

May 25, 2007

Mr. Timothy Slavin  
Director  
State Historic Preservation Office  
21 The Green  
Dover, DE 19904

**RE: SHPO Conservation Easement Amendment Application –  
Response to Public Comments**

Dear Mr. Slavin:

Like Preservation Delaware, Inc. (“PDI”) CCS Investors, LLC (“CCS”), the equitable owner of Gibraltar<sup>1</sup>, wants to be a good neighbor and build a successful adaptive reuse project at Gibraltar of which we all can be proud.

Change is not easy and so it can be expected that any proposal to adaptively reuse and develop even a small portion of the Gibraltar Property will be met with some resistance. It is easy to forget therefore, that such additional construction by a private entity was always envisioned, yet never contemplated to take this long to achieve. We understand there are a number of pending projects in this part of the City which will bring change and unfortunately, the merits of this proposal seem to be inextricably linked to these unrelated projects. But the issue of Gibraltar goes well beyond parochial interests and local anti-development sentiment. The issue of Gibraltar is: What will it take in blood, sweat and tears to save something the State of Delaware has already said it believes taxpayers’ money is worth spending on to save from the wrecking ball, and is it worth the sacrifice and trade-offs? We believe that it is and we are not alone in that viewpoint.

The story of Gibraltar is not about a park at the corner of Greenhill and Pennsylvania Avenue-- It is about PRESERVATION through reuse of the buildings, and always has been. This fundamental concept has gotten lost and forgotten in the anti-development shuffle.

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Submission dated May 1, 2007 and the Supplemental Submission dated May 2, 2007.

Mr. Timothy Slavin

May 25, 2007

Page 2

After having reviewed the various comments filed, CCS holds to the belief that the primary purpose of the original easement having been to preserve Gibraltar, the easement amendment application filed on behalf of PDI should be granted by the State's Chief Preservation Officer ("SHPO"). SHPO has the power, authority and statutory mission to effectuate that result. The Historic Conservation Easement established by the Sharp family essentially created a public private partnership between PDI and the State, the purpose of which was to save Gibraltar from demolition and construction of townhouses on the property—pure and simple. That mission can finally be fully realized with your help.

So, leaving legal debate aside-- we ask --What better partner to have for this project than a local, proven historically sensitive developer with a real plan that has as good of a chance as any to work? If not CCS, who?<sup>2</sup> If not this project, what project?<sup>3</sup> If not now, then when? No one filing opposing comments had any credible answers to these questions, the response to which now lies squarely at SHPO's door.

The Historic Conservation Easement acquired by the State on Gibraltar was intended to prevent its demise and put the Gibraltar Property in the hands of a non-profit organization dedicated to preservation of historic structures, with the ultimate intention of securing a private investor for a commercial endeavor that would fund its renovation and ongoing operating expenses. It was a preservation-motivated partnership from the outset. But regretfully, and despite all good faith efforts on PDI's part, it has struggled to attain that goal which has only been partially met with the restoration of the Gardens. Now the State of Delaware—PDI's "partner" in this endeavor should not turn its back on PDI and Gibraltar because certain vocal members of the very community that rose up to prevent its demolition have forgotten what the real promise was about---it was in part about "open space" in the classic sense, but much more about preservation.

This is the right project and the right time to tend to Gibraltar, as its care cannot be further deferred. Whether the mansion will "fall down" is not known – what is known is that: (i) after 10 years, no viable B&B plan could be realized; ii) PDI needs money to continue to operate the Gardens which it maintains responsibly with the help of dedicated volunteers and subsidizes annually to keep open to the public at no cost; (iii) the laws of science demonstrate that if left alone, the condition of the mansion can be expected to deteriorate, not improve; and (iv) construction costs are rising daily. In other words, "making the numbers work" at Gibraltar will only get harder, not easier.

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<sup>2</sup> CCS was the successful bidder at the second round of RFPs for Gibraltar – it toured the Property with some 80 others. After months of negotiations, coming on the heels of two failed B&B projects, CCS reached an agreement with PDI and passed the hurdle of securing approval from the Wilmington Board of Adjustment to site an office use at Gibraltar – a use expressly permitted by the Easement.

