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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

**DEED OF CONSERVATION EASEMENT**  
(Residential Exterior And Interior)  
(Transfer Fee and Right of First Refusal)  
(35 Legare Street)  
**EXTINGUISHMENT OF PRIOR EASEMENT**  
(Deed Book K-142, Page 93)

THIS indenture deed of easement (hereinafter referred to as the "Easement"), made this  
21 day of April, 2016, between **HCF REALTY, LLC**, a South Carolina limited  
liability company(together with its successors 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").

**W I T N E S S E T H**

**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 exterior and

interior conservation easement with respect to the Property; and

**WHEREAS**, Grantor intends to transfer the Property to Robert S. Cooper and Diana L. Cooper (“Coopers”) promptly after the recordation of this Easement and the Coopers will undertake to satisfy the covenants and conditions of this Easement with respect to Section 38 (Renovation Undertaking); and

**WHEREAS**, Grantor and Grantee acknowledge and agree that the 1961 Loutrel Briggs’ garden plan installed on the Property is of historic significance to the officially designated Historic Charleston District of Charleston, South Carolina, which district contributes significantly to the cultural heritage and visual beauty of Charleston, South Carolina, and should be preserved; and,

**WHEREAS**, it is the desire and intent of the Grantor and Grantee that the hardscape of the front portion of the 1961 Loutrel Briggs’ garden plan (the “Protected Garden Area”), as marked on the plan which is attached hereto as Exhibit C (Protected Garden Area) and incorporated herein by reference, implemented on the Property be preserved; however, the preservation of the existing plant materials is not required; and

**WHEREAS**, the term “landscaping” as used in this Easement refers only to the hardscape features of the lot and is not intended to include vegetation, including grasses, plants, shrubs and trees, the planting, maintenance and removal of which the Grantee does not want to regulate by this Easement except with respect to trees to the extent provided in Section 11 (Topography) and Section 13(f) (Remedies/Trees); and

**WHEREAS**, the term “Main Building” means the main building consisting of two rooms divided by a staircase on each floor, the term “Brick Building” means the brick dependency in the rear and the term “Hyphen” means the area between the Main Building and the Brick Building, all as more fully shown on Exhibit C-1 (Delineation of Building Segments); and

**WHEREAS**, the Property is currently subject to an easement in favor of Grantor donated to it by Salley B. Davidson dated December 31, 1984, memorialized by an eight page Deed of Conservation Easement which was recorded on December 31, 1984, in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina, in Deed Book K-142, at page 93 (hereinafter referred to as the “1984 Easement”); and,

**WHEREAS**, it is the desire and intent of Grantor and Grantee that the 1984 Easement be extinguished and replaced with this Easement; 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, however, the parties agree that this Easement is not intended to qualify as a charitable contribution or to be subject to the federal regulations relating to such charitable contributions; and,

**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 and sufficiency of which is hereby acknowledged, and in further consideration of the recitals and agreements contained herein, Grantor hereby grants, sells and conveys to Grantee, its 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, on the terms and conditions as set out below.

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 Grantor, and their heirs, successors and assigns, hereby place upon the Property such restrictions, covenants, terms and conditions as set forth below. Such restrictions, covenants, terms and conditions shall be appurtenant to and run with the land in perpetuity and shall be referred to in any subsequent conveyance of any interest of the Grantor, although failure to so refer shall not impair this Easement.

Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, hereby places upon the Property such restrictions, covenants, terms and conditions as set forth below. Such restrictions, covenants, terms and conditions shall be appurtenant to and 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 in any way:

**1. Exterior Façade Easement.** 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 of the improvements 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; **(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; **(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 façade 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: **(i)** which will leave unchanged the appearance of the exterior as it exists in its present state; and **(ii)** 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, (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) 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 Easement, the "exterior" of the improvements includes, without limitation, the entire exterior of any improvement 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 of all buildings, as depicted in the written description and in the photographs or drawings as attached to this Easement as Exhibit "B" (Evidence of Condition at Recordation), copies of which have been provided to Grantor. The photographs, or measured drawings, shall be kept on file with Grantee with an appropriate inscription and with the initials of an authorized agent of Grantor and Grantee. It is the intent of the parties that these photographs or drawings shall constitute a convenient record of the present state of the improvement(s), building(s) and/or structure(s) located on the Property subject to this Easement, as of the date of this Deed of Conservation 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 such photographs or drawings shall not preclude or prevent a future determination of the present state by any other means.

**2. Interior Easement.** Subject to Exhibit D (Protected Interior Features), without the prior, express, written consent of the Grantee, Grantor shall not undertake nor permit to be undertaken: (a) any modification, removal, abrasive cleaning or alteration to any Interior Features; or (b) any removal, construction, alteration, remodeling, repainting, refinishing, abrasive cleaning, stripping, sanding, sealing, waterproofing or other action which would substantially alter the appearance of an Interior Feature in a manner which would permanently damage any Interior Feature so that such affected portion of the Interior Feature could not be reasonably restored at some later date to its appearance and condition as of the date of this Easement; *provided, however,* the cleaning, reconstruction, repair, repainting, alteration, sanding, stripping, waterproofing, sealing, or refinishing of Interior Feature damage to which has resulted from destruction, fire, Act of God or deterioration, shall be permitted without consent of the Grantor so long as it is performed in a manner (i) which will leave unchanged the appearance of the Interior Feature as it exists in its present state or (ii) in a manner which would not permanently damage any Interior Feature so that such affected portion of the Interior Feature could be reasonably restored at some later date to its appearance and condition as of the date of this Easement or (iii) which otherwise is allowed by this Easement. "Interior Features" or

"Interior Feature" shall mean only those items listed in Exhibit D (Protected Interior Features) attached hereto and incorporated herein by reference (subject to certain permitted modifications as provided therein). In no event shall Interior Features include the interior of any modern bathroom or modern kitchen or modern laundry room or dressing room.

