



Protective Covenants and Easements

A conservation easement is a very effective mechanism for protecting historic resources. An easement is a partial interest in property, set out as protective covenants or restrictions and conveyed by recorded deed. The easement runs with the land in perpetuity, and affects each succeeding owner, but the grantors and successor owners retain full use and enjoyment of the property, subject to the terms of the easement. The Internal Revenue Service recognizes a tax deduction for the gift of a perpetual conservation restriction on the use which may be made of real property.

The Historic Wilmington Foundation was established in 1966 as a non-profit organization. The Foundation has helped lead the restoration of the city and county and now holds protective covenants over 50 sites and structures.

Properties eligible for easement donation include agricultural, industrial, commercial or residential structures and historically important acreage. The owners of a qualified property can donate a conservation easement for protection in perpetuity. Properties must be individually listed on the National Register of Historic Places or lie within a National Register Historic District and be certified by secretary of Interior as contributory to that district or constitute an "historically important land area."

The easement deed is a perpetual, private preservation agreement between the owners and the Historic Wilmington Foundation. It consists of a series of related provisions covenanting, among others, that the property owner will not alter the exterior architectural character of the structures on the site, will not change the use or destiny, will not construct new buildings or disturb archaeological features, and will not subdivide the property without the approval of Historic Wilmington Foundation. The Foundation recognizes that the modernization of a home requires some alterations and changes to improve its comfort and livability. Individual donors may wish to add special easement provisions for protection of specific interior or landscape features.

The donor of a preservation easement makes a gift to the future by ensuring that the distinguishing features of a property will be protected forever. The donor may be eligible for various tax incentives.

For a number of years Congress has recognized the public benefits of the donation of preservation and other conservation easements. Consequently, an easement donation may qualify for income, gift and estate tax deductions through Internal Revenue Code Section 170(h), and other sections. Various US Treasury regulations provide detailed explanations of certain easement gift situations. Furthermore, several recent tax court decisions have upheld easement valuations for certain family properties, historic land areas and historic commercial rehabilitation.

The value of an easement gift is set by a qualified appraiser, engaged by the donor to determine the impact of the restrictions on the value of the property.

Once the appraisal is completed, the decision to grant the easement should be made by the property owner with the advice of his or her accountant and attorney. The Foundation does not provide tax advice.

Protective covenants and preservation easements provide a vehicle for you to take an active part in the preservation of Wilmington and to be eligible for certain tax benefits. If you have a property that you would like Historic Wilmington Foundation to consider for an easement donation, please contact our office at (910) 762-2511 or our email address, hwf@historicwilmington.org. We will provide further information including a draft deed and additional explanatory information including the most recent developments in the tax laws pertaining to easements. This material will enable you and your legal and financial advisors to make an informed decision before proceeding with the donation process.

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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

**HISTORIC PRESERVATION AGREEMENT,
DECLARATION OF RESTRICTIONS, COVENANTS
AND GRANT OF EASEMENT**

THIS AGREEMENT, DECLARATION OF RESTRICTIONS, COVENANTS AND GRANT OF EASEMENT, made this the ____ day of _____, 2004, by and between _____ and husband, _____ (hereinafter referred to as the "Grantor", whether one or more, corporate or individual), and THE HISTORIC WILMINGTON FOUNDATION, INC., a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal office in Wilmington, North Carolina, and its successors and assigns (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 a house (hereinafter referred to as "the Historic Structure"); and

WHEREAS, the Historic Structure is a building of recognized historical and architectural significance; and

WHEREAS, the Foundation and Grantor both desire that the Historic Structure be preserved and protected for the benefit of present and future generations, retaining its historically and architecturally significant features; and

WHEREAS, the Grantor desires to donate a preservation easement and restrictions on the Historic Structure and Subject Property to a charitable organization qualified to receive easement donations pursuant to Section 170 of the Internal Revenue Code of 1954; and

WHEREAS, the Foundation is a charitable organization which accepts preservation easements and restrictions on buildings and property having historical or architectural importance; to ensure that such

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buildings and property are preserved and maintained for the benefit of future generations; and

WHEREAS, the North Carolina General Assembly has enacted the Historic Preservation and Conservation Agreement Act (North Carolina General Statutes § 121-34 et. seq.) validating preservation agreements, in the form of restrictions, easements, covenants, conditions, and otherwise, appropriate to preservation of a structure or site historically significant for its architecture, archaeology or historical associations.