<sup>3</sup> A dated, recycled abandoned, questionable B&B Day Spa plan with one-sided unchallenged assumptions is all the opposition produces at the eleventh hour to counter our good faith selection and solid plan. Significantly, no one has challenged the Emory Hill financial assumptions which show the need for an increase in the square footage to make the project marginally profitable.

Mr. Timothy Slavin

May 25, 2007

Page 3

Against this backdrop, I want to thank you for the opportunity to file responsive comments to PDI's request to amend and restate (the "Amendment") the Historic Conservation Easement dated June 27, 1997 and recorded in the New Castle County Recorder of Deeds at Deed Book 2296, Page 78, as amended by that certain First Amendment dated February 8, 2000 recorded in the Office at Deed Book 2781, Page 136 (collectively, the "Historic Conservation Easement"). As you know, many of the changes criticized in the proposed Amendment were in fact proposed by SHPO itself in an attempt to enhance the conservation purposes, yet those modifications, too, are being attacked. We will nevertheless try to keep the focus of these responsive comments narrow, as there is more misinformation out there than can be addressed in one submission .

**I. THE CCS PROJECT AND ASSOCIATED AMENDMENT APPLICATION ARE SUPPORTED BY MANY NEIGHBORS, THE ORIGINAL GRANTOR, AND OTHER KEY AGENCIES SUCH AS THE CITY OF WILMINGTON, THE NATIONAL HISTORIC TRUST, THE DELAWARE DEVELOPMENT OFFICE, AND THE KENNETT PIKE ASSOCIATION**

The supportive comments come from many angles and perspectives and contain recurring but not pre-packaged themes. We urge SHPO to consider the source and wisdom of this support—and the fact that such support comes from varied corners – the primary points here are: that all neighbors do not by any means oppose the CCS Project—many of the closest in proximity want and need resolution of Gibraltar's future; the CCS project is context sensitive and consistent with the character of the area; adaptive reuse is the answer for historic preservation; the economics must work or the State will have this historic asset among its inventory of unseen and unappreciated assets, soaking up taxpayers' money in the form of annual operating expenses and capital expenditures, as opposed to providing first-class office space for high quality, tax revenue generating jobs. We do not want that result and don't believe the State does either. The answer for historic preservation is responsible, private investment, spurred by tax credits. Indeed, adaptive reuse, including office use has been proven time and again, (reported as recently as in this past Tuesday's 5/22 News Journal) as the best way to save our nation's dwindling architectural treasures. Only through private investment, eligible for historic tax credits, and incentivized by the prospect of a decent return on investment, can these types of structures be sustained.

**II. THE USE OF THE GIBRALTAR PROPERTY FOR COMMERCIAL USE IS EXPRESSLY PERMITTED UNDER THE EASEMENT**

Much of the opposition's arguments center around the sentiment that a commercial use, such as the proposed offices, is inappropriate at Gibraltar. The opposition complains that such use is inconsistent with the terms of the original easement and/or will negatively impact the neighborhood. But the Historic Conservation Easement clearly and succinctly states that the property may be used for residential or commercial purposes. Indeed, what is a Bed and Breakfast/restaurant or Bed and Breakfast/Day Spa if not a "commercial" use? ADAPTIVE REUSE, WHICH BY DEFINITION IS COMMERCIAL USE, WAS AND HAS ALWAYS

BEEN the objective for Gibraltar—the means to an end of historic preservation. While a B&B may be a preferred use for some, there is no entity out there interested in putting its dollars at risk for such an endeavor at this location, and PDI has certainly tried. And folks that suggest we should just wait for a better idea to come along because this is not the right use do not own the property nor do they have any funds at risk. The opposing neighbors want nothing new here and care not about the renovation of the Mansion nor the financial demands of sustaining the Gardens. Again, that is their right, but there is more at stake here.