**3. Maintenance.** Grantor agrees at all times to maintain the Property, including the lot, in a good and sound state of repair and that 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 structures and improvements on the Property that would adversely affect such structure's structural stability or soundness. In the event of damage to an extent that repair or reconstruction of the structures or improvements on the Property is impracticable, this Easement shall remain in full force and effect unless terminated by Court order pursuant to Paragraph 19 (Extinguishment) hereof, and the design of any replacement building(s) or structure(s) shall be subject to the Grantee's prior written approval.

**4. Work Standards.** 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 any other written guidelines issued by Grantee from time to time that are consistent with the standards published by the United States Secretary of the Interior and must be consistent with the historic character of the exterior.

**5. Use and Subdivision Restrictions.** The Main Building shall be used solely as a single-family dwelling unit. The Brick Building may be rented as an apartment or as a bed and breakfast if permitted by City regulations. Without the prior express written consent of Grantee, the type, use, density or percentage of lot coverage by structures for the Property shall not be changed. Nothing contained herein shall prohibit Grantor or any of Grantor's successors-in-interest from renting the Main Building or the Brick Building subject to the limitations set forth in Paragraph 9 (Time Shares) and Paragraph 10 (Transitory Occupation) herein below. In no event shall the Property be subdivided or converted to a horizontal property regime. Except for leasehold interests permitted under this Paragraph 5 (Use and Subdivision Restrictions), life estates and remainder interests, no portion less than the entire Property shall be conveyed.

**6. Safe and Clean Condition.** 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 (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 6 (Safe and Clean Condition) are not complied with to the satisfaction of Grantee, Grantee may arrange to have the terms and conditions of this Paragraph 6 (Safe and Clean Condition) complied with, including, but not limited to making arrangements to place the Premises in reasonably safe and reasonably clean condition and dispose from the Premises all ashes, garbage, rubbish and other waste, after prior written notice and the right to cure in accordance with Paragraph 13 (Remedies) herein below. In the event Grantee exercises its right to bring the Premises into compliance with this Paragraph 6 (Safe and Clean Condition), Grantor shall reimburse Grantee for the reasonable costs of doing so and Grantee shall have a lien against the Property as provided in Paragraph 13(d) (Remedies) herein below for any unpaid obligations.

**7. Utility Easements.** Subject to the terms and provisions of any utility easements as of the date of this this Easement, without the prior express written consent of Grantee, no new above-ground utility transmission lines that could be placed underground may be erected hereafter on the Property.

**8. New Improvements and Features.** No construction of any improvement or structure above ground or below ground, including without limitation, any swimming pools, garden pools, whirlpool baths, fountains, walkways, driveways, brickwork, or walls, or demolition of existing exterior improvements or structures, in each case, on the Property, including, without limitation, landscaping, garden walls, walkways, brick or stone or concrete paths and walkways, existing as of the date of this Easement shall be permitted without prior written consent of Grantee.

**9. Time Shares.** 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.

**10. Transitory Occupation.** In no event shall the Main House be used as an Inn, Hotel, Bed and Breakfast or motel. In no event shall Grantor lease the Main House for any form of transient occupancy, nor shall Grantor enter into a lease arrangement whereby the Main House, or any portion thereof, is leased for a period of less than thirty (30) consecutive days. The Brick Building may be operated as a bed and breakfast in strict compliance with the City regulations on bed and breakfast establishments. In order to protect the surrounding

neighborhood from the de facto creation of a type of boarding house, no more than four (4) persons not related within four (4) degrees of consanguinity or by marriage shall reside in the Main Building.

**11. Topography.** No human made or human influenced topographical changes on the Property, including, without limitation, excavation below twelve inches (12") or berming, shall be permitted without the express prior written consent of Grantee. No destruction of trees greater than twelve inches (12") in diameter breast high shall be permitted without the prior written consent of the Grantee unless a licensed arborist confirms there is an imminent threat of harm to person or property. 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. Notwithstanding anything to the contrary contained herein, this Easement does not regulate (i) the installation, maintenance or removal of vegetation including, without limitation, plants, shrubs and trees, except with respect to trees to the addressed in this Section 11 (Topography) and Section 13 (f) ( Remedies/Trees), (ii) the installation, maintenance or removal of water lines and sewer lines installed by means of directional drilling or similar techniques nor (iii) the installation of well points of eight inches in diameter or less. These excluded matters are not subject to prior consent of the Grantor nor the limitations on excavations below twelve inches (12").

