staff person, has used the same private consultant to photograph and document their easement properties for fifteen years.[71] In situations like this, an independent consultant provides consistency similar to that of a staff person. Because the IRS does not provide strict guidelines for easement inspections, they can vary from intensive architectural conditions surveys to photographic "windshield" surveys.

Monitoring and Enforcement for Easement Properties Subject to IRS Regulations

In order for the façade easement to qualify for the charitable contribution deduction, the IRS has several requirements, including that the property must be donated "in perpetuity" to a "qualified organization."[72] These regulations place certain burdens on non-profit organizations, who must maintain the proper level of resources for continuing management of easement properties in-perpetuity. The in-perpetuity requirement in IRC § 170(h)(2)(C) and § 170(h)(5)(A) particularly differentiates easements that qualify for the charitable deduction from easements given through revolving loan programs, gifts, and other means, codifying the commitment of the organization to the easement.[73] Treasury Regulation § 1.170A-14(b)(2) further explains the in-perpetuity requirement in relation to the "qualified real property interest" stipulation of the IRS Code.[74] Applicable to issues of monitoring, enforcement, and resources, Treasury Regulation § 1.170A-14(c) elaborates on the

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[71] Conversation with Carol Goldman, 1 March 1999.
[72] IRC § 170(h)(5)(A). "A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity." IRC § 170(h)(1)(B).
[73] IRC § 170(h)(5)(A). "A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity."
[74] IRC § 170(h)(1)(A).

requirement for easement donation to a "qualified organization."[75] Although the regulation states that a qualified organization must "have a commitment to protect the conservation purposes of the donation and have the resources to enforce the restrictions," the regulation does not provide guidelines regarding the nature of the resources.[76]

Whether an organization runs its easement program out of its general operating fund, from an easement stewardship fund, or from both, if the IRS requires the easement to be managed in-perpetuity, IRS regulations must make certain that the organization will be able to support its easement program. Lack of clarity on enforcement procedure and resource allotment in the Treasury Regulations leads to a widely varying degree of enforcement and resources among "qualified organizations." Some organizations maintain a successful stewardship reserve fund based on donor fees for their easement program, while others spend all collected fees on maintaining their program.[77] Those organizations that do not collect fees run easement programs out of their general operating expenses.[78] All of these methods will allow for a successful easement program; however, complexities of individual easements could require enforcement expenses beyond the typical easement maintenance. In these situations, a separate stewardship fund would provide the resources for an

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[75] Internal Revenue Code of 1986, Section 170(h)(1)(B). This section states that the easement must be donated to a qualified organization.
[76] Treasury Regulation §1.170A-14(c)(1).
[77] All fees associated with easement donation are *generally* eligible as part of the donor's charitable donation for tax purposes.
[78] Georgia Trust for Historic Preservation, Historic Annapolis Foundation, Preservation North Carolina, Utah Heritage Foundation.

organization to enforce an easement as needed, instead of having to find the resources as situations arise.

Those organizations that do not have stewardship funds frequently acknowledge that stewardship funds provide security to an easement program.[79] Stewardship funds are especially important as a reserve for any potential legal costs that may arise. Although future costs are impossible to predict, existence of a legal reserve enables the organization to use its legal authority to enforce a non-compliant easement. A property owner cannot take an organization's power seriously if they know that there is no consequence of non-compliance.

If an organization has a stewardship fund set up for maintenance of its easement program, it must decide how to supply the resources for the stewardship fund. As earlier discussed, fees are generally based one or some combination of a percentage of the property's fair market value, a percentage of the appraised value of the easement donation, or an estimated calculation of the time involved in the entire easement process. Although the IRS did hold easement donations under scrutiny in the past, some feel that following codification of the appraisal regulations in 1984 under Treasury Regulation § 1.170A-13(c), the worry that easement-holding organizations and easement donors could be in collusion was somewhat lifted.[80]

Some organizations have experienced that basing the easement fee on the appraised value of the easement cuts into the tax advantage of donating the easement,

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[79] Utah Heritage Foundation and Historic Annapolis Foundation are establishing endowments for their easement programs.
[80] Conversation with Robert Shusterman, Esq., 24 February 1999.

by as much as ten to twenty-five percent (10-25%) at times.[81] The Frank Lloyd Wright Building Conservancy uses the fair market value of the property as the basis for their fee.[82] For organizations that use a percentage of either the fair market value or the value of the donation, this percent can be negotiated based on the circumstances of a specific property.[83]

The New York Landmarks Conservancy, Society for the Preservation of New England Antiquities (SPNEA), and National Trust for Historic Preservation use the calculation method. The New York Landmarks Conservancy uses two costs as the basis for their calculations: the cost of easement negotiation, and the cost of administering the easement.[84] Negotiation of the easement is a one-time fee, simpler to calculate than the administrative fee, which estimates what the easement will cost the Conservancy to maintain over a length of time. SPNEA bases their fee on the complexity of the easement and estimated staff time spent on enforcement. As a regional organization that potentially has to travel a fair distance to inspect an easement property, SPNEA has additional considerations beyond those at most local non-profits. The National Trust for Historic Preservation uses inspection costs and administrative overhead for their fee calculation. The large geographic dispersion of National Trust easements makes their inspection costs a large part of easement maintenance. Also, the existence of in-house counsel makes legal fees less of a

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[81] Historic Charleston Foundation, at the National Trust for Historic Preservation's 49th Annual National Preservation Conference, October 1998.
[82] Conversation with Tom Schmidt, 19 February 1999 and conversation with Robert Shusterman, Esq., 24 February 1999.
[83] Conversation with Robert Shusterman, Esq., 24 February 1999 and conversation with Bill Beuter, 12 February 1999.
[84] Conversation with Roger Lang, 12 February 1999.

concern for the National Trust. Although the National Trust has only a small percentage of easement properties eligible for the charitable contribution deduction, and therefore not subject to the in-perpetuity clause, they multiply the cost of inspection per property by twenty—for twenty years of inspecting. This illustrates the difficulty implicit in the in perpetuity requirement—how can an organization predict future costs? If an easement must be maintained in-perpetuity, then the costs of that maintenance would logically be infinite. Careful management of funds to allow for the ability to establish a stewardship fund is a way for the organization to provide some level of security to its easement program. Generally, organizations assume a certain level of predictability in their easement programs; however, as illustrated by the examples in Chapter I, an organization should be prepared to deal with a problem easement, perhaps through an emergency fund.

Looking at an organization's easement portfolio in entirety demonstrates the importance of easement fees and the interrelationship among easement properties. Easement acquisition requires organizational resources, yet the time spent acquiring a large easement compared to the time on a smaller one is usually equal.[85] By accepting an easement on a significant property that will bring in more funds to the organization, several things are accomplished. Not all easement-holding organizations maintain a one-to-one correlation between a property's easement fee and the cost of maintenance for that property. Fees accrued through the donation of large easements can help off-set the maintenance costs associated with smaller easements. A stewardship fund can be a single "pot of money" that provides the money to maintain an organization's

entire easement portfolio.[86] In terms of the organization, time is used more efficiently and more money is generated for easement maintenance with larger easement donations. If an easement program does not successfully generate money, they cannot maintain an efficient program and frequently go into hibernation, potentially at the expense of their other easement properties.[87] The preservation benefits can also be greater, typically the donation of larger properties has a greater impact on the community.[88]

Factors of Successfully Monitored Easements

Preservation professionals involved in easement programs state that one of the main problems with easement compliance is the lack of communication between the property owner and the easement-holding organization, whether due to poor title searches during property transfer or a misunderstanding of the easement restrictions. In any case, for an easement to work to its maximum potential, a fundamental necessity is that the property owner must be aware of the easement and its requirements. Consistent inspection reports and correspondence with the property owner can alleviate these problems, as can clear regulations and reports. Property owners can feel overwhelmed if they receive inspection forms that list in minutiae

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[85] Conversation with J. Randall Cotton, 1 March 1999.
[86] J. Randall Cotton compares the easement stewardship fund with insurance practices. The insurance industry averages its total premium intake to roughly average liability claims over a period of time. Therefore, a larger easement portfolio and stewardship fund will "even out" the risks to the easement-holding organization over time.
[87] Conversation with J. Randall Cotton, 1 March 1999.
[88] Ibid.

every imperfection with their property. Prioritization of issues can give the property owner an achievable list of projects to bring their property into compliance.[89]

Keeping the easement-holding organization informed of changes the property owner wishes to make requires cooperation among several different entities. Generally these groups would be the easement-holding organization, the municipality's building permit office, and the local historic preservation commission (if applicable). In 1992, Washington D.C. amended their Uniform Conservation Easement Act to require the approval of the easement-holding organization prior to building permit approval for an eased property.[90] The Preservation Alliance for Greater Philadelphia also regularly updates the Philadelphia Historical Commission with their easement holdings. This law insures that all building alterations comply with the easement deed and should serve as an example for other municipalities. Similarly, cooperation between the local preservation commission and the easement organization would eliminate or at least minimize property owner confusion regarding preservation requirements, as well as acting as another line of defense against a property owner determined to alter their property.[91] Often once a property owner makes a major alteration to a building, reversal of the non-compliant feature is time consuming, difficult, and expensive for all the involved parties. Frequently, the easement-holding organization documents the non-compliant feature for their records and use in potential future legal disputes. Cooperation among organizations with similar goals and missions would benefit

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[89] See Appendix C.
[90] Conversation with Carol Goldman, 1 March 1999.
[91] In *Foundation for the Preservation of Historic Georgetown v. Sagalyn*, No. 90-CA10164 (D.C. Super Ct. Dec. 12, 1991), the Mayor's Agent for Historic Preservation and Commission of Fine Arts in

everyone, and eliminate conflicting requirements and regulations. A few simple measures could increase the effectiveness of easements, making them more attractive as a preservation tool. Standard expectations of easement-holding organizations in regards to financial resources and monitoring procedures would create a control to protect the quality of easement programs throughout the United States.

Washington D.C. allowed an addition to a property protected by an easement, which the easement-holding organization vocally opposed. 16 *Preservation Law Reporter* 1153 (1997).

Chapter IV: Façade Easement Valuation

"Easements are the reaction to economic change; they exist to prevent it."[92] –Judith Reynolds

In order for façade easements to be effective preservation incentives, donors must have confidence that their donation is sound and irrevocable. Thus, façade easement valuation procedures, which determine the amount of the charitable contribution deduction, must be legally sound. All easements discussed in this chapter refer to qualified conservation contributions, either open space or façade easements. Reference in this chapter to "conservation easements" implies both open space and façade easements—i.e., easements covered by IRC § 170(h).

Appraisers use three valuation procedures—the comparable sales/market approach, the income approach, and the cost approach. Each of these appraisal methodologies are available for preservation easement appraisal. The issue of easement valuation and appraisal primarily affects the easement donor, not the easement-holding organization. It is in the best interests of the easement-holding organization, however, to make certain the donors use qualified appraisers and follow the Treasury Regulations as a prevention against future challenges from the IRS. While no set formula exists for preservation easement appraisal, current procedures and recommendations will aid the parties involved in easement acquisition. Easement appraisers must be consistent with their own work, applying similar principles to all their easement appraisals.

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[92] Judith Reynolds. *Historic Properties: Preservation and the Valuation Process* (Chicago: The Appraisal Institute. 1997) p. 113.

Many of the issues addressed by professionals involved with preservation easements in the 1980s have been resolved through updates to the Treasury Regulations and increased appraiser experience with easements. Judith Reynolds has published two important pieces on valuation processes of historic buildings and the National Trust for Historic Preservation and the Land Trust Alliance released a second edition of *Appraising Easements* in 1990, updating the 1984 publication.[93] These three works are the major contributions to the field of easement appraisal for the 1990s. Many of the earlier articles and publications address tax shelters that have been eliminated, or other easement appraisal issues resolved in future court rulings.

The main vulnerability with easement appraisal is placing a monetary value on an intangible property right, also known as an incorporeal hereditament as defined in Chapter I.[94] How do easement-holding organizations ensure the security of their easement program and reassure potential donors that their donation will not be challenged by the IRS? Under Treasury Regulation § 1.170A-13(c)(5)(iv), regarding qualified appraiser exclusions, no easement-holding organization can retain an appraiser for the benefit of those wishing to make an easement donation.[95] Therefore, the easement-holding organization can only have a limited influence on the easement valuation process. To aid the donor in finding a qualified appraiser experienced in

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[93] Judith Reynolds, *Historic Properties: Preservation and the Valuation Process* (Chicago: The Appraisal Institute, 1997). Judith Reynolds, *Appraising Historic Properties* (Washington DC: The National Trust for Historic Preservation, 1994) and National Trust for Historic Preservation and Land Trust Alliance, *Appraising Easements: Guidelines for Valuation of Historic Preservation and Land Conservation Easements*, (Washington, D.C.: National Trust for Historic Preservation and Land Trust Alliance, 1990).

[94] This definition can be found on page 13, footnote 12.

façade easement appraisal, some organizations—i.e., the Preservation Alliance for Greater Philadelphia—provide a list of experienced easement appraisers to interested donors. Qualifying this list must be the disclaimer that the organization does not endorse any specific appraiser, but provides the list as a service, leaving the selection of an appraiser to the donor's discretion.

Since the 1976 legislation enabling a charitable deduction for a conservation easement, or IRC § 170(h), the IRS has contested the valuation of some open space and façade easements. As with other aspects of open space and façade easements, each type of conservation easement presents different valuation questions. With the growth in easement popularity and the corresponding increasing stringency of IRS regulations, standard practices for conservation easement valuation have developed. Along with this development, tax case law and the IRS have eliminated early tax shelters previously provided through a combination of accelerated depreciation and the conservation contribution deduction.

For example, in the early 1980s, some lawyers found a tax shelter in the Internal Revenue Code that did not prevent a property owner from depreciating their basis of the property to zero and then taking an additional deduction through a charitable contribution deduction, providing a complete shelter for ordinary (taxable) income.[96] Beneficial depreciation schedules under the Tax Reform Act of 1976 allowed the possibility of historic property owners to use an alternative accelerated

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[95] Treasury Regulation § 1.170A-13 (c)(5) (iv)(F): This section prohibits an appraiser who is regularly used by the donor, donee, or a party to the transaction, from being a "qualified appraiser," unless they perform most of their appraisals outside that organization.

[96] Richard J. Roddewig and Jared Shalaes, "Appraising the Best Tax Shelter in History," *The Appraisal Journal* 50/1 (January 1982) p.28.

method of declining-balance depreciation for rehabilitation projects.[97] These schedules were to be used when the rehabilitation expenditures exceed the building's depreciable value, thereby increasing the attractiveness of the tax shelter.[98] Several legal precedents and a revision to the IRC, as well as the Tax Reform Act of 1986, have eliminated this shelter.[99] *Dorsey v. Commissioner* (1990) noted that "the allowable charitable contribution deduction for ordinary income property is limited to the basis of the property donated."[100]

Conservation Easement Substantiation Regulations

In the early 1980s, the IRS performed an easement study in Washington, D.C., based on the resale value of a sampling of homes, for the purpose of determining the effect of easements on property value. Results of this study found that donating an easement created no diminution of property value. This finding meant that all previous deductions taken by easement donors could be called into question, in addition to eliminating the tax deduction for qualified conservation contributions.

Fortunately, for the future of easements, this study was hugely flawed and discredited; however, it had a "chilling effect" on easements in the mid-1980s.[101] This study did spark a review of approaches to easement valuation, culminating with the

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[97] Judith Reynolds. *Appraising Historic Properties* (Washington DC: The National Trust for Historic Preservation, 1994) p. 6.
[98] Roddewig and Shalaes, p. 26.
[99] IRC Section 170(e)(1)(A). *Lary v. United States* (1986), *Glen v. Commissioner* (1982), and *Morrison v. Commissioner* (1980).
[100] *Dorsey v. Commissioner*, T.C. Memo 1990-242, p. 41 FN26.
[101] Robert J. Shusterman, Esq., "Façade Easements and Other Qualified Conservation Contributions." *The Law of Historic Preservation*, (Harrisburg: Pennsylvania Bar Institute, 1996) p. 333.

publication of *Appraising Easements* and the added substantiation requirements of Treasury Regulation §1.170A-13(c), both in 1984.[102]

Prior to this standardization of easement valuation, the problems caused by unclear easement valuation methods seriously reduced the attractiveness of easements as a preservation incentive. Questioning by the IRS of valuation procedures during the early 1980s led to many audits, and even to a zero valuation policy on façade easements, aided by the aforementioned Washington D.C. study. The Tax Reform Act of 1984 enacted a tax penalty for the overvaluation of conservation easements. Only applicable to cases where the appraiser overvalued the easement by over one hundred fifty percent of the correct valuation, the penalty is thirty percent of the underpayment of taxes. Current Treasury Regulations state that for a property contribution over five thousand dollars ($5,000), made after December 31, 1984, the owner must obtain a "qualified appraisal," [§ 1.170A-13(c)] consisting of three requirements:

1) a qualified appraisal as outlined in § 1.170A-13(c)(3)

2) a completed appraisal summary as defined in § 1.170A-13(c)(4)

3) records that contain information required in § 1.170A-13(b)(2)(ii)

Treasury Regulations state that a "qualified appraisal" must be an appraisal made by a qualified appraiser less than sixty days before the contribution date, but not after the due date of the return on which a deduction is claimed.[103] A qualified appraiser describes an appraiser who has the professional qualifications necessary to

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[102] National Trust for Historic Preservation and Land Trust Alliance, *Appraising Easements: Guidelines for Valuation of Historic Preservation and Land Conservation Easements*, (Washington, D.C.: National Trust for Historic Preservation and Land Trust Alliance, 1984, 2nd Edition 1990).
[103] Treasury Regulation § 1.170A-13(c)(3)(i)(A) and § 1.170A-13(c)(3)(iv).

make the appraisal without receiving a contingent fee, is not affiliated with or related to the donor, is not the donor or donee, and has not had a prior history of false appraisals.[104] The qualified appraiser must prepare, sign, and date the qualified appraisal, including specific information such as a description of the property, physical condition of the property, date or expected date of contribution, and the terms of agreement or understanding made by the donor or donee in relation to the use, sale, or other disposition of the contributed property. Also included must be the appraiser's qualifications, a statement that the appraisal was for income tax purposes, the date of appraisal, appraised fair market value of the property on its contribution date, method of valuation, and basis of valuation consisting of a justification for sampling and explanation of the procedure used.[105] IRS Publication 561, *Determining the Value of Donated Property* (Rev. Dec. 87), defines fair market value as "the price that property would sell for on the open market" and "the price that would be agreed on between a willing buyer and a willing seller, with neither being required to act, and both having reasonable knowledge of the facts."[106] This definition applies to fair market value appraisal of the property both with and without an easement.

An appraisal summary (IRS Form 8283) is a summary of a qualified appraisal, signed and dated by the donee and qualified appraiser, that includes the following information in addition to that listed above: name and taxpayer information of the donor, donee, and qualified appraiser, date and manner of acquisition (purchase,

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[104] Treasury Regulation § 1.170A-13(c)(5).
[105] Treasury Regulation § 1.170A-13(c)(3).
[106] Richard J. Roddewig. "Preservation Easements: An Appraiser's Primer on Tax Rules and Valuation Issues." *ALI-ABA Course of Study: Historic Preservation Law* (Savannah. Georgia: National Trust for Historic Preservation and ALI-ABA. 1998) p. 9.

exchange, gift, bequest, bargain sale), adjusted cost or basis of the property according to section 1016, appraiser declaration that the fee was obtained through permissible means, and any other relevant information.[107]

Valuation Differences Between Façade and Open Space Easements

Several of the differences between façade and open space easements are relevant to the discussion of valuation techniques and the effectiveness of both types of conservation easements as incentives. Donation of a conservation easement can result in a property tax reduction based on the resulting reduction of value. Façade easement donee organizations do not typically encourage exploitation of this tax advantage, because the donation of a façade easement often coincides with a building rehabilitation that would result in an increase in property value.[108] Property tax policies vary among municipalities and according to the individual property. Easement donors have the option of reassessment following donation of the easement. Whether they will receive a diminution in their property tax in inconclusive.[109] Open space easements typically have a clearer loss of value, particularly associated with the loss of development rights.

Open space easements also have a higher benchmark, or standard, easement valuation because of to the greater loss of development potential.[110] *Stanley Works v. Commissioner* (1986) allowed a deduction of seventy-five percent for the contribution

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[107] Treasury Regulation § 1.170A-13(c)(4).
[108] Robert J. Shusterman Esq., Conversation with author, 24 February 1999.
[109] The topic of property tax appraisal and façade easement donation needs further research and is beyond the scope of this thesis.
[110] Another tax advantage available to open space easements, with specific exclusion of façade easements, is the provision in the 1997 Taxpayer Relief Act for estate tax exemption of land subject to a conservation easement, discussed in Chapter II.

of an open space easement. A year later, with the *Stotler v. Commissioner* (1987) decision, a ninety-one percent decrease in property value was allowed, again for an open space easement.[111] While the typical open space easement valuation benchmark is less than these extremes, their approval demonstrates the discrepancy between open space and façade easement valuation. The typical benchmark for façade easements is ten to twenty percent of the property's pre-easement fair market value. Open space easements also have lower on-going property maintenance costs than façade easements. These valuation discrepancies illustrate that, according to the IRS, open space easements are worth more than façade easements.

Sustaining a building in-perpetuity has many ramifications, including additional maintenance restrictions and the possibility of functional obsolescence, not applicable to open space easements. *Dorsey v. Commissioner* (1990) recognized this difference: "A façade easement is different from an open space easement. In the former, the right to control the building exterior is involved while the latter involves no such right."[112] Difficulties in valuing a façade easement stem from differences among the properties that make a standard valuation procedure impossible. Properties can have different current or prospective uses, neighborhood characteristics, and zoning restrictions.[113] A single standard should not be set for properties under the jurisdiction of a local preservation ordinance, because the impact varies from one building to another. Comparison between properties in two historic districts, under

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[111] *Stanley Works and Subsidiaries v. Commissioner*, 87 T.C. No. 22 (1986) and *Stotler v. Commissioner*, T.C. Memo 1987-275 (1987), as discussed in: National Trust for Historic Preservation and Land Trust Alliance, *Appraising Easements: Guidelines for Valuation of Historic Preservation and Land Conservation Easements*, p. vii.
[112] *Dorsey v. Commissioner*, T.C. Memo 1990-242 at 33-34.

different jurisdictions but in the same city, results in different diminutions in value: *Griffin v. Commissioner* (1989) determined a twenty percent diminution in value for a property under jurisdiction of the Historic District/Landmarks Commission in New Orleans, while *Hilborn v. Commissioner* (1985) dealt with a property in the Vieux Carre District, finding a ten percent diminution in value.[114] This example proves that even with relatively similar circumstances, and in the same general real estate market, two façade easements do not necessarily have the same value.

Valuation of Historic Properties

Increased popularity of the preservation movement has risen from numerous factors, resulting in new incentives and valuation principles. Government policy, popularity of historic properties, evolution of architectural styles, and usage of existing resources are among the factors leading to the integration of historic structures with the principle of highest and best use, a guiding principle in property appraisal.[115] Preservation regulation in forms such as local ordinances has either eliminated or made difficult the possibility for legal demolition of many historic structures. Government incentives like tax credits and conservation easements have increased the profitability of historic preservation. As the general population grows aware of the irreplaceable nature of historic buildings, their popularity increases, thereby increasing the risk involved when a developer proposes the demolition of structures that are important to the community. Community opposition can increase project costs and make a developer unpopular to the community in which he attempts to promote his

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[113] *Nicoladis v. Commissioner*, T.C. Memo 1988-163 at 13.
[114] *Griffin v. Commissioner*, T.C. Memo 1989-130 and *Hilborn v. Commissioner*, 85 T.C. 677 (1985).

development. In addition to these factors, transitions in architectural styles in the latter half of the twentieth century have led to a higher degree of comfort in the architectural profession with contextual design, increasing the viability of historic properties in relation to new architecture.

Concerns about sprawl and the wasting of resources are very relevant to the historic preservation movement, as typically large concentrations of historic buildings are located in downtowns, adding to the sense of community. Recently, the "New Urbanism" movement of Andres Duany, Elizabeth Plater-Zyberk, and Peter Calthorpe has attempted to imitate the urban form and even the architectural details found in many older communities. All of these factors justify and explain the preservation incentives that have occurred since the 1970s; however, despite the above motives and impulses for preserving historic fabric, without incentives, many situations economically favor demolition over rehabilitation, making the effectiveness of preservation incentives even more important.

The principles of change, contribution, and supply and demand all must be considered when analyzing historic properties.[116] As many historic buildings may not be capable of fully satisfying their original use (the principle of change), adaptive use and restoration or renovation are viable alternatives to demolition. Costs associated with rehabilitation and maintenance of historic structures must be factored into the valuation of the property after placement of the easement, to determine the amount of the incentive. The rarity of historic properties contributes to their value under the

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[115] Judith Reynolds, *Historic Properties: Preservation and the Valuation Process*, p. 58.
[116] Reynolds, *Historic Properties: Preservation and the Valuation Process*, p. 61.

principle of supply and demand, assuming the appraised building's style is popular at the time of valuation: "Where little demand exists for a particular type of historic building, there is little value regardless of the supply. On the other hand, demand that exceeds the existing supply will drive value up."[117] As economic and land use circumstances change over time, so will the property's highest and best use. Normal shifts in the real estate market indicate that the best use of a property or building change with time. Therefore, the static nature of façade easement restrictions places an economic risk on the property, reducing its value.[118]

Foundations of Easement Valuation

As the demand for land increases and existing structures fail to fill their zoning envelope, application of the highest and best use principle frequently leads to the demolition or insensitive alteration of historic buildings. Maximum utilization of land is the driving principle behind highest and best use. Two factors are critical when determining whether redevelopment of the property would lead to its highest and best use: the greater potential density that would maximize income capacity and the potential superior physical condition.[119]

Façade easements protect against insensitive alterations and losses of historic fabric. In theory, restrictions on the usage of the land and improvements that correspond with façade easements are seen as resulting in a diminution of value on the property. Multiple interpretations exist regarding how to quantify this diminution of

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[117] Reynolds. *Historic Properties: Preservation and the Valuation Process*, p. 62.
[118] Paul K. Asabere and Forrest E. Huffman. "The Value Discounts Associated with Historic Façade Easements." *The Appraisal Journal* (April 1994) p. 274.
[119] Reynolds. *Historic Properties: Preservation and the Valuation Process*, p. 58.

value within the confines of the "before" and "after" method, the accepted technique for conservation easement valuation. "Before" refers to the value of the property before placement of the easement, while the "after" value pertains to the property's value following the easement donation. In 1977 the Tax Court established its approval of this method for open-space easements in *Thayer v. Commissioner* (1977).[120] *Thayer v. Commissioner* (1977) "provides an excellent discussion of the factors an appraiser must consider in valuing an open space easement;" however, open space and façade easements have different valuation problems and restriction implications.[121] While affirming the use of the before and after valuation method for façade easements, *Hilborn v. Commissioner* (1985) outlines the judiciary's interpretation of the before and after methodology and highest and best use principle as applied to façade easement valuation:

> 'Before' value (before value) is arrived at by first determining the highest and best use of the property in its current condition unrestricted by the easement. At this stage, the suitability of the property's current use under existing zoning and market conditions and realistic alternative uses are examined. Any suggested use higher than current use requires both 'closeness in time' and 'reasonable probability.' Next, to the extent possible, the three commonly recognized methods of valuing property (capitalized net operating income, replacement cost, and comparable sales) are used, but are modified to take into account any peculiarities of the property which impact on the relative weight to be afforded each respective method.
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> 'After' value (after value) is arrived at by first determining the highest and best use of the property as encumbered by the easement. At this stage the easement's terms and covenants are examined, individually and collectively, and compared to existing zoning regulations and other controls (such as local

[120] *Thayer v. Commissioner*, T.C. Memo 1977-370.
[121] Thomas A. Coughlin, "Historic Preservation Easements," (1987) p. 24.

> historic preservation ordinances) to estimate whether, and the extent to which, the easement will affect current and alternate future uses of the property. Next, the above-mentioned three approaches to valuing property are again utilized to estimate the value of the property as encumbered by the easement.[122]

The before and after approach as described in *Hilborn v. Commissioner* set the standard for future challenges to façade easement valuation. Debate regarding which of the three appraisal methods—comparable sales, income, or cost—most accurately reflect the value of façade easements continues, as the judiciary discourages mechanical application of the before and after methodology.

The Comparable Sales (Market Data) Approach

Perhaps the "simplest and most direct" of the three valuation approaches, the comparable sales approach requires finding comparables to the subject property and using them to determine the value of that property.[123] Ideally, this approach uses properties nearby the subject property sold close to the appraisal date and with similar physical and development characteristics. An appraiser first uses criteria to find a comparison, such as location, sale date, size, style, and historic or cultural value.[124] Restriction of the sale date and location are particularly important for making an accurate comparison. If the subject property is in a historic district, then finding a comparison in that district simplifies the comparison procedure. However, if the property is not in a historic district, it is better to look in other areas for comparable historic properties than to use a non-historic property and add a variable to account for

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[122] *Hilborn v. Commissioner*, 85 T.C. at 689 (1985).
[123] Reynolds, *Historic Properties: Preservation and the Valuation Process*, 111.
[124] Reynolds, *Appraising Historic Properties*, 10.

the historic characteristics of the subject property.[125] Once the comparison properties are assembled, the appraiser must find a common unit of comparison, such as per-acre for land and per-square-foot for a building. Properties with a greater than usual amount of land should have the land valued apart from the improvements.[126] Factors for adjusting the sale price to the property's unit of comparison are: "location, zoning, date of sale, physical condition, conditions of sale such as undue pressure to buy or sell, and financing terms that vary from those typical in the market."[127] From these adjustments, the appraiser analyzes the difference in sale price based on these conditions. Ideally, the compared properties will only be different in terms of the variable in question.[128]

As adjustments for variables such as changing economic conditions and different locations are made in the sale price, they should maintain mathematical and logical consistency. In easement valuation, this approach reliably values the land related to a façade easement.[129] If no comparable property exists with an easement for the after valuation, the appraiser could find properties whose densities are comparable to the reduced density of the eased property, including land whose development rights have been sold as part of a Transfer of Development Rights transaction, for that particular right lost in a façade easement donation.[130] The court in *Losch v. Commissioner* (1988) recommended usage of the same property pre- and post-

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[125] Reynolds. *Appraising Historic Properties*. p. 10.
[126] Reynolds. *Appraising Historic Properties*. p. 10.
[127] Reynolds. *Appraising Historic Properties*. p.11.
[128] Reynolds. *Appraising Historic Properties*. p. 12.
[129] *Hilborn v. Commissioner* (1985).
[130] Reynolds. *Historic Properties: Preservation and the Valuation Process*, p. 111-12.

easement if the comparable sales approach was employed.[131] Usage of easement sales databases with the comparable sales approach can also be a problem. Some typical methodological problems with these appraiser databases are: comparing an appraisal of a property's unrestricted value with a later sale price of an easement or an easement-encumbered property and use of an old sale as a before value, with adjustments for current market conditions.[132]

The Income-Based Approach

Applicable only to income-producing properties, the income-based approach "may be the most reliable appraisal method in the Before and After valuation of historic income-producing properties."[133] This approach uses two criteria: the property's current and anticipated production of net income, and anticipated sale prices.[134] Both yield/capitalization rates and yield-to-maturity rates are used to determine the market value of the subject property. Capitalization rates reflect the relationship of a property's price/value to its estimated or actual net income. These rates are generally lower than yield-to-maturity rates, which allow for an anticipated increase or decrease in the property's future value.[135] Inflation, improvements in the property's location, and increase in the popularity of the building's style all account for an increase in the value of a property.[136] Conversely, a property's value decreases as the property deteriorates, the location's desirability goes down, or the building's

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[131] *Losch v. Commissioner*, T.C. Memo 1988-230, at 32.
[132] Richard J. Roddewig, "Preservation Easements: An Appraiser's Primer on Tax Rules and Valuation Issues," *ALI-ABA Course of Study: Historic Preservation Law*, (Savannah, Georgia: National Trust for Historic Preservation and ALI-ABA, 1998) p. 24.
[133] National Trust for Historic Preservation and Land Trust Alliance, p. 35.
[134] Reynolds, *Appraising Historic Properties*, p.13.
[135] Reynolds, *Appraising Historic Properties*, p.13.

style falls out of popularity.[137] Yield-to-maturity rates work best in complicated lease situations or if the income and expenses of a property must be determined for a number of years. Appraisers value historic properties with competitive income streams similarly to non-historic properties, even though historic properties incur different expenses when compared with modern structures.[138]

The income approach, when combined with land valuation, will demonstrate if the highest and best use of the property is demolition and development. This conclusion would result from the value of the land without improvements exceeding the value of the property with improvements and is not applicable for properties that are subject to preservation ordinances which do not permit demolition of historic buildings.[139]

The income approach also recognizes that easements can reduce the income available to a property. This can happen several ways: limitations on permitted number of apartments, elimination or control of window display signs, use restrictions that do not reflect market trends, limitations on additions to the existing building, increased costs due to the easement. These income reductions lead to an increased risk for the property owner, which the capitalization or discount rate should reflect, resulting in a lower post-easement income capitalization rate.[140]

Some appraisers use the income approach with non-income producing, residential properties as well. This is accomplished through analysis of the property's

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[136] Reynolds, *Appraising Historic Properties*, p.13.
[137] Reynolds, *Appraising Historic Properties*, p.13.
[138] Reynolds, *Appraising Historic Properties*, p.14.
[139] Reynolds, *Historic Properties: Preservation and the Valuation Process*, p. 112.
[140] Reynolds, *Historic Properties: Preservation and the Valuation Process*, p. 113.

mortgage differential. When an increased risk, such as a façade easement, is placed on a property, the mortgage differential changes. This change, usually manifested through a change in the property owner's mortgage payment, can then be translated into a quantifiable value.[141] While this method may work for some experienced appraisers, it is not recommended as standard practice without further investigation.

The Cost Approach

Often the least indicative approach for historic properties, the controlling element of the cost approach is replacement or reproduction cost, adjusted for depreciation. Difficulties associated with reproduction of historic buildings make this approach less applicable for historic structures. Lack of association with a reconstruction, impossibility of replicating certain materials, craftsmanship, and construction methods, and time's distortion of the relationship between development cost and market value are among the reasons for this approach's ineffectiveness.[142] An appraiser can use this approach to "recognize the craftsmanship and quality of materials inherent in historic properties and to relate these qualities to the higher income and sale prices that often accrue to them;"[143] however, experienced easement appraisers recommend against using this method.[144]

There are three components to the cost approach: the estimate of current cost, estimate of accrued depreciation, and the value of the land. Problems with these components are: the difficulty in estimating replication costs for old structures, the

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[141] Conversation with Richard Cohen, 8 April 1999.
[142] Reynolds, *Appraising Historic Properties*, p. 16.
[143] Reynolds, *Appraising Historic Properties*, p. 16.
[144] Conversation with Richard Cohen, 8 April 1999.

inappropriate nature of deductions for functional utility and physical deterioration of historic properties, and inability to appraise the land as if available for development.[145] Missing in the cost approach analysis is the element of historic association, which is "best estimated by deducting reproduction cost less depreciation and land value from sales of other historic properties."[146] Following quantification, this element can be added to the sum of the land and building values, with the depreciation subtracted.[147]

An advantage to the cost approach when valuing eased properties is the appraiser's ability to separate the land and building components. During challenges to easement valuation, the judiciary has noted the inappropriateness of the cost approach, "since demolition and replacement of a historic building would be highly unlikely."[148] Contrary to this observation, other appraisers have used a modified cost approach along with comparable sales analysis, asserting its reliability as an indicator of a property's pre-easement value.[149]

Integration of Valuation Approaches

Any of the three appraisal methods can be used to determine the value of the property before and after easement donation. Through experience, some appraisers have found that the income approach provides the most accurate valuation of an eased property.[150] Appraisal of other takings that reduce the property owner's full fee interest, such as eminent domain, set a precedent for these appraisal procedures.[151]

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[145] Reynolds, *Appraising Historic Properties*, p. 16-17.
[146] Reynolds, *Appraising Historic Properties*, p. 19.
[147] Reynolds, *Appraising Historic Properties*, p. 19.
[148] *Dorsey v. Commissioner* (1990) at 32.
[149] *Hilborn v. Commissioner* (1985).
[150] Conversation with Richard Cohen, 8 April 1999.
[151] Thomas A. Coughlin, "Historic Preservation Easements," (1987) p. 24.

Combination of the three approaches results in a more accurate façade easement valuation. An appraiser can use the income approach to determine expense changes. The cost approach makes adjustments to properties that require rehabilitation, and when comparable eased properties are available, "the sale comparison approach provides the most direct and convincing measure of after-easement value."[152] Unfortunately, the sales comparison approach is difficult because frequently a comparable property with an easement has not been recently sold. Several appraisers use all of the appraisal methods in order to determine the pre-easement property value.[153] No one appraisal method works the best in all situations. Multiple variations of appraisal techniques can be used to value the same segment of the property; for example, in addition to the other approaches discussed, a combination of the income and sales comparison approaches can also be used for land valuation.[154]

Other Factors of Façade Easement Valuation

Façade easement valuation involves considerations besides those presented by the traditional three appraisal approaches. Whether the subject property is subject to the restrictions of a local preservation ordinance, the impact of the loss of development rights, definition of the property's highest and best use, and other easement restrictions all factor into the post-easement appraisal of a property. Real estate appraiser Richard Cohen cites three factors that cause diminution in a property's value, adding up to the value of the easement:

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[152] Reynolds, *Historic Properties: Preservation and the Valuation Process*, p. 110.
[153] *Hilborn v. Commissioner* (1985) and *Nicoladis v. Commissioner* (1988). The appraiser for the respondent in *Hilborn v. Commissioner* and the appraiser for the petitioner in *Nicoladis v. Commissioner* used all of the valuation techniques.
[154] Reynolds, *Historic Properties: Preservation and the Valuation Process*, p. 112.

