PARKS, RECREATION, AND COMMUNITY ENHANCEMENT COMMITTEE
A G E N D A

JANUARY 14, 2013 - 12:00 NOON

CITY HALL CONFERENCE ROOM
15 LOOCKERMAN PLAZA
DOVER, DELAWARE

Public comments are welcomed on any item and will be permitted at appropriate times. When possible, please notify the City Clerk (736-7008 or e-mail at CityClerk@dover.de.us) should you wish to be recognized.

AGENDA ADDITIONS/DELETIONS

1. Consideration of The Green as a National Monument *(Due to time constraints, this item has been placed on the Council agenda for the meeting being held later in the evening)*

2. Update - CDBG Program

3. Adjournment

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THE AGENDA ITEMS AS LISTED MAY NOT BE CONSIDERED IN SEQUENCE. THIS AGENDA IS SUBJECT TO CHANGE TO INCLUDE THE ADDITION OR THE DELETION OF ITEMS, INCLUDING EXECUTIVE SESSIONS.

PRESERVATION AND CONSERVATION EASEMENT DEED

THIS PRESERVATION AND CONSERVATION EASEMENT DEED, made as of the ____ day of _____, 20__, by and between _____ ("Grantor") with offices at _____ and the United States of America, acting by and through the Secretary of the Interior and National Park Service ("Grantee"), with offices at 1849 C Street NW (2540), Washington, D.C. 20240.

WITNESSETH:

WHEREAS, Grantor is owner in fee simple of certain real property known as the Dover Green located in the City of Dover, County of Kent, State of Delaware, more particularly described in Exhibit A attached hereto and incorporated herein (hereinafter "the Property"), said Property not being improved with any buildings.

WHEREAS, the Secretary of the Interior is authorized to accept the relinquishment of tracts of land or so much thereof as may be necessary for the proper care and management of objects of historic or scientific interest in behalf of the Government of the United States under the provisions of section 2 of the Antiquities Act of 1906 (34 Stat. 225, 16 U.S.C. § 431);

WHEREAS, because of its historic and cultural significance the Property was included in the _____ Historic District in the National Register of Historic Places on December 24, 1967 (insert #);

WHEREAS, Grantor and Grantee recognize the historic, and cultural values (hereinafter "conservation and preservation values") and significance of the Property, and have the common purpose of conserving and preserving the aforesaid conservation and preservation values and significance of the Property;

WHEREAS, the Property's conservation and preservation values are documented in a set of reports, drawings, and photographs (hereinafter, Baseline Documentation) incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Property as of the effective date of this grant (in the event of any discrepancy between the two counterparts produced, the counterpart retained by Grantee shall control);

WHEREAS, the Baseline Documentation shall consist of the following: [list documents and materials]

WHEREAS, the grant of a preservation and conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and its historic and cultural features for the benefit of the people of the United States of America;

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, a preservation and conservation easement (hereinafter, the "Easement") in gross in perpetuity on the Property.

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged~~, and pursuant to Section 170(h) of the Code and [give full citation to the state easement legislation]~~, Grantor does hereby voluntarily grant, con-

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vey and relinquish unto the Grantee a preservation and conservation easement in gross in perpetuity over the Property described in Exhibit A.

PURPOSE

1. **Purpose.** It is the Purpose of this Easement to assure that the historic, cultural and associated features of the Property will be retained and maintained forever substantially in their current or better condition for conservation and preservation purposes and to prevent any use or change of the Property that will significantly impair or interfere with the Property's conservation and preservation values.

GRANTOR'S COVENANTS

2.1 **Grantor's Covenants: Covenant to Maintain.**

(a) Grantor agrees at all times to maintain the Property in the same or better condition and state of repair as that existing on the effective date of this Easement. Grantor's obligation to maintain shall require replacement, repair, and/or reconstruction by Grantor whenever necessary to preserve the features of the property in the same or better condition and state of repair as that existing on the date of this Easement.

(b) Grantor's obligation to maintain shall also require that the Property's landscaping be maintained in good/better appearance with substantially similar plantings, vegetation, and natural screening to that existing on the effective date of this Easement. The existing lawn areas shall be maintained as lawns, regularly mowed.

(c) Subject to the casualty provisions of Paragraphs 7 and 8, the obligation to maintain shall require replacement, repair, and/or reconstruction whenever necessary in accordance with the standards stated in Paragraph 4.

2.2 **Grantor's Covenants: Prohibited Activities.** The following acts or uses are expressly forbidden on, over, or under the Property:

(a) The Property's features shall not be demolished, removed, or razed except as provided in Paragraphs 7 and 8.

(b) Nothing shall be erected or allowed to grow on the Property which would impair the visibility of the Property from the street level or other public rights of way.

(c) The Property shall not be divided or subdivided in law or in fact and the Property shall not be devised or conveyed except as a unit. For the purposes of this Easement the term "subdivision" shall include a long term lease or other use of any portion of the Property that creates the characteristics of a subdivision of the property, as determined in the sole discretion of the Grantee. The term "subdivision" shall also include division into condominium or cooperative interests or the partition of undivided interests in the property.

(d) The dumping of trash, rubbish, ashes, or any other unsightly or offensive materials is prohibited on the Property.