Prior to conducting any type of excavation which is regulated by this Easement, Grantor and Grantee shall discuss the scope of the proposed project and Grantee shall determine, in its reasonable discretion, whether an archaeological study in conjunction with such excavation is reasonably likely to result in the recovery of historic material that should be studied and preserved. If the Grantee determines that an archaeological study would be historically useful, Grantor shall submit to Grantee in writing, at the sole cost of Grantor, a scope of the proposed work that involves such excavation which shall include a map or drawing depicting the location of such excavation and the proposed plans and specifications for the proposed project. The Grantor shall also submit a plan for the archaeological study of the area of such excavation, at Grantor's sole expense. Grantor shall not commence construction of the proposed project and such excavation until the Grantee has given written consent to the proposed project, including such excavation and the archaeological study; Grantee reserves the right, in its reasonable discretion, to prohibit such excavation which is regulated by this Easement or to relocate the area of such excavation. Grantor shall keep Grantee informed of the progress of any archaeological study and shall provide Grantee a copy of the archaeological study within five (5) days of its completion.

**12. Extinguishment of 1984 Easement.** The 1984 Easement is hereby extinguished and terminated and superseded by this Easement.

**13. Remedies.** 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 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 (10) business days' advance written notice to Grantor to correct such violations and hold Grantor financially responsible for the reasonable costs thereof.
- (c) Grantor hereby agree to reimburse Grantee for all reasonable 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 such owner's conveyance of title to the Property to a third person, or for any violation of this Easement arising or occurring prior to the time such owner acquires title to the Property, unless such owner has written notice of the violation prior to the time such owner acquires title or unless such violation is ongoing.
- (d) Grantee shall have the right to place a lien against the Property by filing a notice of lien in the Charleston County RMC Office to secure the payment of any moneys owed to Grantee under the provisions of this Easement and remaining unpaid after thirty (30) days' notice to Grantor following written notice, and to foreclose such lien by judicial proceedings which proceedings shall determine the amount of moneys owed to Grantee; *provided, however*, that any such filed liens of Grantee shall be subordinate to the lien of any valid mortgage of record placed on the Property prior to the recordation of Grantee's notice of lien.
- (e) Subject to the terms, covenants and provisions of Paragraph 34 (Legal Proceedings) herein below, Grantor and Grantee agree to indemnify, hold harmless and defend the other, his/her/its and its respective 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 or willful misconduct; *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 such owner's conveyance of title to the Property to a third person, or for any violation of this easement arising or occurring prior to the time such owner acquires title to the Property, unless such owner has written notice of the violation prior to the time such owner acquires title, or unless such violation is ongoing.

(f) **Trees.** Grantor and Grantee agree that in the event Grantor destroys a tree greater than twelve inches (12") in diameter breast high in violation of Paragraph 11 (Topography) herein, it will be difficult to measure Grantee's damages for such violation. Accordingly, in the event Grantor irreparably damages, destroys, or removes any tree greater than twelve inches (12") in diameter breast high (being a height of four feet), 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 breast high of each tree so damaged, destroyed, or removed, or (ii) plant on the Property, or at a location designated by Grantee, in its reasonable discretion after consultation with Grantor, trees which have a combined total of caliper inches equal to twice the diameter of all trees so damaged, destroyed, or removed, the species of which shall be specified by Grantee after consultation with Grantor. The Grantor shall engage a certified arborist before the removal of any branch or a limb greater than eight (8") inches in diameter who shall provide Grantor and Grantee with a letter that the removal of such limb, in the professional opinion of the arborist, will not damage the health of the tree or is required to prevent damage to a structure. Regular maintenance of trees on the Property by a licensed arborist consistent with this Section 13(f) shall not be considered a violation of this provision. Grantee agrees not to unreasonably withhold, delay or condition its consent to the removal of a tree which Grantee's licensed arborist recommends be removed.

(g) **Specific Liquidated Damage Provisions.** Grantor and Grantee agree that in the event Grantor violates the provisions of Paragraph 7 (Utility Easements), Paragraph 8 (Ancillary Improvements) or Paragraph 11 (Topography) herein, it will be difficult to measure Grantee's damages for such violations. Accordingly, in the event Grantor violates the provisions of Paragraph 7 (Utility Easements), Paragraph 8 (Ancillary Improvements) or Paragraph 11 (Topography) 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 13(g) shall not apply to the destruction of trees, which is subject to the terms and conditions of Paragraph 13(f) (Trees) hereinabove. The liquidated damages provision of this Paragraph 13(g) shall not in any way waive, impair or prevent Grantee from pursuing any other right or remedy, at law or in equity, granted to it by any other provision of this Easement or by the common or statutory law of the United States of America or the State of South Carolina; provided, however, Grantee acknowledges that such alternative remedies may require Grantee to relinquish the liquidated damages provided in this Paragraph 13(g).

**14.** Intentionally Deleted.

**15. Merger of Title.** 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.

**16. Grantee Plaque.** 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.

**17. Viewing of Property.** Grantor agrees not to obstruct the opportunity of the general public to view the exterior architectural features of the Property from adjacent publicly accessible areas. Upon the prior written request of Grantee, Grantor shall elect either to make the Property accessible for study by educational, architectural or historical groups consisting of no more than 15 number of persons at least one (1) day per year or to provide reasonably suitable photographs of significant features of the Property not visible from publicly accessible areas. A wooded yard in front of the historic structures shall not be considered a violation of this Paragraph 17 (Viewing of Property).

**18. No Public Access.** 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 and unrestricted right of access, use and enjoyment of the Property, subject only to the provisions of this Easement.