1) Loss of Development Rights

2) Increased Maintenance Responsibilities

3) A "Cloud on the Title," or Loss of Value due to Additional Unknowns Caused by the Easement.[155]

Higgins v. Commissioner (1990) ruled that the existence of a local historic district did not eliminate the value of the easement, although local restrictions may reduce the value of an easement.[156] *Nicoladis v. Commissioner* (1988) determined that "the potential to develop the Property has been affected at least to the extent that any change or addition must be approved by Preservation Resource Center [of New Orleans] above and beyond the approval of the Historic District/Landmark Commission."[157] *Appraising Easements*, the publication released by the National Trust for Historic Preservation and the Land Trust Alliance, supports the idea that an eased property in a local historic district still suffers a value penalty due to the easement, "because the easement imposes stricter controls than those contained in the typical preservation ordinance."[158] In *Hilborn v. Commissioner* (1985), the Vieux Carre Commission stated that it applied a higher standard to façade easement properties due to the existing protection given to the buildings through the ordinance.[159] Other differences between façade easements and local ordinance protection include: the elimination of the economic hardship provision included in many local ordinances, and that easements exist in-perpetuity, while ordinances and zoning can adapt over

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[155] Conversation with Richard Cohen, 8 April 1999.
[156] *Higgins v. Commissioner*, T.C. Memo 1990-602 and Shusterman, p. 337.
[157] *Nicoladis v. Commissioner* (1988) at 21.
[158] National Trust for Historic Preservation and Land Trust Alliance, p. 34.
[159] *Hilborn v. Commissioner* (1985) at 680.

time to a community's changing needs and tastes.[160] If the local district has particularly strict design reviews, then the easement designation may have less value, because the restrictions already imposed, along with the highest and best use, are generally consistent with the easement restrictions.[161] The differences among local ordinance restrictions and how these differences manifest themselves in easement valuation are seen in the *Griffin v. Commissioner* (1989) decision. In the opinion for this decision, the court specifically noted that a reason for the increased easement diminution of value factor was "increased development potential" for property in the district governed by the Historic District/Landmark Commission, as compared with the Vieux Carre Commission.[162] Valuation of land in historic districts must determine whether the non-easement-encumbered properties can grow vertically or be incorporated into new projects.[163]

Restrictions of the easement impact the property value in several ways. A major factor in determination of post-easement valuation is the loss of development rights associated with the easement restrictions. The impact of the loss of development rights varies according to the locale of the easement. Primary versus secondary tier markets will yield different valuations for the loss of development rights on similar properties with similar zoning envelopes.[164] *Nicoladis v. Commissioner* (1988), *Losch v. Commissioner* (1988), and *Dorsey v. Commissioner* (1990) all included loss of development rights as part of their post-easement valuation. In *Losch v. Commissioner*

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[160] National Trust for Historic Preservation and Land Trust Alliance. p. 34.
[161] National Trust for Historic Preservation and Land Trust Alliance. p. 34.
[162] *Griffin v. Commissioner* (1989) at 18.
[163] Reynolds. *Historic Properties: Preservation and the Valuation Process*, p. 115.
[164] Conversation with Richard Cohen. 8 April 1999.

(1988) the court stated that the property owner had to prove the economic feasibility of a specific project in order to claim the loss of development rights for that project.[165] Regulations that prohibit demolition or subdivision, or that require public access on either a regular or limited basis, are likely to significantly impact the property's post-easement valuation.[166] Other provisions can take away the property owner's ability to respond to economic change. These include the prohibition of subdivision, demolition, façade changes, or changes out of the building's character. Design and use changes are also generally forbidden in façade easements.[167] Some organizations, such as the Preservation Alliance for Greater Philadelphia, allow use changes that are not prohibited by zoning and do not affect the historic character of the property.

Determination of the highest and best use of the property both before and after easement donation is critical to the property's valuation. According to the American Institute of Real Estate Appraisers, the definition of highest and best use is:

> That reasonable and probable use that will support the highest present value, as defined, as of the effective date of the appraisal. Alternatively, that use, from among reasonable probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in highest land value.[168]

This definition only states that the use has to be "reasonable and probable." The interpretation of this definition in *Losch v. Commissioner* (1988) intimates that the property owner should intend to put the property to this reasonable probable use in

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[165] *Losch v. Commissioner* (1988) at 22.
[166] National Trust for Historic Preservation and Land Trust Alliance, p. 33.
[167] National Trust for Historic Preservation and Land Trust Alliance, p. 33.
[168] *Dorsey v. Commissioner* (1990) at 25.

order to receive a deduction for its loss.[169] *Losch v. Commissioner* (1988) places the burden on the petitioners to prove that the use of the property at the time of donation was not the property's highest and best use; if not proven, then no value is placed on the loss of development potential due to the easement:

> If the easement would preclude a potential buyer from putting the property to its highest and best use, then the property encumbered by the easement would have less market value than the property encumbered. Conversely, an easement which limits potential uses of a property will have no effect on the market value of the property unless one of the uses precluded by the easement is the property's highest and best use.[170]

Dorsey v. Commissioner (1990) adds to the *Losch v. Commissioner* (1988) decision by stating that the value of the highest and best use is not impacted by the property owner's intention to put the property to its highest and best use before donating an easement. Nor does the property have to be put to that highest and best use; the only stipulation is that the highest and best use must be structurally and economically feasible.

Results of Façade Easement Valuation

From the original ten percent façade easement valuation in *Hilborn v. Commissioner* (1985), *Dorsey v. Commissioner* (1990) placed a thirty-three percent façade easement diminution factor on the fair market value of the property. Three of the most recent facade easement valuation cases used a diminution value of over twenty percent.[171] *Granger v. Commissioner* (1989) based its twenty-five percent post-

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[169] *Losch v. Commissioner* (1988) at 22.
[170] *Losch v. Commissioner* (1988) at 21-22.
[171] *Granger v. United States of America*, Civil Action No. 87-2455-0, 1989 U.S. Dist. LEXIS 1167 (1989), *Griffin v. Commissioner* (1989), *Dorsey v. Commissioner* (1990).

easement diminution of value on reduced marketability, extra maintenance requirements, and functional obsolescence due to easement restrictions.[172] Establishing a new method for quantification of easement valuation, *Dorsey v. Commissioner* (1990) set up a process for valuing both the loss of property control due to easement restrictions and loss of development rights:

> 1) Find fair market value of property at time of donation
>
> 2) Determine value of the loss of control over the building exterior—10% of the fair market value (fmv) = A (A = 10%fmv)
>
> 3) Value the loss of development rights—allowable pre-easement square footage (X) and allowable post-easement square footage (Y)—subtract Y from X to get the lost square footage (Z)
>
> 4) Calculate the percentage of the diminution due to lost development rights is equal to Z divided by X (Z/X = M%)
>
> 5) Take M% of diminution value applied to the fair market value of the property after the 10%fmv is taken for the loss of control. This figure is not allocated between the land and the improvements, "loss of development rights affects the whole property, not just the improvements"[173]
>
> 6) The sum of steps 2 and 5 is the total loss of value attributable to the easement

Besides supporting the highest diminution of value percentage for a façade easement (thirty-three percent), the *Dorsey v. Commissioner* (1990) decision could set a new standard for easement valuation, providing a clear methodology for an admittedly subjective valuation procedure.

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[172] *Granger v. Commissioner* (1989) at 3.

Chapter V: Easements as Effective Preservation Incentives

Evaluation of preservation easement programs in non-profit organizations must include an analysis of how preservation easements function within the national preservation standards, and whether preservation easements successfully follow generally accepted United States preservation standards. In addition, a cursory evaluation of how preservation easements function as incentives and brief examination of property owners' response to preservation easements as qualified conservation contributions provides a glimpse into the reasons for the success or failure of preservation easement programs.

According to United States policy, specifically the Historic Preservation Act of 1966, the preservation of a historic resource will provide a public benefit; however, because public tax expenditures are involved with easement donation, public access must be available. Treasury Regulations for qualified conservation contributions require some form of public view or access for properties that claimed the qualified conservation contribution, even if only from a public thoroughfare.[174] Some organizations write in a public access clause in their deed requirements, while others rely on the view from the public right-of-way to provide the public benefit.[175] Regardless of whether the property owner must open his property to the public, or if the eased property can be seen from a public thoroughfare, the easement will not

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[173] *Dorsey v. Commissioner* (1990) at 40.
[174] Treasury Regulation § 1.170A-14(d)(5)(iv)(A).
[175] Preservation North Carolina, the Frank Lloyd Wright Building Conservancy, National Trust for Historic Preservation all have public access requirements in their sample easement documents.

accomplish its preservation goals if it only benefits the property owner. Easements must effectively preserve the impacted property.

Façade Easements as Preservation Tools

Two easement-holding organizations in Washington D.C. demonstrate how organizations can use preservation easements to actively preserve their community. The L'Enfant Trust in the 1970s began taking easements on properties to prevent "midnight demolitions" of historic buildings in Washington D.C. The Foundation for the Preservation of Historic Georgetown used easements in the 1980s to stabilize the Georgetown Historic District, targeting easements to specific strategic locations. According to Robert F. Evans, chairman of the Foundation's easement committee in 1981: "With the easements in the right places, we can control the development of the whole block."[176] By these organizations seeking out easements where they can make the most impact on the community, they are utilizing preservation easements as a significant tool to preserve the character of historic districts around Washington D.C.

More organizations could follow this example by targeting the marketing of their easement program to areas threatened by encroaching development or zoned for a higher use than the existing building allows. The greater the disparity between the density of the improvements at the time the easement is placed and the available zoning envelope, the higher the value of the easement, based on the proportional loss of development rights. Organizations could accomplish this by studying the zoning of areas eligible for easements under their jurisdiction, and tailoring their easement

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[176] Sarah Booth Conroy, "Historic Easements: 'A Gift to the Streets.'" *The Washington Post* (13 December 1981) Living section, p.E1.

program to attract those properties. Donation of a preservation easement on a "functionally obsolete" building, or one that underutilizes the zoning limit, benefits the preservation community through perpetual protection of the cultural resource. The donor also benefits through greater tax deduction created based on the scale of the property's lost development rights.[177]

Even if organizations accept preservation easements in locations where they will make a significant impact on the future development of that community, the preservation requirements associated with the easement must be strong, or else the easement will not accomplish its objectives and will lose effectiveness as a preservation tool. Lax inspection standards or loose interpretation of maintenance requirements could damage the validity of preservation easements and could impact the Internal Revenue Service's determination of the property owner's tax deduction. Treasury Regulation §1.170A-14(c)(1) requires that the qualified organization have a commitment to protect the conservation purposes of the donation.[178] Without specifying how this commitment must manifest itself, most organizations have determined their own standards for easement property maintenance.

Organizations generally choose the Secretary of the Interior's Standards for Rehabilitation as guidelines for restoration and maintenance within the easement document.[179] Whether an organization chooses to follow the guidelines of the Secretary of the Interior's Standards for Rehabilitation, to use all of the Secretary of Interior's Standards for Treatment of Historic Properties, or to construct their own

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[177] Reynolds, *Appraising Historic Properties*, p. 114.
[178] Treasury Regulation §1.170A-14(c)(1).

guidelines for restoration and maintenance based on an individual report for that easement, the guidelines set forth by the easement-holding organization as steward of the easement must promote the building's preservation in accordance with the IRS regulations and accepted preservation standards.[180]

Treasury Regulations concentrate on inconsistent uses of the eased property as a major item of non-compliance with the easement restrictions.[181] The Secretary of Interior's Standards for Rehabilitation guide the owner of a historic property to sensitively repair, alter, or add to their building while retaining the architectural integrity of the structure. With the exception of the Standard One, these standards are more concerned with the preservation and retention of historic character than with usage of the building.[182] Advocating repair over replacement, recognition of changes in the building that have occurred throughout time, and usage of chemical or physical treatments only when necessary and as gentle as possible. Overall, the Secretary of the Interior's Standards for Rehabilitation provide the "opportunity to make possible an efficient contemporary use through alterations and additions."[183] This concept coincides with the idea of easements as a preservation tool for occupied, "working" buildings. As a preservation tool, easements are less severe than outright purchase of a historic property, allowing the property owner to occupy the property and maintain

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[179] The L'Enfant Trust, Frank Lloyd Wright Conservancy, and National Trust for Historic Preservation.
[180] Chapter II discusses in greater detail the various maintenance requirements within the easement document.
[181] Treasury Regulation §1.170A-14(e)(2).
[182] See Appendix G.
[183] Kay D. Weeks and Anne E. Grimmer, *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* (Washington D.C.: U.S. Department of the Interior, National Park Service, 1995) p. 63.

ownership. This enables the easement-holding organization to monitor the building's preservation and maintenance without the other obligations of ownership, and without creating a museum.

Interaction between Local Preservation Ordinances and Preservation Easements

The Secretary of the Interior's Standards are not the only alternative standard for the preservation of easement properties. Easements on properties under the jurisdiction of local landmark ordinances should attempt to work with the local preservation commission or overseeing governmental body to establish a consistent set of regulations. Easement regulations should complement, not necessarily duplicate, local ordinances.

Some easement-holding organizations take the local ordinance provisions into account when specifying easement restrictions in the deed.[184] Other organizations, such as the Preservation Alliance for Greater Philadelphia, cooperate with the local Historical Commission in the majority of decisions relating to maintenance and alterations of eased local landmarks. The Preservation Alliance's consideration of the Historical Commission's review regarding the demolition of the Mayfair House, as discussed in Chapter I, provides an excellent example of how these two types of organizations can work together to deal with problem properties and violations of both the local ordinance and the easement document.

Sagalyn v. Foundation for Preservation of Historic Georgetown (1997) demonstrates the consequences of a lack of cooperation between the local preservation

[184] The L'Enfant Trust and the Frank Lloyd Wright Building Conservancy.

commission and the easement-holding organization.[185] In this instance, the Mayor's Agent, the local governing preservation authority, approved an addition to a building with an easement held by the Foundation for Preservation of Historic Georgetown, after the Foundation publicly appeared in opposition to the addition.[186] This approval resulted in the issuance of a building permit to the property owners. If the Mayor's Agent and Foundation had been in agreement, the Foundation would not have had to file for an injunction against the Sagalyn's. The case was ultimately settled in favor of the Foundation on the issue of property subdivision/assemblage, not the non-compliant addition.[187]

As previously stated, preservation easement regulations do not have to duplicate local preservation ordinances. For the optimal effectiveness, preservation easement regulations should augment local ordinances. Stricter easement regulations relative to local ordinances would both justify the donor's tax deduction and make them a valuable preservation tool. Another reason to differentiate restrictions between façade easements and local preservation ordinances is the question of whether more than one preservation tool is necessary for effective building preservation. Existence of a local preservation ordinance, especially one with maintenance requirements, could also diminish the possible value of the easement. Enforcement of local ordinances could potentially be subject to the influence of political motives, while preservation easements are arranged outside of the realm of politics.

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[185] *Sagalyn v. Foundation for Preservation of Historic Georgetown*, 691 A.2d. 107 (1997).
[186] *Sagalyn v. Foundation for Preservation of Historic Georgetown*, 691 A.2d. at 110 (1997).
[187] *Sagalyn v. Foundation for Preservation of Historic Georgetown*, 691 A.2d. at 114 (1997). See Chapter II for additional discussion of the Sagalyn case as it relates to issues of subdivision and assemblage.

Success of the Preservation Requirements in Annual Easement Monitoring

Preservation requirements within the easement document are meaningless without consistent follow-through on the part of the easement-holding organization. The annual inspection checklist of most easement-holding organizations demonstrates what elements the organization deems as most critical for perpetual maintenance of the property. Purely aesthetic inspections will not aid in the conservation of the building fabric. Another danger is that because a façade easement could only apply to one side of the building, annual inspections could overlook severe structural damage on an uneased façade that could compromise the structural integrity of the entire building.

Do the inspection forms coincide with the restoration and maintenance requirements of the easement document? Do the forms clearly communicate the necessary maintenance items to the property owner? Of the six easement-holding organizations with inspection form samples, each one communicated their observations differently.[188] The two main differences among the organizations were whether they used a checklist of potential problems or maintenance requirements, or listed their observations at the time of the visit. The Historic Annapolis Foundation, National Trust for Historic Preservation, and Landmarks Preservation Council of Illinois listed either potential problem areas categorized by location and material, or listed protected features and maintenance restrictions/requirements. Preservation North Carolina had the most cursory inspection form, which allowed three lines for

comments by the inspector. The Utah Heritage Foundation and Preservation Alliance for Greater Philadelphia list their own observations, independent of a specific checklist. Both of these organizations organize their observations according to the relevant façade of the building and include recommendations with their list of non-compliant items.

The organizations that use pre-existing lists of maintenance requirements or potential problems may not use the inspection time most efficiently. Often in these situations, the inspector spends excess time looking for non-existent problems. An advantage to this system is that the inspector is certain to note all the important elements of the maintenance requirements, more strictly adhering to the easement document.

By listing observations without a specific checklist, using the previous year's inspection form as a reference, the easement-holding organization recognizes the changes that can occur in a building over time, and that maintenance issues can evolve as a building ages. A drawback to this system is that inspectors must be knowledgeable about the easement requirements and purposes. An inspector could easily become caught up in aesthetic observations and not concentrate on the more critical structural issues. For this reason, prioritization of the inspection observations is helpful to both the property owner and the inspector, forcing the inspector to qualify his observations.[189]

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[188] See Appendix C: Historic Annapolis Foundation, Preservation North Carolina, Landmarks Preservation Council of Illinois, the National Trust for Historic Preservation, Utah Heritage Foundation, and the Preservation Alliance for Greater Philadelphia all provided samples of their inspection forms.
[189] The Preservation Alliance for Greater Philadelphia prioritizes their inspection observations by façade.

Inspectors of preservation easements should remember the basic tenet of the Secretary of the Interior's Standards for Rehabilitation—that the purpose of rehabilitation is to make a historic building useful for modern purposes, while maintaining the historic and architectural integrity of the building—even if the easement document does not specifically cite the Rehabilitation Standards. Perhaps usage of all the Secretary of the Interior's Standards for the Treatment of Historic Properties is the most effective way to tailor an easement document for a specific property. By using all of the Standards, not just rehabilitation, an easement-holding organization can better adapt their criteria based on the significance of the property on which it accepts a façade easement. Usage of all the Standards allows an easement-holding organization flexibility in determining its easement requirements.[190] Easement-holding organizations must find a balance between individualized requirements and a standard for preservation easement quality.

Façade Easements as Preservation Incentives

For many donors of the qualified conservation contribution easement, the tax deduction is a large preservation incentive. Developers of two historic properties in Hoboken, New Jersey, cited the tax deduction as a "strong reason" why they decided to donate façade easements.[191] Even a prestigious organization such as the Frank Lloyd Wright Building Conservancy has had an easement donation motivated primarily by the financial incentive provided by the qualified conservation contribution.[192]

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[190] Preservation North Carolina's Historic Preservation Agreement includes all of the Secretary of the Interior's Standards for the Treatment of Historic Properties.
[191] Rachelle Garbarine. "IN THE REGION: New Jersey; Façade Easements on Historic Buildings." *New York Times* (15 May 1988) Section 10, p. 12, col. 1.
[192] Conversation with Thomas Schmidt, Esq., 19 February 1999.

In 1986, the IRS revised the Tax Code, reducing the maximum benefit for a charitable contribution deduction from fifty percent to thirty-three percent of the taxpayer's income. This change impacted those with annual incomes over $150,000 most, as the alternative minimum tax—which could further reduce or eliminate tax savings from donations—may also apply to them.[193] In 1993, Congress exempted gifts of land and interests in land, such as easements, from the alternative minimum tax, providing "an enormous incentive for donations."[194]

J. Randall Cotton of the Preservation Alliance stated that the changes in the way people could use deductions resulting from the 1986 Tax Act Change impacted the amount of easement donations.[195] Some donors of façade easements have stated that the results of the 1986 Tax Act have discouraged their pursuit of other preservation projects potentially eligible for façade easements. Connell Contracting, a Hoboken, New Jersey based partnership that donated several easements prior to 1986, has not donated any more easements due to the 1986 Federal tax revisions.[196]

In areas with high-priced real estate markets and strong pressures for development, preservation easements are used less. For example, developers of historic properties in San Francisco choose to use Transfer of Development Rights or the Rehabilitation Tax Credits instead of preservation easements.[197]

Currently, a potential preservation easement donor who wishes to utilize the Rehabilitation Tax Credit in conjunction with the easement must carefully time his

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[193] Garbarine, Section 10, p. 12, col. 1.
[194] Charles E. Roe and Camilla M. Herlevich, *Conservation and Historic Preservation Easements: To Preserve North Carolina's Heritage* (Raleigh: The Conservation Trust of North Carolina, 1995) p. 18.
[195] Conversation with J. Randall Cotton, 1 March 1999.
[196] Garbarine, Section 10, p. 12, col. 1.

easement donation in order to avoid the recapture of a portion of their claimed tax credit. Revenue Ruling 89-90, 1989-2 C.B. 3 established the position of the Internal Revenue Service that donation of a façade easement to a qualified organization would trigger recapture of that portion of the Rehabilitation Tax Credit.[198] Although Revenue Rulings are not legislated, but rather the opinion of the IRS on a particular issue, Section 47(a) of the Internal Revenue Code states that: "If during any taxable year any property is disposed of...before the close of the useful life which was taken into account in computing the credit...then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed...for all prior taxable year..."[199] This statement broadly legislates the meaning of Revenue Ruling 89-90, 1989-2 C.B. 3, without specifying façade easements as triggers for the recapture. The basic premises of the IRC § 47(a)(1) and Revenue Ruling state that if the property is disposed of before the end of that property's designated life as pertains to the tax credit, then the tax will increase according to the reduction of the property owner's basis in the property, from the time the credits were claimed to the time of the property transfer.

Rome I. v. Commissioner (1991) affirmed the 1989 private letter ruling regarding the recapture of portions of the Rehabilitation Tax Credit following easement donation.[200] The Court held "that the partnership must recapture a portion of the Rehabilitation Tax Credit and reduce its basis accordingly upon the donation of a

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[197] Conversation with Bill Beutner. 12 February 1999.
[198] *Rome I. Ltd. v. Commissioner*, 96 T.C. at 702 (1991).
[199] IRC § 47(a)(1).
[200] *Rome I. Ltd. v. Commissioner*, 96 T.C. 697 (1991).

historical façade easement."[201] According to IRC §170(h)(1), a "qualified conservation contribution" is a real property interest.[202] By donating a real property interest, the property owner is decreasing his basis in the property, therefore disposing of a portion of the property and triggering a recapture of a portion of the Rehabilitation Tax Credits. The 1989 Revenue Ruling discussed above clearly states the position of the IRS on such a disposition of property: "the donation of a 'qualified conservation contribution' under section 170(h)(1) constitutes a partial disposition of the underlying real property under section 47(a), triggering recapture of a portion of the Rehabilitation Tax Credit."[203] Because the property owners claimed a qualified conservation contribution and the Rehabilitation Tax Credits in the same year, the property's basis for claiming the tax credit was reduced.[204] *Rome I. v. Commissioner* provided a judicial precedent for the IRS Revenue Ruling, deciding whether donation of an easement constituted a disposition of property. The Tax Court "independently" arrived at the same conclusion as the IRS: that a qualified conservation contribution equaled a disposition of property and that to take both the charitable contribution deduction and the tax credit for the same portion of property would constitute a double deduction, impermissible by law.[205]

Implications of this change regarding usage of the combination of the Rehabilitation Tax Credit and the qualified conservation contribution have varied. In the 1980s, there was a connection between façade easement donation and usage of the

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[201] *Rome I. Ltd. v. Commissioner*, 96 T.C. at 698 (1991).
[202] IRC §170(h)(1).
[203] *Rome I. Ltd. v. Commissioner*, 96 T.C. at 701 (1991).
[204] *Rome I. Ltd. v. Commissioner*, 96 T.C. at 701 (1991).
[205] *Rome I. Ltd. v. Commissioner*, 96 T.C. at 707 (1991).

Rehabilitation Tax Credit. The Preservation Alliance (previously the Philadelphia Historic Preservation Corporation) obtained the bulk of its easement portfolio between 1979 and 1989, peak years for the Rehabilitation Tax Credit—approximately seventy-eight percent, or an average of eleven easements per year. Following the IRS private letter ruling changing the recapture rules in 1989, easement donations dropped to about two per year. Most of the easements donated during the 1980s also used the Rehabilitation Tax Credit; the easement was seen as "icing on the cake."[206] The Rehabilitation Tax Credit, not façade easement donations, contributed to the economic feasibility of these projects during this period—not surprising as a tax credit is a greater financial incentive than a tax deduction.

Some property owners decided against donating a preservation easement because of the reduction of the property owner's basis in the property, the decrease in the amount of the Rehabilitation Tax Credit, and the speculated increase in maintenance costs. They stated that a façade easement donation would be "more trouble than it's worth."[207] The reduction of the taxable basis in the property can be seen as a drawback when associated with the Rehabilitation Tax Credit as a property disposition. However, the basis reduction can also work to the property owner's advantage in conjunction with the Rehabilitation Tax Credit, providing a lower basis for the minimum rehabilitation expenditure requirement of the tax credit.[208] Avoidance of the Rehabilitation Tax Credit recapture due to easement donation and the

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[206] Conversation with Donna Ann Harris, 1 March 1999.
[207] Ben Smith III, "New Rules Hone a Preservation Tool," *The New York Times* (23 February 1986) Section 8, p. 7, col. 1.
[208] Richard J. Roddewig, Esq., *Preservation Easements: An Appraiser's Primer on Tax Rules and Valuation Issues* (Chicago: Clarion Associates, 1998) p. 1.

subsequent disposition of property can be achieved by donating the preservation easement prior to claiming the Rehabilitation Tax Credit or after the five-year recapture period.[209] The qualified conservation contribution deduction has the added advantage of currently being the only Federal preservation incentive for non-income producing owner-occupied properties.

Other tax incentives of the charitable conservation contribution have been discussed in previous chapters. The discovery of a tax shelter in the early 1980s where a property owner could reduce his basis in the property to zero and then claim a deduction for a qualified conservation easement has been eliminated by the Internal Revenue Service in the Internal Revenue Code § 170(e)(1)(A).

Consequences of the In-Perpetuity Clause with the Qualified Conservation Contribution

Taken literally, the fundamental flaw in the IRS requirement that all qualified conservation contributions must be made in-perpetuity is that, while buildings have a finite life-span, forever is a long time. The director of a prominent and respected easement program best described the inherent problem with the concept of in-perpetuity as related to buildings: "When the end of the world comes, easement properties will not likely be the only things left standing." Land conservation easements could more likely exist in-perpetuity, as their main requirement for eternal maintenance is that they remain unencroached upon by human development—they do not require substantial maintenance. Preservation easements, on the other hand, require perpetual and regular maintenance to avoid deterioration of the protected

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[209] Stephen L. Kass, Judith M. LaBelle, and David A. Hansell, *Rehabilitating Older and Historic*

structure. This difference reflects the inherent difficulties in grouping land conservation and building preservation under the same set of regulations and expectations.

Perpetual sustainability of preservation easements depends on their marketability for generations of property owners subsequent to the original donors. In 1994, two researchers from Temple University conducted a study on the discounts associated with the resale of easemented properties.[210] This study focused on the resale of condominiums within an easemented building. The marketability of an easement-encumbered property directly relates to the benefits future owners receive from the easement. Using two equations to determine the effects of the loss of property rights and the highest and best use—the concepts discussed in Chapter IV—the authors determined that the value of easement-encumbered condominiums in the subject building decreased by approximately thirty percent.[211] The analysis also supported the hypothesis of the authors that the easement-encumbered property "would be discounted more severely as the number of years after donation increases.[212] These results provide a positive statement about the future economic viability of façade easements and dispels in part the belief that subsequent property owners do not enjoy any of the financial benefits reaped by the easement donors. The authors do caution that further research is needed to verify their results for properties in different geographic locations, and for buildings other than condominiums.

Buildings: Law, Taxation, Strategies, 2nd Edition (New York: John Wiley and Sons, 1993) p. 33.
[210] Paul K. Asabere and Forrest E. Huffman, "The Value Discounts Associated with Historic Façade Easements," *The Appraisal Journal* (April 1994) p. 270-77.
[211] Asabere and Huffman, p. 277.
[212] Asabere and Huffman, p. 277.

What solutions exist for the conundrum of the in-perpetuity clause? A lawyer for the Hartford Architecture Conservancy stated that it was unrealistic to preserve a property forever: "20 or 30 years from now it may be impractical to maintain some of these old structures. It becomes a logical absurdity to say that you can maintain a building forever. In 2300 some court may say this is totally unenforceable."[213] While this lawyer illustrates the points made above, his statement should also remind preservation professionals of the purpose of the preservation easement. Demolition of historically significant structures cannot inherently be based on the practicality of the building at that time. The purpose of preservation easements is to ensure that historically significant buildings with little immediate practicality are preserved. A term limit on the expected viability of a structure is impossible to estimate. Perhaps the answer is not to change the in-perpetuity requirement, but to allow the nature of the easement to change in the event that the circumstances of the property become drastically altered. At this time, none of the easement-holding organizations interviewed for this thesis follow this practice.

Proposals to allow easement-holding organizations to manage preservation easements in conjunction with the in-perpetuity requirement warrant further research. These answers can only be found through further time and experience dealing with mature preservation easements. Currently, study of the Mayfair House in Philadelphia provides an example of how an experienced easement program in a relatively

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[213] Ben Smith III, "New Rules Hone a Preservation Tool," *The New York Times* (23 February 1986) Section 8, p. 7, col. 1.

preservation-friendly city managed to solve the dilemma of an obsolete, non-viable structure that was required to exist in-perpetuity.

The anticipated solutions arrived at by the Preservation Alliance for the Mayfair House involved utilization of the Doctrine of Changed Circumstances, which states that the circumstances surrounding the easement have been so altered as to render the easement impossible to maintain. This concept provides easement-holding organizations with an "escape clause" for unmaintainable easements; however, its use must remain a final resort. If a precedent is set where easement-holding organizations can claim "changed circumstances," then the IRS might disqualify preservation easements from eligibility for the qualified conservation contribution.

An alternative answer may lay in the easement acquisition process. Perhaps if easement-holding organizations had more stringent requirements for preservation easements subject to IRS regulations, related to the economic viability of the building at the time of easement, then organizations would have an additional layer of protection against properties that have lost all sustainability. Other solutions outside the realm of easements, such as the economic hardship variance found in local preservation ordinances, while potentially useful for anomalous easement properties such as the Mayfair House, could set a similar type of dangerous precedent as the misuse of the Doctrine of Changed Circumstances. Therefore, there currently is no readily apparent solution for the dilemma of how to preserve a building in-perpetuity. A more thorough examination of the potential solutions is necessary to arrive at additional hypotheses.

Chapter VI: Conclusion

Non-profit organizations must properly manage façade easement programs in order to maintain their viability as a preservation incentive. Multiple factors are involved in this management. Currently, no standards exist to regulate the level of quality to which easement-holding organizations are expected to accept and monitor their easements, other than the somewhat vague Treasury Regulation specifications discussed in the preceding chapters. Should easement-holding organizations be held to a national standard, or set of standards? Differences among organizations with national, regional, and local easement holdings demonstrate the different problems posed by each type of easement based solely on the distance of the easement-holding organization from the easement. Other variables within a non-profit organization can also impact the management of an easement program. All preservation easement programs should have one constant—their easement program must be directly related to the mission statement of that organization. If the organization does not take an active part in monitoring the stewardship of its easement properties, then the likelihood of those façade easements actively preserving the structures dramatically diminishes.

The factors involved in managing a successful façade easement program have been discussed throughout this thesis. Requirements of an effective easement program include: a comprehensive easement document and well-managed easement stewardship, including an educated staff, consistent monitoring program, and adequate resources. Communication between the property owner and the easement-holding

organization can increase the property owner's awareness of the easement on his property and what the easement regulations entail. Property owner education is particularly important as easements age and ownership transfers from the original donor. The easement-holding organization can promote its easement program as a more effective preservation *incentive*, potentially increasing the amount of easements, by actively marketing its easement program as a voluntary preservation tool with potential economic benefit to the property owner.

Another issue regarding the effectiveness of façade easements as a preservation incentive is the lack of distinction between façade and open-space conservation easements in the Internal Revenue Service regulations. Although Tax Courts have recognized the valuation differences between the two types of qualified contribution deductions, the Treasury Regulations themselves do not specify different requirements for organizations that deal with buildings or land. Open-space and façade easements share some similarities in administrative framework and general objectives; however, these two types of easements have different sets of problems, particularly in terms of the monitoring of routine maintenance. Perhaps façade/preservation and open-space/conservation easements should have separate Internal Revenue Code provisions or Treasury Regulations. This would be especially relevant for monitoring and property maintenance, due to the different expertise required by those who manage each type of easement.

Valuation principles are critical to the effectiveness of easements as an incentive. Without solid valuation practice, the IRS could question the property owner's income tax deduction. Property owners that associate façade easement

donation with tax audits will be less likely to donate easements on their property. On the other hand, if accepted valuation methodology leads to a higher allowable deduction benchmark, façade easement donation will become more attractive to property owners. Façade easements, as well as all conservation easements, must be marketed as a voluntary preservation tool. The voluntary nature of easements should act as insurance for property maintenance. Indeed, observations made in the interview process demonstrate that easements given for mercenary reasons have a higher incidence of maintenance problems; however, acknowledgement via tax deduction of the rights given up by the easement donor, and the voluntary nature of easements, may appeal to more conservative property owners.

For effective easement program management, easement-holding organizations must tailor their criteria to the types of properties they attract as easements, such as a sliding scale of requirements and restrictions based on different requirement and restrictions. To maximize its effectiveness as a preservation tool, regulations for a façade easement should be stricter than local preservation ordinances. This would both provide added justification to the donor's tax deduction and make the easement a better preservation tool. Frequently portions of the easement document are written for its specific property. Individualized easement documents allow property owners flexibility and acknowledge the variations in economic viability and historic significance that buildings have.

Easement-holding organizations must be active, not reactive, in pursuing future easements. By looking at the zoning of individual properties and determining where easements can make the most difference in preserving the historic nature of a district,

organizations are also increasing the attractiveness of the easement donation through the property owner's lost development rights. According to the formula for easement valuation set forth in *Dorsey v. Commissioner*, a portion of the easement value is the difference between the pre- and post- easement allowable building area.

This thesis provided a general overview of issues related to non-profit management of qualified conservation easements. Any one of the previous chapters could easily be expanded for more in-depth research and analysis. My research involved interviews with façade easement-holding organizations; unfortunately, in the scope of this thesis, I was unable to speak with every easement-holding, non-profit organization. A thorough survey of easement-holding organizations, with appropriate survey methodology and set of criteria, would yield additional answers to easement program management. Additionally, I have tried to thread comparisons of preservation and conservation easements throughout this thesis. This comparison warrants further examination, particularly in light of the Internal Revenue Service's grouping of the two types of easements. Unanswered questions on this topic within this thesis include whether preservation/façade and conservation/open space easements should have the same criteria and restrictions, especially as related to the in-perpetuity requirement. The relationship between the Rehabilitation Tax Credit and Conservation Easements is also a topic for further research.

Other issues require time and experience to determine how problems are best approached. While some non-profit organizations have held easements for over twenty years, façade easement program management is still a relatively new field. Easement-holding organizations are just starting to deal with problems caused by second and

third generation property owners. These older easement programs (Preservation Alliance for Greater Philadelphia, The L'Enfant Trust, etc.) will set the precedent for younger easement programs, just starting to develop their criteria and inspection forms (Historic Santa Fe Foundation). As façade easement management methodology adapts to the changing needs of property owners, documents will be adjusted accordingly. Only through continued examination and analysis will preservation easements remain a sustainable and effective preservation incentive. As façade easement programs mature, organizations will need to adapt their methodology to the changing needs of future property owners, although they must make certain to remain true to the original preservation objective of the easement.

Appendix A: Interview Database

Organization	Phone Number	Contact Person	Date Interviewed
Frank Lloyd Wright Building Conservancy	773-784-7334	Tom Schmidt	February 19, 1999
Georgia Trust for Historic Preservation	404-881-9980	Jane Cassey	February 17, 1999
Historic Annapolis Foundation	410-263-8550	David L. Bunnell	February 17, 1999
Historic Boston, Inc.	617-227-4679	Chad Perry	March 9, 1999
Landmarks Preservation Council of Illinois	312-922-1742	Jean A. Follett	October 19, 1999
National Trust for Historic Preservation	202-588-6000	George Siekkinen	March 9, 1999
New York Landmarks Conservancy	212-995-5260	Roger Lang	February 12, 1999
Preservation Alliance for Greater Philadelphia	215-546-1146	J. Randall Cotton	March 1, 1999
Preservation North Carolina	919-832-3652	Amy Cole	February 17, 1999

Size of Program	Type of Properties	Location of Properties	Age of Program
5 Properties	Open Space and Façade, Interior and Exterior--Residential	Urban, Suburban, and Rural--United States	
50-60 Properties	Façade--Residential, Primarily Commercial	Small Towns--Georgia	
47 Properties	Open Space and Façade, Interior and Exterior--Primarily Residential	Urban--Annapolis	Began early 1970s
4 Properties	Façade, Exterior and Interior--Residential	Urban--Boston	Tied to Revolving Loan Program
48 Properties--One is a military base comprised of 89 buildings	Façade--Residential and Commercial	Primarily Urban, Some Suburban--Greater Chicago	Began 1976
87 Properties	Open Space and Façade, Interior and Exterior--Primarily Residential, Some Commercial	Urban, Suburban, Rural--United States	Began 1973
21 Properties	Open Space and Façade--Residential and Commercial	Urban--New York City	Began 1977
147 Properties	Open Space and Façade--Residential and Commercial	Urban and Suburban--Greater Philadelphia	Began 1979
N/A--Do not distinguish between easements and covenants, 400 properties total	Façade Easements and Covenants--Primarily Residential	Urban, Suburban, and Rural--North Carolina	Began 1980s

Inspection Performance	Inspection Frequency	Fee Requirement
Staff for easements in Chicago area; Board members or volunteers for others		Yes, Endowment
Staff	Annual	No, No Endowment
Staff	Bi-annual	No, No Endowment
Staff	Attempted annually	No, No Endowment
Staff	Annual	Yes, Endowment
Staff, Senior Architect	Varies with Property	Yes, Endowment
Contracted architect or conservator	Tri-annual	Yes, Endowment
Graduate intern	Annual	Yes, Endowment
Interns and Staff	Bi-annual, Informal	No, No Endowment

Method of Fee Calculation	Potential Problems
About 2% of the fair market value of the property	Inspection program is informal, the Conservancy is working to formalize inspections.
N/A	Found minor defect in title on old easement, highway department had taken the property off the National Register. Negotiated a Quick Claim Deed to remove the easement with the condition of easement renegotiaton.
N/A	About a quarter of easement property owners are slow to respond to maintenance suggestions, generally responsive property owners.
Costs associated with inspections	Deferred maintenance and changes in ownership where the new owner inherits deferred maintenance issues
5% of Fair Market Value of property after rehabilitation but prior to donation of easement	Issue with a Frank Lloyd Wright house; the owner is trying to sell window glass, plus part of the property, both covered under the easement. With large properties, the owner may be aware of the easement, but the property manager may not be informed.
Cost of site monitoring, multiplied by twenty (for that many years of monitoring)	Some innovative property owners have ideas about the development of the easement property that may not coincide with the easement restrictions. These properties require additional time with the property owner to work out a mututally acceptable solution.
Estimation of what the easement will cost the Conservancy and cost of easement negotiation	During a restoration the Conservancy negotiated an easement, the restoration was inadequate. Following legal action, the property owners repaired the poor restoration.
5% of appraised easement value	Mayfair House: A property sold by sheriff's sale to the City of Philadelphia, due to back taxes, the Preservation Alliance will ask to be released from their easement due to the frustrated or changed circimstances of the easement.
N/A	Problem with covenant property, owner did not properly maintain the building.

