

REC'D. PAYMENT 1971
PER CLERK
RMC OFFICE
CHARLESTON COUNTY, SC

34 Hasell

STATE OF SOUTH CAROLINA

DEED OF CONSERVATION EASEMENT

RMC OFFICE
CHARLESTON COUNTY, SC

12:52 pm

DEED OF CONSERVATION EASEMENT

34 HASELL STREET

(RESIDENTIAL EXTERIOR & INTERIOR)

COUNTY OF CHARLESTON

THIS indenture deed of easement (hereinafter referred to as the "Easement"), made this
21 st day of December, 2006, between **BARBARA D. DeMARCO** (together with her heirs,
successors, administrators and assigns collectively referred to as "Grantor") and **HISTORIC
CHARLESTON FOUNDATION**, a non-profit corporation, in good standing, organized under the
laws of the State of South Carolina and is a "qualified organization" within the meaning of 26
U.S.C. § 170(h)(3), 1986 (hereinafter referred to as "Grantee").

WITNESSETH

WHEREAS, Grantor is the Owner of certain real property, hereinafter described on Exhibit A, which is attached hereto and incorporated herein by reference, located in the City of Charleston, County of Charleston, State of South Carolina (hereinafter referred to as the "Property"); and

WHEREAS, the Property is located in and has been certified as being of historic significance to the officially designated Historic Charleston District of Charleston, South Carolina, which district is a registered historic district as defined by the Internal Revenue Code of 1986, as amended, or is recognized by the United States Department of Interior through inclusion, or eligibility for listing, in the National Register of Historic Places; or is a part of a historically important land area whose preservation is necessary to maintain the historic integrity of the Historic Charleston District, which district contributes significantly to the cultural heritage and visual beauty of Charleston, South Carolina and should be preserved; and

WHEREAS, Grantee is authorized to accept real Property and interests therein in furtherance of its purpose of preserving and protecting the historical and architectural heritage of Charleston and its environs; and

WHEREAS, Grantee is a “qualified organization” within the meaning of 26 U.S.C. § 170(h)(3), 1986; and

WHEREAS, Grantor desires to grant and Grantee desires to accept, an interior and an exterior conservation easement with respect to the Property; and

WHEREAS, Grantor intends to make a charitable gift of a qualified conservation contribution in the form of this Easement, as hereinafter contained, with respect to the Property, in order to further the preservation and conservation of the Property and the goals of Grantee; and

WHEREAS, Grantee has the resources to manage and enforce the covenants, restrictions,

terms and conditions set forth in this Easement; and,

WHEREAS, Grantee has the commitment to enforce the covenants, restrictions, terms and conditions set forth in this Easement; and,

WHEREAS, the grant of this Easement is made pursuant to all municipal, state and federal ordinances, statutes and regulations, including, without limitation, the South Carolina Conservation Easement Act of 1991, South Carolina Code Sections 27-8-10 through 80, Code of Laws of South Carolina, 1976, as amended.

NOW, THEREFORE, in consideration of the sum of One and no one-hundredths (\$1.00) Dollar, in hand paid by Grantee to Grantor, the receipt of which is hereby acknowledged, and in consideration of the recitals and agreements contained herein, Grantor hereby grants, sells and conveys to Grantee, its heirs, administrators, successors and assigns, an exterior and interior conservation Easement, in perpetuity, in, on and over, and the right to restrict the use of, the Property.

The restrictions, covenants, terms and conditions hereby imposed on the use of the Property are intended to be a qualified conservation contribution in accord with 26 U.S.C. § 170(h)(1), 1986, as amended. Grantor, on behalf of herself and her heirs, administrators, successors and assigns, hereby places upon the Property such restrictions, covenants, terms and conditions set forth below. Such restrictions, covenants, terms and conditions shall run with the land in perpetuity and shall be referred to in any subsequent conveyance of any interest of the Grant, although failure to so refer shall not impair this Easement:

I. Without the prior express written consent of Grantee, Grantor will not undertake nor permit to be undertaken, (a) any construction, alteration, remodeling, repainting, refinishing, or any other thing which would alter or change the present appearance of the exterior or remove, replace or alter any of the materials currently comprising the exterior of any of the improvements located on the Property, now or in the future; or (b) any abrasive cleaning, chemical cleaning, sealant, or waterproofing of the exterior or any of the materials currently comprising the exterior of any of the improvements located on the Property, now or in the future; or (c) the exterior extension of the existing improvements or the erection of any new or additional structures on the Property or in the open space above the land; *provided, however*, the cleaning, reconstruction, repair, repainting, or refinishing of the exterior in its present state, damage to which has resulted from destruction or deterioration, shall be permitted without consent of Grantee so long as it is performed in a manner: (a) which will leave unchanged the appearance of the exterior as it exists in its present state, and (b) is consistent with the historic character of the exterior; *and provided, further*, that no signs, billboards, or advertising shall be placed upon the Property, except (i) such plaques or other markers for commemorating the historic importance of the Property or the grant of this Easement, (ii) such plaques or other markers as are necessary to direct pedestrians or vehicular traffic, (iii) such plaques or other markers as indicate not more than the building name, street address and the names of the occupants of the Property, (iv) such signs as are temporarily placed on the Property to

indicate that it is for sale or lease, or (v) such plaques or signs which are temporarily placed there by a contractor, architect or landscaper, of any type, during a time period during which such contractor is performing repairs, maintenance or renovation to the Property.