**19. Extinguishment.** 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.

**20. Right of First Refusal.** Grantor hereby grants Grantee a first right of refusal to purchase the Property whenever a contract for the purchase and sale of the Property is entered into by Grantor (hereinafter referred to as the "Contract"); *provided, however,* that the right of first refusal contained in this Paragraph (Right of First Refusal) shall apply only to open market arms-length transactions. For purposes of this Paragraph (Right of First Refusal), 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, 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, transfers to a trust of which the grantor is a trustee or beneficiary, the distribution by a trust of any interest in the trust to any beneficiary thereof or transfers to Grantor or the transfer by the Grantor to the Coopers (as defined in the Recitals) (each an "Exempt Transfer").

Grantor agrees that in the event Grantor enters into a Contract, Grantor shall so advise the Director of the Grantee, in writing, by Federal Express or other similar national delivery service, return receipt requested, of the impending sale within five (5) business 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 copy of the Contract and any amendments or addendums thereto. To the extent the Grantor has such information at the time of Grantor's Notice, Grantor shall also furnish the name and contact information for the buyer, the buyer's attorney, and the realtors involved in the sale. Grantee agrees to keep the Contract and the information contained therein confidential, to disclose the existence and terms of the Contract strictly on a need to know basis and to obtain an undertaking from any person to whom this confidential information is disclosed to protect and keep confidential such information. The Grantee represents and warrants that it will only exercise this Right of First Refusal to further the

charitable purposes of the Grantee and shall not exercise it to provide private benefit to a person associated with the Grantee.

Grantor's Notice shall constitute an offer to Grantee to sell the 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. 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 (10<sup>th</sup>) day after receipt of Grantor's Notice, as evidenced by the return receipt, to accept or reject the offer to sell the Property to it. Should Grantee choose to accept the offer to purchase the Property, it shall communicate its acceptance either by delivering written notice of its acceptance by Federal Express or other similar national delivery service, return receipt requested to the Grantor, 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 (10<sup>th</sup>) 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 Grantor 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 Grantee shall be deemed to have submitted a written offer to purchase the Property upon the same terms and conditions as the Contract and the Grantor shall be deemed to have accepted in writing the Grantee's offer of purchase.

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 and by the time set forth hereinabove, 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 or other than in an Exempt Transfer in breach of the provisions of this Paragraph 20 (Right of First Refusal), such transfer shall be voidable by Grantee, and Grantee shall have the right to purchase the Property under the terms set forth in the Contract by giving Grantee's Notice to the transferee in the manner set forth hereinabove within thirty (30) days after Grantee has actual knowledge of the transfer and has received a copy of the Contract. 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.

**21. Estoppel Certificate.** Within ten (10) days after Grantor's request, Grantee agrees to execute, acknowledge and deliver to Grantor 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.

**22. Grantee Delegation.** 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)(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.

**23. Grantor's Notice of Activity.** Unless specified otherwise elsewhere in this Easement, 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 ten (10) 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 reasonable 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.

**24. Forbearance.** 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.

**25. Grantor Ownership Obligations.** 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, as provided herein.

**26. Amendments.** 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 and shall not affect its perpetual duration. Any such amendment shall be recorded in the Register of Deeds Office of Charleston County, South Carolina. Nothing in this Paragraph 26 (Amendments) shall require Grantor or Grantee to agree to any amendment.

**27. Assignment by Grantee.** 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; and, provided, further, that Grantee agrees not to assign this Easement without the prior written consent of Grantor which consent shall not be unreasonably withheld, delayed or conditioned.

**28. Future Deeds.** Grantor agree 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 28 (Future Deeds) shall not impair the validity of this Easement or limit its enforceability in any way.

**29. Notice.** 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 (i) in person, (ii) by Federal Express or other similar national overnight carrier, return receipt requested or (iii) sent by certified mail, return receipt requested and addressed as follows:

To Grantor:	Robert S. Cooper and Diana L. Cooper 24 Fearing Road Hingham, MA 02043
With a copy to:	Susan M. Smythe, Esquire Womble Carlyle Sandridge & Rice, LLP 5 Exchange Street Charleston, S. C. 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 Law Group, LLC

129 Broad Street  
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, (i) on the day delivered in person, (ii) on the day on which the notice is delivered by the overnight carrier, or (iii) on the delivery date for delivery by certified mail.

**30. Recordation of Easement.** Grantee shall record this instrument in timely fashion in the RMC Office for Charleston County, South Carolina, and may re-record it at any time.

**31. Construction.** 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.

**32. General Provisions.** 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.

**33. Legal Proceedings.** In the event Grantor or anyone claiming under them institute legal proceedings for the purpose of extinguishing this Easement, modifying this

Easement in any way, supplementing this Easement, altering this Easement in any way, or severing any provision of this Easement, the person or persons instituting such legal proceedings shall be responsible for paying all reasonable costs and fees incurred by Grantee or its assignee in defending such action, including, without limitation, its reasonable litigation costs and attorney's fees. In the event either party initiates an action to determine whether there has been a breach of this Easement, 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.