Additional Observations
Historic Annapolis Foundation will not accept any more easements until they have an endowment.
All their easements are related to their revolving loan program.
Maintenance of property is determined by the market, same as Preservation Alliance's observations. Another factor is whether the owner has a commitment to preserving the structure or just wanted the tax deduction.
The National Trust shares an easement on one property with a local land trust organization. They accept easements based on many different circumstances, many are gifts of property that the Trust on which the Trust then places an easement.
Tax Act change in 1986, along with the recession, changed the way people could use deductions and impacted the donation of easements. Overall economic health of the community is an overriding factor in the health of easement properties.
Differing motivations for easements, tax deduction versus revolving loan program

Organization	Phone Number	Contact Person	Date Interviewed
Preservation Resource Center of New Orleans	504-581-7032	Stephanie M. Musser	February 22, 1999
San Francisco Architectural Heritage	415-441-3000	Bill Beuter	February 12, 1999
Society for the Preservation of New England Antiquities	617-227-3956	Joseph Cornish	February 12, 1999
The L'Enfant Trust	202-483-4880	Carol B. Goldman	March 1, 1999
Utah Heritage Foundation	801-533-0858	Kirk Huffaker	March 9, 1999

Size of Program	Type of Properties	Location of Properties	Age of Program
90 Properties	Façade--Residential and Commercial	Urban--New Orleans	Began 1980
55 Properties	Façade--Primarily Residential, 2 Commercial	Urban--San Francisco	Began late 1970s
60 Properties	Open Space and Façade, Interior and Exterior--Primarily Residential, Some Commercial	New England	Began early 1980s
169 Properties	Façade--Residential and Commercial	Washington D.C.--5 in Surrounding Area	Began 1978
113 Properties	Façade--Primarily Residential	Primarily Urban, Some Rural--Salt Lake City and Utah	Tied to Revolving Loan Program

Inspection Performance	Inspection Frequency	Fee Requirement
Previously staff, now intern	Attempted annually	Yes, Endowment
Volunteer architect	Attempted bi-annually, actually every five years	Yes, Endowment
Staff	Annual	Yes, Endowment
Contracted photographer	Annual	Yes, No Endowment
Intern	Annual	Yes, Endowment

Method of Fee Calculation	Potential Problems
Variable percentage of easement value	Some property owners with compliance difficulties, typically second owner. Title search not showing them as façade owner is a problem.
10% of easement value as determined by appraisal	Some maintenance problems due to owners in financial difficulty
Complexity of easement and staff time spent enforcing easement	Subsequent owners do not understand the easement and that permission is needed prior to undertaking a project.
Sliding scale percentage based on easement value	Owners painting without permission. Issues of facadism, how a "building" is defined by the tax code, can a donated building be disassembled and reassembled?
Variable percentage based on property	Owner misunderstanding regarding requirements of easement. Later owners not being aware of easement on the property.

Additional Observations
Inactive program, only maintaining current easements. San Francisco real estate market not condusive to easements, pressure for development leads to usage of Transfer of Development Rights and the Investment Tax Credit instead.
Maintain several covenants on deaccessioned house museums.
Institution of law in Washington D.C. that flags all easement properties during building permit applications.
Most easements placed as a result of their revolving loan program. UHF is slowing the pace of easement acquisition based on this method.

Appendix B: Sample Easement Documents

Appendix B(1):	**Stefan Nagel, Model Historic Preservation Easement, *Model Conservation Easement and Historic Preservation Easement, 1996* (Washington D.C.: Land Trust Alliance, 1996) p. 95-107.**
Appendix B(2):	**National Trust for Historic Preservation, Model Historic Preservation Easement, 1998.**
Appendix B(3):	**Preservation Alliance for Greater Philadelphia, Form of Easement: Basic Preservation Easement by Individuals, 1998.**
Appendix B(4):	**Preservation North Carolina, Historic Preservation Agreement, 1999.**
Appendix B(5):	**Historic Annapolis, Inc., Deed of Easement.**
Appendix B(6):	**The L'Enfant Trust, Conservation Easement Deed of Gift, 1998.**
Appendix B(7):	**The Frank Lloyd Wright Building Conservancy, Preservation and Conservation Easement, 1997.**
Appendix B(8):	**National Trust for Historic Preservation, Preservation and Conservation Easement, 1991.**
Appendix B(9):	**Utah Heritage Foundation, Grant of Preservation Easement, 1997.**
Appendix B(10):	**Preservation Resource Center of New Orleans, Act of Donation of Perpetual Real Rights, 1986.**

Model Historic Preservation Easement

Note: The boxed numbers inserted in the text of the easement correspond with the subheading numbers in the commentary that follows. Optional provisions inserted in brackets are discussed in the commentary.

THIS PRESERVATION AND CONSERVATION EASEMENT DEED, made this _____ day of _____[month]_____, _____[year]_____, by and between _____ ("Grantor") and _____ ("Grantee"), a nonprofit corporation of _____[state of incorporation]_____.

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of certain real property located in the Town of _____, _____ County, _____[state]_____, more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter "the Property"), said Property including the following structures (hereinafter "the Buildings"): [1] [2]

the principal residence constructed of _____[brief description]_____ dating from _____[year]_____ (hereinafter "the Residence"); and additional ancillary structures _____[describe]_____ (hereinafter "the Ancillary Structures").

[WHEREAS, the Property also includes a formal landscaped garden, _____[describe]_____, designed by noted landscape architect _____[name]_____ (hereinafter "the Garden");]

WHEREAS, the Property has significant undeveloped open space, including fields, forests, and _____[describe other]_____, that contributes to the setting, context, and the public's view of the Buildings;

WHEREAS, Grantee is authorized to accept preservation and conservation easements to protect property significant in national and _____[state]_____ history and culture under the provisions of _____[state easement legislation]_____ (hereinafter "the Act");

WHEREAS, Grantee is a publicly supported, tax-exempt, nonprofit organization whose primary purposes include the preservation and conservation of sites, buildings, and objects of national significance and is a qualifying recipient of qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter, "the Code");

WHEREAS, the Property stands as a significant example of _____ style architecture in _____[state]_____, illustrates aesthetics of design and setting, and possesses integrity of materials and workmanship;

WHEREAS, because of its architectural, historic, and cultural significance the Property was listed in the National Register of Historic Places on _____[date]_____ and is a certified historic structure [or historically important land area] under Section 170(h)(4)(B) of the Code;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter "conservation and preservation values") and significance of the Property, and have the common purpose of conserving and preserving the aforesaid conservation and preservation values and significance of the Property;

WHEREAS, the Property's conservation and preservation values are documented in a set of reports, drawings, and photographs (hereinafter, "Baseline Documentation") incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Property as of the effective date of this grant. In the event of any discrepancy between the two counterparts produced, the counterpart retained by Grantee shall control; [3]

WHEREAS, the Baseline Documentation shall consist of the following: _____[list documents and materials]_____;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and its architectural, historic, and cultural features for the benefit of the people of the Town [County] of _____, the State of _____, and the United States of America;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation and conservation easement (hereinafter, the "Easement") in gross in perpetuity on the Property pursuant to the Act.

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to Section 170(h) of the Code and _[give full citation to the state easement legislation]_ Grantor does hereby voluntarily grant and convey unto the Grantee a preservation and conservation easement in gross in perpetuity over the Property described in Exhibit A.

PURPOSE [4]

1. **Purpose**. It is the Purpose of this Easement to assure that the architectural, historic, cultural, and associated open space features of the Property will be retained and maintained forever substantially in their current condition for conservation and preservation purposes and to prevent any use or change of the Property that will significantly impair or interfere with the Property's conservation and preservation values.

GRANTOR'S COVENANTS [5]

2.1 **Grantor's Covenants: Covenant to Maintain**. Grantor agrees at all times to maintain the Buildings in the same structural condition and state of repair to that existing on the effective date of this Easement. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the Buildings in substantially the same structural condition and state of repair as that existing on the date of this Easement. Grantor's obligation to maintain shall also require that the Property's landscaping

be maintained in good appearance with substantially similar plantings, vegetation, and natural screening to that existing on the effective date of this Easement. The existing lawn areas shall be maintained as lawns, regularly mown. The existing meadows and open fields shall be maintained as meadows and open fields, regularly bushhogged to prevent the growth of woody vegetation where none currently grows. Subject to the casualty provisions of paragraphs 7 and 8, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Buildings whenever necessary in accordance with *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (36 C.F.R. § 67), as these may be amended from time to time (hereinafter the "Secretary's Standards").

2.2 **Grantor's Covenants: Prohibited Activities.** The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this paragraph:

(a) the Buildings shall not be demolished, removed, or razed except as provided in paragraphs 7 and 8;

(b) nothing shall be erected or allowed to grow on the Property which would impair the visibility of the Property and the Buildings from street level;

(c) no other buildings or structures, including satellite receiving dishes (small rooftop dishes excluded), camping accommodations, or mobile homes, shall be erected or placed on the Property hereafter except for temporary structures required for the maintenance or rehabilitation of the Property, such as construction trailers;

(d) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;

(e) the Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit;

(f) no above-ground utility transmission lines, except those reasonably necessary for the existing Buildings, may be created on the Property, subject to utility easements already recorded;

(g) subject to the maintenance covenants of paragraph 2.1 hereof, the following features located within the Residence [or Buildings/Ancillary Structures] shall not be removed, demolished, or altered:

[Specific interior features that are to be protected are described here]

GRANTOR'S CONDITIONAL RIGHTS [6]

3.1 Conditional Rights Requiring Approval by Grantee. Without the prior express written approval of the Grantee, which approval may be withheld or conditioned in the sole discretion of Grantee, Grantor shall not undertake any of the following actions:

(a) increase or decrease the height of, make additions to, change the exterior construction materials or colors of, or move, improve, alter, reconstruct, or change the facades (including fenestration) and roofs of the Buildings;

(b) change the floor plan of the Residence [or Buildings/Ancillary Structures];

(c) erect any external signs or external advertisements except: (i) such plaque permitted under paragraph 19 of this easement; (ii) a sign stating solely the address of the Property; and (iii) a temporary sign to advertise the sale or rental of the Property;

(d) make permanent substantial topographical changes, such as, by example, excavation for the construction of roads and recreational facilities;

(e) cut down or otherwise remove live trees located within existing lawn areas, or cut down or otherwise remove live trees located outside the existing lawn areas, meadows and open fields for the purpose of conducting commercial timber production [or allow conditional harvesting of timber in accordance with qualified plan presented to Grantee for approval. *(See Model Conservation Easement)*]; and

(f) change the use of the Property to another use other than single family residential. Grantee must determine that the proposed use: (i) does not impair the significant conservation and preservation values of the Property; and (ii) does not conflict with the Purpose of the Easement.

3.2 **Review of Grantor's Requests for Approval**. Grantor shall submit to Grantee for Grantee's approval of those conditional rights set out at paragraph 3.1 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within 45 (forty-five) days of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within 45 (forty-five) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted.

4. **Standards for Review**. In exercising any authority created by the Easement to inspect the Property or the interior of the Residence; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, Grantee shall apply the Secretary's Standards.

5. **Public Access**. Grantor shall make the Property and interior of the Residence accessible to the public on a minimum of _____ days per year. At other times deemed reasonable by Grantor persons affiliated with educational organizations, professional architectural associations, and historical societies shall be admitted to study the property. Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, and architectural character and features of the property and distribute them to magazines, newsletters, or other publicly available publications, or use them to fulfill its charitable and educational purposes. [7]

GRANTOR'S RESERVED RIGHTS [8]

6. **Grantor's Reserved Rights Not Requiring Further Approval by Grantee.** Subject to the provisions of paragraphs 2.1, 2.2, and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval by Grantee:

(a) the right to engage in all those acts and uses that: (i) are permitted by governmental statute or regulation; (ii) do not substantially impair the conservation and preservation values of the Property; and (iii) are not inconsistent with the Purpose of this Easement;

(b) pursuant to the provisions of paragraph 2.1, the right to maintain and repair the Buildings strictly according to the Secretary's Standards. As used in this subparagraph, the right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Buildings. The right to maintain and repair as used in this subparagraph shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of paragraphs 3.1 and 3.2;

(c) the right to continue all manner of existing residential use and enjoyment of the Property's Buildings and Garden, including but not limited to the maintenance, repair, and restoration of existing fences; the right to maintain existing driveways, roads, and paths with the use of same or similar surface materials; the right to maintain existing utility lines, gardening and building walkways, steps, and garden fences; the right to cut, remove, and clear grass or other vegetation and to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Easement; and

(d) the right to conduct at or on the Property educational and nonprofit activities that are not inconsistent with the protection of the conservation and preservation values of the Property.

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE [9]

7. **Casualty Damage or Destruction.** In the event that the Buildings or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Buildings and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and

Grantee, which report shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the feasibility of the restoration of the Buildings and/or reconstruction of damaged or destroyed portions of the Buildings; and

(c) a report of such restoration/reconstruction work necessary to return the Buildings to the condition existing at the date hereof.

8. **Review After Casualty Damage or Destruction.** If, after reviewing the report provided in paragraph 7 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Buildings in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Easement would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of Grantee, alter, demolish, remove, or raze one or more of the Buildings, and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of _____ and paragraph 23.2 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee are unable to agree that the Purpose of the Easement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the State of _____ arbitration statute then in effect [or refer to the arbitration provision referenced at paragraph 15, below] .

9. **Insurance.** Grantor shall keep the Property insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property and Buildings without cost or expense to Grantor or contribution or coinsurance from Grantor. Such insurance shall include Grantee's interest and name Grantee as an additional insured. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefor, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

INDEMNIFICATION; TAXES [10]

10. **Indemnification**. Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury or other damage occurring on or about the Property, unless such injury or damage is caused by Grantee or any agent, trustee, employee, or contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

11. **Taxes**. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

ADMINISTRATION AND ENFORCEMENT

12. **Written Notice**. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods—by overnight courier postage prepaid, facsimile transmission, registered or certified mail with return receipt requested, or hand delivery; if to Grantor, then at _____[address]_____, and if to Grantee, then to _____[address]_____.

Each party may change its address set forth herein by a notice to such effect to the other party. [11]

13. **Evidence of Compliance**. Upon request by Grantee, Grantor shall promptly furnish Grantee with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidences the status of this Easement to the extent of Grantee's knowledge thereof. [12]

14. **Inspection**. With the consent of Grantor, representatives of Grantee shall be permitted at all reasonable times to inspect the Property, including the interior of the Residence [or Buildings/Ancillary Structures]. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections. [13]

15. **Grantee's Remedies**. Grantee may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this easement by *ex parte*, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Buildings to the condition and appearance that existed prior to the violation complained of. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

[Supplementary arbitration provision may be added here or elsewhere. (*See model conservation easement.*)]

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Easement, including all reasonable court costs, and attorney's, architectural, engineering, and expert witness fees.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time. [14]

16. **Notice from Government Authorities**. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law. [15]

17. **Notice of Proposed Sale**. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing.

18. **Liens**. Any lien on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien, except that no lien created pursuant to this

Easement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property. [16]

19. **Plaque**. Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 24 by 24 inches in size, giving notice of the significance of the Property and the existence of this Easement. [17]

BINDING EFFECT; ASSIGNMENT

20. **Runs with the Land**. Except as provided in paragraphs 8 and 23.2, the obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a *bona fide* transfer. The restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property. [18]

21. **Assignment**. Grantee may convey, assign, or transfer this Easement to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" under Section 170(h) of the Code whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Easement was granted will continue to be carried out. [19]

22. **Recording and Effective Date**. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of [town, county, or regional district], [state]. Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the land records of [town, county, or regional district], [state]. [20]

PERCENTAGE INTERESTS; EXTINGUISHMENT [21]

23.1 **Percentage Interests**. For purposes of allocating proceeds pursuant to paragraphs 23.2 and 23.3, Grantor and Grantee stipulate that as of the date of this Easement, Grantor and Grantee are each vested with real property interests

in the Property and that such interests have a stipulated percentage interest in the fair market value of the Property. Said percentage interests shall be determined by the ratio of the value of the Easement on the effective date of this Easement to the value of the Property, without deduction for the value of the Easement, on the effective date of this Easement. The values on the effective date of the Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. The parties shall include the ratio of those values with the Baseline Documentation (on file with Grantor and Grantee) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the effective date of this Easement is reserved to Grantor.

23.2 **Extinguishment**. Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Property in a manner consistent with the Purpose of this Easement and necessitate extinguishment of the Easement. Such circumstances may include, but are not limited to, partial or total destruction of the Buildings resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and any costs or expenses associated with such sale, Grantor and Grantee shall share in any net proceeds resulting from such sale in accordance with their respective percentage interests in the fair market value of the Property, as such interests are determined under the provisions of paragraph 23.1, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's primary purposes. Net proceeds shall also include, without limitation, net insurance proceeds.

In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

23.3 **Condemnation**. If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. After the

satisfaction of prior claims and net of expenses reasonably incurred by Grantor and Grantee in connection with such taking, Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 23.1 and 23.2 unless otherwise provided by law.

INTERPRETATION [22]

24. **Interpretation**. The following provisions shall govern the effectiveness, interpretation, and duration of the Easement.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Easement, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

(b) This instrument may be executed in two counterparts, one of which may be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern.

(c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property is devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Easement.

AMENDMENT 23

25. **Amendment**. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of _____. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the Purpose of this Easement; shall not affect its perpetual duration; shall not permit additional residential development on the Property other than the residential development permitted by this Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Easement. Any such amendment shall be recorded in the land records of [town, county, or regional district], [state]. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

THIS EASEMENT reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Preservation and Conservation Easement, unto the said Grantee and its successors and permitted assigns forever. This DEED OF PRESERVATION AND CONSERVATION EASEMENT may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands under seal on the days and year set forth below.

WITNESS:	GRANTOR:
_____	_____
_____	_____
	(date)
ATTEST:	GRANTEE:
_____	_____
By: _____	By: _____
	Its President (date)

[Notarization]

Appendix B(2): National Trust for Historic Preservation, Model Historic Preservation Easement, 1998.

Model Historic Preservation Easement 98

THIS PRESERVATION AND CONSERVATION EASEMENT DEED, made this _____ day of_____, 19___, by and between _____ ("Grantor") and _____ ("Grantee"), a nonprofit corporation of [state of incorporation].

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of certain real property located in the [town, county, and state], more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter "the Property"), said Property including the following structures (hereinafter "the Buildings"):

the principal residence constructed of [brief description] dating from [year] (hereinafter "the Residence"); and additional ancillary structures [describe] (hereinafter "the Ancillary Structures").

[WHEREAS, the Property also includes a formal landscaped garden, [describe] , designed by noted landscape architect [name] (hereinafter "the Garden");]

WHEREAS, the Property has significant undeveloped open space, including fields, forests, and [describe other], that contributes to the setting, context, and the public's view of the Buildings;

WHEREAS, Grantee is authorized to accept preservation and conservation easements to protect property significant in national and state history and culture under the provisions of [state easement legislation] (hereinafter "the Act");

WHEREAS, Grantee is a publicly supported, tax-exempt, nonprofit organization whose primary purposes include the preservation and conservation of sites, buildings, and objects of national significance and is a qualifying recipient of qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter, "the Code");

WHEREAS, the Property stands as a significant example of style architecture in [state] , illustrates aesthetics of design and setting, and possesses integrity of materials and workmanship;

WHEREAS, because of its architectural, historic, and cultural significance the Property was listed in the National Register of Historic Places on [date] and is a certified historic structure [or historically important land area] under Section 170(h)(4)(B) of the Code;

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter"conservation and preservation values") and significance of the Property, and have the common purpose of conserving and preserving the aforesaid conservation and preservation values and significance of the Property;

WHEREAS, the Property's conservation and preservation values are documented in a set of

reports, drawings, and photographs (hereinafter, "Baseline Documentation") incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Property as of the effective date of this grant. In the event of any discrepancy between the two counterparts produced, the counterpart retained by Grantee shall control;

WHEREAS, the Baseline Documentation shall consist of the following: [list documents and materials]

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and its architectural, historic, and cultural features for the benefit of the people of the Town [County] of _____, the State of _____, and the United States of America;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation and conservation easement (hereinafter, the "Easement") in gross in perpetuity on the Property pursuant to the Act.

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to Section 170(h) of the Code and [give full citation to the state easement legislation], Grantor does hereby voluntarily grant and convey unto the Grantee a preservation and conservation easement in gross in perpetuity over the Property described in Exhibit A.

PURPOSE

1. **Purpose.** It is the Purpose of this Easement to assure that the architectural, historic, cultural, and associated open space features of the Property will be retained and maintained forever substantially in their current condition for conservation and preservation purposes and to prevent any use or change of the Property that will significantly impair or interfere with the Property's conservation and preservation values.

GRANTOR'S COVENANTS

2.1 **Grantor's Covenants: Covenant to Maintain.** Grantor agrees at all times to maintain the Buildings in the same structural condition and state of repair as that existing on the effective date of this Easement. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the Buildings in substantially the same structural condition and state of repair as that existing on the date of this Easement. Grantor's obligation to maintain shall also require that the Property's landscaping be maintained in good appearance with substantially similar plantings, vegetation, and natural screening to that existing on the effective date of this Easement. The existing lawn areas shall be maintained as lawns, regularly mown. The existing meadows and open fields shall be maintained as meadows and open fields, regularly bushhogged to prevent the growth of woody vegetation where none currently grows. Subject to the casualty provisions of paragraphs 7 and 8, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Buildings whenever necessary in accordance with *The Secretary of the Interior's Standards for Rehabilitation and*

Guidelines for Rehabilitating Historic Buildings (36 C.F.R. 67), as these may be amended from time to time (hereinafter the "Secretary's Standards").

2.2 **Grantor's Covenants: Prohibited Activities.** The following acts or uses are expressly forbidden on, over, or under the Property, except as otherwise conditioned in this paragraph:

(a) the Buildings shall not be demolished, removed, or razed except as provided in paragraphs 7 and 8;

(b) nothing shall be erected or allowed to grow on the Property which would impair the visibility of the Property and the Buildings from street level;

(c) no other buildings or structures, including satellite receiving dishes (small rooftop dishes excluded), camping accommodations, or mobile homes, shall be erected or placed on the Property hereafter except for temporary structures required for the maintenance or rehabilitation of the Property, such as construction trailers;

(d) the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property;

(e) the Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit;

(f) no above-ground utility transmission lines, except those reasonably necessary for the existing Buildings, may be created on the Property, subject to utility easements already recorded;

(g) subject to the maintenance covenants of paragraph 2.1 hereof, the following features located within the Residence [or Buildings/Ancillary Structures] shall not be removed, demolished, or altered:

[Specific interior features that are to be protected are described here]

GRANTOR'S CONDITIONAL RIGHTS

3.1 **Conditional Rights Requiring Approval by Grantee.** Without the prior express written approval of the Grantee, which approval may be withheld or conditioned in the sole discretion of Grantee, Grantor shall not undertake any of the following actions:

(a) increase or decrease the height of, make additions to, change the exterior construction materials or colors of, or move, improve, alter, reconstruct, or change the facades (including fenestration) and roofs of the Buildings;

(b) change the floor plan of the Residence [or Buildings/Ancillary Structures];

(c) erect any external signs or external advertisements except: (I) such plaque permitted under paragraph 19 of this easement; (ii) a sign stating solely the address of the Property; and (iii) a temporary sign to advertise the sale or rental of the Property;

(d) make permanent substantial topographical changes, such as, by example, excavation for the construction of roads and recreational facilities;

(e) cut down or otherwise remove live trees located within existing lawn areas, or cut down or otherwise remove live trees located outside the existing lawn areas, meadows and open fields for the purpose of conducting commercial timber production [or allow conditional harvesting of timber in accordance with qualified plan presented to Grantee for approval. (See Model Conservation Easement)]; and

(f) change the use of the Property to another use other than single family residential. Grantee must determine that the proposed use: (I) does not impair the significant conservation and preservation values of the Property; and (ii) does not conflict with the Purpose of the Easement.

3.2 **Review of Grantor's Requests for Approval.** Grantor shall submit to Grantee for Grantee's approval of those conditional rights set out at paragraph 3.1 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to Grantee a timetable for the proposed activity sufficient to permit Grantee to monitor such activity. Within 45 (forty-five) days of Grantee's receipt of any plan or written request for approval hereunder, Grantee shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case Grantee shall provide Grantor with written suggestions for modification or a written explanation for Grantee's disapproval. Any failure by Grantee to act within 45 (forty-five) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by Grantee of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted.

4. **Standards for Review.** In exercising any authority created by the Easement to inspect the Property or the interior of the Residence; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, Grantee shall apply the Secretary's Standards.

5. **Public Access.** Grantor shall make the Property and interior of the Residence accessible to the public on a minimum of ____ days per year. At other times deemed reasonable by Grantor persons affiliated with educational organizations, professional architectural associations, and historical societies shall be admitted to study the property. Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, and architectural character and features of the property and distribute them to magazines, newsletters, or other publicly available publications, or use them to fulfill its charitable and educational purposes.

GRANTOR'S RESERVED RIGHTS

6. **Grantor's Reserved Rights Not Requiring Further Approval by Grantee.** Subject to the provisions of paragraphs 2.1, 2.2, and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval by Grantee:

(a) the right to engage in all those acts and uses that: (I) are permitted by governmental

statute or regulation; (ii) do not substantially impair the conservation and preservation values of the Property; and (iii) are not inconsistent with the Purpose of this Easement;

(b) pursuant to the provisions of paragraph 2.1, the right to maintain and repair the Buildings strictly according to the Secretary's Standards. As used in this subparagraph, the right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Buildings. The right to maintain and repair as used in this subparagraph shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior approval of Grantee in accordance with the provisions of paragraphs 3.1 and 3.2;

(c) the right to continue all manner of existing residential use and enjoyment of the Property's Buildings and Garden, including but not limited to the maintenance, repair, and restoration of existing fences; the right to maintain existing driveways, roads, and paths with the use of same or similar surface materials; the right to maintain existing utility lines, gardening and building walkways, steps, and garden fences; the right to cut, remove, and clear grass or other vegetation and to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Easement; and

(d) the right to conduct at or on the Property educational and nonprofit activities that are not inconsistent with the protection of the conservation and preservation values of the Property.

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

7. **Casualty Damage or Destruction.** In the event that the Buildings or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Buildings and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee, which report shall include the following:

(a) an assessment of the nature and extent of the damage;

(b) a determination of the feasibility of the restoration of the Buildings and/or reconstruction of damaged or destroyed portions of the Buildings; and

(c) a report of such restoration/reconstruction work necessary to return the Buildings to the condition existing at the date hereof.

8. **Review After Casualty Damage or Destruction.** If, after reviewing the report provided in paragraph 7 and assessing the availability of insurance proceeds after satisfaction of any

mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Buildings in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Easement would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of Grantee, alter, demolish, remove, or raze one or more of the Buildings, and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of and paragraph 23.2 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 9, Grantor and Grantee are unable to agree that the Purpose of the Easement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the State of _____'s arbitration statute then in effect [or refer to the arbitration provision referenced at paragraph 15, below] .

9. **Insurance.** Grantor shall keep the Property insured by an insurance company rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property and Buildings without cost or expense to Grantor or contribution or coinsurance from Grantor. Such insurance shall include Grantee's interest and name Grantee as an additional insured. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefor, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

INDEMNIFICATION; TAXES

10. **Indemnification.** Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors, officers and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury or other

damage occurring on or about the Property, unless such injury or damage is caused by Grantee or any agent, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

11. **Taxes.** Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal thereof, in which case the obligation hereunder to pay such charges shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

ADMINISTRATION AND ENFORCEMENT

12. **Written Notice.** Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods—by overnight courier postage prepaid, facsimile transmission, registered or certified mail with return receipt requested, or hand delivery; if to Grantor, then at [address], and if to Grantee, then to [address].

Each party may change its address set forth herein by a notice to such effect to the other party.

13. **Evidence of Compliance.** Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein or that otherwise evidences the status of this Easement to the extent of Grantee's knowledge thereof.

14. **Inspection.** With the consent of Grantor, representatives of Grantee shall be permitted at all reasonable times to inspect the Property, including the interior of the Residence [or Buildings/Ancillary Structures]. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

15. **Grantee's Remedies.** Grantee may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this easement by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property and Buildings to the condition and appearance that existed prior to the violation complained of. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder.

[Supplementary arbitration provision may be added here or elsewhere. (See model conservation easement.)]

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Easement, including all reasonable court costs, and attorney's, architectural, engineering, and expert witness fees.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

16. **Notice from Government Authorities.** Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

17. **Notice of Proposed Sale.** Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing.

18. **Liens.** Any lien on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien, except that no lien created pursuant to this Easement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

19. **Plaque.** Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 24 by 24 inches in size, giving notice of the significance of the Property and the existence of this Easement.

BINDING EFFECT; ASSIGNMENT

20. **Runs with the Land.** Except as provided in paragraphs 8 and 23.2, the obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be

deemed granted to each successor and assign of Grantee and each such fol lowing successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property.

21. **Assignment.** Grantee may convey, assign, or transfer this Easement to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" under Section 170(h) of the Code whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Easement was granted will continue to be carried out.

22. **Recording and Effective Date.** Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of [town, county or regional district], [state] . Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the land records of [town. county or regional district], [state] .

PERCENTAGE INTERESTS; EXTINGUISHMENT

23.1 **Percentage Interests.** For purposes of allocating proceeds pursuant to paragraphs 23.2 and 23.3, Grantor and Grantee stipulate that as of the date of this Easement, Grantor and Grantee are each vested with real property interests in the Property and that such interests have a stipulated percentage interest in the fair market value of the Property. Said percentage interests shall be determined by the ratio of the value of the Easement on the effective date of this Easement to the value of the Property, without deduction for the value of the Easement, on the effective date of this Easement. The values on the effective date of the Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. The parties shall include the ratio of those values with the Baseline Documentation (on file with Grantor and Grantee) and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the effective date of this Easement is reserved to Grantor.

23.2 **Extinguishment.** Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Property in a manner consistent with the Purpose of this Easement and necessitate extinguishment of the Easement. Such

circumstances may include, but are not limited to, partial or total destruction of the Buildings resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and any costs or expenses associated with such sale, Grantor and Grantee shall share in any net proceeds resulting from such sale in accordance with their respective percentage interests in the fair market value of the Property, as such interests are determined under the provisions of paragraph 23.1, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's primary purposes. Net proceeds shall also include, without limitation, net insurance proceeds.

In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

23.3 **Condemnation.** If all or any part of the property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. After the satisfaction of prior claims and net of expenses reasonably incurred by Grantor and Grantee in connection with such taking, Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 23.1 and 23.2 unless otherwise provided by law.

INTERPRETATION

24. **Interpretation.** The following provisions shall govern the effectiveness, interpretation, and duration of the Easement.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Easement, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

(b) This instrument may be executed in two counterparts, one of which may be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern.

(c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of

any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.

(d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Property may be developed to use more intensive (in terms of height, bulk, or other objective criteria related by such ordinances) than the Property is devoted as of the date hereof, such development rights shall not be exercisable on, above, or below the Property during the term of the Easement, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Easement.

AMENDMENT

25. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of _____. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the Purpose of this Easement; shall not affect its perpetual duration; shall not permit additional residential development on the Property other than the residential development permitted by this Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Easement. Any such amendment shall be recorded in the land records of [town. county, or regional district], [state] . Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

THIS EASEMENT reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Preservation and Conservation Easement, unto the said Grantee and its successors and permitted assigns forever. This DEED OF PRESERVATION AND CONSERVATION EASEMENT may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands under seal on the days and year set forth below.

WITNESS:	GRANTOR:
_____	_____
_____	_____ (date)
ATTEST:	GRANTEE:
_____	_____
By:_____	By:_____ Its President (date)

[Notarization]

MORTGAGE SUBORDINATION [as applicable]

26. **Subordination of Mortgage.** At the time of the conveyance of this Easement, the Property is subject to a Mortgage/Deed of Trust dated _____, recorded in the Land Records of [county] at Book/Liber _____, Page/Folio _____ (hereinafter "the Mortgage"/"the Deed of Trust") held by _____ (hereinafter, "Mortgagee"/"Lender"). The Mortgagee/Lender joins in the execution of this Easement to evidence its agreement to subordinate the Mortgage/the Deed of Trust to this Easement under the following conditions and stipulations:

(a) The Mortgagee/Lender and its assignees shall have a prior claim to all insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Property and all proceeds of condemnation proceedings, and shall be entitled to same in preference to Grantee until the Mortgage/the Deed of Trust is paid off and discharged, notwithstanding that the Mortgage/the Deed of Trust is subordinate in priority to the Easement.

(b) If the Mortgagee/Lender receives an assignment of the leases, rents, and profits of the Property as security or additional security for the loan secured by the Mortgage/Deed of Trust, then the Mortgagee/Lender shall have a prior claim to the leases, rents, and profits of the Property and shall be entitled to receive same in preference to Grantee until the Mortgagee's/Lender's debt is paid off or otherwise satisfied, notwithstanding that the Mortgage/Deed of Trust is subordinate in priority to the Easement.

(c) The Mortgagee/Lender or purchaser in foreclosure shall have no obligation, debt, or liability under the Easement until the Mortgagee/Lender or a purchaser in foreclosure under it obtains ownership of the Property. In the event of foreclosure or deed in lieu of foreclosure, the Easement is not extinguished.

(d) Nothing contained in this paragraph or in this Easement shall be construed to give any Mortgagee/Lender the right to violate the terms of this Easement or to extinguish this Easement by taking title to the Property by foreclosure or otherwise.

[Signatures]

Appendix B(3): Preservation Alliance for Greater Philadelphia, Form of Easement: Basic Preservation Easement by Individuals, 1998.

7.29.98 DRAFT

DRAFT

FORM OF EASEMENT
Basic Preservation Easement by Individuals -- 1998

DEED OF PRESERVATION EASEMENT

This Deed of Preservation Easement (the "Easement") made this _____ day of December, 1998 between _____, ("Grantors") and THE PRESERVATION ALLIANCE FOR GREATER PHILADELPHIA, a not-for-profit corporation organized under the laws of the Commonwealth of Pennsylvania ("Grantee").

BACKGROUND

A. Grantors have legal and equitable fee simple title to the parcel of land known as _____ Street, Philadelphia, Pennsylvania, more particularly described in Exhibit "A," attached hereto and made a part hereof, including all improvements thereon erected (the "Property").

B. The Property is within the _____ Historic District, which was listed by the United States Department of the Interior in 19__ and continues to be so listed.

C. The building located on the Property contributes to the historic aspects of the _____ Historic District. Grantee considers the Property to represent a valuable example of a historic architectural style worthy of preservation and benefitting the adjacent historic properties in the _____ Historic District.

D. Grantee is a conservation organization qualified under applicable law as an eligible donee for, inter alia, the donation of preservation and open space easements for the preservation of historically important sites, structures and the conservation of open space.

E. The donation of this Preservation Easement to Grantee will further its goal of fostering the conservation of the region's heritage of historically significant structures with aesthetic, architectural, scenic and/or open space values.

G. Grantors desire to grant to Grantee and Grantee desires to accept the Easement on the terms and conditions set forth below.

Appendix B(3): Preservation Alliance for Greater Philadelphia, Form of Easement: Basic Preservation Easement by Individuals, 1998.

TERMS AND CONDITIONS

Intending to be legally bound hereby, in consideration of the mutual promises herein contained, and in further consideration of other good and valuable consideration paid by Grantee to Grantors, the receipt and sufficiency of which are hereby acknowledged, Grantors and Grantee grant, convey, assign, agree and declare as follows:

1. Grant

Grantors hereby grant and convey to Grantee an estate, interest and easement in the _____ facade(s) of the building located on the Property to the extent indicated in Exhibit "C," attached hereto and made a part hereof, (the "Facade" or the "Facades") for the preservation of historic, architectural, scenic and open space values of the nature and character and to the extent set forth in this Easement, to constitute a servitude and covenant upon the Property, running with the land, for the benefit of and enforceable by the Grantee, to have and to hold the said estate, interest and easement subject to and limited by the provisions of this Easement, to and for Grantee's proper uses forever.

2. Scope of Grantee' Estate, Interest and Easement.

The Easement herein granted conveys to Grantee an interest in the Property consisting of the benefits of the following covenants and undertakings by Grantors.

(a) Without the prior written consent of Grantee, which shall not unreasonably be withheld, Grantors shall not cause, permit or suffer any construction, alteration, remodeling, dismantling, destruction, or other activity which would affect or alter in any material way the appearance of the Facades as viewed from any location on or off the Property, except as specifically required or permitted herein pursuant to Exhibit B.