There are no ambiguities in the Easement language, as it relates to use. Vague recollections, even if supported by “minutes” of the Open Space Council (which we understand they are not) are, in any event, trumped by the clear and unambiguous language of the Historic Conservation Easement. “Under Delaware law, where a contract is clear on its face, the court must apply the meaning a reasonable third party would ascribe to the contract language.” See *Wolfson v. Supermarkets General Holdings Corp.*, 2001 WL 85679 at \*3 (Del. Ch. Jan. 23, 2001). “In the absence of ambiguity, there is no room for construction of an agreement. See *Nepa v. Marta*, 415 A.2d 470, 473 (Del. Supr. 1980). When the provisions of a contract are plain and unambiguous, “evidence outside the four corners of the document as to what actually intended is generally inadmissible.” See *Universal Studios Inc. v. Viacom Inc.*, 705 A.2d 579, 589 (Del. Ch. 1997); *Carrow v. Arnold*, 2006 WL 3289582 at \*6 (Del. Ch. Oct. 31, 2006). Moreover, the City of Wilmington resolved this issue of use during the August 2006 hearing when it approved the proposed office/commercial use.<sup>4</sup> As such, any questions or objections regarding the proposed “commercial use” of the property should be disregarded entirely, for they have been asked and answered.

### III. DELAWARE’S OPEN SPACE LAWS APPLY TO MORE THAN JUST FIELDS AND FORESTS

The Historic Conservation Easement states that it shall be construed in favor of “the policy and purpose of 7 Del. C. Chapter 69.” Title 7, Chapter 69 of the Delaware Code defines “Conservation Easements” as non-possessory interests created not only to retain open space, but to preserve “the historical, architectural, archeological or cultural aspects of real property” as well. In fact, the very definition of “Open Space” in Title 7 includes “significant cultural, historical or archeological sites.” Indeed, the “Baseline Documentation” referred to as establishing the “Conservation Values” in the Historic Conservation Easement for Gibraltar does not cover trees, bushes, bamboo or even the Gardens at Gibraltar. Rather, the “Baseline Documentation”—at the very heart of any conservation easement, including this one, consists, tellingly, in Gibraltar’s case, of the four (4) main rooms on the first floor of the Mansion, which the opposition would have SHPO ignore. It is without question that the General Assembly recognized that state resources other than fields, forests and farmlands are in need of preservation. Indeed, cultural and architectural landmarks such as Gibraltar and the Marion

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<sup>4</sup> See City of Wilmington Building Zone Ordinance Decision dated August 9, 2006 authorizing a variance that permits the Gibraltar mansion to be utilized for office use and which permits the construction of a new 10,000 s.f. office building with accessory parking on the same grounds.

Mr. Timothy Slavin

May 25, 2007

Page 5

Coffin Gardens may and should be preserved by Historic Conservation easements such as the one here.

It is clear from the public comment letters supporting the Amendment and the photographs submitted during the August 2006 hearing and herewith (see notebook of May 2007 photos submitted herewith attached as Exhibit "A") that the Gibraltar mansion is in a dire state of disrepair.<sup>5</sup> From the crumbling walls to the missing and dilapidated shutters, the mansion desperately needs the Historic Conservation Easement's protection. Current photographs show a sharp contrast between current conditions and the Baseline Documentation. What further evidence is necessary to convince the State that this property must be put into private hands and tended to now, or risk spending further public monies to preserve it or possibly demolish it? CCS is willing to take the risk and liability for a reasonable return.

The opposition, however, essentially asks SHPO to ignore this desperate need to protect the architectural and cultural resources of Gibraltar in favor of preserving the "open space"<sup>6</sup> upon which the new building is to be constructed. To disregard the urgency<sup>7</sup> of the needs of the mansion is to disregard the future viability of the Gibraltar property as a whole. SHPO must honor the Easement by permitting the very Amendment that will save this prominent architectural and cultural resource located at the gateway to the City of Wilmington.

The suggestion that this easement request constitutes a conversion of open space requiring legislative or Open Space Council action is unfounded in law and/or logic. This is not an easement to protect wetlands or critical natural areas or the like. THIS WAS AND IS AN HISTORIC CONSERVATION EASEMENT. As such, there is no conversion here requiring repayment to the State. As mentioned above, the "Open Space" here is the architectural resources consisting primarily of the Conservation Values set forth in the Baseline Documentation on file with SHPO. The Gardens and Mansion will be preserved. Nothing is being converted. Even if there was a conversion—the applicable conversion rate is .33% which is the difference in land consumption or open space between the B&B project and this one-- which CCS will gladly

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<sup>5</sup> See the binder of the mansion's current condition being filed herewith.