**34. Computation of Time.** 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.

**35. Transfer Fee.** Except as otherwise provided herein, there shall be assessed by the Grantee 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 Grantee and used by the Grantee for the purpose of preserving the historical architectural, archeological or cultural aspects of real property. Such fee shall not apply to an Exempt Transfer as defined in Paragraph 20 (Right of First Refusal); *provided, however,* that such fee shall not apply to the first non-Exempt Transfer of Property after the date of this Easement, 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. The Grantee shall have such rights of collection of the amount of the transfer fee together with accrued interest as provided in Paragraph 13(d) (Remedies) and Paragraph 33 (Legal Proceedings). Upon obtaining actual knowledge of a non-Exempt Transfer in which the purchaser failed to pay the transfer fee, Grantee agrees to use reasonable efforts to give prompt notice and the opportunity to cure in accordance with Paragraph 13 (Remedies).

**36. Adjoining Property Repairs.** If Grantee holds a deed of conservation easement on any neighboring property adjoining or abutting the Property, Grantor shall permit the owner of any property adjoining or abutting the Property on which Grantee then holds a deed of conservation easement reasonable access to the Property for the limited purpose of making repairs to such neighboring property adjoining or abutting the Property, but only to the extent necessary to effect such repairs and only for the time reasonably necessary to effect such repairs, provided the such owner provides Grantor the protections set forth in Section 15-67-270 Code of Laws, South Carolina and the adjoining owner agrees to afford Grantor similar repair access rights.

**37. Access by Adjoining Property.** Grantee shall assist Grantor in gaining reasonable access to any property adjoining or abutting the Property on which Grantee then holds a deed of conservation easement for the limited purpose of making repairs to the Property, but only to the extent necessary to effect such repairs and only for the time reasonably necessary to effect such repairs, provided Grantor provides the adjoining owner the protections set forth in Section 15-67-270 Code of Laws, South Carolina and the Grantor agrees to afford the adjoining owner similar repair access rights.

**38. Renovation Undertaking.** Grantor has agreed to undertake certain renovations to the structures on the Property as described in the preliminary and final written plans to be submitted to the Grantee for Grantee's approval, such approval not to be unreasonably withheld, conditioned or delayed (the "Renovations"). Grantee shall provide Grantor with either its approval of or with any proposed changes to any Renovation plans submitted to Grantee within ten (10) days of submission of such plans to Grantee by Grantor. Grantor shall apply for all permits necessary for the commencement of the renovations to the structures within one year of conveyance of title to the Property to the Coopers. Grantor agrees to use commercially reasonable efforts to obtain the necessary permits and approvals for the commencement of construction ("Final Permits"). Upon receipt of the Final Permits, Grantor agrees to work diligently and continuously on the Renovations and to complete the Renovations within sixty months from the date of the delivery of the Final Permits; *provided, however,* that Grantor shall have seventy-two months from the date of the delivery of the Final Permits in which to complete the Renovations to the interior of the Brick Building. The time periods set forth herein shall be extended for any period of Force Majeure which is defined broadly as events beyond Grantor's reasonable control. Grantor shall not make any material changes to the final plans without Grantee's approval, such approval not to be unreasonably withheld, conditioned or delayed. The parties agree that Grantee has no approval rights over the construction within the Hyphen, modern bathrooms, modern kitchen(s), laundry room(s) and dressing room(s), with respect to the exterior changes to the Hyphen. The Renovations shall be in full compliance with the provisions of this Easement. Upon reasonable prior notice and at reasonable times that do not interfere with the ongoing construction work, Grantee shall have the right, but not the obligation, in its sole discretion, to inspect the repairs and renovations required by this Paragraph 38.

(Signature Pages and Exhibits Follow)

**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 April, 2016.

**SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:**

## WITNESSES AS TO LLC

## **HCF Realty, LLC**

**Witness One as to LLC**

By: Thomas J. Solmeier  
Its

Its

Witness Two as to LCC

## President and CEO

**STATE OF SOUTH CAROLINA** )

## ACKNOWLEDGMENT

## COUNTY OF CHARLESTON

I, the undersigned Notary Public, do hereby certify that HCF Realty, LLC by Konثارnes Roberts President and CEO personally appeared before me on April 21, 2016 and acknowledged the due execution of the foregoing instrument.

Notary Public for  
My Commission Expires:

Exhibit A	Property Description
Exhibit B	Evidence of Condition on Recordation
Exhibit C	Loutrel Briggs Plan and Protected Garden Area
Exhibit C-1	Designation of Building Components
Exhibit D	Protected Interior Features

Annette Murphy  
Notary Public, State of South Carolina  
My Commission Expires Sept. 21, 2022

WITNESSES AS TO HISTORIC  
CHARLESTON FOUNDATION:

Dr. J. Woodcock

Witness One as to Historic  
Charleston Foundation

Sarah M. Lewis

Witness Two as to Historic  
Charleston Foundation

Dr. J. Woodcock

Witness One as to Historic  
Charleston Foundation

Sarah M. Lewis

Witness Two as to Historic  
Charleston Foundation

HISTORIC CHARLESTON  
FOUNDATION

By: Wilbur E. Johnson  
Its: Board Chair

By: Park 13 Smith  
Its: Board Vice-Chair

STATE OF SOUTH CAROLINA )  
                                  )  
COUNTY OF CHARLESTON    )

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that Historic Charleston Foundation, by Wilbur Johnson, its Board Chair, and by Park Smith, its Board Vice Chair personally appeared before me on April 21, 2016 and acknowledged the due execution of the foregoing instrument.