(b) Grantors, at Grantors' expense, shall maintain the Property at all times and shall keep the Property in a state of good repair and shall make sure that the appearance of the Property, including the Facades as viewed from any location on or off the Property, shall not be permitted to deteriorate in any material way and to this end, Grantors agree that they shall comply with the Restoration Program and the Minimum Maintenance Program set forth in Exhibit B to this Easement.

(c) Grantors shall not cause, permit or suffer the removal of any of the original or historic building elements from the Facades without the written permission of Grantee, except when the replacement of those elements are required in the event of imminent danger to the building or compliance with applicable codes.

(d) Grantors shall permit Grantee access to the Property at such reasonable times as Grantee may request for the purpose of examining and testing all structural portions of the Property, the materials and elements of the Facades and such decorative portions of the Property as may be visible from any location on or off the Property.

(e) Grantors shall permit Grantee to display on the Property, at its discretion, a small marker or sign evidencing its ownership of the Easement granted herein.

3. Initial Level of Preservation, Permitted Future Restoration and Permitted Alteration

(a) Exhibit B.I.A. indicates the required work necessary to be performed on the Facades within _____ months of execution of this Deed or as otherwise scheduled therein (the "Initial Restoration").

(b) The Initial Restoration and the written descriptions, photographs, plans and specifications, attached hereto and made a part hereof as Exhibit "C," shall constitute the aesthetic, architectural and historic condition in which the appearance of the Property, including the Facades, as viewed from any location on or off the Property, is to be maintained and preserved.

(c) Such photographs, plans and specifications as supplemented by Exhibit B shall constitute conclusive evidence of the appearance of the Facades of the Property which are not to be affected or altered except as pursuant to Paragraph 2(a) above and is to be maintained pursuant to Paragraph 2(b) above.

4. Rights of Grantee if Property Destroyed

(a) In the event that the building located on the Property is, by reason of fire, flood, earthquake or other disaster of any kind whatsoever:

(1) Partially destroyed to such extent or of such nature that the appearance of the Property as seen from any location on or off the Property is altered from the Property's appearance in the photographs, plans and specifications referred to in Paragraph 3 above, then Grantors shall, as promptly as is practicable, restore the Property up to the amount of the total of the casualty insurance recovery to a condition so that the appearance is restored to that shown in such photographs, plans and specifications or to such other appearance as Grantee may reasonably direct as being consistent with the architectural character, including height, bulk, mass, materials and colors, of the remainder of the building and of the adjacent _____ buildings on _____ Street.

(2) Totally destroyed, then:

(i) Grantors shall permit Grantee, at Grantee's cost, to salvage any historic building materials of the Property for a period of at least 30 days; and

(ii) Grantors shall not thereafter erect on the Property any building the appearance of which as seen from any location on or off the Property is inconsistent with the architectural character, including site coverage, height, bulk, mass, materials and colors of the _____ buildings located on _____ Street.

(b) Upon satisfactory completion of such restoration, the appearance of the Property to which Paragraphs 2(a), 2(b) and 2(c) above shall apply shall be the restored appearance of the Property.

(c) If Grantors shall fail to restore the Property promptly as required under this Paragraph 4, Grantee shall have all the rights given it under Paragraph 5 below.

5. Remedies of Grantee

Grantee shall have all remedies available to it at law or equity and Grantors agree that money damages shall be insufficient compensation to Grantee for any breach by Grantors. It is further understood and agreed that, in the event Grantors are found to have materially violated any of their obligations hereunder, Grantors shall reimburse Grantee for any and all actual costs or expenses incurred in connection with enforcing this Easement, including Court costs, mediation and arbitration costs and reasonable architect's and attorney's fees. It is understood and agreed that one of Grantee's remedies is the right to require the Grantors to restore the Facades of the Property to the condition required by this Easement. The exercise by Grantee of one remedy and/or the failure to exercise any

remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

6. Assignment, Successors and Assigns

(a) This Easement shall extend to and be binding upon Grantors and all persons hereafter claiming by, under or through Grantors, and the word "Grantors" when used herein shall include all such persons whether or not such persons have signed this instrument or had any interest in the Property at the time it was signed. Anything contained herein notwithstanding, a person shall have no obligation, pursuant to this Easement, if and when such person shall cease to have any (present, partial, contingent, collateral or future) interest in the Property or any portion thereof by reason of a *bona fide* transfer for value.

(b) Grantors acknowledge that in the event of a transfer of all or a portion of the Property, Grantors shall notify Grantee of such transfer within thirty (30) days from the date thereof, in writing by certified or registered mail with postage prepaid and return receipt requested addressed to the Grantee.

(c) Grantee agrees that it will hold this Easement exclusively for conservation purposes: that is, it will not transfer this Easement for money, other property or services. Grantee may, however, assign or transfer its interest hereunder to any agency of the Commonwealth of Pennsylvania or the United States of America; or to one or more organizations whose purpose includes, inter alia, the preservation of historically important structures and land areas, provided such organization has the ability to properly enforce this Easement and, further provided, that such organization is operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Code). In the event of any assignment or transfer of Grantee's interest, Grantee will require the recipient of its interest to enforce this Easement. Subject to the foregoing provisions of this Paragraph 6, the terms and conditions of this Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

7. Reservation

(a) Grantors reserve the free right and privilege to the use of the Property for all purposes not inconsistent with the grant made herein. Nothing herein shall be construed to grant to the general public or any other persons, other than Grantee and its

agents, the right to enter upon the Property pursuant to Paragraph 2(d) above for the purposes set forth herein.

(b) Nothing contained in this Easement shall be interpreted to authorize, require or permit Grantors 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, Grantors shall promptly notify Grantee of such conflict and Grantors and Grantee shall agree upon such modifications to the Facades consistent with sound preservation practices, and consistent with the requirement of such ordinance.

8. Acceptance

Grantee hereby accepts the right and interest granted to it in this Easement. Grantee shall administer this Easement for the preservation and conservation of the Property and to further Grantee's purposes of fostering the conservation of the region's heritage of historically significant sites and structures with aesthetic, architectural, scenic and/or open space values.

9. Grantors' Insurance

Grantors shall maintain, at their own cost, insurance against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage in such amounts as would normally be carried on a property such as that subject to this Easement. Such insurance shall include Grantee's interest and name Grantee as an additional insured and shall provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, Grantors shall deliver to Grantee certificates or other such documents evidencing the aforesaid insurance coverage at the commencement of this grant of Preservation Easement and a new policy or certificate at least ten (10) days prior to the expiration of each such policy.

10. Release and Indemnification

Grantors shall be responsible for and do hereby release and relieve Grantee, its officers, directors, agents and employees, and will defend and hold Grantee, its officers, directors, agents and employees, harmless of, from and against any and all

liabilities, obligations, damages, penalties, claims, costs, charges and expenses which may be imposed upon or incurred by Grantee by reason of loss of life, personal injury and or damages to property occurring in or around the premises subject to this Deed of Preservation Easement occasioned in whole or in part by the negligence of Grantors, their agents or invitees.

11. Estoppel Certificates

Grantee shall at any time and from time to time, within thirty (30) days after Grantors' written request, execute, acknowledge and deliver to Grantors a written instrument stating that Grantors are in compliance with the terms and conditions of this Easement or if Grantors are not in compliance with this Easement, stating what violations of this Easement exist. If this Easement lapses or is extinguished, Grantors and Grantee shall execute and acknowledge a written instrument to that effect which Grantors shall cause to be recorded.

12. Condemnation, Failure of Title and Extinguishment

(a) In the event of a total condemnation of the Property, or a partial condemnation of the Property where the portion remaining after condemnation is not capable of continued reasonable use and/or where the conservation and preservation purpose of this Easement is substantially frustrated by the partial condemnation, in the event of a failure of title to the Property or in the event of an extinguishment of this Easement by judicial decree, then, this Easement shall be deemed to have been extinguished and the rights of the Grantee and Grantors shall be as set forth in Paragraph 12(c) below.

(b) In the event of a partial condemnation or a partial failure in title, where the portion of the Property not taken or defeased of title is capable of continued reasonable use, and provided that the portion of the Property not taken contains a material portion of one or more Facades subject to this Easement, and further provided that the remaining Facades will continue to serve the conservation and preservation purposes of this Easement, then this Easement shall remain on those Facades and/or portions of Facades not taken by condemnation. For purposes of determining Grantors' and Grantee's rights with respect to the portion of the Easement extinguished by condemnation, the portion of the Easement extinguished shall be the percentage representing the change in square foot area of the Facades from that initially subject to the Easement to that remaining subject to the Easement after the condemnation.

(c) In the event of a total or partial condemnation and/or in the event of a total or partial failure in title, the Grantors and Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and/or loss of title and of all incidental or direct damages resulting therefrom. All expenses incurred by the Grantors and Grantee in pursuing this action shall be paid out of the recovered proceeds. The remaining recovered proceeds, less any sums lawfully and properly paid to third parties, shall be distributed between the Grantors and Grantee in shares in proportion to the fair market value of their interests in Property as of the execution of this Preservation Easement. For this purpose, Grantee's interests shall be the proportional amount by which the fair market value of the Property was reduced by the execution of this Easement at the time of granting this Easement, and Grantee's proportional interest, for the purposes of this paragraph, shall be deemed to have become vested as of the date of the execution of this Easement.

(d) Grantee shall use its share of the proceeds in a manner consistent with the conservation and preservation purposes set forth in Paragraph 8 of this Deed of Preservation Easement.

13. Review, Approval and Additional Costs

Whenever the consent of the Grantee is required, it shall not be unreasonably withheld or delayed. In any event, Grantee shall respond to requests for consent within thirty (30) days (except under extraordinary circumstances) or such consent shall be deemed to have been given. It is further agreed that whenever the consent of Grantee is required or requested, Grantors shall bear the reasonable costs of Grantee's review, including inspections for purpose of giving estoppel certificates and Grantors agree that the costs for Grantee's review shall include reasonable architectural fees and Grantee's reasonable administrative expenses in processing Grantors' request.

14. Change of Building Use/No Subdivision or Assemblage into Larger Parcel

Grantors shall not permit or allow to occur any change in use of the building or its land without prior written permission of Grantee. Grantors shall not subdivide the Property or act to permit its assemblage into a larger parcel.

15. Archeological Excavation

No archeological investigation or excavation, professional or amateur may be undertaken without the prior written approval of the Pennsylvania Historical and Museum Commission and the Grantee.

16. Notices

For all notices other than those pursuant to Paragraph 6(b), notices or other communications hereunder shall be in writing and shall be deemed to have been given: *(i)* if hand delivered or sent by express mail or overnight delivery service or by courier, postage prepaid, then if and when delivered to the respective parties at the below listed addresses (or at such other address as the party may hereafter designate for itself by notice to the other party as required hereby), or *(ii)* if mailed, then on the next business day following the date on which such communication is deposited in the U.S. mail, by first-class registered or certified mail, return receipt requested, postage prepaid, and addressed to the respective parties at the below addresses (or at such other address as a party may hereafter designate for itself by notice to the other party as requested hereby):

If to Grantors:

If to Grantee:

Preservation Alliance for Greater Philadelphia
1616 Walnut Street
Suite 2310
Philadelphia, Pennsylvania 19103
Attention: J. Randall Cotton

17. Third Party Beneficiaries

The Pennsylvania Bureau for Historic Preservation shall be deemed a third party beneficiary of this Easement. The third party beneficiary shall have the right, but not the obligation, to enforce this Easement in the event that the Grantee is unable or fails to

act. Anything herein to the contrary notwithstanding in this Agreement, all rights, privileges and benefits are for the exclusive use of the parties hereto, and there shall be no third party beneficiary thereof, except as provided in this Paragraph.

IN WITNESS WHEREOF, the parties hereto have executed this Easement the day and year first set forth.

WITNESS:

_____

_____

GRANTORS:

_____

DRAFT

_____

ATTEST:

[Corporate Seal]

_____
(Assistant) Secretary

GRANTEE:

PRESERVATION ALLIANCE FOR GREATER PHILADELPHIA, a Pennsylvania not-for-profit corporation

DRAFT

By:_____
J. Randall Cotton, Vice President

ACKNOWLEDGEMENTS FOR BOTH

Appendix B(4): Preservation North Carolina, Historic Preservation Agreement, 1999.

NORTH CAROLINA

_____ COUNTY

HISTORIC PRESERVATION AGREEMENT

THIS AGREEMENT, made this the _____ day of _____, 1999 by and between _____ of_____, _____County, North Carolina (hereinafter referred to as the "Grantor"), and THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC., a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal office being in Raleigh, North Carolina (hereinafter referred to as the "Foundation");

WITNESSETH:

WHEREAS, the Grantor owns certain real property (hereinafter referred to as the "Subject Property") a description of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, the Subject Property currently has certain permanent improvements consisting of _____ hereinafter referred to as the _____ and

WHEREAS, the _____ located at _____ County, North Carolina, is a building of recognized historical and architectural significance; and

WHEREAS, the Foundation and Grantor both desire that the _____ be adapted and altered, where necessary, to provide for contemporary uses, while at the same time retaining its historically and architecturally significant features; and

WHEREAS, the Foundation and Grantor both desire that the subject property be preserved in an undeveloped state which will preserve its integrity; and

WHEREAS, the Foundation is a charitable organization which accepts preservation easements on buildings having historical or architectural importance, said easement subjecting such buildings to restrictions that will insure that they are preserved and maintained for the benefit of future generations; and

WHEREAS, the North Carolina General Assembly has enacted the Historic Preservation and Conservation Agreements Act validating restrictions, easements, covenants, conditions, or otherwise, appropriate to the preservation of a structure or site significant for its architecture, archaeology or historical associations.

NOW, THEREFORE, for and in consideration of the Grantor's interest in historic preservation and _____ support for the Foundation and its purposes, and for and in consideration of the sum of ONE DOLLAR ($1.00), the Grantor, for _____self, _____successors and assigns, hereby covenants and agrees to abide by the following restrictions (hereinafter referred to as "covenants"), said covenants to be restrictions of record to attach to the land described in Exhibit A:

1. These covenants shall be administered solely by the Historic Preservation Foundation of North Carolina, Inc., its successors in interest or assigns; and in all subsequent conveyances of Subject Property, the Foundation, its successors in interest or assigns shall be the sole party entitled to administer these covenants. In the event that the Foundation, or its successors in interest by corporate merger cease to exist, then in such event the Foundation shall assign all of its rights and interests in these easements, covenants, and conditions subject to such duties and obligations which it assumes hereby to a non-profit corporation of responsibility which exists for substantially the same reasons as the Foundation itself (as described hereinabove); if no such corporation be available for such assignment, then under such circumstances such assignment shall be made to the State of North Carolina which shall be the sole party entitled to administer these covenants.

2. The Grantor covenants and agrees to continuously maintain, repair, and administer the subject property herein described in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties (in effect as of 1992) so as to preserve the historical integrity of features, materials, appearances, workmanship and environment of the subject property. Maintenance shall be continuously provided using the same materials and workmanship. Said standards are attached as Exhibit B hereto and incorporated in these covenants by reference.

3. No alteration and no physical or structural change and no changes in the color, material or surfacing shall be made to the exterior of the _____ without the prior written approval of the President or Executive Director of the Foundation.

4. No addition to an existing building nor any additional structure shall be built upon the subject property unless the plans and exterior designs for such structure or addition have been approved in advance in writing by the President or Executive Director of the Foundation. The Foundation 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 form and proportion of structure; 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 landscape and archeological resources. Contemporary designs for additions or additional structures shall not be discouraged when such alterations and 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.

5. Neither the _____ nor any part thereof may be removed or demolished without the prior written approval of the President or Executive Director of the Foundation.

6. The Grantor and the Foundation hereby agree that the interior architectural features listed below are elements which contribute to the architectural significance of the _____:

[to be completed later]

No removal or alteration of the abovementioned architectural features shall be made without the prior written approval of the President or Executive Director of the Foundation.

7. No portion of the _____acres under covenant with the subject property may be subdivided.

8. The Grantor shall abide by all federal, state and local laws and ordinances regulating the rehabilitation, maintenance and use of the subject property.

9. No living trees greater than 12 inches in diameter at a point 4 feet above the ground shall be removed from the Subject Property without the express written approval of the Foundation unless immediate removal is necessary for the protection of any persons coming on to the Subject Property or of the general public; for the prevention or treatment of disease; or for the protection and safety of the_____ or any permanent improvements on the Subject Property. Any tree of the aforementioned size which must be removed shall be replaced within a reasonable time by a new tree of a substantially similar species. If so requested, the Foundation may approve the use of an alternate species.

10. In case of any contemplated sale of the subject property or any portion thereof by the Grantor or any successor in title thereto, first refusal as to any bona fide offer of purchase must be given to the Foundation, its successors or assigns. If the Foundation 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 Foundation 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. Provided, however, that if there are any outstanding deeds or trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds or trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

11. In the event of a violation of covenants contained in Paragraphs 2, 3, 4, 5, and 6 hereof, the Foundation shall have an option to purchase the subject property, provided that it shall give the Grantor written notice of the nature of the violation and the Grantor shall not have corrected same within the ninety (90) days next following the giving of said notice. The purchase of the subject property, pursuant to the exercise of the option retained hereby, shall be at a price equal to the then market value of the subject property, subject to restrictive covenants, as determined by agreement of the Grantor and the Foundation, or in the absence of such agreement, by a committee of three appraisers, one to be selected by the Foundation, one to be selected by the Grantor, and the other to be designated by the two appraisers selected by the Foundation and the Grantor respectively. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.

12. Representatives of the Foundation shall have the right to enter the subject property at reasonable times, after giving reasonable notice, for the purpose of inspecting the building and grounds to determine if there is compliance by the Grantor with the terms of these covenants.

13. Researchers, scholars and groups especially interested in historic preservation shall have access to view the interior of the property by special appointment at various times and intervals during each year. The general public shall have access to the Subject Property to view the exterior and interior features herein protected at the Grantor's discretion at various times and intervals during each year at times both desirable to the public and convenient with the Grantor.

14. Grantor shall insure the subject property against damage by fire or other catastrophe. If the original structure is damaged by fire or other catastrophe to an extent not exceeding fifty percent (50%) of the insurable value of those portions of the building, then insurance proceeds shall be used to rebuild those portions of the subject property in accordance with the standards in Exhibit B. The Grantor shall keep the subject property insured under a comprehensive general liability policy that names the Foundation as an additional insured and that protects the Grantor and the Foundation against claims for personal injury, death and property damage.

15. All mortgages and rights in the property of all mortgagees are subject and subordinate at all times to the rights of the Foundation to enforce the purposes of this Historic Preservation Agreement. Grantor will provide a copy of this Agreement to all mortgagees of the subject property and has caused all mortgagees as of the date of this Agreement to subordinate the priority of their liens to this Agreement. The subordination provisions as described above relates only to the purposes of the Agreement, namely the preservation of the historic architecture and landscape of the Subject Property.

16. The Grantor and the Foundation recognize that an unexpected change in the conditions surrounding the Subject property may make impossible or impractical the continued use of the Subject Property for conservation purposes and necessitate the extinguishment of this Historic Preservation Agreement. Such an extinguishment must comply with the following requirements:

(a) The extinguishment must be the result of a final judicial proceeding.

(b) The Foundation shall be entitled to share in the net proceeds resulting from the extinguishment in an amount in accordance with the then applicable regulations of the Internal Revenue Service of the U.S. Department of the Treasury.

(c) The Foundation agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other property or buildings having historical or architectural significance to the people of the State of North Carolina.

(d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Subject Property after the extinguishment.

17. The Grantor does hereby covenant to carry out the duties specified herein, and these restrictions shall be covenants and restrictions running with the land, which the Grantor, _____successors and assigns covenant and agree, in the event the subject property are sold and otherwise disposed of, will be inserted in the deed or other instrument conveying or disposing of the subject property.

18. 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 Foundation. No failure on the part of the Foundation to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Foundation shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Foundation to enforce the same in event of a subsequent breach or default.

19. Unless otherwise provided, the covenants and restrictions set forth above shall run in perpetuity.

IN WITNESS WHEREOF, the Historic Preservation Foundation of North Carolina, Inc., has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by the authority of its Board of Directors, and the Grantor has hereunto set his hand and seal, the day and year first above written.

Appendix B(4): Preservation North Carolina, Historic Preservation Agreement, 1999.

THE HISTORIC PRESERVATION FOUNDATION
OF NORTH CAROLINA, INC.

BY _____
Sylvia C. Nash, President

ATTEST:

BY _____
J. Myrick Howard, Assistant Secretary

BY _____(Seal)

NORTH CAROLINA
WAKE COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that J. Myrick Howard personally came before me this day and acknowledged that he is Assistant Secretary of THE HISTORIC PRESERVATION FOUNDATION OF NORTH CAROLINA, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Assistant Secretary.

Witness my hand and official stamp or seal, this _____ day of _____,

My Commission Expires: _____
Notary Public

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, 1999.

My Commission Expires: _____
Notary Public

EXHIBIT A

Legal Property Description

Appendix B(4): Preservation North Carolina, Historic Preservation Agreement, 1999.

EXHIBIT B

SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES (1992)

TREATMENTS

There are Standards for four distinct, but interrelated, approaches to the treatment of historic properties – Preservation, Rehabilitation, Restoration, and Reconstruction. **Preservation** focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time. (Protection and Stabilization have now been consolidated under this treatment.) **Rehabilitation** acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character. **Restoration** is undertaken to depict a property at a particular period of time in its history, while removing evidence of other periods. **Reconstruction** re-creates vanished or non-surviving portions of a property for interpretive purposes.

In summary, the simplification and sharpened focus of these revised sets of treatment standards is intended to assist users in making sound historic preservation decisions. Choosing appropriate treatment for a historic property, whether preservation, rehabilitation, restoration, or reconstruction, is critical. This choice always depends on a variety of factors, including the property's historical significance, physical condition, proposed use, and intended interpretation.

Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

STANDARDS FOR PRESERVATION

1. A property shall be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property shall be protected and, if necessary, stabilized until additional work may be undertaken.

2. The historic character of the property shall be retained and preserved. The replacement of intact or repairable historical materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

6. The existing condition of historic features shall be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material shall match the old in composition, design, color, and texture.

7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

PRESERVATION AS A TREATMENT

When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not

appropriate; and when a continuing or new use does not require additions or extensive alterations, Preservation may be considered as a treatment. Prior to undertaking work, a documentation plan should be developed.

REHABILITATION is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

STANDARDS FOR REHABILITATION

1. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.

4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historical materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

REHABILITATION AS A TREATMENT

When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, Rehabilitation may be considered as a treatment. Prior to undertaking work, a documentation plan for Rehabilitation should be developed.

RESTORATION is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

STANDARDS FOR RESTORATION

1. A property shall be used as it was historically or be given a new use which reflects the property's restoration period.

2. Materials and features from the restoration period shall be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period shall not be undertaken.

3. Each property shall be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve materials and features from the restoration period shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Materials, features, spaces, and finishes that characterize other historical periods shall be documented prior to their alteration or removal.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period shall be preserved.

6. Deteriorated features from the restoration period shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and where possible, materials.

7. Replacement of missing features from the restoration period shall be substantiated by documentary and physical evidence. A false sense of history shall not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

8. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.

9. Archeological resources affected by a project shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

10. Designs that were never executed historically shall not be constructed.

RESTORATION AS A TREATMENT

When the property's design, architectural, or historical significance during a particular period of time outweighs the potential loss of extant materials, features, spaces, and finishes that characterize other historical periods; when there is substantial physical and documentary evidence for the work; and when contemporary alterations and additions are not planned, Restoration may be considered as a treatment. Prior to undertaking work, a particular period of time, i.e., the restoration period, should be selected and justified, and a documentation plan for Restoration developed.

RECONSTRUCTION is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

STANDARDS FOR RECONSTRUCTION

1. Reconstruction shall be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

2. Reconstruction of a landscape, building, structure, or object in its historic location shall be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures shall be undertaken.

3. Reconstruction shall include measures to preserve any remaining historic materials, features, and spatial relationships.

4. Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property shall re-create the appearance of a non-surviving historic property in materials, design, color, and texture.

5. A reconstruction shall be clearly identified as a contemporary re-creation.

6. Designs that were never executed historically shall not be constructed.

DRAFT

Historic Annapolis, Inc.
18 Pinkney Street
Annapolis, Maryland 21401

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this (date) day of (month/year) by and between (name) , Grantors, and HISTORIC ANNAPOLIS, INC., Grantee.

WITNESSETH

WHEREAS, that one of the purposes of Historic Annapolis, Inc. as stated in its Bylaws, as amended, is to preserve the historic sites and monuments of Annapolis and Anne Arundel County and to encourage the owners of such properties in their preservation and restoration; and

WHEREAS, the Grantors are leasehold owners or owners in fee simple of improved real property located in Annapolis, Maryland, which property hereinafter referred to as "premises" is more particularly described below; and

WHEREAS, Historic Annapolis, Inc. has deemed that the interest created in this Deed of Easement will aid greatly in preserving and maintaining the premises consistent with the interests and purposes of its organization referred to above;

NOW, THEREFORE, in consideration of Five Dollars ($5.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantors do hereby grant and convey unto the Grantee an easement in gross known as an architectural, historic, scenic, and open space easement (pick appropriate type/types) in the real property and improvements thereto of the Grantors designated as ___(address)___and more particularly described in the Land Records of Anne Arundel County in Liber_____, folio_____as follows:

-------METES AND BOUNDS DESCRIPTION-------

THE easement and right of first refusal herein granted and conveyed to constitute a binding servitude upon said premises of the Grantors, and to that end Grantors covenant on behalf of themselves, their agents, personal representatives, heirs, and assigns, and all other successors to them in interest, with Grantee, such covenants being deemed to run as a servitude, in perpetuity, with the land, to do (and refrain from doing) upon the premises each of the following stipulations which contribute to the public purpose in that they aid significantly in the preservation of the historic site in question:

(a) The Grantors agree that the premises shall be open annually to the public from 10:00 a.m. to 5:00 p.m. on a single day to be selected by Historic Annapolis, Inc., and consented to by the Grantors which consent shall not reasonably be withheld.

(b) Without the written permission of Historic Annapolis, Inc., duly signed by its President or Vice President, no construction, alterations, or remodeling shall be undertaken or permitted which would affect either the lot herein described or the exterior (including the roof) of any building or other improvement located thereon as depicted in the photographs attached hereto and expressly incorporated by reference herein as "Exhibits B,C,D, etc. (Supplied by HAI, if not available) except the reconstruction, repair, replanting or refinishing of presently existing parts or elements of lot and house, damage to which has resulted from casualty loss, deterioration, or wear and tear, provided that such reconstruction, repair, replanting or refinishing may not be performed in a manner which would alter the appearance of the house as depicted in said photographs or the appearance of the lot as of this date In all events, the Grantors, their heirs and assigns, in

painting the exterior of any building or improvement on the premises agrees to use thereon a quality and color of paint to be selected by the Grantors, their heirs and assigns from a chart to be supplied to them by the Grantee, which chart shall contain a reasonable selection of colors, not less than six in number.

(c) Without the written permission of Historic Annapolis, Inc., duly signed by its President or Vice President, no construction, alteration, or remodeling shall be undertaken or permitted which would affect the interior of any building or other improvement located on the premises as depicted in the measured drawings attached hereto and expressly incorporated by reference, except the reconstruction, repair, or refinishing of presently existing parts or elements of the house, damage to which has resulted from casualty loss, deterioration, or wear and tear, provided that such reconstruction, repair or refinishing may not be performed in a manner which would alter its interior as depicted in said measured drawings. In all events, the Grantors, in painting such building or other improvement, agree to use thereon a quality and color of paint to be selected by the Grantors from a chart to be supplied to them by the Grantee, which chart shall contain a reasonable selection of colors, not less than nine in number.

(d) The Grantors agree that the officers of Historic Annapolis, Inc. or a person or persons delegated by them shall be permitted at reasonable times (which time shall be established in advance by ten (10) days notice to come upon the premises to inspect for violations of any of the covenants of this Deed of Easement.

(e) In the event a violation of these restrictions is found to exist, Historic Annapolis, Inc. may, following reasonable notice to the Grantors, institute a suit to enjoin by ex parte, temporary and/or permanent injunction such violation to require the restoration of the premises to its prior

condition, and in the alternative the officers may enter upon the premises, correct any such violation, and hold Grantors, their heirs and assigns, responsible for the cost thereof

(f) Grantor hereby agrees that before it shall sell, lease or transfer, other than to members of the family or descendants of the Consenters herein, any of its interest in the Premises, it shall give notice in writing to Grantee of any offer from a bona fide purchaser or lessor and Grantee shall have thirty (30) days in which to purchase or lease the Premises on the same terms and conditions as offered by said bona fide purchaser or lessor. This same right of first refusal in favor of Grantee shall be inserted in any deed or lease of the Premises in order to bind subsequent owners or lessees to offer the same right of first refusal to Grantee on subsequent transfers of the Premises.

(g) The Grantors agree that these restrictions will be inserted by them in any subsequent deed, or other legal instrument, by which they divest themselves of either the fee simple title to or of their possessory interest in the Premises.

(h) Where permission is required to be obtained from Historic Annapolis, Inc., such permission shall be deemed to have been given upon the failure of Historic Annapolis, Inc. to respond to a written request therefore within forty-five (45) days of actual receipt thereof by Historic Annapolis, Inc at its principal office.

Appendix B(6): The L'Enfant Trust, Conservation Easement Deed of Gift, 1998.

CONSERVATION EASEMENT DEED OF GIFT

THIS IS A DEED of a Scenic, Open Space and Architectural Facade Easement, made on the ____day of_____, 19___, by

_____)

_____)

_____) ("Grantor")

to The L'Enfant Trust ("Grantee")

I.

A. The Grantee is a District of Columbia non-profit corporation chartered to promote a public aesthetic in land use planning, including the preservation of historically important properties and is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

B. The Grantee is authorized to accept and administer gifts of real and personal property, including easements for conservation purposes, in furtherance of its public purposes.

C. The Grantor is the owner in fee simple of improved real property, identified as_____, more fully described as:
(STREET ADDRESS)

(FULL LEGAL DESCRIPTION)
(Must be Complete Description Used on a Deed of Purchase for Property)

See Exhibit A.

(the "Property").

D. (Here state the significance of the Property; its pedigree, if any, e.g., "The Property constitutes an important element in the architectural ensemble of the Historic District; the Property is deemed a Grade 2 Landmark by the Landmark Commission"; and, e.g., "The grant of the easement as set

forth in this instrument will assist in (delete inapplicable language)

9/98

preserving a land area for public outdoor recreation by, or the education of, the general public;

preserving an historically important land area or a certified historic structure;

preserving open space for the scenic enjoyment of the general public;

preserving open space pursuant to a federal, state or local government policy."

E. Grantor desires to grant to the Grantee, and the Grantee desires to accept a scenic, open space and architectural facade easement on the Property, exclusively for conservation purposes.

F. The term "Facade" as used herein consists of all exterior surfaces of the improvements on the Property, including all walls, roofs, and chimneys (the existing improvements at the Property hereinafter sometimes referred to as the "Building"). Written descriptions and photographs of the Facade are on file at the offices of the Grantee (such descriptions being referred to as "Exhibit B" which are not appended hereto). It is the intent of the parties that the Property, including the Building and surrounding grounds remain unchanged (except minor changes to the surrounding grounds), and in case of ambiguity, the photographs and descriptions which are part of the Exhibit B shall control.

G. Grantor acknowledges that the grant of this easement constitutes a conveyance of an interest in the Property and may result in a potential loss or diminution in marketability of the Property due to the easement's nature and character, and the inability to modify in the future the Facade or to develop certain of the air space above and around the building on the Property without the prior approval and consent of the Grantee as a result hereof.

II.

The Grantor does hereby grant and convey to the Grantee, TO HAVE AND TO HOLD, an easement in gross, in perpetuity, in, on, and to the Property and the improvements thereon, being a scenic, open space and architectural facade easement on the Property, with the following rights:

A. Without the express written consent of the Grantee, which consent may be withheld, conditioned or delayed in the sole and absolute discretion of the Grantee, the Grantor will not undertake nor suffer nor permit to be undertaken:

1. any alteration, construction or remodeling of existing improvements on the Property, or the placement thereon of signs or markers, which would materially alter or change the appearance of the Facade (as more fully depicted on Exhibit B); or

2. the exterior extension of existing improvements on the Property or the erection of any new or additional improvements on the Property or in the open space above or surrounding the existing improvements (except for, subject to the reasonable consent of Grantee, the erection of new improvements, including an architecturally consistent Facade, to replace existing improvements which have been wholly or partially destroyed by fire or any other cause);

3. the painting or cleaning of the exterior Facade of the existing improvements in a manner incompatible with the protection and preservation of the Facade; provided, however, that the maintenance, reconstruction, repair and refinishing of presently existing elements of the Facade, damage to which has resulted from casualty loss, destruction or deterioration, shall be permitted in a manner which will maintain or recreate the essential appearance of the Facade as it exists at this date or as it existed at the time the improvements were first constructed; and provided further, that dignified signs or markers may be placed on the Facade without consent of the Grantee so long as they (i) indicate no more than the street address and occupants of the premises; or (ii) are necessary to direct pedestrians or vehicular traffic; or (iii) commemorate the history of the Property or the grant of this easement.

B. The Grantor further undertakes that it will periodically clean the Facade, will keep the Grantee's marker polished and visible from the street, and will maintain the Facade and Property in good repair and condition at all times.

C. Grantor agrees, on behalf of itself, its successors, heirs and assigns that any rehabilitation work or new construction work that might be required to be undertaken on the Property will comply with the requirements of all applicable federal, state and local governmental laws and regulations, including, without limitation, the Secretary of the Interior's Standards for Rehabilitating Historic Buildings (presently codified at 36 Code of Federal Regulations Part 67) and the District of Columbia Landmarks Preservation Ordinance.

III.

The Grantee, in order to ensure the effective enforcement of this easement shall have, and the Grantor hereby grants it, the following rights:

1. at reasonable times and upon reasonable notice, the right to enter upon and inspect the Property and any improvement thereon, but not including the inside of the Building;

2. the right to place a marker on the Facade indicating the Grantee's ownership of this easement and to keep such marker clean and visible from the street;

3. in the event of a violation of this easement and upon reasonable notice to the Grantor,

(a) the right to institute legal proceedings to enjoin such violation by ex parte, temporary, and/or permanent injunction, to require the restoration of the Property or the improvements thereon, including the Facade, and open space, to its prior condition, to collect damages, to be reimbursed for all costs and attorneys fees, and to avail itself of all other legal and equitable remedies;
(b) the right to enter upon the Property and improvements thereon in order to correct such violation and hold Grantor responsible for the cost thereof; and
(c) the right to place a lien against the Property to secure the payment by Grantor of any of Grantor's obligations arising under this instrument.

4. Any lien provided for herein shall be subordinate to the lien of any existing or future mortgagee or holder of a deed of trust. The sale or transfer of the Property pursuant to a foreclosure or any proceeding in lieu thereof shall extinguish the lien as to such lender. However, any indebtedness represented by such lien shall continue as a personal obligation of the Grantor, its successors and assigns.

IV.

A. This easement is binding not only upon Grantor but also upon its successors, heirs, and assigns and all other successors in interest to it, and shall continue as a servitude running in perpetuity with the land. This easement shall survive any termination of Grantor's or the Grantee's existence. The rights of the Grantee under this instrument shall run for the benefit of and may be exercised by its successors and assigns, or by its designees duly authorized in a deed of appointment.

B. Grantee covenants and agrees that it will not transfer, assign or otherwise convey its rights under this conservation easement except to another "qualified organization" described in Section 170(h)(3) of the Internal Revenue Code of 1986, and controlling Treasury regulations, and provided, further, that Grantee shall not make any transfer of this easement to any transferee unless such transferee first agrees to continue to carry out the conservation purposes originally intended by this easement donation.

C. In the event this easement is ever extinguished, whether through condemnation, judicial decree or otherwise, Grantor agrees on behalf of itself, its heirs, successors and assigns, that Grantee, or its successors and assigns, will be entitled to receive upon the subsequent sale, exchange or involuntary conversion of the Property, a portion of the proceeds from such sale, exchange or conversion at least equal to the same proportion that the value of the initial easement donation bore to the entire value of the property at the time of donation, [unless controlling state law provides that the Grantor is entitled to the full proceeds in such situations, without regard to the easement.] Grantee agrees to use any proceeds so realized in a manner consistent with the conservation purposes of the original contribution

D. The property is currently encumbered by a Deed of Trust recorded _____ in the land records of the District of Columbia, securing a loan payable to_____ (the "Lender"). The Lender joins in the execution of this Conservation Deed for the limited purpose of subordinating its rights in the Property to the right of the Grantee, its successors or assigns, to enforce solely the conservation purposes of this easement in perpetuity.

IN WITNESS WHEREOF, the Grantor has executed this Conservation Easement Deed on the date first written above.

_____

Grantor

Accepted:
The L'Enfant Trust

By: _____

Date:_____

9/98

Appendix B(6): The L'Enfant Trust, Conservation Easement Deed of Gift, 1998.

Lender Acknowledgment - Conservation Easement

In testimony whereof, the _____(Lender)_____has on this ____day of _____,19___, caused these presents to be signed by _____, its president (or other officers), and attested by its secretary, and its corporate seal to be affixed and doth hereby appoint _____ its true and lawful attorney in fact to acknowledge and deliver these presents as its act and deed.

(CORPORATE SEAL)

_____
Name of Lending Institution

Attest:

_____
President or Officer

_____
Secretary

_____SS:

I, _____, a Notary Public in and for the _____do hereby certify that _____ _____, who is personally well known to me as the person named as the attorney in fact in the foregoing and annexed deed, bearing date on the _____day of_____, 19___, personally appeared
(Date at Beginning of Deed)

before me as an attorney in fact as aforesaid, and by virtue of the power vested in him/her by said deed, acknowledged the same to be the act and deed of the _____.

Given under my hand and official seal this_____day of _____, 19____.