<sup>6</sup> See the public comment letter dated April 26, 2007 from Wendy Gentry, the Gibraltar Garden Manager. She indicates that the so called "open space" that the opposition seeks to maintain in its present state "currently functions as a garden debris dump site. I would hesitate to call it open space and would invite anyone who wishes to keep that space open to bring their family to that site for a picnic or recreation. The most important "open space" on this site is the garden." Ms. Gentry clearly distinguishes between the primary area of the Property which must be preserved, and the remainder of the Property, whose value is apparently so minimal that it is used as a dumping ground. Note that the proposed building will be located on this so-called "dump site."

<sup>7</sup> The opposition finds PDI's description of the urgency of the mansion's decay "suspect." If the photographs and public comment letters do not sufficiently describe the situation, perhaps Ms. Gentry's concerns will. It is worth noting that Ms. Gentry cautioned in her public comment letter that the mansion currently is "a haven for vermin and an attraction not only for the curious but the mischievous. This activity has increased two fold with the recent coverage in the news about the property being vacant and in need of repair." Indeed, the most immediate neighbor, Steve Silver, testified as to his concern that Gibraltar has turned into a "toilet bowl," attracting teenagers and vermin alike.

compensate the State for on a pro rata basis. Even approaching this issue from another angle, the Sharp family received \$800,000 from the State for the approximately 6 acres comprising Gibraltar (the other \$200,000 was for the open space easement on the Shaw property)<sup>8</sup>. Since 6500 square feet of additional development is already permitted, adding another 3500 footprint is *de minimis* from an "open space" perspective, and CCS would most likely be willing to pay that pro rata difference to the State to get beyond this most irrelevant of issues. A "conversion" if any, in the case of Gibraltar's open space would actually only occur if the Conservation Values as set forth in the Baseline Documentation referenced in the Historic Conservation Easement were affected by this Amendment (the four main rooms of the Mansion)—not loss of a dirt pile in the back of the Property, which was always the location planned for future construction as having the least impact on the historic resources on the Property.

#### **IV. CONSERVATION EASEMENTS ARE NON-POSSESSORY INTERESTS, NOT OWNERSHIP INTERESTS**

As indicated above, Conservation Easements are defined as non-possessory interests. They are neither fee simple ownership nor leasehold interests. Put another way, the holder of the Easement – the Department of State for the State of Delaware – does not own the Gibraltar Property. For that matter, the residents of the Highlands do not own the Gibraltar property, either. Although the State of Delaware was given the opportunity to purchase the Gibraltar property ten years ago, it did not do so. It chose to enter into a Conservation Easement instead, and to put the responsibility or onus on a private non-profit group to be the arbiter of its disposition. Accordingly, who develops Gibraltar is not a state or public decision and is not vested in the neighbors, although PDI tried to be as inclusive as possible in the selection process. The State neither wanted nor paid for this right, but it is now being urged to exercise the power of ownership nevertheless.

The owner of the mansion and gardens of Gibraltar is PDI. CCS is the contract purchaser. Thus, the legal and equitable ownership rights are held by PDI and CCS. Indeed, the Gibraltar Property was valued at \$1.8 million, and the value of the restricted land providing the view shed along Pennsylvania Ave, adjacent to Gibraltar, also owned by the Sharp family (the "Shaw Property") was valued at \$200,000. So, the State by no means paid to own Gibraltar as the opposition presumes. The State got a conservation easement on Gibraltar and the adjacent Shaw Property for its \$1,000,000, the Sharps got a tax deduction of \$800,000, which was the difference between the value and what the State paid for the conservation easement on Gibraltar, and PDI got the Gibraltar property with substantial restrictions-- A major liability, as it turns out, not an asset.

As a result, neither the State (nor the Highland opposers) have the right to hand pick the successor or even the use, so long as local zoning rules are followed. That right is not among the "sticks" of property ownership reserved to the State/taxpayers which has merely a non-possessory interest in the Gibraltar property by virtue of the easement. Although the input of the Highlands neighbors is appreciated, the neighbors do not own Gibraltar, do not have divine right

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<sup>8</sup> See Shaw Property Easement attached hereto as Exhibit B.