Notary Public for South Carolina  
My Commission Expires: 9/21/2022

Annette Murphy  
Notary Public, State of South Carolina  
My Commission Expires Sept. 21, 2022

## EXHIBIT A

**ALL** that lot, piece or parcel of land situate, lying and being on the West side of Legare Street, in the City of Charleston and State aforesaid, with the dwelling house, outbuildings and improvements thereon, measuring and containing in width from North to South fifty-five (55) feet, more or less; and in depth from East to West one hundred and seven (107) feet, nine and one-half (9½) inches, more or less, and known as 35 Legare Street in the current numbering system of the streets of Charleston, South Carolina.

**BUTTING AND BOUNDING** to the North on lands now or formerly of Batten; to the South on lands now or formerly of Smythe; to the East on Legare Street aforesaid; and to the West on lands now or formerly of Lowndes.

TMS No. 457-11-04-103

Property Address: 35 Legare Street  
Charleston, SC 29401

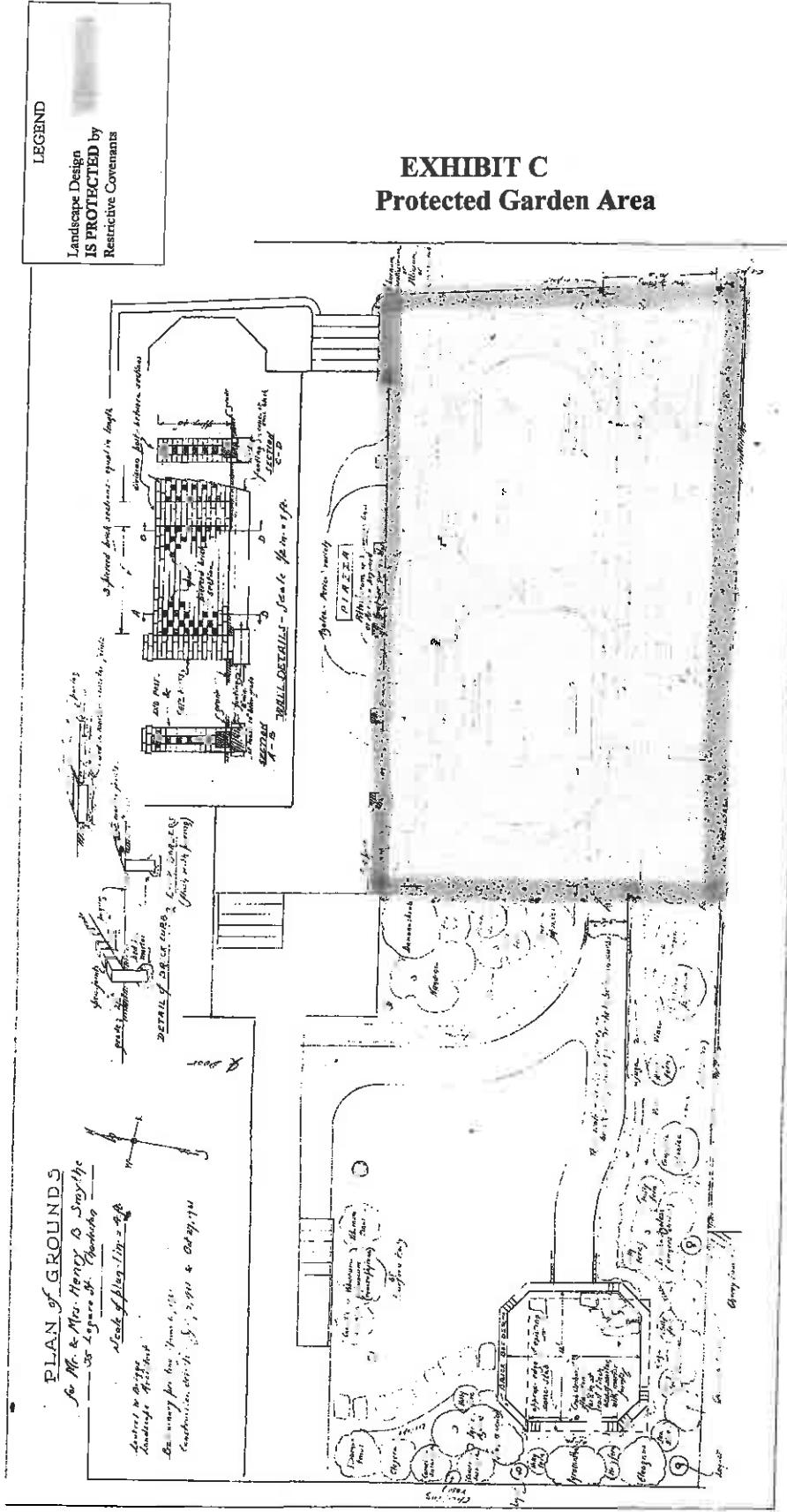
**EXHIBIT B**  
**(Evidence of Condition at Recordation)**

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. Copies of these unrecorded documents have been provided to Grantor.