_____
Notary Public

My commission expires: _____.

9/98

Notary Form for Individual Donors

_____)
SS:
_____)

I, _____, a notary public in and for the state and county aforesaid, do hereby certify that_____ _____, the Grantor in the foregoing Deed bearing the date on the _____day of _____, 19___, and

(Date at Beginning of Deed)

hereto annexed, personally appeared before me in said state and county; the said _____being personally well-known to me as the person who executed the said Deed, and acknowledged the same to be his (her) act and deed. Given under my hand and official seal this _____ day of _____, 19___.

_____
Notary Public

My Commission Expires:_____

9/98

Appendix B(7): The Frank Lloyd Wright Building Conservancy, Preservation and Conservation Easement, 1997.

PRESERVATION AND CONSERVATION EASEMENT

THIS PRESERVATION AND CONSERVATION EASEMENT, made this _____ day of _____, by and between _____ of _____ _____ ("Grantor") and The Frank Lloyd Wright Building Conservancy, Inc., ("Grantee"), a nonprofit corporation of the State of Michigan, the principal place of business of which is 343 South Dearborn Street, Suite 1701, Chicago, IL 60604-3815.

WITNESSETH:

WHEREAS, the Grantee is organized as a non-profit corporation under the laws of the State of Michigan and is a qualifying recipient of qualified conservation contributions under Sections 170(b), (f), and (h) of the Internal Revenue Code of 1986 as amended (hereinafter the "Code");

WHEREAS, the Grantor is owner in fee simple of certain real property in _____ County, _____; which property is sometimes referred to as the _____ (hereinafter "the Premises"), said Premises including one structure commonly know as the _____ together with the furnishings originally designed for and extant in the _____ (hereinafter "the Building"), and is more particularly described below;

OPTIONAL IF APPROPRIATE:

WHEREAS, the Building is located in _____, _____ (city, state) which in its entirety is a National Register Historic District;

WHEREAS, the Building is listed on the National Register of Historic Places;

WHEREAS, the architect of the Building was Frank Lloyd Wright, who is generally recognized as the greatest American architect of the twentieth century;

WHEREAS, the Building has been cited by architectural historians as one of Frank Lloyd Wright's _____;

WHEREAS, the Grantor and Grantee recognize the historical, cultural, and aesthetic value and significance of the Premises, and have the common purpose of conserving and preserving the aforesaid value and significance of the Premises;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the real property referred to herein will assist in preserving and maintaining the Premises and its architectural, historical, and cultural features;

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WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation and conservation easement on the Premises, pursuant to the laws of the State of _____;

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Grantee a preservation and conservation easement in gross in perpetuity (which easement is more particularly described below and is hereinafter "the Easement") in and to that certain real property and exterior and interior surfaces of the Building located thereon, owned by the Grantor, and more particularly described as:

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BEING the same property which was granted by _____
_____
_____
_____
_____, and recorded in the Offices of the Recorder of Deeds of _____ County on _____ day of _____ at _____ and permanent Index number _____.

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The Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon said Premises of the Grantor, and to that end Grantor covenants on behalf of himself/herself successors, and assigns, with Grantee, its successors, and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land, to do upon the Premises each of the following covenants and stipulations, which contribute to the public purpose in that they aid significantly in the preservation of the Building and surrounding land area, and which help maintain and assure the present and future historic integrity of the Building:

1. Description of Facades. In order to make more certain the full extent of Grantor's obligations and the restrictions on the Premises (including the Building), and in order to document the external and internal nature of the Building as of the date hereof, attached hereto as Exhibit A and incorporated herein by this reference are a set of photographs depicting the exterior and interior surfaces of the Building and the surrounding property, text describing the Building and copies of architectural plans of the Building. It is stipulated by and between Grantor and Grantee that the external and internal nature of the Building as shown in Exhibit A is deemed to be the external and interior nature of the Building as of the date hereof and as of the date this instrument is first recorded in the land records of _____ County, _____. The external and interior nature of the Building as shown in Exhibit A is hereinafter referred to as the "Facades."

Exterior facades are intended to include specifically all walkways approaching various entrances to the Building as designed by Mr. Wright, and _____ landscaping sympathetic to Mr. Wright's architecture.

The interior facades include specifically

_____

_____

_____

_____

2. Grantor's Covenants. In furtherance of the easement herein granted, Grantor undertakes, for herself/ himself, to do (and to refrain from doing as the case may be) upon the Premises each of the following covenants, which contribute to the public purpose of significantly protecting and preserving the Premises:

   (a) Grantor shall not demolish, remove, or raze the Building or the Facades except as provided in Paragraphs 6 and 7.
   (b) Without the prior express written permission of the Grantee, signed by a duly authorized representative thereof, Grantor shall not undertake any of the following actions:
      (i) increase or decrease the height of the Facades or the Building;
      (ii) adversely affect the structural soundness of the Facades;

(iii) make any changes in the Facades including the alteration, partial removal, construction, remodeling, or other physical or structural change including any change in color or surfacing, with respect to the appearance or construction of the Facades, with the exception of ordinary maintenance pursuant to Paragraph 2 (c) below or restoration in accordance with the original design of the Premises;

(iv) erect anything on the Premises or on the Facades which would prohibit them from being visible from street level, except for a temporary structure during any period of approved alteration or restoration.

(v) Permit any significant reconstruction, repair, repainting, or refinishing of the Facades that alter their state from the existing condition or as originally designed. This subsection (v) shall not include ordinary maintenance pursuant to Paragraph 2(c) below;

(vi) Erect, construct, or move anything on the premises that would encroach on the open land area surrounding the Building and interfere with a view of the Facades or be incompatible with the historic or architectural character of the Building or the Facades.

(vii) Make any changes in the interior facades as shown in the plans and photographs in Exhibit A, including removing or altering (subject to ordinary maintenance pursuant to Paragraph 2c) below), any interior walls, staircases, wall surfaces, woodwork trim, brickwork, grouting, or built-in furniture.

(c) Grantor agrees at all times to maintain the Building in a good and sound state of repair and to maintain the Facades and the structural soundness and safety of the Building and to undertake a minimum maintenance program so as to prevent deterioration of the Facades. Subject to the casualty provisions of paragraphs 5 through 7, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction whenever necessary to have the external nature of the Building at all times appear to be and actually be the same as the Facades.

(d) No buildings or structures, including satellite receiving dishes, camping accommodations, or mobile homes not presently on the Premises shall be erected or placed on the Premises hereafter, except for temporary structures required for the maintenance or rehabilitation of the property, such as construction trailers.

(e) No signs, billboards, awnings, or advertisements shall be displayed or placed on the Premises or Building; provided, however, that Grantor may, with prior written approval from and in the sole discretion of Grantee, erect such signs or awnings as are compatible with the preservation and conservation purposes of this easement and appropriate to identify the Premises and Building and any activities on the Premises or in the Building. Such approval from Grantee shall not be unreasonably withheld.

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(f) No topographical changes, including but not limited to excavation, shall occur on the Premises; provided, however, that Grantor may, with prior written approval from and in the sole discretion of Grantee, make such topographical changes as are consistent with and reasonably necessary to promote the preservation and conservation Purposes of this easement.

(g) There shall be no removal, destruction, or cutting down of trees, shrubs, or other vegetation on the Premises; provided, however, that Grantor may with prior written approval from and in the sole discretion of Grantee, undertake such landscaping of the Premises as is compatible with the preservation and conservation purposes of this easement and which may involve removal or alteration of present landscaping, including trees, shrubs, or other vegetation. In all events, Grantor shall maintain trees, shrubs, and lawn in good manner and appearance in conformity with good forestry practices.

(h) No dumping of ashes, trash, rubbish, or any other unsightly or offensive materials shall be permitted on the Premises.

(i) The Premises shall be used only for purposes consistent with the preservation and conservation purposes of this easement.

(j) The Premises shall not be subdivided and the Premises shall not be devised or conveyed except as a unit.

(k) No utility transmission lines, except those reasonably necessary for the existing Building, may be created on said land, subject to utility easements already recorded.

3. (b) Public Access. Grantor shall make the premises accessible to the public on a minimum of two (2) days per year from 10:00 a.m. to 4:00 p.m., and at other times by appointment to permit persons affiliated with educational organizations, professional architectural associations, and historical societies to view and study the property. Any such public admission may be subject to restrictions mutually agreed upon as reasonably designed for the protection and maintenance of the property, and the Grantee on request of the Grantor shall furnish such guides and/or guardians as may reasonably be necessary or desirable for such restrictions. Such admission may also be subject to a reasonable fee, if any, as may be approved by the Grantee. The Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, or architectural character and features of the property and distribute them to magazines, newsletters, or other publicly available publications, or use them in any of its efforts or activities for the preservation and conservation of Frank Lloyd Wright's heritage.

4. Standards for Review. In exercising any authority created by the Easement to inspect the Premises, the Building, or the Facades; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, Grantee shall apply the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, issued and as may be amended from time to time by the Secretary of the United States Department of the Interior (hereinafter the

"Standards") and/or state or local standards considered appropriate by Grantee for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally, or culturally significant areas. A copy of the Standards will be supplied to Grantor by Grantee, and whenever Grantee receives notice that the Standards have been amended, it shall notify Grantor of the Amendment. Grantor agrees to abide by the Standards in performing all ordinary repair and maintenance work and the minimum maintenance program described in Paragraph 2 (c). In the event the Standards are abandoned or materially altered or otherwise become, in the sole judgment of the Grantee, inappropriate for the purposes set forth above, the Grantee may apply reasonable alternative standards and notify Grantor of the substituted standards.

5. Casualty Damage or Destruction. In the event that the Premises or any part thereof shall be damaged or destroyed by casualty, the Grantor shall notify the Grantee in writing within one (1) day of the damage or destruction, such notification including what, if any emergency work has already been completed. For purposes of this instrument the term "casualty" is defined as such sudden damage or loss as would qualify for a loss deduction pursuant to Section 165(c)(3) of the Code (construed without regard to the legal status, trade, or business of the Grantor or any applicable dollar limitation). No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the property and to protect public safety, shall be undertaken by Grantor without the Grantee's prior written approval of the work. Within four (4) weeks of the date of damage or destruction, the Grantor shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer, if required, acceptable to the Grantor and the Grantee which shall include the following:
   (a) an assessment of the nature and extent of the damage;
   (b) a determination of the feasibility of the restoration of the Facades and/or reconstruction of damaged or destroyed portions of the Premises; and (c) a report of such restoration/construction work necessary to return the Premises to the condition existing at the date hereof. If in the opinion of the Grantee, after reviewing such report, the purpose and intent of the Easement will be served by such restoration/reconstruction, the Grantor shall with eighteen (18) months after the date of such change or destruction complete the restoration/construction of the premises in accordance with plans and specifications consented to by the Grantee up to at least the total of the casualty insurance proceeds. Grantee has the right to raise funds toward the costs of restoration of partially destroyed premises above and beyond the total of the casualty insurance proceeds as may be necessary to restore the appearance of the Facades, and such additional costs shall constitute a lien on the Premises until prepaid by Grantor.

6. Grantee's Remedies Following Casualty Damage. The foregoing notwithstanding, in the event of damage resulting from casualty, as defined at Paragraph 5, which is of such magnitude and extent as to render repairs or reconstruction of the Building impossible using all applicable insurance proceeds, as determined by Grantee by reference to bona fide cost estimates, then
   (a) Grantee may elect to reconstruct the Building using insurance proceeds, donations, or other funds received by Grantor or Grantee on account of such casualty, but otherwise

at its own expense (such expense of Grantee to constitute a lien on the premises until repaid in full); or

(b) Grantee may elect to choose any salvageable portion of the Facades and remove them from the premises, extinguish the easement pursuant to Paragraph 26, and this instrument shall thereupon lapse and be of no further force and effect, and Grantee shall execute and deliver to Grantor acknowledged evidence of such fact suitable for recording in the land records of _____ County, _____ and Grantor shall deliver to Grantee a good and sufficient Bill of Sale for such salvaged portions of the Façade.

7. Review After Casualty Loss. If in the opinion of the Grantee, restoration/reconstruction would not serve the purpose and intent of the Easement, then the Grantor shall continue to comply with the provisions of the Easement and obtain the prior written consent of the Grantee in the event the Grantor wishes to alter, demolish, remove, or raze the Building, and/or construct new improvements on the Premises.

8. Grantee's Covenants. The Grantee hereby warrants and covenants that:

(a) Grantee is and will remain a Qualified Organization for purposes of Section 170(h) of the Internal Revenue Code. In the event that the Grantee's status as a Qualified Organization is successfully challenged by the Internal Revenue Service, then the Grantee shall promptly select another Qualified Organization and transfer all of its rights and obligations under the Easement to it.

(b) In the event that the Grantee shall at any time in the future become the fee simple owner of the Premises, Grantee for itself, its successors, and assigns, covenants and agrees, in the event of a subsequent conveyance of the same to another, to create a new preservation and conservation easement containing the same restrictions and provisions as are contained herein, and either to retain such easement in itself or to convey such easement to a similar unit of federal, state, or local government or local, state, or national organization whose purposes, inter alia, are to promote preservation or conservation of historical, cultural, or architectural resources, and which is a qualified organization under Section 170(h)(3) of the Internal Revenue Code.

(c) Grantee may, at its discretion and without prior notice to Grantor, convey, assign, or transfer this easement to a unit of federal, state, or local government or to a similar local, state or national organization whose purposes, inter alia, are to promote preservation or conservation of historical, cultural, or architectural resources, and which at the time of the conveyance, assignment, or transfer is a qualified organization under Section 170(h)(3) of the Internal Revenue Code, provided that any such conveyance, assignment, or transfer requires that the preservation and conservation purposes for which the Easement was granted will continue to be carried out.

(d) Grantee shall exercise reasonable judgment and care in performing its obligations and exercising its rights under the terms of the Easement.

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9. Inspection. Grantor hereby agrees that representative of Grantee shall be permitted at all reasonable times to inspect the Premises, including the Facades and the Building. Grantor agrees that representatives of Grantee shall be permitted to enter and inspect the interior of the Building to ensure maintenance of structural soundness and safety; inspection of the interior will not, in the absence of evidence of deterioration, take place more often than annually, and may involve reasonable testing of interior structural condition. Inspection of the interior will be made at a time mutually agreed upon by Grantor and Grantee, and Grantor covenants not to withhold unreasonably its consent in determining a date and time for such inspection.
10. Grantee's Remedies. Grantee has the following legal remedies to correct any violation of any covenant, stipulation, or restriction herein, in addition to any remedies now or hereafter provided by law:
    (a) Grantee may, following reasonable written notice to Grantor, institute suit(s) to enjoin such violation by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Premises to the condition and appearance required under this instrument.
    (b) Representatives of the Grantee may, following reasonable notice to Grantor, enter upon the Premises, correct any such violation, and hold Grantor, its successors, and assigns, responsible for the cost thereof.
        (i) Such cost until repaid shall constitute a lien on the Premises.
        (ii) Grantee shall exercise reasonable care in selecting independent contractors if it chooses to retain such contractors to correct any such violations, including making reasonable inquiry as to whether any such contractor is properly licensed and has adequate liability insurance and workman's compensation coverage.
    (c) Grantee shall also have available all legal and equitable remedies to enforce Grantor's obligations hereunder.
    (d) In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection therewith, including all reasonable court costs, and attorney's, architectural, engineering and expert witness fees.
    (e) Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.
11. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice, demand, letter, or bill received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee evidence of Grantor's compliance with such notice, demand, letter, or bill, where compliance is required by law.
12. Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Premises and provide the opportunity for Grantee to explain the terms of the Easement to potential new owners prior to sale closing.

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13. Runs with the Land. The obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the premises. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest, and all persons hereafter claiming under or through Grantor and Grantee, an the words "Grantor" and "Grantee" when used herein shall include all such persons. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument where such person shall cease to have any interest in the premises by reason of a bona fide transfer. Restrictions, stipulations, and covenants contained in this instrument shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests himself/herself of either the fee simple title to or any lesser estate in the premises or any part thereof, including, by way of example and not limitation, a lease of office space.
14. Recording. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of _____ County, _____. This instrument is effective only upon recording in the land records of _____ County, _____.
15. Existing Liens. Except for those matters shown in Exhibit B hereto, Grantor warrants to Grantee that no lien or encumbrance exists on the premises as of the date hereof. Grantor shall immediately cause to be satisfied or release any lien or claim of lien that may hereafter come to exist against the premises which would have priority over any of the rights, title, or interest hereunder of Grantee.
16. Subordination of Mortgages. Grantor and Grantee agree that all mortgages and rights in the property of all Mortgagees are subject and subordinate at all times to the rights of the Grantee to enforce the purposes of the preservation and conservation easement. Grantor has provided a copy of the Easement to all Mortgagees of the Premises as of the date of this agreement, and the agreement of each Mortgagee to subordinate the mortgage to the Easement is contained in the Addenda as Exhibit B. The following provisions apply to all Mortgagees now existing or hereafter holding a mortgage on the Premises:
    (a) If a mortgage grants to a Mortgagee the right to receive the proceeds of condemnation proceedings arising from any exercise of the power of eminent domain as to all or any part of the Premises or the right to receive insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Premises, the Mortgagee shall have a prior claim to the insurance and condemnation proceeds and shall be entitled to same in preference to Grantee until the mortgage is paid off and discharged, notwithstanding that the mortgage is subordinate in priority to the Easement.
    (b) If a Mortgagee has received an assignment of the leases, rents, and profits of the Premises as security or additional security for a loan, then the Mortgagee shall have a prior claim to the leases, rents, and profits of the Premises and shall be entitled to receive same in preference to Grantee until said Mortgagee's debt is paid off, notwithstanding that the Mortgage is subordinate to the Easement.
    (c) Until a Mortgagee or purchaser at foreclosure obtains ownership of the Premises following foreclosure of its Mortgage or deed in lieu of foreclosure, the Mortgagee or purchaser shall have no obligation, debt, or liability under the Easement.

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(d) Before exercising any right or remedy due to breach of the Easement except the right to enjoin a violation hereof, Grantee shall give all Mortgagees of record written notice describing the default, and the Mortgagees shall have sixty (60) days thereafter to cure or cause a cure of the default.

(e) Nothing contained in the above paragraphs or in the Easement shall be construed to give any Morgagee the right to extinguish this Easement by taking title to the Premises by foreclosure or otherwise.

17. Plaques. Grantor agrees that Grantee may provide and maintain a plaque on the Facades of the Building, which plaque shall not exceed 6 by 6 inches in size, giving notice of the significance of the Building or the Premises and the existence of this perpetual preservation and conservation easement.

18. Indemnification. The Grantor hereby agrees to pay, protect, indemnify, hold harmless, and defend at its own cost and expense, the Grantee, its agents, director, and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in any way relating to the administration, performed in good faith, of this preservation and conservation easement, including, but not limited to, the granting or denial of consents hereunder, the reporting on or advising as to any condition on the Premises, and the execution of work on the Premises. In the event that the Grantor is require to indemnify the Grantee pursuant to the terms of the Easement, the amount of such indemnity, until discharged, shall constitute a lien on the Premises.

19. Taxes. Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the premises. Grantee is hereby authorized, but in no event required or expected, to make or advance, upon three (3) days prior written notice to Grantor, in the place of Grantor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipality charge, fine, imposition, or lien asserted against the premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment, if made by Grantee, shall become a lien on the premises of the same priority as the item if not paid would have had and shall bear interest until paid by Grantor at two (2) percentage points over the prime rate of interest from time to time charged by Bank of America, N.A.

20. Insurance. The Grantor shall keep the premises insured by an insurance company rated "A+" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage of a type and in such amounts as would, in the opinion of Grantee, normally be carried on a property such as the Premises protected by preservation and conservation easement. Such insurance shall include Grantee's interest and name Grantee as an additional insured and shall provide for at least

thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, the Grantor shall deliver to the Grantee fully executed copies of such insurance policies evidencing the aforesaid insurance coverage at the commencement of this grant and copies of new or renewed policies at least ten (10) days prior to the expiration of such policy. The Grantee shall have the right to provide insurance at the Grantor's cost and expense, should the Grantor fail to obtain same. In the event the Grantee obtains such insurance, the cost of such insurance shall be a lien on the Premises until repaid by the Grantor.

21. Liens. Any lien on the Premises created pursuant to any Paragraph of the Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien.

22. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by registered or certified mail with return receipt requested, or hand delivered; if to Grantor, then at _____, and if to Grantee, then to The Frank Lloyd Wright Building Conservancy, 343 South Dearborn Street, Suite 1701, Chicago, IL 60604-3815. Each party may change its address set forth herein by a notice to such effect to the other party. Any notice, consent, approval, agreement, or amendment permitted or required of Grantee under the Easement may be given by the Executive Director and the President of the Board of Directors of the Grantee or by any duly authorized representative of the Grantee.

23. Evidence of Compliance. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with any obligation of Grantor contained herein.

24. Stipulated Value of Grantee's Interest. Grantor acknowledges that upon execution and recording of the Easement, Grantee shall be immediately vested with a real property interest in the Premises and that such interest of Grantee shall have a stipulated fair market value, for purposes of allocating net proceeds in an extinguishment pursuant to Paragraph 26, equal to the ratio between the fair market value of the Easement and the fair market value of the Premises prior to considering the impact of the Easement (hereinafter the "Easement Percentage") as determined in the Qualified Appraisal provide to the Grantee pursuant to Paragraph 25. Upon submission of the Qualified Appraisal, the Grantor and Grantee shall sign an affidavit verifying the Easement Percentage and record it as an amendment to the Easement. In the event Grantor does not claim a charitable gift deduction for purposes of calculating federal income taxes and submit a Qualified Appraisal, the Easement Percentage shall be 15 percent.

25. Qualified Appraisal. In the event Grantor claims a federal income tax deduction for donation of a "qualified real property interest" as that term is defined in Section 170(h) of the Internal Revenue Code, Grantor shall provide Grantee with a copy of all appraisals (hereinafter, the "Qualified Appraisal" as that term is defined in P.L. 98-369, 155(a), 98 Stat. 691 (1984), and by reference therein Section 170(a)(1) of the Internal Revenue Code) of the fair market value of

the Easement. Upon receipt of the Qualified Appraisal, this fully executed easement, and any endowment requested hereunder by Grantee, Grantee shall sign any appraisal summary form prepared by the Internal Revenue Service and submitted to the Grantee by Grantor.

26. Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Premises may make impossible the continued ownership or use of the Premises for the preservation and conservation purposes and necessitate extinguishment of the Easement. Such a change in condition includes, but is not limited to, partial or total destruction of the Building or the Facades resulting from a casualty of such magnitude that Grantee approves demolition as explained in Paragraphs 5 and 7, or condemnation or loss of title of all or a portion of the Premises, the Building, or the Facades. Such an extinguishment must comply with the following requirements:
    (a) The extinguishment must be the result of a final judicial proceeding;
    (b) Grantee shall be entitled to share in the net proceeds resulting from the extinguishment in an amount equal to the Easement Percentage determined pursuant to Paragraph 24 multiplied by the net proceeds.
    (c) Grantee agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other buildings, structures, or sites having historical, architectural, cultural, or aesthetic value and significance to the people of the State of Illinois.
    (d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Premises after the extinguishment, but shall specifically exclude any preferential claim of a Mortgagee under Paragraph 16.
27. Interpretation and Enforcement. The following provisions shall govern the effectiveness, interpretation, and duration of the Easement.
    (a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this instrument, and this instrument shall be interpreted broadly to effect its preservation and conservation purposes and the transfer of rights and the restrictions on use herein contained as provide in the Act.
    (b) This instrument shall extend to and be binding upon Grantor and all persons hereafter claiming under or through Grantor, and the word "Grantor" when used herein shall include all such persons, whether or not such persons have signed this instrument or then have and interest in the premises. Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this instrument where such person shall cease to have any interest (present, partial, contingent, collateral, or future) in the premises by reason of a bona fide transfer for full value. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

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(c) This instrument is executed in counterparts, each page of which (including exhibits) has been initialed by Grantor and Grantee for purposed of identification. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided above, each counterpart shall constitute the agreement of the parties. Immediately after execution hereof, one counter-part shall be held by each of the Grantor and the Grantee, one counterpart shall be recorded as provided above and may be returned to Grantee, and one counterpart shall be stored as a matter of public record at the offices of the Grantee.

(d) Except as expressly provided herein, nothing contained in this instrument grants, nor shall be interpreted to grant, to the public any right to enter on the Premises or into the Building.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the Premises may be developed to use more intensive (in terms of height, bulk , or other objective criteria regulated by such ordinances than the Premises are devoted as of the date hereof, such development rights shall nor be exercisable on, above, or below the Premises during the term of the Easement, not shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the preservation and conservation purposes of the Easement.

(f) For purposes of furthering the preservation of the Premises and Building and of furthering the other purposes of this instrument, and to meet changing conditions, Grantor and Grantee are free to amend jointly the terms of this instrument in writhing without notice to any party; provided, however, that no such amendment shall limit the perpetual duration or interfere with the preservation and conservation purposes of the donation. Such amendment shall become effective upon recording among the land records of _____ County, _____.

(g) The terms and conditions of this easement shall be references in any transfer of the property by the Grantor, his heirs, successors, and assigns.

(h) This instrument is made pursuant to the laws of the State of _____, but the invalidity of any such statute or any part thereof shall not affect the validity and enforceability of this instrument according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement either in existence now or at any time subsequent hereto. This instrument may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this instrument or any part thereof. The invalidity or lack of enforceability of any other provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter hereof.

(i) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms

hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this instrument and such ordinance or regulation.

(j) This instrument reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

IN WITNESS WHEREOF, on the date first shown above, Grantor has caused this preservation and conservation easement to be executed, sealed, and delivered; and Grantee has caused this instrument to be accepted, sealed, and executed in its corporate name by its Executive Director.

_____
Witness

_____
Name of Grantor

ATTEST:

GRANTEE:
The Frank Lloyd Wright Building Conservancy

_____
Witness

By: _____
Sara-Ann Briggs, Executive Director

STATE OF _____
COUNTY OF _____

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgements, personally appeared _____ (name of Grantor) to me known to be the person described in and who executed the foregoing instrument and acknowledged before me the _____(he/she) executed the same.

WITNESS my hand and office seal in the County and State last aforesaid this _____ day of _____, _____.

My Commission Expires: _____

_____
Notary Public

FLW BC 8.97

Appendix B(8): National Trust for Historic Preservation, Preservation and Conservation Easement, 1991.

THIS PRESERVATION AND CONSERVATION EASEMENT, made this 26 day of July, 1991, by and between Rex Lee Shoemaker and Barbara Ellen Shoemaker, husband and wife, 199 North High Street, Chillicothe, Ohio 45601 ("Grantor") and the National Trust for Historic Preservation in the United States, a congressionally chartered non-profit corporation with offices at 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036, ("Grantee").

W I T N E S S E T H:

WHEREAS, the Grantee is organized as a nonprofit corporation by an Act of Congress of the United States of October 26, 1949, Pub. L. No. 81-408, as amended, and is a qualifying recipient of qualified conservation and preservation deeds under the laws of the State of Ohio and the United States of America;

WHEREAS, the Grantor is owner in fee simple of certain real property at 199 North High Street, Chillicothe, Ross County, Ohio, which property is also sometimes referred to as the General Samuel H. Hurst House and the Mary Anne Schlegel Home (hereinafter "the Premises"), said Premises including a residential structure (hereinafter "the Residential Building") and is more particularly described below;

WHEREAS, the Premises are deemed eligible for listing in the National Register of Historic Places;

WHEREAS, the Grantor and Grantee recognize the historical, cultural, and aesthetic value and significance of the Premises, and have the common purpose of conserving and preserving the aforesaid value and significance of the Premises;

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Premises will assist in preserving and maintaining the aforesaid value and significance of the Premises;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept a preservation and conservation easement on the Premises, pursuant to Ohio law.

NOW, THEREFORE, In consideration of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby irrevocably grant and convey unto the Grantee a preservation

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and conservation easement in gross in perpetuity (which easement is more particularly described below and is hereinafter "the Easement") in and to those Premises, and the exterior and a portion of the interior surfaces of the Residential Building located thereon, owned by the Grantor, but specifically excluding the existing carriage house located thereon, and more particularly described as:

Situate in the City of Chillicothe, County of Ross and State of Ohio, bounded and described as follows:

A part of Out Lot No. 47 in the City of Chillicothe, Ohio as laid down on the recorded plat of said City: Beginning at the NW corner of the lot formerly owned by Lewis Heiser, in the E. line of High St. in said City; and running thence with the N line of said Heiser lot N 75 deg E 176' to the W. line of a 12' alley; thence N 15 deg 30' W 87' with the W line of said alley to a corner post; thence S 75 deg W 176' with a line parallel with the S. line of Chestnut Street, said line being S 75 deg W 56.5' of said Street line, to a point in the E. line of High Street; thence S 15 deg. E 87' with the E. line of High Street to the place of beginning. Said above described premises being known as 199 North High Street in said city. Being the same premises conveyed to the National Trust for Historic Preservation in the United States by Certificate of Transfer from the Estate of Mary Anne Schlegel, deceased, dated 16 February 1990, and recorded in Volume 518, Page 540 of the Ross County, Ohio, Deed Records.

LAST DEED REFERENCE: Being the same lands and premises conveyed by Grantee herein to Grantor herein recorded immediately prior hereto.

The Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon said Premises of the Grantor, and to that end Grantor covenants on behalf of itself, its successors and assigns, with Grantee, its successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity, with the land:

1. Description of Facades, Interior, and Grounds. In order to make more certain the full extent of Grantor's obligations and the restrictions on the Premises (including the Residential Building but specifically excluding the existing carriage house), and in order to document the exterior and interior nature of the Residential Building as

of the date hereof, attached hereto as Exhibit A and incorporated herein by this reference is a set of photographs depicting the exterior surfaces of the Residential Building and a portion of the interior surfaces of the Residential Building and the surrounding property. It is stipulated by and between Grantor and Grantee that the photographs shown in Exhibit A depict the exterior and interior nature of the Residential Building and the surrounding property as of the date hereof and as of the date this instrument is first recorded in the land records of Ross County, Ohio.

2. Grantor's Covenants. In furtherance of the easement herein granted, Grantor undertakes, of itself, to do (and to refrain from doing as the case may be) upon the Premises each of the following covenants, which contribute to the public purpose of significantly protecting and preserving the Premises:

(a) The Residential Building on the Premises shall not be demolished, removed or razed except under circumstances in which it is destroyed or damaged beyond economical repair by fire or other catastrophe. Economical repair shall be defined as that repair covered by hazard insurance carried by the Owner. If a portion of the Residential Building is destroyed or damaged, Grantor shall restore such portion to its appearance at time of purchase with like and in kind materials commercially available within Chillicothe, Ohio, or the immediate surrounding area.

(b) Without the express written consent of the Grantee the Grantor shall not make any changes to the exterior of the Residential Building nor to the front stair hall, window and door trim, built-in case work, parquet flooring, fireplaces and fireplace mantels, all faux and fancy painting on woodwork and on stone fireplace mantels, and light fixtures in front stair hall and dining room.

Grantor shall not erect, construct or place anything on the Premises without the prior written consent of the Grantee, except for such vehicles and other items of movable personal property reasonably or customarily associated with single family residential use.

Nothing herein shall be construed as applicable to ordinary maintenance and care.

Grantor's request for permission to make changes shall be made in writing and shall be answered by the Grantee within twenty-one (21) days of receipt. Failure of the Grantee to respond within such time will be assumed to be a grant of permission.

(c) Grantor agrees to maintain the Residential Building, all accessory structures, and the Premises in a good, sound state of repair and condition.

(d) No signs, billboards or advertising shall be placed on the Premises except as may be allowed by the zoning and sign ordinances of the City of Chillicothe.

(e) The Premises and the Residential Building shall be used for single family residential purposes only and shall not be subdivided in law or in fact without the written consent of the Grantee.

3. Grantee's Covenants.

(a) Grantee may, at its discretion and without prior notice to Grantor, convey, assign or transfer this easement to a unit of federal, state or local government or to a similar local, state or national organization whose purposes, inter alia, are to promote preservation or conservation of historical, cultural, or architectural resources, and which at the time of the conveyance, assignment or transfer is a qualified organization under Section 170(h)(3) of the Internal Revenue Code, provided that any such conveyance, assignment or transfer requires that the preservation and conservation purposes for which the Easement was granted will continue to be carried out.

(b) Grantee shall exercise reasonable judgment and care in performing its obligations and exercising its rights under the terms of the Easement.

4. Inspection. Grantor hereby agrees that representatives of Grantee shall be permitted at all reasonable times upon fourteen (14) days' written notice, to enter upon and inspect the Premises. Grantor agrees that representatives of Grantee shall be permitted to enter and inspect the interior of the Residential Building; inspection of the interiors will not, in the absence of evidence of deterioration, take place more often than annually, and may involve reasonable testing of interior structural conditions.

5. Insurance. The Grantor shall keep the Premises insured for the full fair market value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage of a type and in such amounts as would normally be carried on a property such as the Premises.

6. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be mailed postage prepaid by registered or certified mail with return receipt requested, or hand delivered; if to Grantor, then at 199 North High Street, Chillicothe, Ohio 45601, and if to Grantee, then to Office of General Counsel, National Trust for Historic Preservation, 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036. Each party may change its address set forth herein by a notice to such effect to the other party. Any notice, consent, approval, agreement, or amendment permitted or required of Grantee under the Easement may be given by any duly authorized representative of the Grantee. Response to any request by notice shall be made within twenty-one (21) days of receipt.

7. Interpretation and Enforcement. The following provisions shall govern the interpretation and enforcement of the Easement.

(a) This instrument is executed in three (3) counterparts. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided above, each counterpart shall constitute the agreement of the parties. Immediately after execution hereof, one counterpart shall be held by each of Grantor and Grantee, and one counterpart shall be recorded and may be returned to Grantee.

(b) Except as expressly provided herein, nothing contained in this instrument grants, nor shall be interpreted to grant, to the public any right to enter on the Premises.

(c) Any violation by either party of this easement will entitle the other party to enjoin such violation or to seek such legal and other equitable remedies necessary to enforce the obligations hereunder. In the event suit is filed, the prevailing party may recover all reasonable costs and expenses incurred, including attorneys' fees.

IN WITNESS WHEREOF, on the date first shown above, Grantor has caused this Preservation and Conservation Easement to be executed, sealed and delivered; and Grantee has caused this instrument to be accepted, sealed and executed in its corporate name by its President and attested by its Assistant Secretary.

Witness

Witness

GRANTOR:

GRANTEE: The National Trust for Historic Preservation in the United States

Witness

By: President
J. Jackson Walter

Witness

Attest: Assistant Secretary
Stefan Nagel

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State of Ohio)
) ss.
County of Ross)

Before me, a Notary Public in and for said County and State, personally appeared the above named Rex Lee Shoemaker and Barbara Ellen Shoemaker who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal at Chillicothe, Ohio this 16 day of July, 1991.

Marion B. Hoop
My Commission expires 12/25/95

Washington, D.C.) ss.

Be It Remembered, that on this 24 day of July, 1991, before me, the Subscriber, a Notary Public for said District of Columbia, personally came Barbara Walke, President, and Stan Dale, Assistant Secretary, of the Grantee in the foregoing Deed, and acknowledged the signing thereof to be their and its voluntary act and deed, pursuant to authority of its board of directors (tructees).

In Testimony Whereof, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

Thomas McLeod Mupo
My Commission Expires: June 30, 1996

This instrument was prepared by Stefan Nagel, Assistant General Counsel, National Trust for Historic Preservation in the United States, 1785 Massachusetts Avenue, N.W., Washington, D.C. 20036

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EXHIBIT A

Description of Facades, Interior and Surrounding Property

Preservation and Conservation Easement of Rex Lee Shoemaker and Barbara Ellen Shoemaker to National Trust for Historic Preservation in the United States

The photographic attachments referred to in the attached Easement Deed as Exhibit A, and incorporated therein by reference, are not recordable. Accordingly, one counterpart of this Deed and its photographic attachments is available for public inspection upon reasonable request at offices of Grantee, Washington, D.C. One additional counterpart of the Deed and its photographic attachments has been delivered to Grantor. The recorded Deed, without photographic attachments, shall be returned to Grantee. In the event of any disparity between the Deed counterparts (excluding photographic attachments, which are not recordable), the recorded Deed counterpart shall govern. In the event of any disparity between the photographic attachments, the counterpart of the photographic attachments held by Grantee shall govern.

TOTAL P.12

Appendix B(9): Utah Heritage Foundation, Grant of Preservation Easement, 1997.

When recorded, mail to:
Utah Heritage Foundation
P.O. Box 28
Salt Lake City, Utah 84110-0028

GRANT OF PRESERVATION EASEMENT

This preservation easement is granted this _____ day of _____, 1997 by [name] (hereinafter collectively referred to as Grantor), in favor of the Utah Heritage Foundation, a Utah non-profit corporation (hereinafter referred to as Grantee).

1. In consideration of $10.00, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor does hereby grant and convey unto the Grantee, its successors and assigns, a preservation easement in the real property and improvements thereon of the Grantor (the "Property") located in [county], State of Utah, more particularly described as follows:

[property description] Beginning at the NW corner of Lot 3, Block 55, Plat A of Spring City Survey;
E 107.25 feet; S 107.25 feet; W 107.25 feet, N 107.25 feet to the point of beginning

2. This preservation easement, intended to be of the type described in Utah Code Ann. 63-18a-1 et seq (1953 as amended), is granted in perpetuity and the burdens imposed hereby upon the Property are deemed to run with the land and be binding upon the Grantor's successors in interest to the Property. Grantor's estate is to be the servient estate; Grantee's estate is to be the dominant estate. Grantor agrees that this preservation easement gives rise to a property right vested in Grantee immediately upon its granting with a fair market value that is equal to the difference between the current fair market value of the Property immediately before and after its granting

3. Grantee agrees to hold this preservation easement exclusively for conservation purposes. Any transfer by Grantee shall be conditioned upon the transferee being qualified in Grantee's opinion and agreeing to hold this preservation easement exclusively for conservation purposes and continuing the conservation purpose which this preservation easement was originally intended to carry out. "Qualified" means qualified within the meaning of the applicable provisions and regulations of the Internal Revenue Service.