Mr. Timothy Slavin

May 25, 2007

Page 7

over its disposition, nor should they, as they are not offering to fund the millions of dollars of repairs, renovations and upkeep which the mansion and the gardens demand. In point of fact, the \$1,000,000 given to the Sharp family was to prevent the threatened demolition of Gibraltar and protect the viewshed along Pennsylvania Avenue in front of the house and neighboring Shaw Property<sup>9</sup>—an endeavor some of the very same community members that advocated for it now feel would be better abandoned than to allow construction of an additional modest building on site to fund the renovation.

**V. SHPO, AS HOLDER OF THE EASEMENT, IS THE FINAL ARBITER OF WHETHER TO GRANT THE EASEMENT AMENDMENT, AND IS CLEARLY AUTHORIZED TO AMEND THE EASEMENT**

With all due respect, the relationships here are akin to SHPO being a passive/limited partner in a business deal, who has elected to limit its liability to the initial investment and turn management of the asset over to the managing partner (PDI) which has everything at risk and unlimited exposure. Understandably, the non-profit PDI does not have the resources to accomplish the mission in its entirety, and has agreed with CCS to be an equity partner. SHPO now under pressure from neighbors who do not want any development at Gibraltar, should not abandon or undermine the good faith efforts of the very management it has chosen, and which has the “skin in the game.”

Under Title 7 of the Delaware Code, only three State agencies may manage natural and cultural resources. Those exclusive agencies are: Department of Natural Resources and Environmental Control (Division of Parks and Recreation and Fish and Wildlife); Department of State (Division of Historical and Cultural Affairs); and Department of Agriculture (Division of Resource Management).

As indicated above, the Department of State is the holder of the Easement. Specifically, the Division of Historical and Cultural Affairs is responsible for managing the Easement and, where appropriate, amending it.<sup>10</sup> As the head of the Division’s preservation team, you, the SHPO, are, by common law principles the holder of the authority to amend on behalf of the State. The Department of Resources and Environmental Control (“DNREC”) ceded any authority over Gibraltar when the Secretary of State was designated as the Grantee. The source of the funding is irrelevant.

Not only is the SHPO authorized by common law to amend the Easement, it is authorized by statute and by precedent as well. Again, the use of open space funds does not change this analysis—where does it say under Delaware law or regulation that if open space funds are used

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<sup>9</sup> See the Easement attached hereto as Exhibit B.

<sup>10</sup> Title 7, Chapter 6092(a) of the Delaware Code clearly provides that a Conservation Easement may be modified in the same manner as other easements. Like any other easement, therefore, this Easement may be modified by mutual agreement of the parties, who in this case are PDI and the Department of State. Any assertion otherwise would disregard the clear language of the statute.

to acquire non-possessory interests in real property, amendments thereto cannot be made as otherwise allowed by law? Indeed, the Historic Conservation Easement was amended by SHPO once before on February 8, 2000 to allow for the increase in the square footage for new construction. Barring any case law or statute to the contrary – none of which has been identified – no law has altered the SHPO's authority to amend the Easement. Indeed, the language of the easement itself contemplates that such amendment could be necessary to further its purposes:

#### 11. MODIFICATION

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.

What more clear endorsement and acknowledgement that the preservation of Gibraltar would require flexibility on the part of SHPO could there possibly be?<sup>11</sup>

#### VI. THE "LOSS" OF OPEN SPACE IS A RED HERRING AND IN ANY EVENT, *DE MINIMIS*

The opposition argues repeatedly, mostly through what appear to be "canned" comments, (underscoring the power of electronic communications over the internet), that the Amendment will materially detract from the "open space" of the property. Not true. First, as set forth above, "open space" here is the preservation of the architectural resource called Gibraltar. As set forth in my supplemental submission dated May 2, 2007, a copy of which is attached hereto as Exhibit "C" for your convenience, the CCS project will preserve sixty-five percent (65%) of the open space of the property (or seventy percent (70%) if the Gardens were to be included. The difference between the open space absorption between the current proposal and the previous bed and breakfast proposal embraced by state, local and community representatives in 2000 is less than one half of one percent (1/2 of 1%). The portion of open space on which the new building will be constructed is currently a dirt pile in an unused portion of the Property. What historical or cultural value exists for this dirt pile in comparison to its potential use to preserve the property as a whole? Moreover, the State paid \$800,000 for the Historic Conservation Easement for Gibraltar and \$200,00 for the Shaw Property. So, the "value" on a per square foot basis, as set forth above, is *de minimis*.