For purposes of this grant of Easement, the "exterior" of the improvements includes, without limitation, the entire exterior of any improvements located on the Property, now or in the future, and includes the exterior walls, including windows and doors, roofs and chimneys, porches and piazzas, exterior stairs, balustrades, awnings, steps and any and all other exterior features of any improvements located on the Property now and in the future, regardless of its type or nature, as depicted in the written description and in the photographs or drawings as attached hereto as Exhibit B. The photographs, or measured drawings, shall be kept on file with Grantee with an appropriate inscription and with the initials of Grantors and an agent of Grantee. It is the intent of the parties that these photographs or drawings shall constitute a convenient record of the present state of the building(s) and/or structure(s) located on the Property subject to this Easement, as of the date of this Easement, and shall be used as the primary evidence of the present state in enforcing the terms of this Easement; *provided, however*, that the nonexistence or unavailability of these photographs shall not preclude or prevent a future determination of the present state by any other means.

For purposes of this Easement, the term "Interior" shall mean the interior, enclosed area of the buildings located on the Property, including, without limitation, all interior walls, ceilings, floors and Interior Features. Photographs of the Interior shall also be made by the Grantee, and all photographs and floor plans or measured drawings used to define the Interior, shall be kept on file with the Grantee with an appropriate inscription and with the initials of the Grantor and an agent of the Grantee. It is the intent of the parties that these photographs, floor plans or drawings shall constitute a convenient record of the present state of the Interior and Interior Features as of the date of this Easement, and shall be used as the primary evidence of the present state in enforcing the terms of this Easement; *provided, however*, that the nonexistence or unavailability of these photographs, floor plans or measured drawings shall not preclude or prevent a future determination of the present state by other means.

II. Grantor agrees at all times to maintain the lot and all structures and improvements thereon, and the exterior appearance of the Property in a good and sound state of repair and no extension, additional structures, or change in the color, material or surfacing of the exterior of the structures shall be permitted without the prior, express written consent of Grantee. No changes shall be undertaken to the interior or the exterior of the Property that would affect the Property's structural stability or soundness. In the event of damage to an extent that repair or reconstruction of the Property is impracticable, this Easement shall remain in full force and effect unless terminated by Court order pursuant to Article XVIII hereof, and the design of any replacement building(s) or structure(s) shall be subject to the Grantee's prior written approval.

III. All maintenance, rehabilitation or other work subject to the provisions of this Easement shall be performed according to *Standards for Rehabilitation and Guidelines for*

Rehabilitating Historic Buildings, issued and as may from time to time be amended, by the United States Secretary of the Interior, and by the *Exterior Preservation and Restoration Guidelines* and other written guidelines of Grantee issued, and as may from time to time, be amended, and must be consistent with the historic character of the exterior.

IV. Except as provided in Paragraph IX hereinbelow, the Property shall be used solely as a single family residence subject to the limitations set forth in Paragraphs VIII and IX hereinbelow. In no event shall the percentage of the lot area occupied by a structure be increased beyond the percentage of the lot currently occupied by a structure without the prior express written consent of Grantee. In no event shall the density of the Property's use be increased beyond the current density without the express written consent of Grantee. Nothing contained herein shall prohibit Grantors or any of Grantor's successors-in-interest from renting the entire Property for use as a single family residence subject to the limitations set forth in Paragraph IX hereinbelow. Except as otherwise provided herein, without the prior express written consent of Grantee, the Property shall not be subdivided or converted to any form of horizontal property regime nor shall any portion less than the entire Property be conveyed.

V. Grantor shall keep the Property, including, but not limited to, the interior and exterior of any improvement, structure or building located on the Property, the yard, the porches, the roofs, the area beneath any improvement, structure or building located on the Property and the sidewalk and street immediately adjacent to the Property (the foregoing hereinafter collectively referred to as the "Premises"), reasonably safe and reasonably clean. Grantor shall dispose from the Premises all ashes, garbage, rubbish and other waste in a reasonably clean and safe manner. Grantor shall not deliberately or negligently destroy, deface, damage, impair or remove any part of the Property or the Premises that is covered by this Easement or knowingly permit any person to do so. If the terms and conditions of this paragraph are not complied with to the satisfaction of Grantee, Grantee may arrange to have the terms and conditions of this paragraph complied with, including, but not limited to, contracting with someone to bring the Property into compliance with applicable building and housing codes, place the Premises in reasonably safe and reasonably clean condition and dispose from the Premises all ashes, garbage, rubbish and other waste. In the event Grantee exercises its right to bring the Premises into compliance with this paragraph, Grantor shall reimburse Grantee for the cost of doing so and Grantee shall have a lien against the Property as provided in Paragraph XI(d) hereinbelow.