4. The exterior surfaces of improvements (including, without limitation, the exterior walls, roofs and chimneys) on the Property are those depicted in the photographs attached hereto and incorporated herein as Exhibit A, being essentially those exterior surfaces of improvements on the Property which are visible from the public streets abutting the Property but in the event of uncertainty the exterior surfaces of improvements visible in the photographs of Exhibit A shall control. Grantor agrees that the photographs in Exhibit A are an accurate representation of the Property at the time of the granting of this preservation easement. Without the prior written permission of the Grantee, its successor or assigns, no construction, alteration, remodeling, demolition, or any other thing shall be undertaken or permitted to be undertaken on the Property which would, in Grantee's opinion, affect either the exterior surfaces herein described, or increase the height, or alter the exterior facade (including, without limitation, exterior walls, roofs and chimneys) or the appearance of the building(s) located thereon, insofar as they are depicted in the photographs attached hereto and incorporated herein as Exhibit A or which would, in Grantee's opinion, adversely affect the structural soundness of the Property; provided, however, that the reconstruction, repair, repainting or refinishing of presently existing parts or elements of the lot and improvements subject to this preservation easement, damage to which shall at any time hereafter have resulted from casualty loss, deterioration, or wear and tear, shall be permitted without the prior approval of Grantee (provided that such reconstruction, repair, repainting or refinishing is performed in a manner which will not alter the appearance of those elements of the building(s) subject to this easement as they are of this date). Grantor, in cleaning or painting the exterior of the building(s) on the Property, agrees to obtain the prior written permission of Grantee, its successors or assigns, as to the cleaning process(es) to be employed or the quality or color

of paint to be used if significantly different from that presently existing In all events, Grantor agrees to refrain from sandblasting or other forms of abrasive cleaning

5. Grantor agrees to complete the rehabilitation work on the Property as stated in the list attached hereto and incorporated herein as Exhibit B within one year of the granting of this preservation easement.

6. Grantor agrees at all times to maintain the lot and structures herein described, and the exterior appearance of the Property (including, without limitation, the exterior walls, roofs, and chimneys of the building(s) located thereon) in a good and sound state of repair, subject to the casualty loss provisions in paragraph 7 below, and except the Grantee may, in its sole discretion, waive any portion of this requirement.

7. No extension of the existing structures that are visible from the public streets which abut the Property or erection of additional structures anywhere on the Property shall be permitted, except that in the event of damage resulting from casualty loss to an extent rendering repair or reconstruction of the existing improvements impracticable in Grantee's opinion, erection of a comparable structure, the design of which shall be subject to prior approval by Grantee, is successor or assigns, shall be permitted.

8. No freestanding structures or outbuildings shall be constructed on the Property without the prior written permission of Grantee, its successors or assigns.

9. No utility or transmission lines, except those required for the existing structure and use may be created on said land.

10. No dumping of ashes, sawdust, bark, trash, rubbish, or any other unsightly or offensive materials which are visible from public roads or streets shall be permitted on the premises.

11. Grantor confirms its agreement that representatives of Grantee, its successors or assigns, shall be permitted at all reasonable times to inspect the premises. Inspections will normally take place from the street, however, Grantor agrees that representatives of Grantee, its successor or assigns, shall be permitted to enter and inspect the interior of the improvements on the Property to insure maintenance of structural soundness; inspection of the interior will be at a time mutually agreed upon by Grantor and Grantee, its successors or assigns, and Grantor covenants not to unreasonably withhold its consent in determining a date and time for such inspection.

12. Grantor agrees to pay any and all taxes assessed against the Property, including but not limited to ad valorem taxes for which Grantee might otherwise be liable.

13. Grantor and Grantee realize that existing or future law may allow a judicial proceeding to be commenced to terminate this preservation easement should a sudden unexpected change in the conditions surrounding the Property make impossible or impractical, in Grantee's opinion, the continued use of the Property for conservation purposes. If this preservation easement is ever terminated by a judicial proceeding for this or any other reason, and if the Property or any interest in the Property is thereafter sold or exchanged (including acquisition by eminent domain) or put to any use that would be a breach of this preservation easement were it still in force, Grantor agrees that Grantee shall be entitled to a proportionate share of Grantor's proceeds from such sale, exchange or use The value of Grantee's interest in the Property shall be determined by negotiation or independent appraisal at the discretion of Grantee.

14. Grantor will, at Grantor's expense, cure any breach or violation of the terms of this preservation easement within three days after receiving notice or knowledge thereof, or within any such longer period as may be reasonably required to cure such breach or violation. In the event Grantor fails so to cure, Grantor will pay the costs and expenses, including reasonable attorneys' fees incurred by Grantee, for any action reasonably necessary to enforce the terms hereof, including the curing of any breach or violation of the terms of this preservation easement.

15. Upon any breach of the terms of this preservation easement by Grantor, Grantee shall, in addition to the rights conferred on Grantee by paragraph 14 above, have the following rights which shall be cumulative and shall be in addition to any other rights and remedies available to Grantee, at law or in equity; (1) to require restoration of the Property to its condition at the time of the granting of this preservation easement or to the enhanced condition of the Property as a result of the requirements for repair, restoration or maintenance contained in this preservation easement, (2) to enjoin any further breach or enforce any covenant hereof by action in an appropriate court of competent jurisdiction; (3) to recover damages for any breach of the conditions hereof or for the purpose of accomplishing the restoration of the real property or improvements thereon by Grantee, and/or (4) to enter upon the Property, correct any such violation, and hold Grantor their successors and/or assigns, liable for the cost thereof, any of which amounts so expended to correct said violation shall accrue interest at the rate of one and one-half percent (1 1/2%) per month until paid. Any amounts so expended by Grantee shall constitute a lien upon the property, which lien may be foreclosed in the manner provided by the laws of the State of Utah, and Grantor shall be liable for any costs and expenses incurred in connection therewith, including a reasonable attorney's fee.

16. It is further provided by the parties hereto that no failure on the part of the Grantee to enforce any provisions herein, nor any waiver of any right hereunder by the Grantee shall discharge or invalidate such provision, nor shall same operate to affect the right of the Grantee to enforce the terms and conditions hereof in the event of a subsequent breach or default.

17. Grantor shall insert a reference to this preservation easement in any subsequent deed, sales or purchase contract, financing instrument, or other legal instrument by which Grantor is divested of either the fee simple title to or equitable title, a possessory ownership of interest in the Property, or any part thereof. Said reference shall be substantially as follows: "The property conveyed herein is subject to a Preservation Easement which controls the ability of any owner or other possessor of the Property to alter its historic character and requires that the improvements thereon be maintained. This easement is recorded _____, as Entry No. _____, in Book _____, at Page _____, in the office of the [county] Recorder, State of Utah."

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands this _____ day of _____, 1997.

GRANTOR.

_____

[name]

Appendix B(10): Preservation Resource Center of New Orleans, Act of Donation of Perpetual Real Rights, 1986.

ACT OF DONATION OF PERPETUAL REAL RIGHTS BY _____ TO PRESERVATION ALLIANCE OF NEW ORLEANS d/b/a PRESERVATION RESOURCE CENTER OF NEW ORLEANS	* * * * * * * * * * * *	UNITED STATES OF AMERICA STATE OF LOUISIANA PARISH OF ORLEANS

BE IT KNOWN, that on this _____ day of _____, 1986,

BEFORE ME, _____, a Notary Public, duly commissioned and qualified in and for the Parish of Orleans, State of Louisiana, therein residing, and in the presence of the hereinafter named and undersigned witnesses:

PERSONALLY CAME AND APPEARED:

_____
(hereinafter referred to as "Owner");

and

PRESERVATION ALLIANCE OF NEW ORLEANS, d/b/a PRESERVATION RESOURCE CENTER OF NEW ORLEANS (hereinafter referred to as "Donee"), a Louisiana non-profit corporation organized under §1950, Title 12, Chapter II of the Louisiana Revised Statutes (R.S. 12:1950), before Patrick D. Breeden, Notary Public, May 31, 1974, and recorded in the Office of the Louisiana Secretary of State on June 20, 1974, the date that corporate existence began, herein represented by its Executive Director, duly authorized to act for said Donee;

WHO HEREBY DECLARE, stipulate, covenant and agree as follows:

WITNESSETH:

WHEREAS, Owner possesses full and complete ownership of that certain real property and the exterior ownership of surfaces of improvements located thereon (hereinafter referred to as the "Property") known as _____, and more particularly described below; and

WHEREAS, Donee is a non-profit Corporation, duly established under the laws of Louisiana, operated exclusively for charitable, educational and historical purposes in order to facilitate public participation in the preservation of sites, buildings, and objects significant in the history and culture of the City of New Orleans, and in furtherance of such purposes is authorized under Section 1252 of Title 9 of the Louisiana Revised Statutes (R.S. 9:1252(A)) to accept grants of perpetual real rights burdening whole or any part of immovable property, including, but not limited to, the facade, exterior, roof or front of any improvements thereof, in order to protect property significant to such history and culture;

WHEREAS, Owner warrants that there exists no servitude, lease, mortgage, lien or other interest affecting or encumbering the Property which would prohibit, prime, interfere or otherwise limit the effectiveness of any of the rights and benefits herein created by this Act of Donation and granted to Donee, except that certain mortgage in favor of _____; and

WHEREAS, the Property has historical and/or architectural merit and contributes significantly to the architectural and cultural heritage and visual beauty of the City of New Orleans and should be preserved; and

WHEREAS, the scenic, open space and architectural facade servitude donated by the Owner to Donee by this Act of Donation of Perpetual Real Rights is

created herein for charitable, educational and historical purposes and will assist in preserving and maintaining the Property and the architectural ensemble of the City of New Orleans; and

WHEREAS, to this end, Owner desires to donate, grant, transfer and convey to Donee, and Donee desires to accept, a scenic, open space and architectural facade servitude, as a perpetual real right in and to said Property as hereinafter described;

NOW, THEREFORE, pursuant to R.S. 9:1252, as amended, and in accordance with applicable provisions of the Internal Revenue Code of 1954, as amended, Owner does hereby create, establish, grant, donate, convey and transfer to Donee a perpetual real right (which perpetual real right is more particularly described below) in and to the Property and the exterior surfaces of improvements located thereon, all owned by the Owner, and more particularly described as follows:

[Insert property description]

The perpetual real right created and donated herein, to be of the nature and character further expressed, shall constitute a binding servitude upon the Property of Owner, and to that end Owner covenants on behalf of Owner, his heirs, successors, assigns, and all subsequent owners of the Property, with Donee, its

successors and assigns, such covenants being deemed to run as a binding servitude, in perpetuity with the land, to do (and refrain from doing) upon the Property each of the following terms and stipulations, which contribute to the public purpose in that they aid significantly in the preservation of historic property:

1. The exterior surfaces of improvements (including, without limitation, the exterior walls, roofs and chimneys) on the Property are those depicted in the photographs attached hereto and incorporated herein as Exhibits ____ and ____, being essentially those exterior surfaces of improvements on the aforesaid Property which are visible from _____ Street, but in the event of uncertainty, the exterior surfaces of improvements visible in the photographs in Exhibits ____ and ____ shall control.

2. Owner agrees at all times to preserve and maintain the Property, those portions of the exterior surfaces of improvements (including, without limitation, the exterior roof, walls, exterior facade(s) and chimneys) on the Property, and the foundations and structural support of the Building located on the Property (hereinafter referred to as the "Building") in a good and sound state of repair.

3. Without the express written permission of the Donee, its successors or assigns, signed by a duly authorized representative thereof, based upon written plans submitted by Owner to Donee, no construction, change, alteration, remodeling, renovation or any other thing shall be undertaken by Owner or permitted to be undertaken in or to the Property or Building thereon, which would affect either the height, or alter the exterior facade (including, without limitation, exterior walls, roofs and chimneys) or the appearance of the Building located

thereon, insofar as same is depicted in the photographs attached hereto and incorporated herein as Exhibits ____ and ____, or which would adversely affect the structural soundness of the Building, provided, however, that the reconstruction, repair, repainting or refinishing of presently existing parts or elements of the lot and improvements subject to the perpetual real right created and granted herein, damage to which has resulted from casualty loss, deterioration, or wear and tear, shall be permitted without the prior written approval of Donee, provided that such reconstruction, repair, repainting or refinishing is performed in a manner which will not alter the appearance of those elements of the Building subject to this perpetual real right as they are as of even date.

4. In all events, Owner, in painting the exterior of the Building on the Property, agrees to obtain the prior written consent of Donee, its successors or assigns, signed by a duly authorized representative thereof, as to the quality and color of paint to be used if significantly different from that presently existing.

5. All work for preserving, maintaining, altering or renovating the Building shall be performed and conducted by Owner at Owner's sole cost and expense. Should demolition of the Building occur, in whole or in part, or in the event either reconstruction or change, alteration or renovation is performed without the prior written approval of Donee as required herein, Donee shall have the right to require any changes to such work as Donee, in its sole discretion, deems proper. All such construction or changes shall be commenced at Owner's sole cost and expense within sixty (60) days of Donee's written notice to Owner and pursued with diligence until completion, or Donee may compel curative work to be performed at Owner's sole cost and expense, in addition to all rights and remedies provided herein or by law.

6. For the purpose of maintaining and preserving the exterior surfaces and structure of the Building in their condition at the time of this Act of Donation, Donee shall have the right, in Donee's sole discretion, to require the Owner, at Owner's expense, to perform and conduct such repairs and maintenance work reasonably deemed necessary in order to preserve, maintain or repair such Building. All such work shall be commenced, at Owner's sole cost and expense, no later than sixty (60) days after Owner's receipt of Donee's written notice, and shall be pursued with due diligence until completion. In the event that said repairs and maintenance work are not completed by Owner within a reasonable time thereafter, Donee may (a) cause such work to be performed at Owner's sole cost and expense, (b) proceed against Owner by summary process in a court of competent jurisdiction to compel such repairs and maintenance, and/or (c) exercise all other rights and remedies provided herein or by law. Whenever the Donee causes work to be performed or causes materials to be furnished to the Property or Building thereon for any purpose authorized under this Paragraph 6 or elsewhere in this Act of Donation, Donee shall obtain a written bid for such work or materials. The parties herein understand and agree that any person performing work or furnishing material pursuant to this Paragraph 6 shall have a valid and enforceable lien on the Property.

7. All rights granted to Donee herein, including such rights which Donee may exercise pursuant to Paragraph 6 above, shall be exercised in a reasonable and prudent manner and with least possible cost to Owner, calculated so as not to interfere with Owner's reasonable use and enjoyment of the Property while accomplishing the purposes of this Act of Donation.

8. Owner hereby consents and agrees that representatives of Donee, its successors or assigns, shall be permitted to inspect the Property including the Building thereon at all reasonable times upon forty-eight (48) hours prior notice given to Donee. Inspections will normally take place from the street; however, Owner consents and agrees that representatives of Donee, its successors or assigns, shall be permitted to enter and inspect the interior of the Building and other improvements on the Property for the purpose of verifying the maintenance of the structural condition and soundness of such Building and improvements and protecting the rights of Donee herein. Inspection of the interior will be made at a time mutually agreed upon by the Owner and Donee, its successors or assigns, and Owner covenants not to withhold unreasonably his consent in establishing a date and time for such inspection. At least once every five (5) years, Owner, at Owner's cost, shall provide to Donee an inspection report of the condition of those portions of the Property, and Building thereon, donated herein, such inspection report to be prepared by a competent licensed structural engineer, or competent licensed roofer, or both, whichever is applicable. Donee shall have the right to require that the Owner cause an inspection of the Building from time to time, upon Donee's reasonable belief that a special inspection is necessary to accomplish the purposes of this Act of Donation, including, but not limited to, evidence of deterioration to the Building. Within forty-five (45) days after Donee has notified the Owner of the need for a special inspection, Owner shall deliver to Donee an inspection report prepared by a competent person as above-described. In the event that the Owner fails to provide such inspection reports as are required by this Paragraph (8), Donee may, at the Owner's sole cost and expense, employ for the account of Owner the

services of a competent licensed structural engineer and/or a competent licensed roofer and shall submit to Owner all bills and other evidence of fees incurred or paid for such services, which shall be promptly paid by Owner.

9. In the event of a fire or other casualty which results in damage to or loss or destruction of a part of the Building, Owner agrees promptly to repair, renovate or reconstruct the damaged or destroyed parts of the Property with the prior consent and approval of Donee as otherwise provided herein.

In the event of a total loss or destruction of the Property, Owner shall promptly remove all debris and trash and properly maintain the Property. Owner must obtain Donee's written approval of and prior consent to any construction or reconstruction of the Property, as provided herein.

10. Owner agrees at all times to carry and maintain such adequate amounts of comprehensive general bodily and property damage liability insurance, property fire, vandalism, malicious mischief and extended coverages insurance, general construction liability insurance, and such other standard insurance coverages as may be reasonably required by Donee. The policies of insurance required to be obtained pursuant to this Paragraph (10) shall name Donee as a co-insured as its interest appears herein. If the Property is uninsurable, Owner shall provide such other protection which in the reasonable discretion of Donee is necessary and advisable for the maintenance and preservation of the Property, at Owner's sole cost and expense. Donee shall be provided with copies of said policies. Donee shall have the right to provide such insurance at Owner's cost and expense and lien the Property for the cost of the premiums in the event Owner fails to obtain the required policies.

11. Owner shall provide to Donee written notice of the Owner's sale or other disposition of the Property, or any part thereof, at the time of such sale or other disposition or as soon as practicable thereafter but in no event more than seven (7) days following such sale. Owner shall insert in any agreement to sell the Property (or any part thereof) or in any act of sale of the Property (or any part thereof) a provision expressly setting forth that the Property and the purchaser thereof are subject to and bound by this Act of Donation of Perpetual Real Rights and all covenants, obligations, agreements and restrictions herein. The written notice required to be made by Owner under this Paragraph (11) shall contain the name and address of any purchaser and the name and address of a local agent and attorney-in-fact for an absentee purchaser.

12. In the event the Property is subdivided into condominium units, time-sharing units, or other forms of multiple ownership, Owner and his heirs, successors, vendees or assigns agree to appoint and maintain a single agent and attorney-in-fact residing in the Parish of New Orleans with whom Donee shall be authorized to deal exclusively in order to enforce Donee's rights under this Act of Donation.

13. Owner agrees to and does herewith grant, transfer and convey to Donee all "development rights" applicable to the Property as provided for in the City of New Orleans Comprehensive Zoning Ordinance as well as all privileges to transfer, sell or otherwise trade or bargain for such "development rights", in the name of Owner but for the benefit of Donee. Owner agrees to cooperate with Donee as necessary in any such transfer, with all costs of such transfer to be paid by Donee and all benefits therefrom accruing to Donee.

14. No signs, markers, notices, billboards, advertisements, plaques, decorations or other items shall be displayed, erected, mounted, or placed on the exterior surfaces of the Building or on the Property without the prior express written consent of Donee, which consent Donee may withhold in its reasonable and sole discretion.

15. The rights, interests, obligations and benefits herein constitute, individually and collectively, a perpetual real right which vests immediately in Donee upon the execution of this Act and shall be binding on Owner, his heirs, successors and assigns, and on all subsequent owners of the Property. Grantor agrees and acknowledges that the perpetual real right granted herein to Donee shall have a fair market value at all times that is at least equal to the proportionate value that the perpetual real right as of the date of donation bears to the total value of the Property as of the date of donation, and that such proportionate value of Donee's perpetual real rights shall remain constant and recognized henceforth and forevermore. Such proportionate value is hereby agreed by the parties hereto to be _____ (___%) percent. Grantor further agrees and acknowledges that in the event of a change in conditions which would give rise to the judicial extinguishment of the restrictions and obligations imposed hereunder with respect to the Property, the Donee, on a subsequent sale, exchange, or involuntary conversion of the Property shall be entitled to a portion of the proceeds of such sale, exchange, or involuntary conversion at least equal to the constant proportionate value of the perpetual real rights as provided herein.

16. Donee agrees and binds itself to use all of the proceeds it receives from a sale, exchange, or involuntary conversion of the Property, resulting from a

judicial proceeding which extinguishes Donee's real rights, in a manner consistent with the conservation purposes of the original donation.

The parties hereto contemplate that the perpetual real right donated herein is a perpetual conservation restriction within the meaning of Sections 1.170A-13T and 1.170A-14 of the Regulations of the Department of Treasury. (The "Regulations"), and, for Federal income tax purposes, the donation of this perpetual real right is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. It is further contemplated that this Act of Donation will serve the following conservation purposes:

(a) The scenic enjoyment of the general public and significant public benefit, based upon the following factors: (1) The compatability of the land use with other land in the vicinity; (2) The degree of contrast and variety provided by the visual scene; (3) Relief from urban closeness; (4) The harmonious variety of shapes and textures; (5) The degree to which the land use maintains the scale and character of the urban landscape to preserve visual enjoyment, and sunlight for the surrounding area.

(b) The donation of this perpetual real right will preserve the scenic enjoyment by the general public of the Property through visual access to the Property by the general public.

(c) [Optional] The preservation of land areas for outdoor recreation by, or the education of, the general public.

(d) [Optional] The protection of a significant natural habitat in which a fish, wildlife, or plant community, or similar echo system normally lives.

(e) [Optional] The preservation of open space where such preservation is pursuant to a clearly delineated federal, state or local governmental policy and will yield a significant public benefit, or is for the scenic enjoyment of the general public and will yield a significant public benefit, based upon the following factors: (1) The compatability of the land use with other land in the vicinity; (2) The degree of contrast and variety provided by the visual scene; (3) The openness of the land (which is a more significant factor in an urban or densely populated setting); (4) Relief from urban closeness; (5) The harmonious variety of shapes and textures; (6) The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area.

(f) [Optional] The donation of this perpetual real right will preserve the scenic enjoyment by the general public of the Property through visual access to or across the Property by the general public.

(g) [Optional] The donation of this perpetual real right to the extent it is made for the preservation of open space will yield a significant public benefit, taking into account the uniqueness of the Property to the area; the intensity of land development in the vicinity of the Property (both existing development and foreseeable trends of development); the consistency of the proposed open space use with public programs for conservation in the region; the

consistency of the proposed open space use with existing private conservation programs in the area; the likelihood that development of the Property would lead to or contribute to degradation of the scenic, natural, or historic character of the area; the opportunity for the general public to use the Property or to appreciate its scenic values; the importance of the Property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area; the likelihood that the Donee will acquire equally desirable and valuable substitute property or property rights; the cost to the Donee of enforcing the terms of the conservation restriction; the population density in the area of the Property; and the consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

17. In the event that the Donee shall at any time in the future acquire full and complete ownership of the Property, Donee for itself, its successors and assigns, covenants and agrees, in the event of subsequent conveyances of such Property to another, to create a new perpetual real right containing the same restrictions and provisions as are contained herein, and either to retain such perpetual real right in itself or to convey such real right to a similar local or national organization whose purposes, inter alia, are to promote historic preservation.

18. Any right or obligation imposed upon the Owner of the Property by the perpetual real rights created hereunder, including any covenant, restriction

or affirmative obligation herein, shall be enforceable by the Donee, following reasonable notice to Owner, through judicial proceeding by actions for temporary and/or permanent injunction to enjoin such violations and to require the performance of all obligations imposed on Owner by this Act of Donation, or, in the alternative, representatives of Donee, its successors or assigns, may enter upon the Property, correct any violation, and hold Owner and Owner's heirs, successors and assigns, responsible for the cost thereof in an action for damages brought by Donee. Donee, its successors or assigns, shall have available all other legal and equitable remedies permitted by law to enforce Owner's obligations hereunder. In the event Owner is found to have violated any of his obligations arising from the creation of the perpetual real rights herein, Owner agrees to indemnify and hold harmless Donee from all reasonable attorneys fees, expert witness charges, and other charges, fees and costs paid or incurred by Donee in the enforcement of any of its rights granted herein.

19. All other rights of ownership that do not conflict with the exercise of Donee's rights hereunder shall be and are hereby retained by Owner. Owner shall have the right to use the Property and the Building for whatever lawful purpose Owner deems necessary, except as to rights herein granted. Owner agrees not to perform any work or make any use of the Property which would adversely affect Donee's full exercise and enjoyment of the perpetual real rights created herein. Owner agrees to pay all real estate taxes and real property assessments on the Property and agrees to hold Donee harmless in connection therewith.

20. Donee, its successors or assigns, will do and perform at Donee's cost all acts necessary to the prompt filing for registry of this Act of Donation of

Perpetual Real right in the conveyance records of the Parish of Orleans wherein the Property is located.

THUS DONE AND PASSED in my office at New Orleans, Louisiana, on the day, month and year herein first above written, in the presence of the two undersigned competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading of the whole.

WITNESSES:

_____ _____
OWNER

_____ _____
OWNER

PRESERVATION ALLIANCE OF
NEW ORLEANS, d/b/a
PRESERVATION RESOURCE CENTER

_____
By: EXECUTIVE DIRECTOR

_____
NOTARY PUBLIC

Ann#79
Rev. 11/86

Appendix C: Sample Façade Easement Inspection Forms

Appendix C(1): **National Trust for Historic Preservation, Easement Inspection Form.**

Appendix C(2): **Preservation Alliance for Greater Philadelphia, Master Easement Form.**

Appendix C(3): **Preservation North Carolina, Property Inspection Form.**

Appendix C(4): **Historic Annapolis Foundation, Easement Inspection Checklist.**

Appendix C(5): **Utah Heritage Foundation, Easement Inspection Report.**

Appendix C(6): **Landmark Preservation Council of Illinois, Easement Annual Inspection Form.**

EASEMENT INSPECTION FORM

Building/Site: [redacted]

Address: [redacted]

Current Owner: [redacted]

Address/Phone: [redacted]

Inspection Date: June 16, 1995

A.	Protected Features or Restrictions	Compliance
1.	No alteration, construction or remodeling of exterior surfaces of main residence or other buildings.	Yes
2.	No extension of existing structures or erection of additional structures.	Yes
3.	External appearance of outbuildings and residence must be maintained and preserved in good condition.	Yes
4.	No topographical changes shall occur upon the property, including no excavation or cutting of trees greater than 8 inches.	Yes
5.	No industrial or commercial activities, with the exception of farming, shall be carried out on the premises.	Yes
6.	The "historic core" of the property shall not be subdivided.	Yes

7. No utility transmission lines, except as required for existing building. Yes

8. No dumping of ashes or rubbish or materials which are visible from public roads. Yes

9. No signs, billboards or advertisements shall be displayed or placed upon the land except as otherwise noted in deed of easement. Yes

B. General Conditions and Potential Problem Areas:

Bowlingly is in excellent condition, and the owners continue to maintain and care for it. Recent tree work has been completed with excellent results. New pool enclosure works well. Shingles on guest cottage, and some slates on main residence need repair/replacement. Northwest corner of guest cottage exhibits mortar deterioration.

C. Inspector did meet with the property owner or his representative during the inspection visit.

D. Inspected by: [redacted]

Title/Affiliation: Associate General Counsel

Phone: (202) 673-4035

Date: June 16, 1995

E. I, _____, owner of the above property, agree that the description prepared by _____ is an accurate representation of the physical condition of the property as of

_____.

Appendix C(2): Preservation Alliance for Greater Philadelphia, Master Easement Form.

PRESERVATION ALLIANCE FOR GREATER PHILADELPHIA
MASTER EASEMENT FORM

Property Address _____ Property Name _____

Current Owner _____ Name/Position _____

Address _____ City _____ State ____ Zip ____

Telephone _____ Fax _____

Contact, if different from owner

Contact Name _____ Company _____

Street _____ City _____ State ____ Zip ____

Telephone _____ Fax _____

Facades Eased _____ Current Inspector _____ Date Inspected ____

Rating ____ Insur. Exp. ____ Donor Name _____ Acquisition Date ____

Deed Bk/Pg # _____ Mortgagee Name _____ Mortgage Date ____

Comments _____

INSPECTION INFORMATION

Priority 1 conditions require IMMEDIATE attention. Examples would include: an unsafe situation or structural concern; a condition causing active deterioration of the building; or an alteration not given prior approval by the Alliance.

Conditions listed under Priority 2 need attention in the near future, such as: conditions which require repairs but are not contributing to active deterioration; or minor, unapproved alterations.

Priority 3 conditions can be addressed following the remedy of Priority 1 and 2 concerns.

Information recorded should include: problem location; nature of condition; and recommended action. Bays are numbered from left to right.

North Facade

Priority One _____

Priority Two _____

Priority Three _____

East Facade

Priority One _____

PRESERVATION ALLIANCE FOR GREATER PHILADELPHIA
MASTER EASEMENT FORM

East Facade Continued

Property Address

Priority Two

Priority Three

South Facade

Priority One

Priority Two

Priority Three

West Facade

Priority One

Priority Two

Priority Three

Appendix C(3): Preservation North Carolina, Property Inspection Form.

The Historic Preservation Foundation of North Carolina, Inc.
Property Inspection Form

Date	Name of Property	Name of Owner	Owner Present?	Exterior?	Interior?	Inspected By:
			yes no	yes no	yes no	
Comments:						

Date	Name of Property	Name of Owner	Owner Present?	Exterior?	Interior?	Inspected By:
			yes no	yes no	yes no	
Comments:						

Date	Name of Property	Name of Owner	Owner Present?	Exterior?	Interior?	Inspected By:
			yes no	yes no	yes no	
Comments:						

Date	Name of Property	Name of Owner	Owner Present?	Exterior?	Interior?	Inspected By:
			yes no	yes no	yes no	
Comments:						

Date	Name of Property	Name of Owner	Owner Present?	Exterior?	Interior?	Inspected By:
			yes no	yes no	yes no	
Comments:						

Date	Name of Property	Name of Owner	Owner Present?	Exterior?	Interior?	Inspected By:
			yes no	yes no	yes no	
Comments:						

Appendix C(4): Historic Annapolis Foundation, Easement Inspection Checklist.

HISTORIC ANNAPOLIS FOUNDATION
EASEMENT INSPECTION CHECKLIST

Name of property: _____
Location: _____ _____
Date of visit: _____
Present owner: _____
Address: _____
Telephone: _____
Present occupant: _____
Address: _____
Telephone: _____
Present use: _____

I. SETTING / SITE

	YES	NO	NOT OBSERVED
1. Lot is well drained.	___	___	___
2. Lawn is generally cared for	___	___	___
3. Trees appear healthy (no insects or rot present)	___	___	___
4. Shrubs appear healthy	___	___	___
5. Are shrub or tree roots damaging the structure	___	___	___
6. Are there creepers or vines on the building	___	___	___
7. Rot present in wood fences, rails or posts	___	___	___
8. Wood fences properly aligned	___	___	___
9. Metal fences: dented or rusted	___	___	___
10. Fences are properly painted	___	___	___
11. Out buildings need repair	___	___	___
12. Roads / entrance need repair	___	___	___
13. Evidence of present or potential encroachment	___	___	___

Additional comments:

B. STRUCTURE

1. Type of wall structure:

2. Type of finish:

	YES	NO	NOT OBSERVED
3. Moisture problems present	---	---	---
4. Spalling present	---	---	---
5. Efflorescence present	---	---	---
6. Pointing needs repair	---	---	---
7. Cement pointing present	---	---	---
8. Walls are plumb	---	---	---
9. Walls show bulges	---	---	---
10. Cracks present: structural or shrinkage	---	---	---
11. Uneven settlement present	---	---	---
12. Has surface been abrasively cleaned	---	---	---
13. Surface has sealant on it	---	---	---
14. Signs of insect infiltration	---	---	---
15. Fungal attack present	---	---	---
16. Biological attack present	---	---	---
17. Is wood warped	---	---	---
18. Is wood split	---	---	---
19. Are nails loose or rusted	---	---	---
20. Are mitre joints closed	---	---	---

Additional comments:

	YES	NO	NOT OBSERVED
6. Excessive paint build up	---	---	---
7. Frame is plumb	---	---	---
8. Is frame wicking up water	---	---	---
9. Sill is intact	---	---	---
10. Storm doors present	---	---	---

Additional comments:

E. GUTTERS AND DOWNSPOUTS

1. Material:

	YES	NO	NOT OBSERVED
2. Sagging or ponding present	---	---	---
3. Gutter mounting brackets are secure	---	---	---
4. Are gutters filled with trash	---	---	---
5. Drainspouts are correctly attached	---	---	---
6. Feed out is securely attached and runs water away from building	---	---	—

Additional comments:

	YES	NO	NOT OBSERVED
5. condition of pointing is sound	---	---	---
6. Creosote stains present	---	---	---
7. Condensation caused problems present	—	---	---
8. Chimneys have been relined	---	---	---

Additional comments:

H. PORCHES AND OPEN BALCONIES

1. Materials: wood, concrete, stone, brick, other:

	YES	NO	NOT OBSERVED
2. Salt damage present	---	---	---
3. Support posts show signs of rot at the base	---	---	---
4. Are iron fittings corroded	---	---	---
5. Have steps been altered	---	---	---

Additional comments:

Appendix C(5): Utah Heritage Foundation, Easement Inspection Report.

Utah Heritage Foundation Easement Inspection Report

Address of Property:

Name of Property:

Easement Date:

Current Owner:

Mailing Address:

Date of Inspection:

Elements to Inspect on Each Elevation:

Foundation	Doorways	Dormers
Wall Material	Windows	Roofs
Trim	Cornices & Eaves	Chimneys
Porches/Stoops	Flashing & Downspouts	Other_____

Site Sketch:

Observations:

A: North Elevation
- Foundation
- Main wall
- Roof line

B: East Elevation

C: South Elevation

D: West Elevation

E: Roofs and Chimneys
- Gutters and downspouts
- Roof

F: Grounds, Outbuildings, Miscellaneous
- Front Yard
- Garage

G: General Condition of Building(s)

Recommendations:

Inspector met / did not meet with owner or owner's representative

Inspection was for easement compliance only and is not a warranty that any part of the building and appurtenances meet code requirements.

Prepared by____Miranda P. Burwell_____ Date___15 July 1998___

Signature_____

Owner Statement:

A. Construction, restoration, major maintenance or changes in use or ownership contemplated within the next twelve months.

B. Comments or questions on your easement or easement inspection procedures.

I/We, _____, owner(s) of the above property, agree that the description in this Utah Heritage Foundation Easement Report is an accurate representation of the physical condition of the property as of _____.

Owner's Signature_____ Date_____

Owner's Signature_____ Date_____

Please return one signed copy of this form to Utah Heritage Foundation in the enclosed envelope and retain the other copy for your records.

Utah Heritage Foundation/PO Box 28/SLC UT 84110-0028/(801)533-0858

Appendix C(6): Landmark Preservation Council of Illinois, Easement Annual Inspection Form.

Exterior

Landmark Preservation Council of Illinois

Easement Annual Inspection Form

Property Address: 1040 Aurora, Aurora

Propernick House

Michael Lambert - Monitor

Item No.	Date	Location and description of building material or element	Comments on completed Maintenance Work	Comments on required Maintenance Work	Inspection Date/Compliance 1997	1998	1999	2000
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

KEY: C = Maintenance Work Completed

N = Maintenance Work Not Completed/Noncompliance

O = No Change In Condition From Previous Year

P = Maintenance Work Partially Completed

Page 1

INTERNAL REVENUE CODE AUTHORITY FOR QUALIFIED CONSERVATION CONTRIBUTIONS

[Sec. 170(h)]

(h) QUALIFIED CONSERVATION CONTRIBUTION.—

(1) IN GENERAL.—For purposes of subsection (f)(3)(B)(iii), the term "qualified conservation contribution" means a contribution—

(A) of a qualified real property interest,

(B) to a qualified organization,

(C) exclusively for conservation purposes.

(2) QUALIFIED REAL PROPERTY INTEREST.—For purposes of this subsection, the term "qualified real property interest" means any of the following interests in real property:

(A) the entire interest of the donor other than a qualified mineral interest,

(B) a remainder interest, and

(C) a restriction (granted in perpetuity) on the use which may be made of the real property.

(3) QUALIFIED ORGANIZATION.—For purposes of paragraph (1), the term "qualified organization" means an organization which—

(A) is described in clause (v) or (vi) of subsection (b)(1)(A), or

(B) is described in section 501(c)(3) and—

(i) meets the requirements of section 509(a)(2), or

(ii) meets the requirements of section 509(a)(3) and is controlled by an organization described in subparagraph (A) or in clause (i) of this subparagraph.

(4) CONSERVATION PURPOSE DEFINED.—

(A) IN GENERAL.—For purposes of this subsection, the term "conservation purpose" means—

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation is—

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

(B) CERTIFIED HISTORIC STRUCTURE.—For purposes of subparagraph (A)(iv), the term "certified historic structure" means any building, structure, or land area which—

(i) is listed in the National Register, or

(ii) is located in a registered historic district (as defined in section 48(g)(3)(B)) and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

A building, structure, or land area satisfies the preceding sentence if it satisfies such sentence either at the time of the transfer or on the due date (including extensions) for filing the transferor's return under this chapter for the taxable year in which the transfer is made.

(5) EXCLUSIVELY FOR CONSERVATION PURPOSES.—For purposes of this subsection—

(A) CONSERVATION PURPOSE MUST BE PROTECTED.—A contribution shall not be treated as exclusively for conservation purposes unless the conservation purpose is protected in perpetuity.

(B) NO SURFACE MINING PERMITTED.—In the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(6) QUALIFIED MINERAL INTEREST.—For purposes of this subsection, the term "qualified mineral interest" means—

(A) subsurface oil, gas or other minerals, and

(B) the right to access such minerals.

Amendments:	Sec. as amended effective:
P.L. 97-448 § 102(i)(7)	.....
P.L. 96-541, § 6(b)	.....

P.L. 97-448, § 102(i)(7):

Amended Code Sec. 170(h)(4)(B)(ii) by striking out "section 191(d)(2)" and inserting in lieu thereof "section 48(g)(3)(B)", effective as if such amendment had been included in the provision of P.L. 97-34 to which it relates.

P.L. 96-541, § 6(b):

Amended Code Sec. 170 by redesignating Code Sec. 170(h) as 170(i) and Code Sec. 170(i) as 170(j), and added a new Code Sec. 170(h), effective for transfers made after December 17, 1980, in taxable years ending after that date.