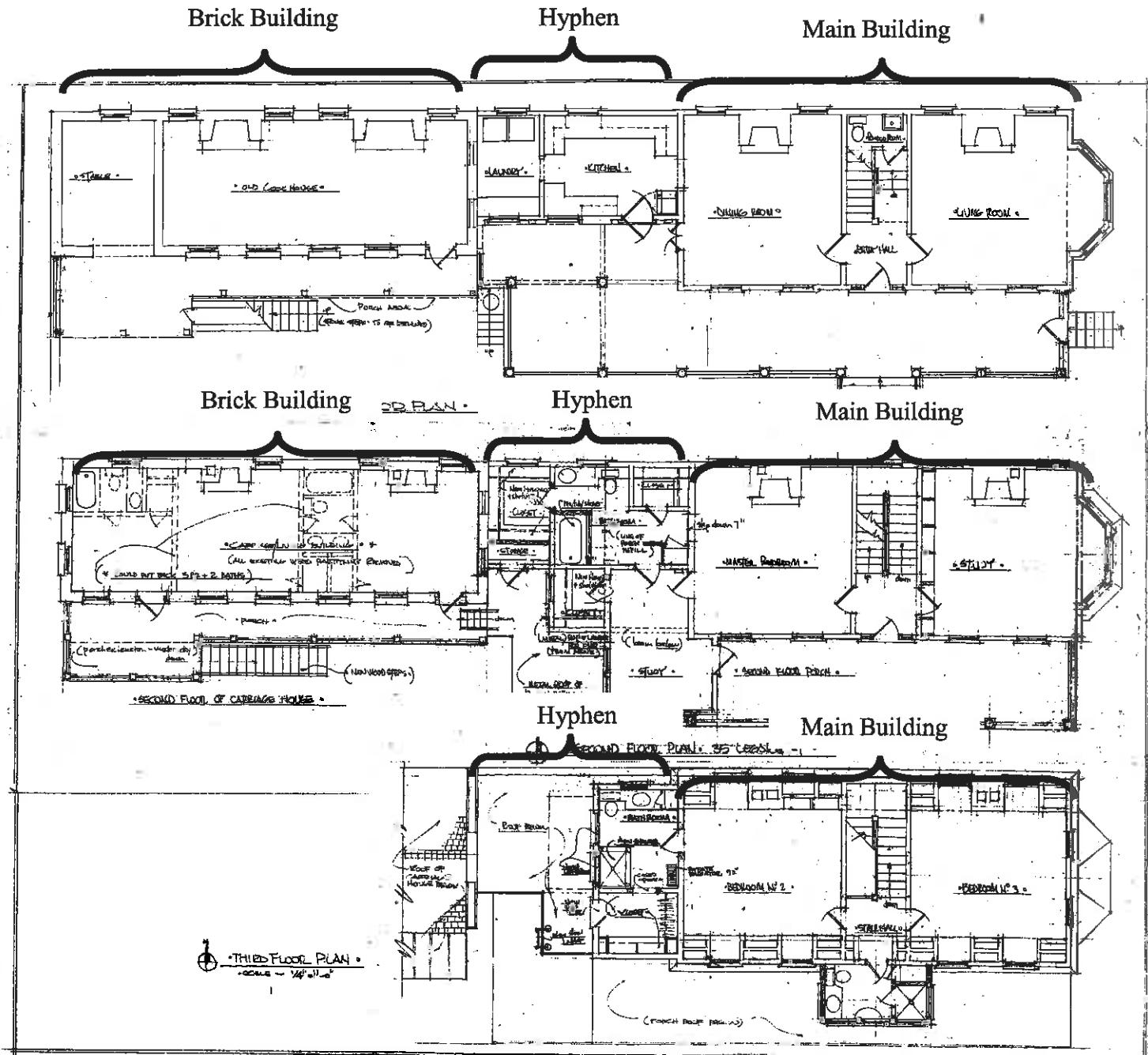
Exhibit B consists of the following:

Series of photographs

35 LEGARE STREET  
1961 LOOTREL BRUGGS GARDEN PLAN



**Exhibit C-1**  
**Designation of Building Components**



## **EXHIBIT D**

### **35 Legare Street – Interior Features List\*** **(See also attached Interior Easement Protection Key)**

#### **MAIN BUILDING** **FIRST FLOOR**

##### **Front Room**

Floors (if owner wants to uncover the original floorboards they would need to salvage the existing floorboards)

Baseboards

Crown Molding

Mantle\*\* (fireplaces may be returned to wood burning or gas)

Windows and surrounds

Plaster (as possible)

##### **Dining Room**

Floors (if owner wants to uncover the original floorboards they would need to salvage the existing floorboards)

Baseboards

Mantle\*\* (fireplaces may be returned to wood burning or gas)

Windows and surrounds

Plaster (as possible)

#### **SECOND FLOOR**

##### **Front Room**

Floors

Baseboards

Mantle and hearth tile (fireplaces may be returned to wood burning or gas)

Windows and surrounds

Plaster (as possible)

##### **Bedroom**

Floors

Baseboards

Mantle with hearth tile (fireplaces may be returned to wood burning or gas)

Windows and surrounds

Plaster (as possible)

## **THIRD FLOOR**

Floors in the historic portion of the house only.

### **STAIR HALLS AND STAIRS – FLOORS 1-3**

#### **Hall floors**

Windows and surrounds  
Entry door and surround  
Doors, surrounds, and hardware  
    2<sup>nd</sup> floor: 2 doors  
    3<sup>rd</sup> floor: 2 doors

#### **Stairs**

Treads  
Risers  
Stringer ornament  
Spindles  
Hand rail  
Baseboards

\*Room configuration and location of door and window openings are also protected.