NOW, THEREFORE, for and in consideration of the Grantor's interest in historic preservation and its support for the Foundation and its purposes, and for and in consideration of the sum of ONE DOLLAR (\$1.00), and other valuable consideration, the receipt and sufficiency of which are hereby confessed by the Grantor, the Grantor, for itself, its successors and assigns, hereby covenants and agrees to abide by the following restrictions (hereinafter referred to as "covenants"), and hereby subjects the Subject Property described in Exhibit A to the restrictions, and covenants expressed herein, said covenants to be restrictions of record to attach to the Subject Property described in Exhibit A, and hereby gives, grants, bargains, sells, and conveys unto the Foundation an indefeasible easement in and to the Subject Property described in Exhibit A, for the preservation and conservation of the Historic Structure described above in accordance with said covenants.

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

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sole party entitled to administer these covenants.

2. No alteration and no physical or structural change shall be made to the exterior of the Historic Structure without the prior written approval of the President or Executive Director of the Foundation. In assessing the suitability of any proposed changes, the Foundation shall be guided by the Secretary of the Interior's Standards for the Treatment of Historic Properties (1992), a copy of which is attached as Exhibit B and incorporated herein.

3. The Subject Property shall not be subdivided without the prior written approval of the President or Executive Director of the Foundation.

4. No addition shall be constructed to the Historic Structure nor additional structure 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. In reviewing the plans and designs for any addition or additional structure the Foundation 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 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 materials, and such design is compatible with the size, color, material and character of the property and its environment.

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

6. Representatives of the Foundation shall have the right to enter the premises 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. 7. The Grantor covenants to

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carry out the duties specified herein and these restrictions and covenants and this easement shall run with the land. The Grantor, its heirs, successors and assigns, covenant and agree, that in the event the Subject Property is sold and otherwise disposed of, these restrictions and covenants and this easement will be incorporated into the deed or other instrument conveying or disposing of the Subject Property. Grantor and Grantor's heirs, successors and assigns agree that these restrictions, covenants and this easement shall be made a condition of any contract of sale of the Subject Property to which they may be a party.

8. In the event of a violation of these easements, covenants, and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to the Foundation, and the Foundation shall recover of the Grantor its reasonable attorneys fees incurred in the enforcement of same. 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 the event of a subsequent breach or default.

9. Unless otherwise provided, the covenants and restrictions and easement set forth herein shall run with the land and shall be binding on the Grantor, and its heirs, successors, assigns and personal representatives, donees and devisees in perpetuity, provided however that same shall terminate and be of no further force or effect only in the event that the Historic Structure is damaged beyond restoration as a result of fire or other catastrophe. Damage beyond restoration is defined as damage to an extent exceeding seventy percent (75%) of the insurable value of the Historic Structure.

10. In the event that any one or more of the conditions, restrictions, limitations or other provision set out herein (or any part thereof), are held to be invalid by a court of proper jurisdiction, such judicial determination shall not invalidate the remaining conditions, restrictions and limitations set out herein.

11. Notwithstanding anything to the contrary set out herein, the conditions, restrictions and limitations hereinabove set forth may be altered, modified, changed, or rescinded, in whole or in part, by written instrument duly executed between Historic Wilmington Foundation, Inc., its successors or assigns,

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and the then record title owner, or owners, of the lands and premises herein described and conveyed, provided, however, such instrument shall be first duly recorded in the office of the Register of Deeds of New Hanover County.

TO HAVE TO HOLD said easement unto the Foundation, its successors and assigns, forever.

Grantor acknowledges that it has been advised by the Foundation to obtain independent advice of a qualified accountant or tax attorney regarding the tax advantages, if any, of the donation made herein, and Grantor has not relied upon any representations, oral or written, made by the Foundation regarding the tax consequences of this conveyance and agreement.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal, the day and year first above written, and the Historic Wilmington Foundation, 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.

GRANTOR:

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FOUNDATION:

HISTORIC WILMINGTON FOUNDATION, INC.

(CORPORATE SEAL)

By: _____
_____ President

ATTEST:

_____ Secretary

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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

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

WITNESS my hand and official seal this _____ day of _____, 2004.

Notary Public

My Commission Expires:

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STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, _____, a Notary Public in and for the State and County aforesaid, do certify that _____ personally came before me this day and acknowledged that he/she is _____ Secretary of the Historic Wilmington Foundation, Inc., a North Carolina corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal, and attested by himself/herself as its _____ Secretary.

WITNESS my hand and notarial stamp or seal, this the _____ day of February, 2004.

Notary Public

My Commission Expires:

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EXHIBIT A

That certain parcel or tract of land, lying and being in the City of Wilmington, County of New Hanover and State of North Carolina and described as follows:

[Description of subject property]

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EXHIBIT B

SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION (as of December 1, 1984)

1. Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
2. The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features shall be avoided when possible.
3. All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.
6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features shall be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any rehabilitation project.
9. Contemporary design for alterations and additions to existing properties 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, scale, color, material and character of the property, neighbor or environment.
10. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

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