VI. Without the prior express written consent of Grantee, no new above-ground utility transmission lines may be erected hereafter on the Property.

VII. No construction above-ground or below-ground or demolition of existing exterior improvements or structures on the Property shall be permitted without prior express written consent of Grantee, including without limitation, any swimming pools, garden pools, whirlpool baths, fountains, walkways, driveways, brickwork, or walls.

VIII. In no event shall any interval ownership interest, interval estate, time span estate, timeshare ownership interest or timeshare leasing interest in the Property be conveyed by Grantor. For purposes of this Easement, "timeshare ownership interest" shall mean any arrangement, plan or similar device, whether by tenancy in common, sale, term for years, deed, or other means, whereby the Grantee receives an ownership interest in the Property for a period or periods of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year. For purposes of this Easement, "timeshare leasing interest" shall mean any arrangement or plan or similar device, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the Grantee receives a right to use accommodations or facilities, or both, but does not receive an ownership interest in the Property, for a period or periods of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

IX. A portion of the Property consisting of a three (3) room suite is currently being used as a single bed and breakfast (hereinafter referred to as the "Existing Bed and Breakfast"). Nothing herein contained shall be construed to prevent Grantor from utilizing the portion of the Property being used for the Existing Bed and Breakfast as a single bed and breakfast.

Except as otherwise provided in this Section IX herein, Grantor shall not use any portion of the Property as an inn, hotel, bed and breakfast, motel or apartment house nor shall Grantor expand or relocate Existing Bed and Breakfast into any other portion of the Property nor shall Grantor subdivide the Existing Bed and Breakfast into more than one Bed and Breakfast unit. Except as otherwise provided in this Section IX herein, in no event shall Grantor lease the Property for any form of transient occupancy, nor shall Grantor enter into a lease arrangement whereby the Property, or any portion thereof, is leased for a period of less than thirty (30) consecutive days; *provided, however,* in no event shall more than six (6) persons not related within four (4) degrees of consanguinity reside on the Property at the same time.

X. No topographical changes on the Property, including, but not limited to, excavation below twelve inches, berming, or destruction of trees greater than eight inches (8") in diameter, shall be permitted without the prior written consent of the Grantee. No investigation of below-ground accessory features, including cellars, privies and wells may be undertaken without consent of the Grantee and its approval of a suitable archaeological plan.

XI. Grantee, in order to insure the effective enforcement of this Easement, shall have, and Grantor hereby grants to it, the following rights in addition to any other rights and remedies that are available to Grantee at law or in equity:

(a) Grantor agrees that the officers of Grantee and persons delegated by it shall be permitted, upon forty-eight (48) hours prior written notice, to come upon the Property to inspect for possible violations of any of the covenants of this Easement.

(b) In the event Grantee determines there is a violation of the Easement,

it shall provide written notice to Grantor setting forth a description of each violation. If Grantor has failed to commence or continue satisfactory corrective action or work to remedy the violations described in Grantee's written notice within thirty (30) calendar days following Grantee's written notice to Grantor describing each violation, Grantee shall have (i) the right to institute legal proceedings, by *ex parte*, temporary and/or permanent injunction, (ii) to require the restoration of the Property to its prior condition, and to avail itself of all other legal and equitable remedies; and (iii) the right to enter upon the Property upon ten days' advance written notice to Grantor to correct such violations and hold Grantor financially responsible for the costs thereof.

(c) Grantor hereby agrees to reimburse Grantee for all costs incurred in connection with the enforcement and administration of Grantee's rights hereunder, including reasonable attorney's fees and litigation costs; *provided, however*, that in no event shall any owner of the Property be responsible for any costs incurred in connection with the enforcement and administration of Grantee's rights hereunder for any violation of this easement arising or occurring at any time subsequent to his, her, its or their conveyance of title to the Property to a third person, or for any violation of this easement arising or occurring prior to the time she, he, it or they acquires title to the Property, unless she, he, it or they has written notice of the violation prior to the time she, he, it or they acquires title or unless such violation is ongoing.

(d) Grantee shall have the right to place a lien against the Property to secure the payment of any moneys owed to Grantee under the provisions of this Easement and to foreclose such lien by judicial proceedings; *provided, however*, that any such liens of Grantee shall be subordinate to the lien of any valid mortgage of record placed on the Property, now or in the future.

(e) Grantor agrees to indemnify, hold harmless and defend Grantee, its successors, assigns, agents, employees, independent contractors and representatives from and against all claims, costs and damages, including reasonable attorney fees and litigation costs, arising out of or in any way relating to this grant of Easement and the rights, obligations and discretion granted hereunder except for such claims, costs and damages arising by reason of their gross negligence or recklessness; *provided, however*, that in no event shall any owner of the Property be responsible for any costs incurred in connection with the enforcement and administration of Grantee's rights hereunder for any violation of this easement arising or occurring at any time subsequent to his, her, its or their conveyance of title to the Property to a third person, or for any violation of this easement arising or occurring prior to the time she, he, it or they acquires title to the Property, unless she, he, it or they has written notice of the violation prior to the time she, he, it or they acquires title, or unless such violation is ongoing.

