

Gibraltar Conservation Easement, Tax Parcel No. 26-012.20-004
Between Preservation Delaware, Inc. And Delaware Department Of State
Full Text Of Original Easement Dated 6/27/1997
Including Language Modified By Easement Amendment Dated 2/08/2000
2007 Proposed Changes in Red

AMENDED AND RESTATED CONSERVATION EASEMENT

THIS **AMENDED AND RESTATED CONSERVATION EASEMENT** made this ~~27th~~ ____ day of ~~June, 1997~~ **2007** (this **Amended and Restated Conservation Easement Agreement**”), by and between ~~H. RODNEY SHARP III, TRUSTEE of the H.R.S. Real Estate Trust u/a dated September 22, 1986, Party of the First Part, hereinafter referred to as: Grantors,~~ PRESERVATION DELAWARE, INC., a Delaware Corporation, Party of the First Part, hereinafter referred to as “Grantor” and THE STATE OF DELAWARE DEPARTMENT OF STATE, Party of the Second Part, hereinafter referred to as “Grantee”.

WITNESSETH

WHEREAS, Grantor is the fee simple owner of a certain tract of land located in the City of Wilmington, New Castle County, Delaware, identified in the New Castle County Assessment Office as Parcel Number 26-012.20-004, ~~more particularly described in Exhibit A attached hereto and incorporated by reference,~~ hereinafter referred to as “Property”, as evidenced by a deed **from H. Rodney Sharp, III, Trustee of HRS Real Estate Trust u/a dated September 22, 1986 (the “Sharps”) to Preservation Delaware, Inc. dated June 27, 1997** recorded in the above-referenced office at Deed Book 2295, Page 64; and

WHEREAS, simultaneously with the conveyance of the Property, the Sharps granted a Conservation Easement to Grantee dated June 27, 1997 recorded in the above-referenced office at Deed Book 2296, Page 78, as amended by that certain First Amendment dated February 8, 2000, recorded in the Office of the Recorder of Deeds in Deed Book 2781, Page 136; and

WHEREAS, the parties desire to further amend and restate the Conservation Easement as more fully set forth herein; and

WHEREAS, it has been determined that this Amended and Restated Easement Agreement will enhance the Conservation Values (as more particularly set forth herein) and will also facilitate the rehabilitation and maintenance of Gibraltar (as hereinafter described); and

WHEREAS, said Property has scenic, historic, and cultural resource values (collectively “Conservation Values”) worthy of conservation protection and of great importance to the ~~Grantors~~ **Grantee**, and the people of New Castle County and the people of Delaware; and

WHEREAS, in particular, the Property contains Gibraltar, a main estate house built in 1884 with major expansions in the 1920s which exhibits architecturally significant characteristics of Italianate and Colonial Revival periods designed by locally

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and regionally renowned architects (“**Gibraltar**”); and contains formal and informal gardens designed by a nationally renowned landscape architect (“**the Gardens**”); and both the structures and the **G**ardens exhibit a high degree of site and structural integrity; and

WHEREAS, the specific Conservation Values of the Property are documented in an inventory (“Baseline Documentation”) as of ~~the date hereof~~ **June 27, 1997**, containing reports, maps, photographs, and other documentation of relevant features of the Property on file with Grantee and incorporated by this reference which the parties agree is an accurate representation of the condition of the Property at the time of ~~this~~ **the original** grant and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantors and Grantee are desirous of preserving the open state of the Property and further desire to conserve and protect the Property from any disruption and/or other occurrences which might interfere with the beauty and unique character of the Property as it exists in its open and scenic state; and

WHEREAS, Grantors hereby, as owners of the Property, **do**s grant and convey unto Grantee the right to preserve and protect the Conservation Values of said Property in perpetuity; and

WHEREAS, Grantee is a department of the State government among whose purposes is the preservation, protection, or enhancement of land and building for their natural, scenic, historic, open space and cultural resource values (“Conservation Purposes”); and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and generations to come; and

~~WHEREAS, said Property is encumbered by a Conservation Easement recorded in the above referenced office at Deed Book 2296, Page 78; and~~

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Delaware and in particular 7 Del. C. Chapter 69, Grantors hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity of the Property of the nature and character to the extent hereinafter set forth.