Appendix E: Treasury Regulation §1.170A-13(c)

Appendix D

Final Treasury Regulations on Substantiation

graph (d) (1) and (2) to pre-1985 contributions. See paragraph (d) (1) and (2) of this section with regard to contributions of property made on or before December 31, 1984.

(c) *Deductions in excess of $5,000 for certain charitable contributions of property made after December 31, 1984*—(1) *General Rule*—(i) *In general.* This paragraph applies to any charitable contribution made after December 31, 1984, by an individual, closely held corporation, personal service corporation, partnership, or S corporation of an item of property (other than money and publicly traded securities to which § 1.170A-13(c)(7)(xi)(B) does not apply if the amount claimed or reported as a deduction under section 170 with respect to such item exceeds $5,000. This paragraph also applies to charitable contributions by C corporations (as defined in section 1361(a)(2) of the Code) to the extent described in paragraph (c)(2)(ii) of this section. No deduction under section 170 shall be allowed with respect to a charitable contribution to which this paragraph applies unless the substantiation requirements described in paragraph (c)(2) of this section are met. For purposes of this paragraph (c), the amount claimed or reported as a deduction for an item of property is the aggregate amount claimed or reported as a deduction for a charitable contribution under section 170 for such items of property and all similar items of property (as defined in paragraph (c)(7)(iii) of this section) by the same donor for the same taxable year (whether or not donated to the same donee).

(ii) *Special rule for property to which section 170(e) (3) or (4) applies.* For purposes of this paragraph (c), in computing the amount claimed or reported as a deduction for donated property to which section 170(e) (3) or (4) applies (pertaining to certain contributions of inventory and scientific equipment) there shall be taken into account only the amount claimed or reported as a deduction in excess of the amount which would have been taken into account for tax purposes by the donor as costs of goods sold if the donor had sold the contributed property to the donee. For example, assume that a donor makes a contribution from inventory of clothing for the care of the needy to which section 170(e)(3) applies. The cost of the property to the donor was $5,000, and, pursuant to section 170(e)(3)(B), the donor claims a charitable contribution deduction of $8,000 with respect to the property. Therefore, $3,000 ($8,000-$5,000) is the amount taken into account for purposes of determining whether the $5,000 threshold of this paragraph (c)(1) is met.

(2) *Substantiation requirements*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, a donor who claims or reports a deduction with respect to a charitable contribution to which this paragraph (c) applies must comply with the following three requirements:

(A) Obtain a qualified appraisal (as defined in paragraph (c) (3) of this section) for such property contributed. If the contributed property is a partial interest, the appraisal shall be of the partial interest.

(B) Attach a fully completed appraisal summary (as defined in paragraph (c) (4) of this section) to the tax return (or, in the case of a donor that is a partnership or S corporation, the information return) on which the deduction for the contribution is first claimed (or reported) by the donor.

(C) Maintain records containing the information required by paragraph (b) (2) (ii) of this section.

(ii) *Special rules for certain nonpublicly traded stock, certain publicly traded securities, and contributions by certain C corporations.* (A) In cases described in paragraph (c) (2) (ii) (B) of this section, a qualified appraisal is not required, and only a partially com-

pleted appraisal summary form (as described in paragraph (c) (4) (iv) (A) of this section) is required to be attached to the tax or information return specified in paragraph (c)(2)(i)(B) of this section. However, in all cases donors must maintain records containing the information required by paragraph (b)(2)(ii) of this section.

(B) This paragraph (c)(2)(ii) applies in each of the following cases:

(*1*) The contribution of nonpublicly traded stock, if the amount claimed or reported as a deduction for the charitable contribution of such stock is greater than $5,000 but does not exceed $10,000;

(*2*) The contribution of a security to which paragraph (c) (7) (xi) (B) of this section applies; and

(*3*) The contribution of an item of property or of similar items of property described in paragraph (c)(1) of this section made after June 6, 1988, by a C corporation (as defined in section 1361(a)(2) of the Code), other than a closely held corporation or a personal service corporation.

(3) *Qualified appraisal*—(i) *In general.* For purposes of this paragraph (c), the term "qualified appraisal" means an appraisal document that—

(A) Relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property nor later than the date specified in paragraph (c) (3) (iv) (B) of this section;

(B) Is prepared, signed, and dated by a qualified appraiser (within the meaning of paragraph (c) (5) of this section);

(C) Includes the information required by paragraph (c)(3)(ii) of this section; and

(D) Does not involve an appraisal fee prohibited by paragraph (c) (6) of this section.

(ii) *Information included in qualified appraisal.* A qualified appraisal shall include the following information:

(A) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was (or will be) contributed;

(B) In the case of tangible property, the physical condition of the property;

(C) The date (or expected date) of contribution to the donee;

(D) The terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee that relates to the use, sale, or other disposition of the property contributed, including, for example, the terms of any agreement or understanding that—

(*1*) Restricts temporarily or permanently a donee's right to use or dispose of the donated property,

(*2*) Reserves to, or confers upon, anyone (other than a donee organization or an organization participating with a donee organization in cooperative fundraising) any right to the income from the contributed property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire, or

(*3*) Earmarks donated property for a particular use;

(E) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser; and, if the qualified appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person (whether an individual, corporation, or partnerships), or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number (if a number is otherwise required by section 6109 and the regulations thereunder) of the partnership or the person who employs or engages the qualified appraiser;

(F) The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership, if any, in professional appraisal associations;

(G) A statement that the appraisal was prepared for income tax purposes;

(H) The date (or dates) on which the property was appraised;

(I) The appraised fair market value (within the meaning of § 1.170A-1 (c)

(2)) of the property on the date (or expected date) of contribution;

(J) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, and the replacement-cost-less-depreciation approach; and

(K) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

(iii) *Effect of signature of the qualified appraiser.* Any appraiser who falsely or fraudulently overstates the value of the contributed property referred to in a qualified appraisal or appraisal summary (as defined in paragraphs (c) (3) and (4), respectively, of this section) that the appraiser has signed may be subject to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability and, moreover, may have appraisals disregarded pursuant to 31 U.S.C. 330(c).

(iv) *Special rules*—(A) *Number of qualified appraisals.* For purposes of paragraph (c) (2) (i) (A) of this section, a separate qualified appraisal is required for each item of property that is not included in a group of similar items of property. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. Only one qualified appraisal is required for a group of similar items of property contributed in the same taxable year of the donor, although a donor may obtain separate qualified appraisals for each item of property. A qualified appraisal prepared with respect to a group of similar items of property shall provide all the information required by paragraph (c)(3)(ii) of this section for each item of similar property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description of such items.

(B) *Time of receipt of qualified appraisal.* The qualified appraisal must be received by the donor before the due date (including extensions) of the return on which a deduction is first claimed (or reported in the case of a donor that is a partnership or S corporation) under section 170 with respect to the donated property, or, in the case of a deduction first claimed (or reported) on an amended return, the date on which the return is filed.

(C) *Retention of qualified appraisal.* The donor must retain the qualified appraisal in the donor's records for so long as it may be relevant in the administration of any internal revenue law.

(D) *Appraisal disregarded pursuant to 31 U.S.C. 330(c).* If an appraisal is disregarded pursuant to 31 U.S.C. 330(c) it shall have no probative effect as to the value of the appraised property. Such appraisal will, however, otherwise constitute a "qualified appraisal" for purposes of this paragraph (c) if the appraisal summary includes the declaration described in paragraph (c)(4)(ii)(L)(2) and the taxpayer had no knowledge that such declaration was false as of the time described in paragraph (c)(4)(i)(B) of this section.

(4) *Appraisal summary*—(i) *In general.* For purposes of this paragraph (c), except as provided in paragraph (c)(4)(iv)(A) of this section, the term "appraisal summary" means a summary of a qualified appraisal that—

(A) Is made on the form prescribed by the Internal Revenue Service;

(B) Is signed and dated (as described in paragraph (c)(4)(iii) of this section) by the donee (or presented to the donee for signature in cases described in paragraph (c)(4)(iv)(C)(2) of this section);

(C) Is signed and dated by the qualified appraiser (within the meaning of paragraph (c)(5) of this section) who prepared the qualified appraisal (within the meaning of paragraph (c)(3) of this section); and

(D) Includes the information required by paragraph (c) (4) (ii) of this section.

(ii) *Information included in an appraisal summary.* An appraisal summary shall include the following information:

(A) The name and taxpayer identification number of the donor (social security number if the donor is an individual or employer identification number if the donor is a partnership or corporation);

(B) A description of the property in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was contributed;

(C) In the case of tangible property, a brief summary of the overall physical condition of the property at the time of the contribution;

(D) The manner of acquisition (*e.g.*, purchase, exchange, gift, or bequest) and the date of acquisition of the property by the donor, or, if the property was created, produced, or manufactured by or for the donor, a statment to that effect and the approximate date the property was substantially completed;

(E) The cost or other basis of the property adjusted as provided by section 1016;

(F) The name, address, and taxpayer identification number of the donee;

(G) The date the donee received the property;

(H) For charitable contributions made after June 6, 1988, a statement explaining whether or not the charitable contribution was made by means of a bargain sale and the amount of any consideration received from the donee for the contribution;

(I) The name, address, and (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) the identifying number of the qualified appraiser who signs the appraisal summary and of other persons as required by paragraph (c)(3)(ii)(E) of this section;

(J) The appraised fair market value of the property on the date of contribution;

(K) The declaration by the appraiser described in paragraph (c)(5)(i) of this section;

(L) A declaration by the appraiser stating that—

(*1*) The fee charged for the appraisal is not of a type prohibited by paragraph (c)(6) of this section; and

(*2*) Appraisals prepared by the appraiser are not being disregarded pursuant to 31 U.S.C. 330(c) on the date the appraisal summary is signed by the appraiser; and

(M) Such other information as may be specified by the form.

(iii) *Signature of the original donee.* The person who signs the appraisal summary for the donee shall be an official authorized to sign the tax or information returns of the donee, or a person specifically authorized to sign appraisal summaries by an official authorized to sign the tax or information returns of such done. In the case of a donee that is a governmental unit, the person who signs the appraisal summary for such donee shall be the official authorized by such donee to sign appraisal summaries. The signature of the donee on the appraisal summary does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in the appraisal summary on the date specified in the appraisal summary and that the donee understands the information reporting requirements imposed by section 6050L and § 1.6050L-1. In general, § 1.6050L-1 requires the donee to file an information return with the Internal Revenue Service in the event the donee sells, exchanges, consumes, or otherwise disposes of the property (or any portion thereof) described in the appraisal summary within 2 years after the date of the donor's contribution of such property.

(iv) *Special rules*—(A) *Content of appraisal summary required in certain cases.* With respect to contributions of nonpublicly traded stock described in paragraph (c)(2)(ii)(B)(*1*) of this section, contributions of securities described in paragraph (c)(7)(xi)(B) of this section, and contributions by C corporations described in paragraph (c)(2)(ii)(B)(*3*) of this section, the term "appraisal summary" means a document that—

(*1*) Complies with the requirements of paragraph (c)(4)(i) (A) and (B) of this section,

(*2*) Includes the information required by paragraph (c)(4)(ii) (A) through (H) of this section,

(*3*) Includes the amount claimed or reported as a charitable contribution deduction, and

(*4*) In the case of securities described in paragraph (c)(7)(xi)(B) of this section, also includes the pertinent average trading price (as described in para-

graph (c)(7)(xi)(B)(*2*)(iii) of this section).

(B) *Number of appraisal summaries.* A separate appraisal summary for each item of property described in paragraph (c)(1) of this section must be attached to the donor's return. If, during the donor's taxable year, the donor contributes similar items of property described in paragraph (c)(1) of this section to more than one donee, the donor shall attach to the donor's return a separate appraisal summary for each donee. See paragraph (c)(7)(iii) of this section for the definition of similar items of property. If, however, during the donor's taxable year, a donor contributes similar items of property described in paragraph (c)(1) of this section to the same donee, the donor may attach to the donor's return a single appraisal summary with respect to all similar items of property contributed to the same donee. Such an appraisal summary shall provide all the information required by paragraph (c)(4)(ii) of this section for each item of property, except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description for such items.

(C) *Manner of acquisition, cost basis and donee's signature.* (*1*) If a taxpayer has reasonable cause for being unable to provide the information required by paragraph (c)(4)(ii) (D) and (E) of this section (relating to the manner of acquisition and basis of the contributed property), an appropriate explanation should be attached to the appraisal summary. The taxpayer's deduction will not be disallowed simply because of the inability (for reasonable cause) to provide these items of information.

(*2*) In rare and unusual circumstances in which it is impossible for the taxpayer to obtain the signature of the donee on the appraisal summary as required by paragraph (c)(4)(i)(B) of this section, the taxpayer's deduction will not be disallowed for that reason provided that the taxpayer attaches a statement to the appraisal summary explaining, in detail, why it was not possible to obtain the donee's signature. For example, if the donee ceases to exist as an entity subsequent to the date of the contribution and prior to the date when the appraisal summary must be signed, and the donor acted reasonably in not obtaining the donee's signature at the time of the contribution, relief under this paragraph (c)(4)(iv)(C)(*2*) would generally be appropriate.

(D) *Information excluded from certain appraisal summaries.* The information required by paragraph (c)(4)(i)(C), paragraph (c)(4)(ii) (D), (E), (H) through (M), and paragraph (c)(4)(iv)(A)(*3*), and the average trading price referred to in paragraph (c)(4)(iv)(A)(*4*) of this section do not have to be included on the appraisal summary at the time it is signed by the donee or a copy is provided to the donee pursuant to paragraph (c)(4)(iv)(E) of this section.

(E) *Statement to be furnished by donors to donees.* Every donor who presents an appraisal summary to a donee for signature after June 6, 1988, in order to comply with paragraph (c)(4)(i)(B) of this section shall furnish a copy of the appraisal summary to such donee.

(F) *Appraisal summary required to be provided to partners and S corporation shareholders.* If the donor is a partnership or S corporation, the donor shall provide a copy of the appraisal summary to every partner or shareholder, respectively, who receives an allocation of a charitable contribution deduction under section 170 with respect to the property described in the appraisal summary.

(G) *Partners and S corporation shareholders.* A partner of a partnership or shareholder of an S corporation who receives an allocation of a deduction under section 170 for a charitable contribution of property to which this paragraph (c) applies must attach a copy of the partnership's or S corporation's appraisal summary to the tax return on which the deduction for the contribution is first claimed. If such appraisal summary is not attached, the partner's or shareholder's deduction shall not be allowed except as provided for in paragraph (c)(4)(iv)(H) of this section.

(H) *Failure to attach appraisal summary.* In the event that a donor fails to attach to the donor's return an ap-

praisal summary as required by paragraph (c)(2)(i)(B) of this section, the Internal Revenue Service may request that the donor submit the appraisal summary within 90 days of the request. If such a request is made and the donor complies with the request within the 90-day period, the deduction under section 170 shall not be disallowed for failure to attach the appraisal summary, provided that the donor's failure to attach the appraisal summary was a good faith omission and the requirements of paragraph (c)(3) and (4) of this section are met (including the completion of the qualified appraisal prior to the date specified in paragraph (c)(3)(iv)(B) of this section).

(5) *Qualified appraiser*—(i) *In general.* The term "qualified appraiser" means an individual (other than a person described in paragraph (c)(5)(iv) of this section) who includes on the appraisal summary (described in paragraph (c)(4) of this section), a declaration that—

(A) The individual either holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;

(B) Because of the appraiser's qualifications as described in the appraisal (pursuant to paragraph (c)(3)(ii)(F) of this section), the appraiser is qualified to make appraisals of the type of property being valued;

(C) The appraiser is not one of the persons described in paragraph (c)(5)(iv) of this section; and

(D) The appraiser understands that an intentionally false or fraudulent overstatement of the value of the property described in the qualified appraisal or appraisal summary may subject the appraiser to a civil penalty under section 6701 for aiding and abetting an understatement of tax liability, and, moreover, the appraiser may have appraisals disregarded pursuant to 31 U.S.C. 330(c) (see paragraph (c)(3)(iii) of this section).

(ii) *Exception.* An individual is not a qualified appraiser with respect to a particular donation, even if the declaration specified in paragraph (c)(5)(i) of this section is provided in the appraisal summary, if the donor had knowledge of facts that would cause a reasonable person to expect the appraiser falsely to overstate the value of the donated property (*e.g.*, the donor and the appraiser make an agreement concerning the amount at which the property will be valued and the donor knows that such amount exceeds the fair market value of the property).

(iii) *Numbers of appraisers.* More than one appraiser may appraise the donated property. If more than one appraiser appraises the property, the donor does not have to use each appraiser's appraisal for purposes of substantiating the charitable contribution deduction pursuant to this paragraph (c). If the donor uses the appraisal of more than one appraiser, or if two or more appraisers contribute to a single appraisal, each appraiser shall comply with the requirements of this paragraph (c), including signing the qualified appraisal and appraisal summary as required by paragraphs (c)(3)(i)(B) and (c)(4)(i)(C) of this section, respectively.

(iv) *Qualified appraiser exclusions.* The following persons cannot be qualified appraisers with respect to particular property:

(A) The donor or the taxpayer who claims or reports a deductions under section 170 for the contribution of the property that is being appraised.

(B) A party to the transaction in which the donor acquired the property being appraised (*i.e.*, the person who sold, exchanged, or gave the property to the donor, or any person who acted as an agent for the transferor or for the donor with respect to such sale, exchange, or gift), unless the property is donated within 2 months of the date of acquisition and its appraised value does not exceed its acquisition price.

(C) The donee of the property.

(D) Any person employed by any of the foregoing persons (*e.g.*, if the donor acquired a painting from an art dealer, neither the art dealer nor persons employed by the dealer can be qualified appraisers with respect to that painting).

(E) Any person related to any of the foregoing persons under section 267(b), or, with respect to appraisals made after June 6, 1988, married to a

person who is in a relationship described in section 267(b) with any of the foregoing persons.

(F) An appraiser who is regularly used by any person described in paragraph (c)(5)(iv) (A), (B), or (C) of this section and who does not perform a majority of his or her appraisals made during his or her taxable year for other persons.

(6) *Appraisal fees*—(i) *In general.* Except as otherwise provided in paragraph (c)(6)(ii) of this section, no part of the fee arrangement for a qualified appraisal can be based, in effect, on a percentage (or set of percentages) of the appraised value of the property. If a fee arrangement for an appraisal is based in whole or in part on the amount of the appraised value of the property, if any, that is allowed as a deduction under section 170, after Internal Revenue Service examination or otherwise, it shall be treated as a fee based on a percentage of the appraised value of the property. For example, an appraiser's fee that is subject to reduction by the same percentage as the appraised value may be reduced by the Internal Revenue Service would be treated as a fee that violates this paragraph (c)(6).

(ii) *Exception.* Paragraph (c)(6)(i) of this section does not apply to a fee paid to a generally recognized association that regulates appraisers provided all of the following requirements are met:

(A) The association is not organized for profit and no part of the net earnings of the association inures to the benefit of any private shareholder or individual (these terms have the same meaning as in section 501(c)),

(B) The appraiser does not receive any compensation from the association or any other persons for making the appraisal, and

(C) The fee arrangement is not based in whole or in part on the amount of the appraised value of the donated property, if any, that is allowed as a deduction under section 170 after Internal Revenue Service examination or otherwise.

(7) *Meaning of terms.* For purposes of this paragraph (c)—

(i) *Closely held corporation.* The term "closely held corporation" means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of the Code is met.

(ii) *Personal service corporation.* The term "personal service corporation" means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of the Code).

(iii) *Similar items of property.* The phrase "similar items of property" means property of the same generic category or type, such as stamp collections (including philatelic supplies and books on stamp collecting), coin collections (including numismatic supplies and books on coin collecting), lithographs, paintings, photographs, books, nonpublicly traded stock, nonpublicly traded securities other than nonpublicly trade stock, land, buildings, clothing, jewelry, funiture, electronic equipment, household appliances, toys, everyday kitchenware, china, crystal, or silver. For example, if a donor claims on her return for the year deductions of $2,000 for books given by her to College A, $2,500 for books given by her to College B, and $900 for books given by her to College C, the $5,000 threshold of paragraph (c)(1) of this section is exceeded. Therefore, the donor must obtain a qualified appraisal for the books and attach to her return three appraisal summaries for the books donated to A, B, and C. For rules regarding the number of qualified appraisals and appraisal summaries required when similar items of property are contributed, see paragraphs (c)(3)(iv)(A) and (c)(4)(iv)(B), respectively, of this section.

(iv) *Donor.* The term "donor" means a person or entity (other than an organization described in section 170(c) to which the donated property was previously contributed) that makes a charitable contribution of property.

(v) *Donee.* The term "donee" means—

(A) Except as provided in paragraph (c)(7)(v) (B) and (C) of this section, an organization described in section 170(c) to which property is contributed,

(B) Except as provided in paragraph (c)(7)(v)(C) of this section, in the case

of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c), the trust, or

(C) In the case of a charitable contribution of property placed in trust for the benefit of an organization described in section 170(c) made on or before June 6, 1988, the beneficiary that is an organization described in section 170(c), or if the trust has assumed the duties of a donee by signing the appraisal summary pursuant to paragraph (c)(4)(i)(B) of this section, the trust.

In general, the term, refers only to the original donee. However, with respect to paragraph (c)(3)(ii)(D), the last sentence of paragraph (c)(4)(iii), and paragraph (c)(5)(iv)(C) of this section, the term "donee" means the original donee and all successor donees in cases where the original donee transfers the contributed property to a successor donee after July 5, 1988.

(vi) *Original donee.* The term "original donee" means the donee to or for which property is initially donated by a donor.

(vii) *Successor donee.* The term "successor donee" means any donee of property other than its original donee (*i.e.*, a transferee of property for less than fair market value from an original donee or another successor donee).

(viii) *Fair market value.* For the meaning of the term "fair market value," see section 1.170A-1(c)(2).

(ix) *Nonpublicly traded securities.* The term "nonpublicly traded securities" means securities (within the meaning of section 165(g)(2) of the Code) which are not publicly traded securities as defined in paragraph (c)(7)(xi) of this section.

(x) *Nonpublicly traded stock.* The term "nonpublicly traded stock" means any stock of a corporation (evidence by a stock certificate) which is not a publicly traded security. The term stock does not include a debenture or any other evidence of indebtedness.

(xi) *Publicly traded securities*—(A) *In general.* Except as provided in paragraph (c)(7)(xi)(C) of this section, the term "publicly traded securities" means securities (within the meaning of section 165(g)(2) of the Code) for which (as of the date of the contribution) market quotations are readily available on an established securities market. For purposes of this section, market quotations are readily available on an established securities market with respect to a security if:

(*1*) The security is listed on the New York Stock Exchange, the American Stock Exchange, or any city or regional exchange in which quotations are published on a daily basis, including foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis;

(*2*) The security is regularly traded in the national or regional over-the-counter market, for which published quotations are available; or

(*3*) The security is a share of an open-end investment company (commonly known as a mutual fund) registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), for which quotations are published on a daily basis in a newspaper of general circulation throughout the United States.

(If the market value of an issue of a security is reflected only on an interdealer quotation system, the issue shall not be considered to be publicly traded unless the special rule described in paragraph (c)(7)(xi)(B) of this section is satisfied.)

(B) *Special rule*—(*1*) *In General.* An issue of a security that does not satisfy the requirements of paragraph (c)(7)(xi)(A) (*1*), (*2*), or (*3*) of this section shall nonetheless be considered to have market quotations readily available on an established securities market for purposes of paragraph (c)(7)(xi)(A) of this section if all of the following five requirements are met:

(*i*) The issue is regularly traded during the computational period (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iv*) of this section) in a market that is reflected by the existence of an interdealer quotation system for the issue,

(*ii*) The issuer or an agent of the issuer computes the average trading price (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section) for

the issue for the computational period,

(*iii*) The average trading price and total volume of the issue during the computational period are published in a newspaper of general circulation throughout the United States not later than the last day of the month following the end of the calendar quarter in which the computational period ends,

(*iv*) The issuer or its agent keeps books and records that list for each transaction during the computational period involving each issue covered by this procedure the date of the settlement of the transaction, the name and address of the broker or dealer making the market in which the transaction occurred, and the trading price and volume, and

(*v*) The issuer or its agent permits the Internal Revenue Service to review the books and records described in paragraph (c)(7)(xi)(B)(*1*)(*iv*) of this section with respect to transactions during the computational period upon giving reasonable notice to the issuer or agent.

(*2*) *Definitions.* For purposes of this paragraph (c)(7)(xi)(B)—

(*i*) *Issue of a security.* The term "issue of a security" means a class of debt securities with the same obligor and identical terms except as to their relative denominations (amounts) or a class of stock having identical rights.

(*ii*) *Interdealer quotation system.* The term "interdealer quotation system" means any system of general circulation to brokers and dealers that regularly disseminates quotations of obligations by two or more identified brokers or dealers, who are not related to either the issuer of the security or to the issuer's agent, who compute the average trading price of the security. A quotation sheet prepared and distributed by a broker or dealer in the regular course of its business and containing only quotations of such broker or dealer is not an interdealer quotation system.

(*iii*) *Average trading price.* The term "average trading price" means the mean price of all transactions (weighted by volume), other than original issue or redemption transactions, conducted through a United States office of a broker or dealer who maintains a market in the issue of the security during the computational period. For this purpose, bid and asked quotations are not taken into account.

(*iv*) *Computational period.* For calendar quarters beginning on or after June 6, 1988, the term "computational period" means weekly during October through December (beginning with the first Monday in October and ending with the first Sunday following the last Monday in December) and monthly during January through September (beginning January 1). For calendar quarters beginning before June 6, 1988, the term "computational period" means weekly during October through December and monthly during January through September.

(C) *Exception.* Securities described in paragraph (c)(7)(xi) (A) or (B) of this section shall not be considered publicly traded securities if—

(*1*) The securities are subject to any restrictions that materially affect the value of the securities to the donor or prevent the securities from being freely traded, or

(*2*) If the amount claimed or reported as a deduction with respect to the contribution of the securities is different than the amount listed in the market quotations that are readily available on an established securities market pursuant to paragraph (c)(7)(xi) (A) or (B) of this section.

(D) *Market quotations and fair market value.* The fair market value of a publicly traded security, as defined in this paragraph (c)(7)(xi), is not necessarily equal to its market quotation, its average trading price (as defined in paragraph (c)(7)(xi)(B)(*2*)(*iii*) of this section), or its face value, if any. See section 1.170A-1(c)(2) for the definition of "fair market value."

(d) *Charitable contributions; information required in support of deductions for taxable years beginning before January 1, 1983*—(1) *In general.* This paragraph (d)(1) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer the requirements of this paragraph (d)(1) shall also apply to all charitable contributions made on or before December 31, 1984 (in

lieu of the requirements of paragraphs (a) and (b) of this section). In connection with claims for deductions for charitable contributions, taxpayers shall state in their income tax returns the name of each organization to which a contribution was made and the amount and date of the actual payment of each contribution. If a contribution is made in property other than money, the taxpayer shall state the kind of property contributed, for example, used clothing, paintings, or securities, the method utilized in determining the fair market value of the property at the time the contribution was made, and whether or not the amount of the contribution was reduced under section 170(e). If a taxpayer makes more than one cash contribution to an organization during the taxable year, then in lieu of listing each cash contribution and the date of payment the taxpayer may state the total cash payments made to such organization during the taxable year. A taxpayer who elects under paragraph (d)(2) of § 1.170A-8 to apply section 170(e)(1) to his contributions and carryovers of 30-percent capital gain property must file a statement with his return indicating that he has made the election and showing the contributions in the current year and carryovers from preceding years to which it applies. For the definition of the term "30-percent capital gain property", see paragraph (d)(3) of § 1.170A-8.

(2) *Contribution by individual of property other than money.* This paragraph (d)(2) shall apply to deductions for charitable contributions made in taxable years beginning before January 1, 1983. At the option of the taxpayer, the requirements of this paragraph (d)(2) shall also apply to contributions of property made on or before December 31, 1984 (in lieu of the requirements of paragraph (b) of this section). If an individual taxpayer makes a charitable contribution of an item of property other than money and claims a deduction in excess of $200 in respect of his contribution of such item, he shall attach to his income tax return the following information with respect to such item:

(i) The name and address of the organization to which the contribution was made.

(ii) The date of the actual contribution.

(iii) A description of the property in sufficient detail to identify the particular property contributed, including in the case of tangible property the physical condition of the property at the time of contribution, and, in the case of securities, the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.

(iv) The manner of acquisition, as, for example, by purchase, gift, bequest, inheritance, or exchange, and the approximate date of acquisition of the property by the taxpayer or, if the property was created, produced, or manufactured by or for the taxpayer, the approximate date the property was substantially completed.

(v) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

(vi) The cost or other basis, adjusted as provided by section 1016, of property, other than securities, held by the taxpayer for a period of less than 5 years immediately preceding the date on which the contribution was made and, when the information is available, of property, other than securities, held for a period of 5 years or more preceding the date on which the contribution was made.

(vii) In the case of property to which section 170(e) applies, the cost or other basis, adjusted as provided by section 1016, the reduction by reason of section 170(e)(1) in the amount of the charitable contribution otherwise taken into account, and the manner in which such reduction was determined.

(viii) The terms of any agreement or understanding entered into by or on behalf of the taxpayer which relates to the use, sale, or disposition of the property contributed, as, for example, the terms of any agreement or understanding which:

(A) Restricts temporarily or permanently the donee's right to dispose of the donated property,

(B) Reserves to, or confers upon, anyone other than the donee organization or other than an organization participating with such organization in cooperative fundraising, any right to the income from such property, to the possession of the property, including the right to vote securities, to acquire such property by purchase or otherwise, or to designate the person to have such income, possession, or right to acquire, or

(C) Earmarks contributed property for a particular charitable use, such as the use of donated furniture in the reading room of the donee organization's library.

(ix) The total amount claimed as a deduction for the taxable year due to the contribution of the property and, if less than the entire interest in the property is contributed during the taxable year, the amount claimed as a deduction in any prior year or years for contributions of other interests in such property, the name and address of each organization to which any such contribution was made, the place where any such property which is tangible property is located or kept, and the name of any person, other than the organization to which the property giving rise to the deduction was contributed, having actual possession of the property.

(3) *Statement from donee organization.* Any deduction for a charitable contribution must be substantiated, when required by the district director, by a statement from the organization to which the contribution was made indicating whether the organization is a domestic organization, the name and address of the contributor, the amount of the contribution, the date of actual receipt of the contribution, and such other information as the district director may deem necessary. If the contribution includes an item of property, other than money or securities which are regularly traded on a stock exchange or in an over-the-counter market, which the donee deems to have a fair market value in excess of $500 ($200 in the case of a charitable contribution made in a taxable year beginning before January 1, 1983) at the time of receipt, such statement shall also indicate for each such item its location if it is retained by the organization, the amount received by the organization on any sale of the property and the date of sale or, in case of any other disposition of the property, the method of disposition. In the case of any contribution of tangible personal property, the statement shall indicate the use of the property by the organization and whether or not it is used for a purpose or function constituting the basis for the donee organization's exemption from income tax under section 501 or, in the case of a governmental unit, whether or not it is used for exclusively public purposes.

(68A Stat. 58, 26 U.S.C. 170(a)(1); 96 Stat. 693, 26 U.S.C. 6050L; 68A Stat. 917, 26 U.S.C. 7805; sec. 155 of the Tax Reform Act of 1984 (Pub. L. 98-369) 96 Stat. 691)

[T.D. 8002, 49 FR 50664 and 50666, Dec. 31, 1984, as amended by T.D. 8003, 49 FR 50659, Dec. 31, 1984; T.D. 8199, 53 FR 16080, May 5, 1988; 53 FR 18372, May 23, 1988]

§ 1.170A–14 Qualified conservation contributions.

(a) **Qualified conservation contributions.** A deduction under section 170 is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust (see § 1.170A–6 relating to charitable contributions in trust and § 1.170A–7 relating to contributions not in trust of partial interests in property). However, a deduction may be allowed under section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if the requirements of this section are met. A qualified conservation contribution is the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. To be eligible for a deduction under this section, the conservation purpose must be protected in perpetuity.

(b) **Qualified real property interest—(1) Entire interest of donor other than qualified mineral interest.** (i) The entire interest of the donor other than a qualified mineral interest is a qualified real property interest. A qualified mineral interest is the donor's interest in subsurface oil, gas, or other minerals and the right of access to such minerals.

(ii) A real property interest shall not be treated as an entire interest other than a qualified mineral interest by reason of section 170(h)(2)(A) and this paragraph (b)(1) if the property in which the donor's interest exists was divided prior to the contribution in order to enable the donor to retain control of more than a qualified mineral interest or to reduce the real property interest donated. See Treasury regulations § 1.170A–7(a)(2)(i). An entire interest in real property may consist of an undivided interest in the property. But see section 170(h)(5)(A) and the regulations thereunder (relating to the requirement that the conservation purpose which is the subject to the donation must be protected in perpetuity). Minor interests, such as rights-of-way, that will not interfere with the conservation purposes of the donation, may be transferred prior to the conservation contribution without affecting the treatment of a property interest as a qualified real property interest under this paragraph (b)(1).

(2) **Perpetual conservation restriction.** A perpetual conservation restriction is a qualified real property interest. A "perpetual conservation restriction" is a restriction granted in perpetuity on the use which may be made of real property—including, an easement or other interest in real property that under state law has attributes similar to an easement (e.g., a restrictive covenant or equitable servitude). For purposes of this section, the terms "easement", "conservation restriction", and "perpetual conservation restriction" have the same meaning. The definition of "perpetual conservation restriction" under this paragraph (b)(2) is not intended to preclude the deductibility of a donation of affirmative rights to use a land or water area under § 1.170A–13(d)(2). Any rights reserved by the donor in the donation of a perpetual conservation restriction must conform to the requirements of this section. See e.g., paragraph (d)(4)(ii), (d)(5)(i), (e)(3), and (g)(4) of this section.

(c) **Qualified organization—(1) Eligible donee.** To be considered an eligible donee under this section, an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions. A conservation group organized or operated primarily or substantially for one of the conservation purposes specified in section 170(h)(4)(A) will be considered to have the commitment required by the preceding sentence. A qualified organization need not set aside funds to enforce the restrictions that are the subject of the contribution. For purposes of this section, the term "qualified organization" means:

(i) A governmental unit described in section 170(b)(1)(A)(v);

(ii) An organization described in section 170(b)(1)(A)(vi);

(iii) A charitable organization described in section 501(c)(3) that meets the public support test of section 509(a)(2);

(iv) A charitable organization described in section 501(c)(3) that meets the requirements of section 509(a)(3) and is controlled by an organization described in paragraphs (c)(1) (i), (ii), or (iii) of this section.

(2) **Transfers by donee.** A deduction shall be allowed for a contribution under this section only if in the instrument of conveyance the donor prohibits the donee from subsequently transferring the easement (or, in the case of a remainder interest or the reservation of a qualified mineral interest, the property), whether or not for consideration, unless the donee organization, as a condition of the subsequent transfer, requires that the conservation purposes which the contribution was originally intended to advance continue to be

carried out. Moreover, subsequent transfers must be restricted to organizations qualifying, at the time of the subsequent transfer, as an eligible donee under paragraph (c)(1) of this section. When a later unexpected change in the conditions surrounding the property that is the subject of a donation under paragraph (b)(1), (2), or (3) of this section makes impossible or impractical the continued use of the property for conservation purposes, the requirement of this paragraph will be met if the property is sold or exchanged and any proceeds are used by the donee organization in a manner consistent with the conservation purposes of the original contribution. In the case of a donation under paragraph (b)(3) of this section to which the preceding sentence applies, see also paragraph (g)(5)(ii) of this section.

(d) Conservation purposes—(1) In general. For purposes of section 170(h) and this section, the term "conservation purposes" means—

(i) The preservation of land areas for outdoor recreation by, or the education of, the general public, within the meaning of paragraph (d)(2) of this section,

(ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, within the meaning of paragraph (d)(3) of this section,

(iii) The preservation of certain open space (including farmland and forest land) within the meaning of paragraph (d)(4) of this section, or

(iv) The preservation of a historically important land area or a certified historic structure, within the meaning of paragraph (d)(5) of this section.

(2) Recreation or education—(i) In general. The donation of a qualified real property interest to preserve land areas for the outdoor recreation of the general public or for the education of the general public will meet the conservation purposes test of this section. Thus, conservation purposes would include, for example, the preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.

(ii) Access. The preservation of land areas for recreation or education will not meet the test of this section unless the recreation or education is for the substantial and regular use of the general public.

(3) Protection of environmental system—(i) In general. The donation of a qualified real property interest to protect a significant relatively natural habitat in which a fish, wildlife, or plant community, or similar ecosystem normally lives will meet the conservation purposes test of this section. The fact that the habitat or environment has been altered to some extent by human activity will not result in a deduction being denied under this section if the fish, wildlife, or plants continue to exist there in a relatively natural state. For example, the preservation of a lake formed by a man-made dam or a salt pond formed by a man-made dike would meet the conservation purposes test if the lake or pond were a nature feeding area for a wildlife community that included rare, endangered, or threatened native species.

(ii) Significant habitat or ecosystem. Significant habitats and ecosystems include, but are not limited to, habitats for rare, endangered, or threatened species of animal, fish, or plants; natural areas that represent high quality examples of a terrestrial community or aquatic community, such as islands that are undeveloped or not intensely developed where the coastal ecosystem is relatively intact; and natural areas which are included in, or which contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area.

(iii) Access. Limitations on public access to property that is the subject of a donation under this paragraph (d)(3) shall not render the donation nondeductible. For example, a restriction on all public access to the habitat of a threatened native animal species protected by a donation under this paragraph (d)(3) would not cause the donation to be nondeductible.

(4) Preservation of open space—(i) In general. The donation of a qualified real property interest to preserve open space (including farmland and forest land) will meet the conservation purposes test of this section if such preservation is—

(A) Pursuant to a clearly delineated Federal, state, or local governmental conservation policy and will yield a significant public benefit, or

(B) For the scenic enjoyment of the general public and will yield a significant public benefit.