#### VII. CCS IS WILLING TO AGREE TO ADDITIONAL PRESERVATION PROTECTIONS IN THE AMENDMENT AND STANDS BY THE

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<sup>11</sup> Similarly, New Castle County's very successful adaptive reuse ordinance (Chapter 40.15.240 of the UDC) allows an increase of 50% of existing square footage (which would not include parking structures under the UDC) by right and sixty percent (60%) open space. The CCS Project is well within that realm. See New Castle County Unified Development Code 40.15.240.

## FACTUAL REPRESENTATIONS AND DEPICTIONS MADE TO THE COMMUNITY

CCS has always acted in good faith to obtain approvals for this Application. After months of conferring with SHPO staff and PDI, an application was filed last May 2006, simply asking for an increase in square footage for additional square footage at Gibraltar—as had been the case with the prior application granted in 2000- we asked and wanted nothing more—both then and now. That application was mysteriously rejected as being unacceptable despite having been co-signed by PDI, without reference to any statutory or regulatory provision purportedly rendering it so deficient. After months of negotiations to address SHPO staff's requests for further changes to the easement for clarification and to purportedly "strengthen it", as PDI and SHPO wanted to do, CCS is now criticized for many of the requests for changes made by PDI at SHPO's suggestion, including, for example, the establishment of primary and secondary conservation easement areas. As to procedural matters, repeated requests by CCS and PDI for definition as to process and timing of this application have been ignored and/or responded to inconsistently. Despite the lack of definition, CCS truly wants to be a good partner with the State, community and PDI.<sup>12</sup> Yet, our problem lies in the fact that the opposition wants nothing here and no change. They want to run the clock down and hope for a state sponsored miracle. But history and maintaining history is about change and our Chief Preservation Officer must understand that and respond accordingly, despite political pressure to do otherwise. We have confidence that ultimately the right decision will be reached.

My client's initial submission back in May 2006 requested to amend the Easement succinctly to read:

"A new construction addition or additions of up to 10,000<sup>13</sup> gross square feet may be built on-site (not including any gross square feet associated with structured parking to be situated upon one level thereunder, which shall also be permitted.)"

We understand that the change from this language to the "foot print" language has raised concerns, and for that we are regretful. CCS is more than willing to revert to its original proposed language (that is, to clarify that the net increase in square footage (not including the structured parking) cannot exceed 10,000 square feet (not including the life safety improvements to the mansion not greater than 1000 square feet) if that change would address this concern. Moreover, CCS is willing to agree to any of the other additional requirements it set forth in its initial submission to protect the public expectation. Finally, CCS takes no position on the many changes made at SHPO's request which now seem to be used to subvert not advance the prospects for the Amendment. We can live with them or we can live without them.

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<sup>13</sup> Note that CCS originally wanted to construct a three story, 12,500 square foot annex. After public input, CCS agreed to a two story, 10,000 square foot annex. The opposition's argument that the building will be "several" stories tall is totally inaccurate and, as with much of its argument, flies in the face of public record.

Mr. Timothy Slavin

May 25, 2007

Page 10

CCS has never distorted the impact of the new construction in its materials, despite allegations to the contrary. For example, it has been suggested that we have intentionally distorted the depiction of the building as it relates to the Mansion. In sum, there is an allegation by Ms. Meissner that the photo rendering is “doctored”—this allegation is libelous, as have been many other comments made to discredit my client and its consultants. (Please see the Affidavit of Mike Looney attached hereto as Exhibit D as it relates to the methodology relied upon to prepare the rendering, which was based upon survey and topographical information). What is distorting is to rely upon a non-dimensionally accurate tax map and hearsay as to square footage to compare the CCS Project to other structures in the area. What might provide better perspective is to compare for example the square footage as reported on the tax maps of the large houses built on the neighboring Shaw Property to get real perspective—for example, the adjacent recently built house fronting on Pennsylvania Avenue is larger than the proposed square footage of the new building without the sub-grade parking. (See tax parcel information attached as Exhibit “E”).