(f) Grantor and Grantee agree that in the event Grantor destroys a tree greater than eight inches (8") in diameter in violation of Paragraph X herein, it will be difficult to measure Grantee's damages for such violation. Accordingly, in the event Grantor damages, destroys, cuts or removes any tree greater than eight inches (8") in diameter, measured four feet (4') above the immediately surrounding terrain, without prior written permission from Grantee, Grantor

shall be required, in the sole discretion of Grantee, to either (i) make a donation to Grantee equal to One Hundred and no one-hundredths dollars (\$100.00) times the diameter of each tree damaged, destroyed, cut or removed, or (ii) plant on the Property, or at a location designated by Grantee, in its sole discretion, trees which have a combined total of caliper inches equal to twice the diameter of all trees damaged, destroyed, cut or removed, the species of which shall be specified by Grantee. The provisions of this paragraph do not apply to the cutting or trimming of branches limbs or leaves; *provided, however,* that any branch or limb over four (4) inches in diameter may only be removed under the direction or supervision of a certified arborist.

(g) Grantor and Grantee agree that in the event Grantor violates the provisions of Paragraph VII or X herein, it will be difficult to measure Grantee's damages for such violations. Accordingly, in the event Grantor violates the provisions of Paragraph VII or Paragraph X herein, Grantor shall make a donation to Grantee in the amount of two thousand five hundred and no one-hundredths dollars (\$2,500.00); *provided, however,* that the terms and provisions of this Paragraph XI(g) shall not apply to the destruction of trees, which is subject to the terms and conditions of Paragraph XI(f) hereinabove. The liquidated damages provision of this Paragraph XII(g) shall not be subject to any right to cure contained in any other paragraph in this Deed of Conservation Easement.

XII. Grantor agrees, at her sole expense, to keep the Property insured against loss from perils commonly insured against under standard fire and extended coverage policies in an amount great enough to fully restore the Property to its condition immediately prior to its being damaged or destroyed. Grantor shall deliver to Grantee satisfactory certificates of insurances within five (5) days of such request. In the event Grantor breaches the covenants hereunder, Grantee shall have the right but not the obligation to obtain such insurance, the cost of which shall be the legal obligation of the Grantor. Grantee shall not claim an interest in any insurance proceeds provided reasonable assurances are given that the Property shall be restored and repaired in accordance with the terms of this Easement or unless this Easement is terminated pursuant to the provisions of Paragraph XVII.

XIII. In the event Grantee should at some future date acquire full title to the subject Property and merger of titles should occur, any re-conveyance by Grantee of the Property shall be made subject to the provisions of this Easement.

XIV. Grantor agrees that Grantee may provide and maintain a plaque on the street façade of the premises, not to exceed six inches (6") by eight inches (8") in size, mounted flush on the front exterior of the house, giving notice of the grant of this Easement.

XV. Grantor agrees not to obstruct the substantial and regular opportunity of the general public to view the exterior architectural features of the Property from adjacent publicly accessible areas. Upon the request of Grantee, Grantor shall elect either to make the Property accessible for study by educational, architectural or historical groups at least two days per year or to provide suitable photographs of significant features of the Property not visible from publicly

accessible areas.

XVI. Although this Easement will benefit the public in ways recited above, nothing herein shall be construed to convey a right to the public, for access or use of the Property by the public, and Grantor shall retain exclusive right of access and use, subject only to the provisions of this Easement.

XVII. Grantor and Grantee hereby recognize that subsequent unexpected changes in the conditions surrounding the Property may make impossible the continued ownership or use of the Property for preservation and conservation purposes and necessitate extinguishment of this Easement. Such a change in conditions generally includes, but is not limited to, destruction to such an extent that repair or reconstruction is impracticable or condemnation. Such an extinguishment must comply with the following requirements:

- (a) The extinguishment must be the result of a final judicial proceeding;
- (b) Grantee shall be entitled to share in the net proceeds resulting from the extinguishment in an amount equal to the percentage that the value of the Easement bears to the value of the Property as a whole at the date of donation of the Easement.
- (c) Grantee agrees to apply all of the net proceeds it receives for such extinguishment to the preservation and conservation of other buildings, structures or sites having historical, architectural, cultural, or aesthetic value and significance to the City and environs of Charleston, South Carolina.
- (d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale, lease, or exchange by Grantor of any portion of the Property after the extinguishment.

XVIII. Grantor hereby grants Grantee a first right of refusal to purchase the Property, or any part thereof, whenever a contract for the purchase and sale of the Property, or any part thereof, (hereinafter referred to as the "Contracted For Property") is entered into by Grantor (hereinafter referred to as the "Contract"); *provided, however,* that the right of first refusal contained in this paragraph shall apply only to open market arms-length transactions. For purposes of this paragraph, open market arms-length transactions shall not include inter-spousal transfers, transfers by gift, transfers between parents and children, transfers between grandparents and grandchildren, transfers between siblings, transfers between a corporation and any shareholder in the same corporation who owns ten percent (10%) or more of the stock in such corporation and transfers between a limited liability corporation and any member who owns more than ten percent (10%) of such limited liability corporation, transfers by Will, bequest, intestate succession or transfers to the Historic Charleston Foundation.