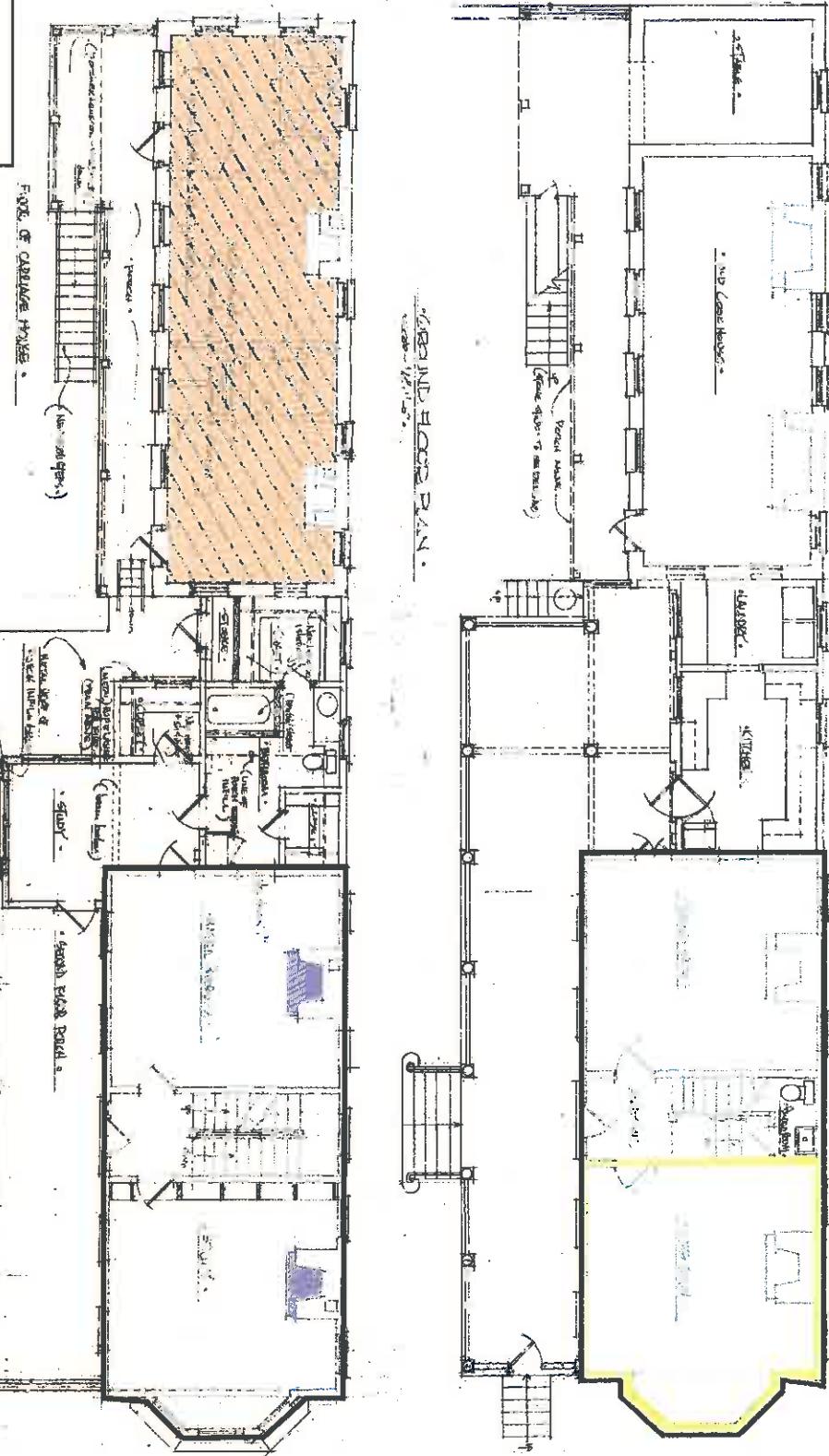
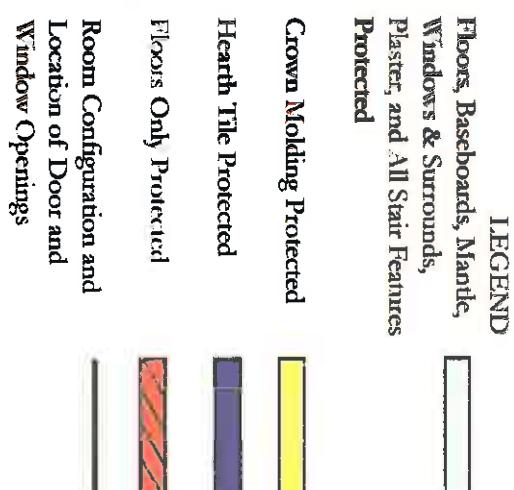
## **BRICK BUILDING**

First floor fire boxes  
Second floor fire boxes  
Mantle on second floor  
Second floor flooring

\*\*Mantle on first floor, second room is originally from main house, first floor. This mantle must be retained. Should the owner wish to install it on the first floor of the main house, this will be approved by HCF.

# 35 LEGARE STREET

## Interior Easement Protection Key



# RECORDER'S PAGE

**NOTE:** This page MUST remain with the original document



**Filed By:**

PRITCHARD LAW GROUP, LLC  
129 BROAD ST  
PO BOX 630  
CHARLESTON SC 29401-2433

## RECORDED

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Charlie Lybrand, Register  
Charleston County, SC

**Maker:**

HCF REALTY LLC

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