1. PURPOSE

It is the purpose of this **Amended and Restated Conservation** Easement Agreement to assure that, **subject to the existing conditions and structures and others expressly contemplated herein**, the Property will be retained forever in its scenic and open condition and, **accordingly**, to prevent any use of the Property that will significantly

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impair or interfere with the Conservation Values of the Property, all in accordance with the terms hereof.

2. RESTRICTIONS ON USE

In order to accomplish, safeguard, and promote the purposes of ~~the~~ **this Amended and Restated Conservation** Easement Agreement set forth in Paragraph 1, Grantors hereby declares and covenants that the following restrictions are hereby imposed and shall apply forever to the use and enjoyment of the Property.

- (A) No signs, billboards, or outdoor advertising structures shall be placed or maintained on the Property; except for a reasonable number of signs for resource protection, safety, boundary identification, management, interpretation of cultural and historic areas, and for such other purposes with express written approval of Grantee; except for the following rights Grantors hereby reserves as described in Paragraph 3 below.
- (B) No building, structure, improvement, or facility (hereinafter referred to as "Improvement") shall be constructed, repaired, remodeled, reconstructed, or maintained on or above ground on the Property; except for the following rights Grantors hereby reserves as described in Paragraph 3 below.
- (C) No subdivision of the Property **that adversely impairs or interferes with the Conservation Values of the Property** shall take place without prior submission of written notification to the Grantee, ~~that adversely impairs or interferes with the Conservation Values of the Property.~~
- (D) No substance of material as landfill, trash, waste, or unsightly or offensive materials shall be placed or dumped on the Property except for temporary storage of trash and debris generated from the conduct of the Permitted Uses described in Paragraph 3 provided such trash and debris is placed in suitable containers and removed from the property in a reasonable time.
- (E) No loam, peat, gravel, soil, rock, sand, or ~~similar~~ **other** material **shall be deposited or placed on the Property**, nor **shall there be made** any change in the general topography of the land; except ~~as~~ **for approved material** associated with the following rights hereby reserved as described in Paragraph 3 below.
- (F) There shall be no excavation or removal of loam, peat, gravel, soil, rock, sand, or similar material, nor any change in **the general topography of** the land; except as associated with the following rights hereby reserved as described in paragraph 3 below.
- (G) No other acts or uses shall be allowed which adversely affect the scenic, historic, and cultural resource values of the Property except as associated with the following rights hereby reserved as described in paragraph 3 below.

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- (H) The restriction on use shall not affect any commercial or residential use of the Property, which is not inconsistent with the terms of this Easement Agreement, and the right to continue such use is reserved to the Grantors, ~~their~~ **its** heirs, executors, administrators, successors or assigns.
- (I) The Conservation Values of Gibraltar are embodied in the formal gardens, formal designed aspects of the landscape, and the historic buildings, structures, and objects on the Property. These elements are the primary aspects of the public interest in the Property and will be strictly conserved in this Amended and Restated Conservation Easement. Areas outside the Primary Conservation Easement Area are of secondary importance and can be developed without compromising the spirit of this Amended and Restated Conservation Easement or the importance of the Property and are defined as “the Secondary Easement Area”. The Primary Conservation Easement Area and Secondary Easement Area are delineated on the Plan attached hereto as Exhibit “A”.