An open space easement donated on or after December 18, 1980, must meet the requirements of section 170(h) in order to be deductible.

(ii) Scenic enjoyment—(A) Factors. A contribution made for the preservation of open space may be for the scenic enjoyment of the general public. Preservation of land may be for the scenic enjoyment of the general public if develop-

ment of the property would impair the scenic character of the local rural or urban landscape or would interfere with a scenic panorama that can be enjoyed from a park, nature preserve, road, waterbody, trail, or historic structure or land area, and such area or transportation way is open to, or utilized by, the public. "Scenic enjoyment" will be evaluated by considering all pertinent facts and circumstances germane to the contribution. Regional variations in topography, geology, biology, and cultural and economic conditions require flexibility in the application of this test, but do not lessen the burden on the taxpayer to demonstrate the scenic characteristics of a donation under this paragraph. The application of a particular objective factor to help define a view as "scenic" in one setting may in fact be entirely inappropriate in another setting. Among the factors to be considered are:

(1) The compatibility of the land use with other land in the vicinity;

(2) The degree of contrast and variety provided by the visual scene;

(3) The openness of the land (which would be a more significant factor in an urban or densely populated setting or in a heavily wooded area);

(4) Relief from urban closeness;

(5) The harmonious variety of shapes and textures;

(6) The degree to which the land use maintains the scale and character of the urban landscape to preserve open space, visual enjoyment, and sunlight for the surrounding area;

(7) The consistency of the proposed scenic view with a methodical state scenic identification program, such as a state landscape inventory; and

(8) The consistency of the proposed scenic view with a regional or local landscape inventory made pursuant to a sufficiently rigorous review process, especially if the donation is endorsed by an appropriate state or local governmental agency.

(B) Access. To satisfy the requirement of scenic enjoyment by the general public, visual (rather than physical) access to or across the property by the general public is sufficient. Under the terms of an open space easement on scenic property, the entire property need not be visible to the public for a donation to qualify under this section, although the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is visible to the public.

(iii) Governmental conservation policy—(A) In general. The requirement that the preservation of open space be pursuant to a clearly delineated Federal, state, or local governmental policy is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation. A general declaration of conservation goals by a single official or legislative body is not sufficient. However, a governmental conservation policy need not be a certification program that identifies particular lots or small parcels of individually owned property. This requirement will be met by donations that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; the preservation of a wild or scenic river, the preservation of farmland pursuant to a state program for flood prevention and control; or the protection of the scenic, ecological, or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites. For example, the donation of a perpetual conservation restriction to a qualified organization pursuant to a formal resolution or certification by a local governmental agency established under state law specifically identifying the subject properly as worthy of protection for conservation purposes will meet the requirement of this paragraph. A program need not be funded to satisfy this requirement, but the program must involve a significant commitment by the government with respect to the conservation project. For example, a governmental program according preferential tax assessment or preferential zoning for certain property deemed worthy of protection for conservation purposes would constitute a significant commitment by the government.

(B) Effect of acceptance by governmental agency. Acceptance of an easement by an agency of the Federal Government or by an agency of a state or local government (or by a commission, authority, or similar body duly constituted by the state or local government and acting on behalf of the state or local government) tends to establish the requisite clearly delineated governmental policy, although such acceptance, without more, is not sufficient. The more rigorous the review process by the governmental agency, the more the acceptance of the easement tends to establish the requisite clearly delineated governmental policy. For example, in a state where the legislature

has established an Environmental Trust to accept gifts to the state which meet certain conservation purposes and to submit the gifts to a review that requires the approval of the state's highest officials, acceptance of a gift by the Trust tends to establish the requisite clearly delineated governmental policy. However, if the Trust merely accepts such gifts without a review process, the requisite clearly delineated governmental policy is not established.

(C) Access. A limitation on public access to property subject to a donation under this paragraph (d)(4)(iii) shall not render the deduction nondeductible unless the conservation purpose of the donation would be undermined or frustrated without public access. For example, a donation pursuant to a governmental policy to protect the scenic character of land near a river requires visual access to the same extent as would a donation under paragraph (d)(4)(ii) of this section.

(iv) **Significant public benefit**—(A) Factors. All contributions made for the preservation of open space must yield a significant public benefit. Public benefit will be evaluated by considering all pertinent facts and circumstances germane to the contribution. Factors germane to the evaluation of public benefit from one contribution may be irrelevant in determining public benefit from another contribution. No single factor will necessarily be determinative. Among the factors to be considered are:

(1) The uniqueness of the property to the area;

(2) The intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);

(3) The consistency of the proposed open space use with public programs (whether Federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area;

(4) The consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land, protected by easement or fee ownership by organizations referred to in § 1.170A-14(c)(1), in close proximity to the property;

(5) The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural, or historic character of the area;

(6) The opportunity for the general public to use the property or to appreciate its scenic values;

(7) The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;

(8) The likelihood that the donee will acquire equally desirable and valuable substitute property or property rights;

(9) The cost to the donee of enforcing the terms of the conservation restriction;

(10) The population density in the area of the property; and

(11) The consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

(B) Illustrations. The preservation of an ordinary tract of land would not in and of itself yield a significant public benefit, but the preservation of ordinary land areas in conjunction with other factors that demonstrate significant public benefit or the preservation of a unique land area for public employment would yield a significant public benefit. For example, the preservation of a vacant downtown lot would not by itself yield a significant public benefit, but the preservation of the downtown lot as a public garden would, absent countervailing factors, yield a significant public benefit. The following are other examples of contributions which would, absent countervailing factors, yield a significant public benefit: The preservation of farmland pursuant to a state program for flood prevention and control; the preservation of a unique natural land formation for the enjoyment of the general public; the preservation of woodland along a public highway pursuant to a government program to preserve the appearance of the area so as to maintain the scenic view from the highway; and the preservation of a stretch of undeveloped property located between a public highway and the ocean in order to maintain the scenic ocean view from the highway.

(v) **Limitation**. A deduction will not be allowed for the preservation of open space under section 170(h)(4)(A)(iii), if the terms of the easement permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land or with the governmen-

tal conservation policy that is being furthered by the donation. See § 1.170A-14(e)(2) for rules relating to inconsistent use.

(vi) **Relationship of requirements**—(A) Clearly delineated governmental policy and significant public benefit. Although the requirements of "clearly delineated governmental policy" and "significant public benefit" must be met independently, for purposes of this section the two requirements may also be related. The more specific the governmental policy with respect to the particular site to be protected, the more likely the governmental decision, by itself, will tend to establish the significant public benefit associated with the donation. For example, while a statute in State X permitting preferential assessment for farmland is, by definition, governmental policy, it is distinguishable from a s state statute, accompanied by appropriations, naming the X River as a valuable resource and articulating the legislative policy that the X River and the relatively natural quality of its surrounding be protected. On these facts, an open space easement on farmland in State X would have to demonstrate additional factors to establish "significant public benefit." The specificity of the legislative mandate to protect the X River, however, would by itself tend to establish the significant public benefit associated with an open space easement on land fronting the X River.

(B) Scenic enjoyment and significant public benefit. With respect to the relationship between the requirements of "scenic enjoyment" and "significant public benefit," since the degrees of scenic enjoyment offered by a variety of open space easements are subjective and not as easily delineated as are increasingly specific levels of governmental policy, the significant public benefit of preserving a scenic view must be independently established in all cases.

(C) Donations may satisfy more than one test. In some cases, open space easements may be both for scenic enjoyment and pursuant to a clearly delineated governmental policy. For example, the preservation of a particular scenic view identified as part of a scenic landscape inventory by a rigorous governmental review process will meet the tests of both paragraphs (d)(4)(i)(A) and (d)(4)(i)(B) of this section.

(5) **Historic preservation**—(i) **In general.** The donation of a qualified real property interest to preserve an historically important land area or a certified historic structure will meet the conservation purposes test of this section. When restrictions to preserve a building or land area within a registered historic district permit future development on the site, a deduction will be allowed under this section only if the terms of the restrictions require that such development conform with appropriate local, state, or Federal standards for construction or rehabilitation within the district. See also, § 1.170A-14(h)(3)(ii).

(ii) **Historically important land area.** The term "historically important land area" includes:

(A) An independently significant land area including any related historic resources (for example, an archaeological site or a Civil War battlefield with related monuments, bridges, cannons, or houses) that meets the National Register Criteria for Evaluation in 36 CFR 60.4 (Pub.L. 89-665, 80 Stat. 915);

(B) Any land area within a registered historic district including any buildings on the land area that can reasonably be considered as contributing to the significance of the district, and

(C) Any land area (including related historic resources) adjacent to a property listed individually in the National Register of Historic Places (but not within a registered historic district) in a case where the physical or environmental features of the land area contribute to the historic or cultural integrity of the property.

(iii) **Certified historic structure.** The term "certified historic structure," for purposes of this section, means any building, structure or land area which is—

(A) Listed in the National Register, or

(B) Located in a registered historic district (as defined in section 48(g)(3)(B)) and is certified by the Secretary of the Interior (pursuant to 36 CFR 67.4) to the Secretary of the Treasury as being of historic significance to the district.

A "structure" for purposes of this section means any structure, whether or not it is depreciable. Accordingly easements on private residences may qualify under this section. In addition, a structure would be considered to be a certified historic structure if it were certified either at the time the transfer was made or at the due date (including extensions) for filing the donor's return for the taxable year in which the contribution was made.

(iv) **Access.** (A) In order for a conservation contribution described in section 170(h)(4)(A)(iv) and this paragraph (d)(5) to be deductible, some visual public access to the donated property is required. In the case of an historically important land area, the entire property need not be visible to the public for a donation to qualify under this

section. However, the public benefit from the donation may be insufficient to qualify for a deduction if only a small portion of the property is so visible. Where the historic land area or certified historic structure which is the subject of the donation is not visible from a public way (e.g., the structure is hidden from view by a wall or shrubbery, the structure is too far from the public way, or interior characteristics and features of the structure are the subject of the easement), the terms of the easement must be such that the general public is given the opportunity on a regular basis to view the characteristics and features of the property which are preserved by the easement to the extent consistent with the nature and condition of the property.

(B) Factors to be considered in determining the type and amount of public access required under paragraph (d)(5)(iv)(A) of this section include the historical significance of the donated property, the nature of the features that are the subject of the easement, the remoteness or accessibility of the site of the donated property, the possibility of physical hazards to the public visiting the property (for example, an unoccupied structure in a dilapidated condition), the extent to which public access would be an unreasonable intrusion on any privacy interests of individuals living on the property, the degree to which public access would impair the preservation interests which are the subject of the donation, and the availability of opportunities for the public to view the property by means other than visits to the site.

(C) The amount of access afforded the public by the donation of an easement shall be determined with reference to the amount of access permitted by the terms of the easement which are established by the donor, rather than the amount of access actually provided by the donee organization. However, if the donor is aware of any facts indicating that the amount of access that the donee organization will provide is significantly less than the amount of access permitted under the terms of the easement, then the amount of access afforded the public shall be determined with reference to this lesser amount.

(v) **Examples.** The provisions of paragraph (d)(5)(iv) of this section may be illustrated by the following examples:

Example 1. A and his family live in a house in a certified historic district in the State of X. The entire house, including its interior, has architectural features representing classic Victorian period architecture. A donates an exterior and interior easement on the property to a qualified organization but continues to live in the house with his family. A's house is surrounded by a high stone wall which obscures the public's view of it from the street. Pursuant to the terms of the easement, the house may be opened to the public from 10:00 a.m. to 4:00 p.m. on one Sunday in May and one Sunday in November each year for house and garden tours. These tours are to be under the supervision of the donee and open to members of the general public upon payment of a small fee. In addition, under the terms of the easement, the donee organization is given the right to photograph the interior and exterior of the house and distribute such photographs to magazines, newsletters, or other publicly available publications. The terms of the easement also permit persons affiliated with educational organizations, professional architectural associations, and historical societies to make an appointment through the donee organization to study the property. The donor is not aware of any facts indicating that the public access to be provided by the donee organization will be significantly less than that permitted by the terms of the easement. The 2 opportunities for public visits per year, when combined with the ability of the general public to view the architectural characteristics and features that are the subject of the easement through photographs, the opportunity for scholarly study of the property, and the fact that the house is used as an occupied residence, will enable the donation to satisfy the requirement of public access.

Example 2. B owns an unoccupied farmhouse built in the 1840's and located on a property that is adjacent to a Civil War battlefield. During the Civil War the farmhouse was used as quarters for Union troops. The battlefield is visited year round by the general public. The condition of the farmhouse is such that the safety of visitors will not be jeopardized and opening it to the public will not result in significant deterioration. The farmhouse is not visible from the battlefield or any public way. It is accessible only by way of a private road owned by B. B donates a conservation easement on the farmhouse to a qualified organization. The terms of the easement provide that the donee organization may open the property (via B's road) to the general public on four weekends each year from 8:30 a.m. to 4:00 p.m. The donation does not meet the public access requirement because the farmhouse is safe, unoccupied, and easily accessible to the general public who have come to the site to visit Civil War historic land areas (and related resources), but will only be open to the public on four weekends each year. However, the donation would meet the public access requirement if the terms of the easement permitted the donee organization to open the property to the public every other weekend during the year and the donor is not aware of any facts indicating that the donee organization will provide significantly less access than that permitted.

(e) **Exclusively for conservation purposes—(1) In general.** To meet the requirements of this section, a donation must be exclusively for conservation purposes. See paragraphs (c)(1) and (g)(1) through (g)(6)(ii) of this section. A deduction will not be denied under this section when incidental benefit inures to the donor merely as a result of conservation restrictions limiting the uses to which the donor's property may be put.

(2) Inconsistent use. Except as provided in paragraph (e)(4) of this section, a deduction will not be allowed if the contribution would accomplish one of the enumerated conservation purposes but would permit destruction of other sig-

ificant conservation interests. For example, the ervation of farmland pursuant to a State ogram for flood prevention and control would qualify under paragraph (d)(4) of this section nder the terms of the contribution a signifi- nt, naturally occurring ecosystem could be in- ed or destroyed by the use of pesticides in the eration of the farm. However, this require- ent is not intended to prohibit uses of the operty, such as selective timber harvesting or lective farming if, under the circumstances, ose uses do not impair significant conservation erests.

(3) **Inconsistent use permitted.** A use that is structive of conservation interests will be per- ted only if such use is necessary for the pro- tion of the conservation interests that are the ject of the contribution. For example, a de- tion for the donation of an easement to pre- e an archaeological site that is listed on the tional Register of Historic Places will not be allowed if site excavation consistent with sound haeological practices may impair a scenic view which the land is a part. A donor may tinue a pre-existing use of the property that not conflict with the conservation purposes the gift.

(f) **Examples.** The provisions of this section lating to conservation purposes may be illustrat- by the following examples.

Example 1. State S contains many large tract forests that desirable recreation and scenic areas for the general lic. The forests' scenic values attract millions of people to State. However, due to the increasing intensity of land elopment in State S, the continued existence of forestland eas greater than 45 acres is threatened. J grants a petual easement on a 100–acre parcel of forestland that is of one of the State's scenic areas to a qualifying organiza- n. The easement imposes restrictions on the use of the d for the purpose of maintaining its scenic values. The rictions include a requirement that the parcel be main- ed forever as open space devoted exclusively to conserva- purposes and wildlife protection, and that there be no mercial, industrial, residential, or other development use such parcel. The law of State S recognizes a limited public ht to enter private land, particularly for recreational pur- s, unless such land is posted or the landowner objects. easement specifically restricts the landowner from posting parcel, or from objecting, thereby maintaining public ess to the parcel according to the custom of the State. J's cel provides the opportunity for the public to enjoy the use the property and appreciate its scenic values. Accordingly, donation qualifies for a deduction under this section.

Example 2. A qualified conservation organization owns Greenacre in fee as a nature preserve. Greenacre contains a h quality example of a tall grass prairie ecosystem. Farma- an operating farm, adjoins Greenacre and is a compatible ce to the nature preserve. Conversion of Farmacre to a e intense use, such as a housing development, would ously affect the continued use of Greenacre as a nature serve because of human traffic generated by the development. The owner of Farmacre donates an easement preventing any future development on Farmacre to the qualified conservation organization for conservation purposes. Normal agricultural uses will be allowed on Farmacre. Accordingly, the donation qualifies for a deduction under this section.

Example 3. H owns Greenacre, a 900–acre parcel of woodland, rolling pasture, and orchards on the crest of a mountain. All of Greenacre is clearly visible from a nearby national park. Because of the strict enforcement of an applicable zoning plan, the highest and best use of Greenacre is as a subdivision of 40–acre tracts. H wishes to donate a scenic easement on Greenacre to a qualifying conservation organization, but H would like to reserve the right to subdivide Greenacre into 90–acre parcels with no more than one single-family home allowable on each parcel. Random building on the property, even as little as one home for each 90 acres, would destroy the scenic character of the view. Accordingly, no deduction would be allowable under this section.

Example 4. Assume the same facts as in example (3), except that not all of Greenacre is visible from the park and the deed of easement allows for limited cluster development of no more than five nine-acre clusters (with four houses on each cluster) located in areas generally not visible from the national park and subject to site and building plan approval by the donee organization in order to preserve the scenic view from the park. The donor and the donee have already identified sites where limited cluster development would not be visible from the park or would not impair the view. Owners of homes in the clusters will not have any rights with respect to the surrounding Greenacre property that are not also available to the general public. Accordingly, the donation qualifies for a deduction under this section.

Example 5. In order to protect State S's declining open space that is suited for agricultural use from increasing development pressure that has led to a marked decline in such open space, the Legislature of State S passed a statute authorizing the purchase of "agricultural land development rights" on open acreage. Agricultural land development rights allow the State to place agricultural preservation restrictions on land designated as worthy of protection in order to preserve open space and farm resources. Agricultural preservation restrictions prohibit or limit construction or placement of buildings except those used for agricultural purposes or dwellings used for family living by the farmer and his family and employees; removal of mineral substances in any manner that adversely affects the land's agricultural potential; or other uses detrimental to retention of the land for agricultural use. Money has been appropriated for this program and some landowners have in fact sold their "agricultural land development rights" to State S. K owns and operates a small dairy farm in State S located in an area designated by the Legislature as worthy of protection. K desires to preserve his farm for agricultural purposes in perpetuity. Rather than selling the development rights to State S, K grants to a qualified organization an agricultural preservation restriction on his property in the form of a conservation easement. K reserves to himself, his heirs and assigns the right to manage the farm consistent with sound agricultural and management practices. The preservation of K's land is pursuant to a clearly delineated governmental policy of preserving open space available for agricultural use, and will yield a significant public benefit by preserving open space against increasing development pressures.

(g) **Enforceable in perpetuity—(1) In general.** In the case of any donation under this section, any interest in the property retained by the donor (and the donor's successors in interest) must be

subject to legally enforceable restrictions (for example, by recordation in the land records of the jurisdiction in which the property is located) that will prevent uses of the retained interest inconsistent with the conservation purposes of the donation. In the case of a contribution of a remainder interest, the contribution will not qualify if the tenants, whether they are tenants for life or a term of years, can use the property in a manner that diminishes the conservation values which are intended to be protected by the contribution.

(2) Protection of a conservation purpose in case of donation of property subject to a mortgage. In the case of conservation contributions made after February 13, 1986, no deduction will be permitted under this section for an interest in property which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity. For conservation contributions made prior to February 14, 1986, the requirement of section 170 (h)(5)(A) is satisfied in the case of mortgaged property (with respect to which the mortgagee has not subordinated its rights) only if the donor can demonstrate that the conservation purpose is protected in perpetuity without subordination of the mortgagee's rights.

(3) Remote future event. A deduction shall not be disallowed under section 170(f)(3)(B)(iii) and this section merely because the interest which passes to, or is vested in, the donee organization may be defeated by the performance of some act or the happening of some event, if on the date of the gift it appears that the possibility that such act or event will occur is so remote as to be negligible. See paragraph (e) of § 1.170A–1. For example, a state's statutory requirement that use restrictions must be rerecorded every 30–years to remain enforceable shall not, by itself, render an easement nonperpetual.

(4) Retention of qualified mineral interest—(i) In general. Except as otherwise provided in paragraph (g)(4)(ii) of this section, the requirements of this section are not met and no deduction shall be allowed in the case of a contribution of any interest when there is a retention by any person of a qualified mineral interest (as defined in paragraph (b)(1)(i) of this section) if at any time there may be extractions or removal of minerals by any surface mining method. Moreover, in the case of a qualified mineral interest gift, the requirement that the conservation purposes be protected in perpetuity is not satisfied if any method of mining that is inconsistent with the particular conservation purposes of a contribution is permitted at any time. See also § 1.170A–14(e)(2). However, a deduction under this section will not be denied in the case of certain methods of mining that may have limited, localized impact on the real property but that are not irremediably destructive of significant conservation interests. For example, a deduction will not be denied in a case where production facilities are concealed or compatible with existing topography and landscape and when surface alteration is to be restored to its original state.

(ii) Exception for qualified conservation contributions after July 1984. (A) A contribution made after July 18, 1984, of a qualified real property interest described in section 170(h)(2)(A) shall not be disqualified under the first sentence of paragraph (g)(4)(i) of this section if the following requirements are satisfied.

(1) The ownership of the surface estate and mineral interest were separated before June 13, 1976, and remain so separated up to and including the time of the contribution.

(2) The present owner of the mineral interest is not a person whose relationship to the owner of the surface estate is described at the time of the contribution in section 267(b) or section 707(b), and

(3) The probability of extraction or removal of minerals by any surface mining method is so remote as to be negligible.

Whether the probability of extraction or removal of minerals by surface mining is so remote as to be negligible is a question of fact and is to be made on a case by case basis. Relevant factors to be considered in determining if the probability of extraction or removal of minerals by surface mining is so remote as to be negligible include: Geological, geophysical or economic data showing the absence of mineral reserves on the property, or the lack of commercial feasibility at the time of the contribution of surface mining the mineral interest.

(B) If the ownership of the surface estate and mineral interest first became separated after June 12, 1976, no deduction is permitted for a contribution under this section unless surface mining on the property is completely prohibited.

(iii) Examples. The provisions of paragraph (g)(4)(i) and (ii) of this section may be illustrated by the following examples:

Example 1. K owns 5,000 acres of bottomland hardwood property along a major watershed system in the southern part of the United States. Agencies within the Department of the Interior have determined that southern bottomland hardwoods are a rapidly diminishing resource and a critical ecosys-

in the south because of the intense pressure to cut the trees and convert the land to agricultural use. These agencies have further determined (and have indicated in correspondence with K) that bottomland hardwoods provide a superb habitat for numerous species and play an important role in controlling floods and purifying rivers. K donates to a qualified organization his entire interest in this property other than the interest in the gas and oil deposits that have been identified under K's property. K covenants and can ensure that, although drilling for gas and oil on the property may have some temporary localized impact on the real property, the drilling will not interfere with the overall conservation purpose of the gift, which is to protect the unique bottomland hardwood ecosystem. Accordingly, the donation qualifies for a deduction under this section.

Example 2. Assume the same facts as in example (1), except that in 1979, K sells the mineral interest to A, an unrelated person, in an arm's-length transaction, subject to a recorded prohibition on the removal of any minerals by any surface mining method and a recorded prohibition against any mining technique that will harm the bottomland hardwood ecosystem. After the sale to A, K donates a qualified real property interest to a qualified organization to protect the bottomland hardwood ecosystem. Since at the time of the transfer, surface mining and any mining technique that will harm the bottomland hardwood ecosystem are completely prohibited, the donation qualifies for a deduction under this section.

(5) Protection of conservation purpose where taxpayer reserves certain rights. (i) **Documentation.** In the case of a donation made after February 13, 1986, of any qualified real property interest when the donor reserves rights the exercise of which may impair the conservation interests associated with the property, for a deduction to be allowable under this section the donor must make available to the donee, prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights. Such documentation may include:

(A) The appropriate survey maps from the United States Geological Survey, showing the property line and other contiguous or nearby protected areas;

(B) A map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences, or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);

(C) An aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made; and

(D) On-site photographs taken at appropriate locations on the property. If the terms of the donation contain restrictions with regard to a particular natural resource to be protected, such as water quality or air quality, the condition of the resource at or near the time of the gift must be established. The documentation, including the maps and photographs, must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and in substance saying "This natural resources inventory is an accurate representation of [the protected property] at the time of the transfer.".

(ii) **Donee's right to inspection and legal remedies.** In the case of any donation referred to in paragraph (g)(5)(i) of this section, the donor must agree to notify the donee, in writing, before exercising any reserved right, e.g. the right to extract certain minerals which may have an adverse impact on the conservation interests associated with the qualified real property interest. The terms of the donation must provide a right of the donee to enter the property at reasonable times for the purpose of inspection the property to determine if there is compliance with the terms of the donation. Additionally, the terms of the donation must provide a right of the donee to enforce the conservation restrictions by appropriate legal proceedings, including but not limited to, the right to require the restoration of the property to its condition at the time of the donation.

(6) **Extinguishment.** (i) **In general.** If a subsequent unexpected change in the conditions surrounding the property that is the subject of a donation under this paragraph can make impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if the restrictions are extinguished by judicial proceeding and all of the donee's proceeds (determined under paragraph (g)(6)(ii) of this section) from a subsequent sale or exchange of the property are used by the donee organization in a manner consistent with the conservation purposes of the original contribution.

(ii) **Proceeds.** In case of a donation made after February 13, 1986, for a deduction to be allowed under this section, at the time of the gift the donor must agree that the donation of the

perpetual conservation restriction gives rise to a property right, immediately vested in the donee organization, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift, bears to the value of the property as a whole at that time. See § 1.170A–14(h)(3)(iii) relating to the allocation of basis. For purposes of this paragraph (g)(6)(ii), that proportionate value of the donee's property rights shall remain constant. Accordingly, when a change in conditions give rise to the extinguishment of a perpetual conservation restriction under paragraph (g)(6)(i) of this section, the donee organization, on a subsequent sale, exchange, or involuntary conversion of the subject property, must be entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction.

(h) Valuation—(1) Entire interest of donor other than qualified mineral interest. The value of the contribution under section 170 in the case of a contribution of a taxpayer's entire interest in property other than a qualified mineral interest is the fair market value of the surface rights in the property contributed. The value of the contribution shall be computed without regard to the mineral rights. See paragraph (h)(4), example (1), of this section.

(2) Remainder interest in real property. In the case of a contribution of any remainder interest in real property, section 170(f)(4) provides that in determining the value of such interest for purposes of section 170, depreciation and depletion of such property shall be taken into account. See § 1.170A–12. In the case of the contribution of a remainder interest for conservation purposes, the current fair market value of the property (against which the limitations of § 1.17A–12 are applied) must take into account any pre-existing or contemporaneously recorded rights limiting, for conservation purposes, the use to which the subject property may be put.

(3) Perpetual conservation restriction—(i) In general. The value of the contribution under section 170 in the case of a charitable contribution of a perpetual conservation restriction is the fair market value of the perpetual conservation restriction at the time of the contribution. See § 1.170A–7(c). If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the sales prices of such comparable easements. If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction. The amount of the deduction in the case of a charitable contribution of a perpetual conservation restriction covering a portion of the contiguous property owned by a donor and the donor's family (as defined in section 267(c)(4)) is the difference between the fair market value of the entire contiguous parcel of property before and after the granting of the restriction. If the granting of a perpetual conservation restriction after January 14, 1986, has the effect of increasing the value of any other property owned by the donor or a related person, the amount of the deduction for the conservation contribution shall be reduced by the amount of the increase in the value of the other property, whether or not such property is contiguous. If, as a result of the donation of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section. However, if the donor or a related person receives, or can reasonably expect to receive, a financial or economic benefit that is substantial, but it is clearly shown that the benefit is less than the amount of the transfer, then a deduction under this section is allowable for the excess of the amount transferred over the amount of the financial or economic benefit received or reasonably expected to be received by the donor or the related person. For purposes of this paragraph (h)(3)((i), related person shall have the same meaning as in either section 267(b) or section 707(b). (See example (10) of paragraph (h)(4) of this section.)

(ii) Fair market value of property before and after restriction. If before and after valuation is used, the fair market value of the property before contribution of the conservation restriction must take into account not only the current use of the property but also an objective assessment of how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that

already restrict the property's potential highest and best use. Further, there may be instances where the grant of a conservation restriction may have no material effect on the value of the property or may in fact serve to enhance, rather than reduce, the value of property. In such instances no deduction would be allowable. In the case of a conservation restriction that allows for any development, however limited, on the property to be protected, the fair market value of the property after contribution of the restriction must take into account the effect of the development. In the case of a conservation easement such as an easement on a certified historic structure, the fair market value of the property after contribution of the restriction must take into account the amount of access permitted by the terms of the easement. Additionally, if before and after valuation is used, an appraisal of the property after contribution of the restriction must take into account the effect of restrictions that will result in a reduction of the potential fair market value represented by highest and best use but will, nevertheless, permit uses of the property that will increase its fair market value above that represented by the property's current use. The value of a perpetual conservation restriction shall not be reduced by reason of the existence of restrictions on transfer designed solely to ensure that the conservation restriction will be dedicated to conservation purposes. See § 1.170A–14 (c)(3).

(iii) **Allocation of basis.** In the case of the donation of a qualified real property interest for conservation purposes, the basis of the property retained by the donor must be adjusted by the elimination of that part of the total basis of the property that is properly allocable to the qualified real property interest granted. The amount of the basis that is allocable to the qualified real property interest shall bear the same ratio to the total basis of the property as the fair market value of the qualified real property interest bears to the fair market value of the property before the granting of the qualified real property interest. When a taxpayer donates to a qualifying conservation organization an easement on a structure with respect to which deductions are taken for depreciation, the reduction required by this paragraph (h)(3)(ii) in the basis of the property retained by the taxpayer must be allocated between the structure and the underlying land.

(4) **Examples.** The provisions of this section may be illustrated by the following examples. In examples illustrating the value or deductibility of donations, the applicable restrictions and limitations of § 1.170A–4, with respect to reduction in amount of charitable contributions of certain appreciated property, and § 1.170A–8, with respect to limitations on charitable deductions by individuals, must also be taken into account.

Example 1. A owns Goldacre, a property adjacent to a state park. A wants to donate Goldacre to the state to be used as part of the park, but A wants to reserve a qualified mineral interest in the property, to exploit currently and to devise at death. The fair market value of the surface rights in Goldacre is $200,000 and the fair market value of the mineral rights in $100,000. In order to ensure that the quality of the park will not be degraded, restrictions must be imposed on the right to extract the minerals that reduce the fair market value of the mineral rights to $80,000. Under this section, the value of the contribution is $200,000 (the value of the surface rights).

Example 2. In 1984 B, who is 62, donates a remainder interest in Greenacre to a qualifying organization for conservation purposes. Greenacre is a tract of 200 acres of undeveloped woodland that is valued at $200,000 at its highest and best use. Under § 1.170A–12(b), the value of a remainder interest in real property following one life is determined under § 25.2512–5 of this chapter (Gift Tax Regulations). (See § 25.2512–5A of this chapter with respect to the valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred before December 1, 1983.) Accordingly, the value of the remainder interest, and thus the amount eligible for an income tax deduction under sections 170(f), is $55,996 ($200,000 × .27998).

Example 3. Assume the same facts as in example (2), except that Greenacre is B's 200–acre estate with a home built during the colonial period. Some of the acreage around the home is cleared; the balance of Greenacre, except for access roads, is wooded and undeveloped. See section 170(f)(3)(B)(i). However, B would like Greenacre to be maintained in its current state after his death, so he donates a remainder interest in Greenacre to a qualifying organization for conservation purposes pursuant to section 170 (f)(3)(B)(iii) and (h)(2)(B). At the time of the gift the land has a value of $200,000 and the house has a value of $100,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to § 1.170A–12. See § 1.170A–12(b)(3).

Example 4. Assume the same facts as in example (2), except that at age 62 instead of donating a remainder interest B donates an easement in Greenacre to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to $110,000. Accordingly, the value of the easement, and thus the amount eligible for a deduction under section 170(f), is $90,000 ($200,000 less $110,000).

Example 5. Assume the same facts as in example (4), and assume that three years later, at age 65, B decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre (subject to the easement) to $130,000. Accordingly, the value of the remainder interest, and thus the amount eligible for a deduction under section 170(f), is $41,639 ($130,000 × .32030).

Example 6. Assume the same facts as in example (2), except that at the time of the donation of a remainder interest in Greenacre, B also donates an easement to a different qualifying organization for conservation purposes. Based on all the facts and circumstances, the value of the easement is determined to be $100,000. Therefore, the value of the

property after the easement is $100,000 and the value of the remainder interest, and thus the amount eligible for deduction under section 170(f), is $27,998 ($100,000 × .27998).

Example 7. C owns Greenacre, a 200–acre estate containing a house built during the colonial period. At its highest and best use, for home development, the fair market value of Greenacre is $300,000. C donates an easement (to maintain the house and Green acre in their current state) to a qualifying organization for conservation purposes. The fair market value of Greenacre after the donation is reduced to $125,000. Accordingly, the value of the easement and the amount eligible for a deduction under section 170(f) is $175,000 ($300,000 less $125,000).

Example 8. Assume the same facts as in example (7) and assume that three years later, C decides to donate a remainder interest in Greenacre to a qualifying organization for conservation purposes. Increasing real estate values in the area have raised the fair market value of Greenacre to $180,000. Assume that because of the perpetual easement prohibiting any development of the land, the value of the house is $120,000 and the value of the land is $60,000. The value of the remainder interest, and thus the amount eligible for an income tax deduction under section 170(f), is computed pursuant to § 1.170A–12. See § 1.170A–12(b)(3).

Example 9. D owns property with a basis of $20,000 and a fair market value of $80,000. D donates to a qualifying organization an easement for conservation purposes that is determined under this section to have a fair market value of $60,000. The amount of basis allocable to the easement is $15,000 ($60,000/$80,000=$15,000/$20,000). Accordingly, the basis of the property is reduced to $5,000 ($20,000 minus $15,000).

Example 10. E owns 10 one-acre lots that are currently woods and parkland. The fair market value of each of E's lots is $15,000 and the basis of each lot is $3,000. E grants to the county a perpetual easement for conservation purposes to use and maintain eight of the acres as a public park and to restrict any future development on those eight acres. As a result of the restrictions, the value of the eight acres is reduced to $1,000 an acre. However, by perpetually restricting development on this portion of the land, E has ensured that the two remaining acres will always be bordered by parkland, thus increasing their fair market value to $22,500 each. If the eight acres represented all of E's land, the fair market value of the easement would be $112,000, an amount equal to the fair market value of the land before the granting of the easement. (8 × $15,000=$120,000) minus the fair market value of the encumbered land after the granting of the easement (8 × $1,000=$8,000). However, because the easement only covered a portion of the taxpayer's contiguous land, the amount of the deduction under section 170 is reduced to $97,000 ($150,000–$53,000), that is, the difference between the fair market value of the entire tract of land before ($150,000) and after ((8 × $1,000) + (2 × $22,500)) the granting of the easement.

Example 11. Assume the same facts as in example (10). Since the easement covers a portion of E's land, only the basis of that portion is adjusted. Therefore, the amount of basis allocable to the easement is $22,400 ((8 × $3,000) × ($112,000/$120,000)). Accordingly, the basis of the eight acres encumbered by the easement is reduced to $1,600 ($24,000–$22,400), or $200 for each acre. The basis of the two remaining acres is not affected by the donation.

Example 12. F owns and uses as professional offices a two-story building that lies within a registered historic district F's building is an outstanding example of period architecture with a fair market value of $125,000. Restricted to its current use, which is the highest and best use of the property, [illegible] making changes to the facade, the building and lot would [illegible] a fair market value of $100,000, of which $80,000 would [illegible] allocable to the building and $20,000 would be allocable [illegible] the lot. F's basis in the property is $50,000, of which $[illegible] is allocable to the building and $10,000 is allocable to the [illegible] F's neighborhood is a mix of residential and commercial [illegible] and it is possible that F (or another owner) could enlarge [illegible] building for more extensive commercial use, which [illegible] highest and best use. However, this would require changes [illegible] the facade. F would like to donate to a qualifying preservation organization an easement restricting any changes [illegible] facade and promising to maintain the facade in perpetuity. [illegible] donation would qualify for a deduction under this [illegible] The fair market value of the easement is $25,000 ([illegible] market value of the property before the easement, $125,[illegible] minus the fair market value of the property after the easement, $100,000). Pursuant to § 1.170A–14(b)(3)(iii), [illegible] sis allocable to the easement is $10,000 and the basis of the underlying property (building and lot) is reduced to $10,[illegible]

(i) Substantiation requirement. If a taxpayer makes a qualified conservation contribution [illegible] claims a deduction, the taxpayer must maintain [illegible] written records of the fair market value of the underlying property before and after the donation and the conservation purpose furthered by the donation and such information shall be stated in the taxpayer's income tax return if required by the return or its instructions. See also § 1.170A–13(c) (relating to substantiation requirements for deductions in excess of $5,000 for charitable contributions made after 1984), [illegible] section 6659 (relating to additions to tax in [illegible] case of valuation overstatements).

(j) Effective date. Except as otherwise provided in § 1.170A–14(g)(4)(ii), this section applies only to contributions made on or after December 18, 1980.

[T.D. 8069, 51 FR 1499, Jan. 14, 1986; 51 FR 4[illegible], Feb. 13, 1986; 51 FR 6219, Feb. 21, 1986; T.D. [illegible], 53 FR 16085, May 5, 1988; T.D. 8540, 59 FR [illegible], June 10, 1994]

§ 1.171–1 Bond premium.

Text of section effective March 2, 1998.

(a) Overview—(1) In general. This section and §§ 1.171–2 through 1.171–5 provide rules for the determination and amortization of bond premium by a holder. In general, a holder amortizes bond premium by offsetting the interest allocable to an accrual period with the premium allocable to that period. Bond premium is allocable to an accrual period based on a constant yield. The use of a constant yield to amortize bond premium is intended to generally conform the treatment of bond premium to the treatment of original issue discount under sections [illegible] through 1275. Unless otherwise provided, [illegible] terms used in this section and §§ 1.171–2 through

Standards for Rehabilitation

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

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