Grantor agrees that in the event Grantor enters into a Contract, Grantor shall so advise the

Director of the Grantee, in writing, by registered mail, return receipt requested, of the impending sale within five (5) days after the execution of the Contract. The notice required to be given to the Director of the Grantee (hereinafter referred to as "Grantor's Notice") shall include a description of the Contracted For Property, the name, address and telephone number of the buyer(s) and the seller(s), the name, address and telephone number of the closing attorney, the name, address and telephone of any realtor who represents any of the parties to the Contract in connection with the purchase and sale of the Contracted For Property and the purchase price of the Contracted For Property and shall also enclose a complete copy of the Contract.

Grantor's Notice shall constitute an offer to Grantee to sell the Contracted For Property to Grantee on the same terms set forth in the Contract, and the Contract shall be deemed contingent as to the buyer(s) listed therein upon Grantee waiving its first right of refusal; *provided, however,* that nothing herein shall be construed to require Grantee to waive its right of refusal. All Contracts must contain reference to Grantee's first right of refusal, and any Contract which fails to make reference to Grantee's first right of refusal shall be voidable by Grantee. Failure to include reference to Grantee's first right of refusal shall not impair the validity of the first right of refusal granted to Grantee herein or the validity of this Easement or limit its enforcement of either in any way.

Grantee shall have until 11:59:59 pm, local Charleston, South Carolina, time, on the tenth (10th) day after receipt of Grantor's Notice, as evidenced by the return receipt, to accept or reject the offer to sell the Contracted For Property to it. Should Grantee choose to accept the offer to purchase the Contracted For Property, it shall communicate its acceptance either by depositing written notice of its acceptance in the United States mail with proper postage affixed thereto addressed to the seller, with a copy to the buyer, or by hand delivering written notice of its acceptance to Grantor, with a copy to the buyer, on or before 11:59:59 pm on the tenth (10th) day after receipt of Grantor's Notice (hereinafter referred to as "Grantee's Notice"); *provided, however,* that if Grantor's Notice specifies that Grantee send Grantee's Notice to someone other than the seller and sets forth the address of such person so specified, Grantee shall send Grantee's Notice to the person specified in Grantor's Notice in the manner set forth herein; *provided, further, however,* that if Grantor's Notice specifies Grantee's Notice be sent via facsimile and Grantor's Notice includes the facsimile number to which Grantee's Notice is to be sent, Grantee shall send Grantee's Notice via facsimile. Upon Grantee giving Grantee's Notice as provided herein, the Contract shall be terminated as to the buyer listed in the Contract. Grantee and Grantors shall thereafter memorialize in writing their contract for the purchase and sale of the Contracted For Property within fifteen (15) days after the date of Grantee's Notice, which document shall contain the same terms set forth in the Contract.

Grantee shall be deemed to have waived its first right of refusal granted herein as to the transfer of title arising out of that Contract only, if (1) Grantee fails to communicate its acceptance in the manner set forth hereinabove by 11:59:59 pm on the tenth (10th) day after receipt of Grantor's Notice, or (2) it specifically waives its first right of refusal as to that Contract in writing; *provided, however,* that waiver as to any particular Contract shall constitute a waiver as to that Contract only

and shall in no event constitute a waiver as to any contract subsequently entered into by Grantor for the sale of the Property.

In the event Grantor transfers title to the Property, or any part thereof, to anyone other than Grantee pursuant to any open market arms-length transaction, (1) without first giving Grantee Grantors' Notice in the manner provided hereinabove, (2) prior to expiration of the ten (10) day period set forth hereinabove or (3) after receiving Grantee's Notice prior to expiration of the ten (10) day period set forth hereinabove in the manner set forth hereinabove, such transfer shall be voidable by Grantee, and Grantee shall have the right to purchase the Contracted For Property under the terms set forth in the Contract by giving Grantee's Notice to the transferee in the manner set forth hereinabove within one (1) year after it has actual knowledge of the transfer. Failure of Grantee to exercise its first right of refusal after learning of a transfer shall not constitute a waiver of Grantee's first right of refusal as to any future Contract or transfer.

XIX. Grantee agrees that within twenty (20) days after Grantor's request to execute, acknowledge and deliver to Grantors a written instrument stating that Grantor is in full compliance with the terms of this Easement, or if Grantor is not in compliance, stating the nature of such noncompliance and the steps necessary to correct such noncompliance.

XX. Grantee agrees that it will hold this Easement "exclusively for conservation purposes" as that term is defined in 26 U.S.C. § 170(h)(4)(A) and 170(h)(4)(B) and the implementing Treasury regulations as they may be amended from time to time. Subject to the foregoing, Grantee reserves the right to delegate all or part of its responsibilities hereunder to other public entities or organizations if Grantee determines that such delegation furthers the public purposes of this Easement.