3. PERMITTED USES

Grantors ~~is~~ hereby declares and covenants that the following uses are hereby permitted on the Property subject to the limitations contained herein, and shall apply forever to the use and enjoyment of the Property:

- (A) Grantors ~~is~~ may repair and maintain existing Improvements. Existing improvements include a three-story stone dwelling, garage/greenhouse complex, tool storage complex, gatehouse, stone/brick temple structures, perimeter stone wall, driveways, walkway, and gardens. **In order to protect and maintain the two existing entrances in their current configuration within the Primary Conservation Easement Area, it is acknowledged that an additional entrance driveway (expressly authorized in 3(D) below) at 16th Street (or such other location in the Secondary Easement Area) may be required to provide safe and adequate access to the Property for the public and for emergency equipment. The design and precise location of the additional entrance shall be subject to the express written approval of Grantee.**
- (B) A new construction addition **or free standing building** of up to ~~4000 6500~~ **10,000** square feet **(excluding necessary modifications to the existing mansion for the sole purpose of life safety and/or accessibility code compliance) in foot print may be built ~~on-site~~ upon the Property. Such alteration required solely for code purposes shall be exclusive of the 10,000 square feet (footprint) limit for new construction (and shall be limited to less than 1,000 square feet). Notwithstanding anything herein contained to the contrary, additions to the main house will be limited to no more than 6,500 square feet, (exclusive of up to 1000 square feet to address life safety and accessibility issues).** The new construction may be any combination of attached/detached construction associated with the main house and the garage/greenhouse complex. All new construction shall be on the north

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side of existing buildings with the specific location and exterior design subject to express written approval of Grantee.

- (C) The east, south, and west facades of the main house shall not be altered **without the expressed written approval of the Grantee. Alterations on these facades shall be limited to construction required to meet life safety and accessibility code requirements.**
- (D) Construction of new gardens, new parking areas, new driveways, and widening of existing driveways are permitted subject to express written approval of the Grantee.
- (E) On the main house, window sashes shall be retained where possible or replaced in-kind. Replacement of sash and storm window design shall be subject to express written approval of Grantee.
- (F) The significant architectural features, to the extent identified as such in the Baseline Documentation, of the following first floor rooms shall not be altered: Main entry hall including the staircase and west side foyer entrance; dining room to the north of the entry hall; living room at the southeast corner; library at the southwest corner; glass-walled conservatory on the south façade.
- (G) The remaining wooden trim shall be retained wherever possible, except as room arrangement may necessitate removal. In such cases it shall be salvaged where possible and reused or re-milled to match the remaining trim.
- (H) The following shall be retained **and** repaired, ~~or replaced~~ where practicable:
Terracing, belvedere, statuary, iron gates, and railings.
- (I) All new construction or rehabilitation of the exterior or interior areas covered **(the interior area being limited to the first floor of Gibraltar)** under ~~the~~ **this Amended and Restated Easement Agreement**, including existing buildings and significant ground/garden features, shall be consistent with the U.S. Department of the Interior's standards for the treatment of historic properties and subject to the express written approval of the Grantee.
- (J) Loam, peat, gravel, soil, rock, sand, or material may be excavated or removed for archaeological investigations, for the purposes of landscape and garden rehabilitation or new landscape installation or for temporary construction, replacement, repair, or maintenance of permitted underground utilities, **or for foundations of new construction for an addition or separate building, parking areas, and access to the Property. To protect potential valuable archaeological resources, a detailed history of the site and a Phase 1A archaeological assessment of the property will be undertaken by a qualified professional to determine any areas of the site that may have a high potential for the presence of important**

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archaeological resources. Any identified areas will be avoided to the extent possible during any ground disturbing activities, including excavating, constructing, landscaping, contouring, or adding material upon the Property.

(K) All buildings on the property currently under roof will be protected from the weather and secured from vandalism.

(L) The Property may be maintained consistent with the limitations contained herein.

4. LIMITATIONS OF USE OF CONSERVATION EASEMENT AREA FOR PURPOSES OF BUILDING DENSITY REQUIREMENTS

No portion of the Property may be used to satisfy land area requirements for the calculation of building density under zoning or subdivision laws, regulation, or ordinances for any lands adjacent to the Property.

