

Appendix 3 Conservation Easement Agreement Excerpts

073065

Tax Parcel No. 26-01220004

Prepared by Division of Parks & Recreation

Dept. of Natural Resources and Environmental Control, King's Highway, P. O. Box 1401

Dover, Delaware 19903

CONSERVATION AGREEMENT

THIS GRANT OF EASEMENT made this 27th day of June (this "Easement Agreement"), by and between H. RODNEY SHARP, III TRUSTEE OF H.R.S. Real Estate Trust u/a dated September 22, 1986, Party of the First Part, hereinafter referred to as "Grantors" and the STATE OF DELAWARE, DEPARTMENT OF STATE, Party of the Second Part, hereinafter referred to as "Grantee"

WHEREAS, said Property has scenic, historic and cultural resource values (collectively "Conservation Values") worthy of conservation protection and of great importance to the Grantors, 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 1844 with major expansions in the 1920s which exhibits architecturally significant characteristics of Italianate and Colonial Revival periods designed by locally and regionally renowned architects, and contains formal and informal gardens designed by a nationally renowned landscape architect, and **both the structures and the gardens 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 thereof, containing reports, maps, photographs and other documentation of relevant features of the Property on file with Grantee** and incorporated by the reference which the parties agree is an accurate representation of the condition of the property at the time of this 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 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 buildings for their natural scenic, historic, open space and cultural resource values ("Conservation Values"); 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.

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 grant and convey to Grantee a Conservation Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. PURPOSE

It is the purposes of this Easement Agreement to assure that the Property will be retained forever in its scenic and open condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, all in accordance with the terms thereof.

(C) No subdivision of the Property shall take place without prior submission of written notification to the Grantee, that materially adversely impairs or interferes with the Conservation Values of the Property.

(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.

3. PERMITTED USES

Grantors hereby declare and covenant 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 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.

(B) A new construction of up to 4,000 square feet may be built on-site [On February 8, 2000, this was amended by PDI and the Secretary of State to 6,500 square feet].

The new construction may be any combination of attached detached constructions associated with the main house and the garage greenhouse complex. All new construction shall be on the north side of the existing building 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.**

(D) Construction of new gardens, new parking areas, new driveways, and widening of existing driveways are permitted subject to express written approval of Grantee.

(E) On the main house, window sashes shall be retained where possible or replaced in-kind. Replacement 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 facade**

(G) **The remaining wooden trim shall be retained wherever possible, except as room rearrangement 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, 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 under this 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.

8. ENFORCEMENT RIGHTS OF GRANTEE

(A) To accomplish the purposes of this Easement Agreement, the following rights are conveyed to Grantee [Department of State, Division of Historical and Cultural Affairs, Hall of Records, Dover, Delaware 19901] by this Easement Agreement

- (i) To preserve and protect the Conservation Values of the Property
- (ii) To enter the Property at reasonable times in order to monitor Grantors compliance herewith and otherwise enforce the terms of this Easement Agreement, provided that such entry shall not unreasonably interfere with Grantors' 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 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 Easement Agreement by Grantors or by a third party comes to the attention of the 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 the 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 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 court of competent jurisdiction to enforce the terms of this 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 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 for 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 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 Easement Agreement shall be borne by Grantors or other violators, respectively.

(E) Grantee's rights under Paragraph 8 apply equally in the event of either actual or threatened violations of the terms of this 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 Grantors' control including fire, flood or storm.

9. PUBLIC ACCESS

Grantors shall open the Property for public access on at least four separate and distinct occasions per year, subject to such reasonable rules, regulations and fee schedules adopted by Grantors with notification to Grantee.

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 grants, subject to any procedural requirements imposed upon Grantors or Grantee by law.

Signed by H. Rodney Sharp III and the Secretary of State of Delaware, June 27, 1997.