**VIII. ACCESS VIA SIXTEENTH STREET IS A DEVELOPMENT ISSUE  
AND IS ALREADY ALLOWED BY THE EASEMENT**

One final issue regarding the 16<sup>th</sup> Street access must be addressed as it appears in many of the comments. 16<sup>th</sup> Street is a public street owned by the City of Wilmington that extends along the back of the Property from Greenhill to Brinckle. We have every right to use it as does all of the public. The easement already allows the creation of new driveways. The fact that the wall must be breached in an area to create such driveway is apparent and already permitted by the Historic Conservation Easement. The Amendment seeks to establish clarity on this point, but does not change things. Similarly, construction in the front yard on Pennsylvania Avenue is prohibited by this Easement and the Shaw Easement. Where else would the allowable new building go and how would one get there safely without a new entrance/driveway? The 16<sup>th</sup> Street access is the only sensical access and is the most historically sensitive place for ingress/egress. The public is protected by an entrance design that takes traffic to Pennsylvania Ave. We have also requested a stop sign at this location. Extending the paved area of already existing 16<sup>th</sup> St. protects existing historically significant entrances. Also, safe and adequate access must be provided per City of Wilmington and DeIDOT specifications and 16<sup>th</sup> St. appears to be the only place to access this site (just as had been proposed by the B and B), other than at Brinckle, which raises more concerns. The issue is, in any event, fundamentally a City/DeIDOT issue, and so long as this is relatively modest in historic impact, SHPO should defer to these agencies on this issue and approve a historically sensitive, safe entrance design.

**IX. FAILURE TO AMEND THE EASEMENT WHEN AN AMENDMENT IS  
CLEARLY REQUIRED TO PRESERVE THE MANSION AND GARDENS  
WOULD SET JUST AS BAD OF A PRECEDENT AS HAVING THE  
STATE'S CHIEF PRESERVATION OFFICER DECLINE TO DO SO  
WHEN NECESSARY TO MEET THE EASEMENT'S HISTORIC  
PRESERVATION PURPOSE**

Mr. Timothy Slavin

May 25, 2007

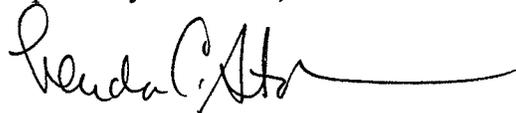
Page 11

The opposition argues that to permit the Amendment would be to set a bad precedent. It seems that the opposition believes that no easements should ever be amended, for to do so would undermine the very nature of a conservation easement. We could not disagree more.

New construction at Gibraltar was a given. How much would be necessary to make the numbers work was not known. The Easement itself contemplates the possible need for change to accomplish its purpose (See Modification paragraph set forth in Section V hereof). The easement is a preservation easement whereby PDI and the State promised to work together as stewards of the Property. Given the state of disrepair into which the mansion has fallen, it is clear that a private entity needs to become involved to help achieve those purposes unless additional public monies or resources will be dedicated for this purpose. Otherwise, to deny the easement amendment will frustrate the entire purpose of preservation which is at the heart of the matter here. Such would most certainly set a bad precedent – a precedent that dictates our historic conservation easements are not flexible to meet the needs of the very properties which we seek to protect; that our conservation needs are not to be reconsidered even when we know that a failure to make changes could make our most treasured properties victim to waste and vagrancy. If we fail to amend the Historic Conservation Easement, we fail to take advantage of this opportunity to restore the mansion and to preserve the Gardens. If we fail to amend this Easement and restore the Mansion, the precedent set is that we are willing to risk our historic properties falling into decay and becoming public hazards in the name of “keeping promises.” What promises? What vague promises were made other than the clear one established in the Historic Conservation Easement to preserve Gibraltar? Amending the Historic Conservation Easement now will fulfill that purpose.

Thank you for your consideration of this important application. CCS holds the conviction that it is the entity best suited for the job and also to reach out with PDI and SHPO as partners in preservation to begin the healing and move Gibraltar forward. CCS remains confident in the commercial viability of this project if given the necessary accommodation and assuming a facilitative, not obstructive approach on the part of the State. Without further State money, (just a modest non-monetary accommodation) we can, and will return Gibraltar to its prominence on the hill above the Highlands. But we need the State of Delaware’s support and that of SHPO to finish the preservation job at Gibraltar. We want to be a partner and a good neighbor and save this landmark in the process--we pledge to continue to work in good faith to that end, but we need your support.

Respectfully submitted,



Wendie C. Stabler

cc: CCS Investors, LLC