5. RESERVED RIGHTS

Grantors reserves to ~~themselves~~ **itself**, ~~their~~ **its** ~~personal representatives, heirs,~~ successors and assigns, all rights accruing from ~~their~~ **its** ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purposes of the **Amended and Restated Conservation** Easement Agreement. Grantors also retains all responsibilities, costs, and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

6. GRANTOR'S DUTY TO NOTIFY

Grantors, prior to performing or permitting any activity described in this **Amended and Restated Conservation** Easement Agreement which requires prior approval of Grantee, hereby agrees to submit to Grantee for review and approval, the required information in writing forty-five (45) days prior to the date Grantors intends to undertake the activity in question. Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request, failure to respond being deemed an approval. Grantee's approval or authorization for any action here under requiring Grantee's approval or authorization may be withheld only upon a reasonable determination by the Grantee that the action as proposed would be inconsistent with this **Amended and Restated Conservation** Easement Agreement.

7. NOTICES

Any notice, demand, request, consent, approval, or communication that either party desired or is required to give to the other shall be in writing and either served personally or sent by first class main, postage prepaid and addressed as follows:

To Grantors: ~~H.R.S. Real Estate Trust~~ **Preservation Delaware, Inc.**
~~e/o H. Rodney Sharp, III, Trustee~~
~~Box 3779~~ **1405 Greenhill Avenue**
~~Greenville, Delaware 19807~~ **Wilmington, Delaware 19806**

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To Grantee: Department of State
Division of Historical and Cultural Affairs
~~Hall of Records~~ 21 The Green
Dover, Delaware 19901

Upon written notice from a party, or a successor in interest, to the other party hereto, any such notice, demand, etc. shall be given to that party or successor at the address indicated in such notice.

8. ENFORCEMENT RIGHTS OF GRANTEE

- (A) To accomplish the purposes of this Easement Agreement, the following rights are conveyed to Grantee by this **Amended and Restated Conservation** Easement Agreement:
- (i) To preserve and protect the Conservation Values of the Property;
 - (ii) To enter upon the Property at reasonable times in order to monitor Grantors's compliance herewith and otherwise enforce the terms of this **Amended and Restated Conservation** Easement Agreement; provided that such entry shall not unreasonably interfere with Grantors's use and quiet enjoyment of the Property; and
 - (iii) To prevent any activity on or use of the Property that is inconsistent with the purpose of this **Amended and Restated Conservation** Easement Agreement and to require the restoration of such areas or features of the Property that may be damaged by any activity inconsistent with this document.
- (B) In the event that a violation of the terms of this **Amended and Restated Conservation** Easement Agreement by Grantors or by a third party comes to the attention of Grantee, Grantee shall give written notice to Grantors or other violators of such violation and demand corrective action sufficient to cure the violation and restore the portion of the Property so injured. If the violation is not cured within thirty (30) days of receipt of written notice from Grantee, or, where the required corrective action cannot be completed within 30 days, Grantors or other violators fail to commence such a cure within said 30 day period and fail to continue diligently to cure the violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of the Easement Agreement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violations of the terms of this Easement Agreement, including damages for the loss of Conservation Values, and to require the restoration of the Property to its prior condition. If Grantee in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage

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to the Conservation Values of the Property, Grantee may pursue its remedies under this Paragraph 8 without prior notice to Grantors or without waiting for the period provided to cure to expire.

- (C) If Grantee's remedies at law for any violation of the terms of this Easement are inadequate, Grantee shall be entitled to the injunctive relief described in this Paragraph 8, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement Agreement. Actual damages or the inadequacy of otherwise available legal remedies need not be proven for Grantee to obtain the relief described in this Paragraph 8.
- (D) Any costs incurred by Grantee in enforcing the terms of the **Amended and Restated Conservation** Easement Agreement against Grantors or other violators, including without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by the violation of the terms of this **Amended and Restated Conservation** Easement Agreement shall be borne by Grantors or other violators, respectively.
- (E) Grantee's rights under this Paragraph 8 apply equally in the event of either actual or threatened violations of the terms of this **Amended and Restated Conservation** Easement Agreement.
- (F) Nothing contained herein shall be construed to entitle Grantee to bring any action for any injury or change in the Property resulting from causes beyond Grantor's control including fire, flood or storm.