XXI. Unless specified otherwise, for any activity on the Property which requires notice and/or approval of Grantee, Grantor agrees to notify Grantee in writing of Grantor's proposed activity not less than thirty (30) days prior to the proposed beginning of the activity on the Property. The notice shall describe the nature, scope, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to evaluate the activity, to determine whether to accept or reject the proposal and to monitor the activity, if approved. Failure to secure approval or give notice as may be required under the Easement shall be a material breach of this Easement and shall entitle Grantee to such remedies as may be available herein. Notwithstanding the foregoing, in no event shall any activities be permitted which would allow any change in the exterior which is inconsistent with the historical character of the exterior.

XXII. Any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach of Grantor shall impair such right or remedy or be construed as a waiver.

XXIII. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including, without limitation, the maintenance of any insurance coverage.

XXIV. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement; provided that no amendment shall be allowed that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the laws of the State of South Carolina. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be constructed on the Property, other than development or improvements permitted by this Easement on its effective date, shall not permit any change in the exterior inconsistent with the historical character of the same and shall not permit any impairment of the significant conservation, historic and architectural values of the Property. Any such amendment shall be recorded in the RMC Office of Charleston County, South Carolina. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment.

XXV. The benefits of this Easement shall be in gross and shall be assignable by Grantee; *provided, however,* that as a condition of any assignment, Grantee requires that the purpose of this Easement continues to be carried out, and the assignee, at the time of assignment, qualifies under 26 U.S.C. § 170(h), 1986, as amended, and applicable regulations thereunder; and under the law of the State of South Carolina as an eligible donee to receive this Easement directly.

XXVI. Grantor agrees to incorporate by reference the terms of this Easement into any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Property, including, without limitation, a leasehold interest. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

XXVII. Unless otherwise provided herein, any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served by overnight carrier or sent by certified mail, return receipt requested and addressed as follows:

To Grantor: Barbara D. DeMarco
 34 Hasell
 Charleston, SC 29401

To Grantee: Historic Charleston Foundation
 40 East Bay Street
 Post Office Box 1120

Charleston, SC 29402

With a copy to: Edward K. Pritchard, III, Esquire
 Pritchard & Elliott, LLC
 8 Cumberland Street, Suite 200
 Charleston, SC 29401

or to such other address as any of the above persons from time to time shall designate by written notice to the others. Notice shall be effective, as the case may be, on the day following the day on which the notice is presented to the overnight carrier, or three (3) days after the notice is deposited with the U.S. Postal Service for delivery by certified mail.

XXVIII. Grantee shall record this instrument in timely fashion in the Office of the Register of Mesne Conveyance for Charleston County, South Carolina, and may re-record it at any time.

XXIX. Grantor and Grantee intend that this Easement shall be construed liberally to further the public purpose of preserving the historic, cultural, scenic and aesthetic character of the Property and the historic district in which the Property is located. Grantor and Grantee further intend that the various terms, provisions and conditions of this Easement be strictly complied with and that substantial compliance with the terms, conditions and provisions of this Easement shall not be sufficient. In the event of any ambiguity in the terms of this Easement, said ambiguity shall be resolved by a liberal construction of the language of the grant in favor of Grantee to effect the purpose of this Easement and the policy and purposes of the Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. This document memorializing the terms of this Easement is a negotiated document and the general rule that the terms of a document shall be construed against the party preparing it shall not apply to the interpretation of this Easement.

XXX. The following general provisions shall apply:

a. The interpretation and performance of this Easement shall be governed by the laws of the State of South Carolina.

b. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.

c. The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall run with the title and continue as a servitude running in perpetuity with the Property.

XXXI. In the event Grantor or anyone claiming under her, him, it or them institutes legal proceedings for the purpose of extinguishing this Easement, modifying this Easement in any way, supplementing this Easement, altering this Easement in any way, interpreting this Easement or severing any provision of this Easement, the person or persons instituting such legal proceedings shall be responsible for paying all costs and fees incurred by Grantee or its assignee in defending such action, including, without limitation, its litigation costs and attorney's fees. In the event Grantee or its assignee initiates an action to determine the validity of this Easement or any part thereof, or to interpret this Easement or any part thereof, the prevailing party shall be entitled to recover reasonable attorney fees and litigation costs.

XXXII. In computing any period of time prescribed or allowed by this Easement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a State or Federal holiday or a day on which, due to weather or other conditions, the Governor of South Carolina or the Mayor of the City of Charleston has issued a voluntary or mandatory evacuation order, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and State and Federal holidays shall be excluded in computation.