9. PUBLIC ACCESS

Grantors shall ~~open the Property~~ **cause the Gardens to be open generally, on a daily basis, and shall cause the main floor of the Gibraltar mansion to be open** for public access on at least four separate and distinct occasions per year, subject to such reasonable rules, regulation, and fee schedules adopted by Grantors with notification to Grantee.

10. HOLD HARMLESS

Grantors shall hold harmless, indemnify, and defend Grantee and its Secretary, employees, agents, and contractors and their heirs, personal representatives, successors and assigns (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of any of the Indemnified Parties.

11. MODIFICATION

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This grant is made by Grantors with the understanding that the Conservation Purposes for which it is given may be protected or furthered notwithstanding the possibility that circumstances may arise that would justify modification of certain specific terms of this Easement Agreement. To that end, Grantors and Grantee may agree in writing to modify the terms of this Easement Agreement to the extent that such modification furthers or does not have an adverse effect on the Conservation Values to be protected by this grant, subject to any procedural requirements imposed upon Grantors or Grantee by law.

12. CONDEMNATION

If the **Property subject to this** Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee as well as Grantors shall be entitled to compensation in accordance with applicable law. Grantors agrees that the grant of the Easement gives rise to a property right, immediately vested in Grantee, with a fair market value of at least equal to the proportionate value that the Easement, at the time of this grant, bears to the value of the property as a whole. Accordingly, in the event of extinguishment of the Easement, Grantee on a subsequent sale, exchange, or involuntary conversion of the Property, shall be entitled to a portion of the proceeds at least equal to the aforesaid proportionate value at the time of the extinguishment. Grantee shall use this compensation exclusively for the acquisition of interests in land for Conservation Purposes.

13. TRANSFER OF GRANTOR'S INTEREST

Grantors agrees that Grantee shall record the **Amended and Restated Conservation** Easement Agreement and that the terms thereof shall be referenced in any subsequent deed or other legal instrument which conveys either the fee simple title or possessory interest in the subject Property. Grantors further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer or such shorter period to which Grantee may agree. The failure of Grantors to perform any act required by this Paragraph 13 shall not impair the validity of the Easement or limit its enforceability in any way.

14. TRANSFER OF GRANTEE'S INTEREST

Grantee Agrees that:

- (A) Grantee shall not transfer the Easement unless Grantee, as a condition of the transfer, requires that the Conservation Purposes, which the Easement Agreement is intended to advance continued to be carried out; and
- (B) All transfers of the Easement shall be restricted to organizations qualifying, at the time of the transfer, as an eligible grantee under paragraph (c)(1) of Treasury Regulation Section 1.170A-14, as amended and replaced from time to time.

15. INTERPRETATION OF THIS EASEMENT AGREEMENT

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This **Amended and Restated Conservation** Easement Agreement shall be liberally construed in favor of the grant to effect the purpose of the Conservation Easement and the policy and purpose of 7 Del. C. Chapter 69.

16. NO FORFEITURE

Nothing contained herein will result in a forfeiture or reversion of Grantors's title in any respect.

17. ACKNOWLEDGEMENTS

(A) Grantors ~~have~~ **has** received and fully reviewed the Baseline Documentation and attests that it is a true, correct, and complete summary of the Conservation Values of the Property **at the time of the execution of the Easement on June 27, 1997** and is an accurate representation of the Property as of ~~the that date of this Easement Agreement.~~

(B) Grantors attests that ~~they are~~ **it is** the owners of the Property and that the Property is not subject to a mortgage as of this date, ~~or a release of lien has been signed and acknowledged, prior to the approval of this document.~~

18. AMENDMENT AND RESTATEMENT IN ENTIRETY

This Amended and Restated Conservation Easement shall supersede the Conservation Easement as amended in its entirety.

19. EFFECTIVE DATE

This Amended and Restated Conservation Easement shall become effective upon execution by both parties and recordation thereof.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantors and Grantee have set their Hands and Seals the day and year above first written.

PRESERVATION DELAWARE, INC.

Witness

By: _____
President

THE STATE OF DELAWARE
Ex rel. The Department of State

Witness

By: _____
Secretary of State