XXXIII. Except as otherwise provided herein, there shall be assessed by the Historic Charleston Foundation and collected from the purchaser of the property, or any portion thereof, subject to this easement, a transfer fee equal to twenty-five one-hundredths of one percent (0.25%) of the sales price of such property, or any portion thereof, which transfer fee shall be paid to the Historic Charleston Foundation and used by the Historic Charleston Foundation for the purpose of preserving the historical architectural, archeological or cultural aspects of real property. Such fee shall not apply to inter-spousal transfers, transfers by gift, transfers between parents and children, transfers between grandparents and grandchildren, transfers between siblings, transfers between a corporation and any shareholder in the same corporation who owns ten percent (10%) or more of the stock in such corporation and transfers between a limited liability corporation and any member who owns more than ten percent (10%) of such limited liability corporation, transfers by Will, bequest, intestate succession or transfers to the Historic Charleston Foundation (each of the foregoing hereinafter referred to as an "Exempt Transfer"); *provided, however*, that such fee shall not apply to the first non-exempt transfer of Property, but shall apply to each non-Exempt Transfer thereafter. In the event of non-payment of such transfer fee, the amount due shall bear interest at the rate of 12% (twelve percent) *per annum* from the date of such transfer, shall, together with accrued interest, constitute a lien on the real property, or any portion thereof, subject to this easement and shall be subject to foreclosure by the Historic Charleston Foundation. In the event that the Historic Charleston Foundation is required to foreclose on its lien for the collection of the transfer fee, and/or interest thereon, provided for herein, the Historic Charleston Foundation shall be entitled to recover all litigation costs and attorney's fees incurred in such foreclosure, which litigation costs and attorney's fees

shall be include as part of the lien and recoverable out of the proceeds of the foreclosure sale. The Historic Charleston Foundation may require the purchaser and/or seller to provide reasonable written proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds, affidavits or such other evidence, and such purchaser shall be obligated to provide such information within forty-eight (48) hours after receipt of written request for such information from the Historic Charleston Foundation.

XXXIV. Grantor and Grantee hereby agree that:

- (a) Grantee is a "qualified organization" within the meaning of 26 U.S.C. § 170(h)(3), 1986, as amended;
- (b) Grantee's primary purpose is historic preservation;
- (c) Grantee has the resources to manage and enforce the restrictions, covenants, terms and conditions encumbering the Property contained in this Easement herein; and,
- (d) as of the date of this Easement, Grantee has a commitment to enforce the restrictions, covenants, terms and conditions set forth in the Easement herein.

Both Grantor and Grantee have certified and acknowledged each of the foregoing, under penalty of perjury, as evidenced by their respective Affidavits which are attached hereto as Exhibit "C" and Exhibit "D," respectively, and which are incorporated herein by reference.

TO HAVE AND TO HOLD, all and singular, this grant of Easement over the Property, unto said Historic Charleston Foundation, its successors and assigns, forever.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their hands or their duly authorized representatives and officers this 21 day of December, 2006.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

WITNESSES AS TO GRANTOR

Kathy G. Willis
Delecia Bourque

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

GRANTOR

Barbara D. DeMarco
BARBARA D. DEMARCO

PROBATE AS TO GRANTOR

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Grantor, sign, seal and as her act and deed, deliver the within written instrument and that (s)he with the other witness named above, witnessed the execution thereof.

Kathy G. Wilks

(Signature of Witness)

SWORN to before me this 21st day of December, 2006.

Delicia Burridge

Notary Public for South Carolina
My Commission Expires June 22, 2014

WITNESSES AS TO GRANTEE:

Winslow Hastie
Winslow Hastie

Rick Rockwell
Rick Rockwell

Georgia S. Ellington
Winslow Hastie Georgia S. Ellington

Rick Rockwell
Rick Rockwell

GRANTEE:

**HISTORIC CHARLESTON
FOUNDATION**

By: R. W. Salmons
Richard W. Salmons, Jr.

Its: President

By: W. E. Applegate
William E. Applegate, III

Its: Treasurer

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

**PROBATE AS TO HISTORIC CHARLESTON
FOUNDATION**

PERSONALLY appeared before me, Winslow Hastie, and made oath that he saw the within named Historic Charleston Foundation, by and through its President, Richard W. Salmons, Jr., and its Treasurer, William E. Applegate, III, respectively, sign, seal and as its act and deed, deliver the within written instrument and that he with Rick Rockwell witnessed the execution thereof.

SWORN to before me this 21st day
of December, 2006.

Georgia S. Ellington

Rick Rockwell

Winslow Hastie
RICK ROCKWELL

Notary Public for South Carolina
My Commission Expires 7-22-07

EXHIBIT A

ALL that lot, piece or parcel of land, with the buildings and improvements therein, situate, lying and being on the North side of Hasell Street in the City of Charleston, State of South Carolina, known and designated in the present numbering system of the City of Charleston as No. 34 Hasell Street. (Formerly known and designated as No. 50 Hasell Street). Measuring and containing in front on Hasell Street and on the back or North line thirty-six feet, three inches (36'3"), and on the East and West lines ninety-eight feet (98'), be the said dimensions a little more or less. Butting and bounding to the North on lands now or late of Elizabeth Waters Doscher, to the East on lands now or late of Mary F. Conlon and Lois Conlon, to the South on Hasell Street and to the West on lands of Ernest R. Schwengber and Gudrun H. Schwengber. The said premises being the western moiety of three (3) lots of land conveyed to Martha W. Gage by George W. Williams by deed bearing date the 5th day of July, 1879, and recorded in the office of the Register of Mesne Conveyance for Charleston County, South Carolina, in Book A-18, Page 19.

BEING THE SAME PROPERTY conveyed to Grantor herein by deed of Andrew J. Savage, III, and Cheryl L. Savage dated March 15, 1996, and recorded in the office of the Register of Mesne Conveyance for Charleston County, South Carolina, on March 19, 1996, in Deed Book R-266 at Page 143.

TMS # 458-05-01-034

Grantee's Address: Historic Charleston Foundation
 40 East Bay Street
 Post Office Box 1120
 Charleston, SC 29402

EXHIBIT B

Certain of the attachments referred to as Exhibit B are not recordable. Accordingly, none of the attachments referred to as Exhibit B have been recorded, but they are available for inspection upon reasonable request of the Historic Charleston Foundation, which is located as of the date of the execution of this easement at 40 East Bay Street, Post Office Box 1120, Charleston, South Carolina 29402.

Exhibit B consists of the following: Two sets of fifty (50) black and white photographs, and two sets of fifty (50) color photographs.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, Katharine S. Robinson of Historic Charleston Foundation, 40 East Bay Street, Post Office Box 1120, Charleston, South Carolina 29402, who first being duly sworn, deposes and sayeth:

1. That she is, as of the date of this Affidavit, the Executive Director of Historic Charleston Foundation.
2. That she is over the age of twenty-one (21) and is mentally competent.
3. That Historic Charleston Foundation is an eleemosynary corporation organized and existing pursuant to the laws of the State of South Carolina, and is, as of the date of this Affidavit, in good standing.
4. That Historic Charleston Foundation is, as of the date of this Affidavit, a tax exempt organization pursuant to 26 U.S.C. § 501(c)(3) (1986).
5. That Historic Charleston Foundation is, as of the date of this Affidavit, a "qualified organization" within the meaning of 26 U.S.C. § 170(h)(3) (1986).
6. That the principle purpose of Historic Charleston Foundation is historic preservation.
7. That as of the date of this Affidavit, Historic Charleston Foundation has the resources to manage and enforce the covenants, restrictions, terms and conditions set forth in the easement document to which this Affidavit is attached as Exhibit "C."
8. That as of the date of this Affidavit, Historic Charleston Foundation has a commitment to manage and enforce the covenants, restrictions, terms and conditions set forth in the easement document to which this Affidavit is attached as Exhibit "C."

9. That this Affidavit is made for the purpose of complying with 26 U.S.C. § 170(h)(4)(b)(ii) (1986), with regard to the easement document to which this Affidavit is attached as Exhibit "C," and the scope of this Affidavit is limited to such purpose and shall be used for no other purpose.

FURTHER DEPONENT SAYETH NAUGHT!



Katharine S. Robinson
Executive Director, Historic Charleston Foundation

SWORN TO AND SUBSCRIBED BEFORE ME
this _____ day of December, 2006.



Notary Public for South Carolina
My Commission Expires: 2/14/15

EXHIBIT "D"

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF CHARLESTON)

PERSONALLY APPEARED BEFORE ME, Grantor or Grantors herein, such as the case may be (hereinafter collectively referred to as "Grantor") who first being duly sworn, deposes and sayeth:

10. That Grantor is over the age of twenty-one (21) and mentally competent.
11. That Grantor is informed and believes that Historic Charleston Foundation is an eleemosynary corporation organized and existing pursuant to the laws of the State of South Carolina, and is, as of the writing of this Affidavit, in good standing.
12. That Grantor is informed and believes that Historic Charleston Foundation is, as of the writing of this Affidavit, a tax exempt organization pursuant to 26 U.S.C. § 501(c)(3) (1986).
13. That Grantor is informed and believes that Historic Charleston Foundation is, as of the writing of this Affidavit, a "qualified organization" within the meaning of 26 U.S.C. § 170(h)(3) (1986).
14. That Grantor is informed and believes that the principle purpose of Historic Charleston Foundation is historic preservation.
15. That Grantor is informed and believes that as of the writing of this Affidavit, Historic Charleston Foundation has the resources to manage and enforce the covenants,

restrictions terms and conditions set forth in the easement document to which this Affidavit is attached as Exhibit "D."

16. That Grantor is informed and believes that as of the writing of this Affidavit, Historic Charleston Foundation has a commitment to manage and enforce the covenants, restrictions, terms and conditions set forth in the easement document to which this Affidavit is attached as Exhibit "D."

FURTHER DEPONENT SAYETH NAUGHT!

Barbara D. DeMarco
Signature

Barbara D. DeMarco
[Please print name above]

SWORN TO AND SUBSCRIBED BEFORE ME

this 21 day of December, 2006.

Delecia Burdage
Notary Public for South Carolina My Commission Expires: _____
My Commission Expires: June 22, 2014