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GRANTOR'S CONDITIONAL RIGHTS SUBJECT TO APPROVAL

3.1 **Conditional Rights Requiring Approval by Grantee.** The following acts are prohibited except with the prior express written approval of the Grantee, which approval may be withheld or conditioned in the sole discretion of Grantee:

~~(a) Grantor shall not increase or decrease the height of, make additions to, change the exterior construction materials or colors of, or move, improve, alter, reconstruct, or change the facades (including fenestration) and roofs of the Buildings.~~

~~(b) Grantor shall not shall not remove, demolish, or alter the following interior features located in the Buildings:~~

~~[Specific interior features that are to be protected are described here, if applicable]~~

~~(c) Grantor shall not change the floor plan of the Buildings.~~

(d) Grantor shall not erect or place on the Property any ~~additional~~ buildings or structures, including but not limited to, sheds, barns, similar ancillary structures, and non-building structures such as utility transmission lines (subject to utility easements already recorded), satellite receiving dishes, antennas, cellular communications transmitters, or similar electronic frequency receiving or emitting devices, flagpoles, fences, walls, wind turbines, solar panels or other similar devices, tents of longer duration than 30 days, mobile homes or trailers, dumpsters, storage containers, camping accommodations, or other similar temporary structures

(e) Grantor shall not erect or allow to be erected any external signs or external advertisements except: (i) such plaque permitted under Paragraph 19 of this Easement; (ii) a sign stating solely the name and/or address of the Property and owner; and (iii) a temporary sign to advertise the sale or rental of the Property.

(f) Grantor shall not make substantial topographical changes, such as, by example, excavation for the construction of roads, swimming pools, and recreational facilities. Grantee, at its discretion, may as a condition of granting approval, require Grantor, at Grantor's cost, to perform an archaeological survey to identify and determine the significance of archaeological deposits. If archaeological deposits are identified, then Grantee may deny or conditional approval of topographical changes as appropriate. As applicable, additional archaeological protections may be included, such as that Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Property , and that archaeologically significant deposits, sites, or features on the Property shall not be intentionally disturbed or excavated except by or under the supervision of a professionally qualified archaeologist retained by Grantor, and an archaeological plan approved by the Grantee.

(g) Grantor shall not cut down or remove live trees located on the Property unless diseased or damaged as determined in the sole discretion of the Grantee. Grantee may require, at Grantor's expense, a professional arborist's report as a condition of reviewing any request to remove live trees.

~~(h) Grantor shall not cut down or remove live trees located in forests for the purpose of conducting commercial timber production [or allow conditional harvesting of timber except in accordance with a qualified forest management plan presented to Grantee for approval. (See Model Conservation Easement)].~~

(i) Grantor shall not change the use of the Property to another use other than a _____. Grantee must determine that the proposed use: (i) does not impair the significant conservation and preservation values of the Property; and (ii) does not conflict with the Purpose of the Easement.

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3.2 **Review of Grantor's Requests for Approval.**

(a) Pursuant to Paragraph 3.1, Grantor shall submit in writing to Grantee for Grantee's approval information (including plans, specifications, and designs where appropriate) together with a specific request identifying the proposed activity. In addition, Grantor shall also submit to Grantee a timetable for the proposed activity which is sufficient to permit Grantee to monitor such activity. Grantor shall not make changes or take any action subject to the approval of Grantee unless expressly authorized in writing by an authorized representative of Grantee.

(b) Grantee reserves the right to consult with governmental agencies, nonprofit preservation and conservation organizations, and/or other advisors deemed appropriate by the Grantee, concerning the appropriateness of any activity proposed under this Easement.

(c) All approval rights of the Grantee shall be exercised in the reasonable discretion of Grantee. Grantee agrees to use its reasonable efforts to respond to any written request of Grantor not later than forty-five (45) days following receipt by Grantee of Grantor's request. Failure of Grantee to respond to Grantor within the forty-five (45) day period shall not, however, be deemed to constitute approval of Grantor's request.

(d) In the event that the Grantor does not implement any approval granted pursuant to Paragraphs 3.1 and 3.2, for a period of one (1) year, such approval shall be void. Grantor may resubmit the request for approval; however, such approval may be given or denied in the sole discretion of the Grantee.

STANDARDS FOR REVIEW

4. **Standards for Review.** In exercising any authority created by this Easement to inspect the Property; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction following casualty damage, Grantee shall apply the following standards (hereinafter "the Secretary's Standards"), as they may be amended from time to time: For buildings and structures: *The Secretary of the Interior's Standards for Rehabilitation* (36 C.F.R. § 67.7) and the guidelines referenced therein; and, for landscapes: *The Secretary of the Interior's Guidelines for Rehabilitating Cultural Landscapes*.

GRANTOR'S RESERVED RIGHTS

5. **Grantor's Reserved Rights Not Requiring Further Approval by Grantee.** Subject to the provisions of Paragraphs 2.1, 2.2, and 3.1, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Easement and by Grantee without further approval by Grantee:

(a) the right to engage in all those acts and uses that: (i) are permitted by governmental statute or regulation; (ii) do not substantially impair the conservation and preservation values of the Property; and (iii) are not inconsistent with the Purpose of this Easement;

(b) pursuant to the provisions of Paragraph 2.1, the right to maintain and repair the Property strictly according to the Secretary's Standards, subject to the following qualifications:

(i) The right to maintain and repair shall mean the use by Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or ap-

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plication of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Property.

(ii) The right to maintain and repair shall not include the right to make changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior written approval of Grantee in accordance with the provisions of Paragraphs 3.1 and 3.2.

(iii) The right to maintain and repair shall not include the right to replace historic materials unless such historic materials are significantly deteriorated or damaged.

(c) the right to continue all manner of existing use and enjoyment of the Property including but not limited to the maintenance, repair, and restoration of existing fences; the right to maintain existing driveways, roads, and paths with the use of same or similar surface materials; the right to maintain existing utility lines, walkways and steps; the right to cut, remove, and clear grass or other vegetation and to perform routine maintenance, landscaping, horticultural activities, and upkeep, consistent with the Purpose of this Easement.

PUBLIC ACCESS

6. Grantor shall make the Property and interior portions of the Courthouse accessible to the public on a minimum of ___ days per year. This requirement may be fulfilled through an open house, ~~house~~ tour, or similar event that is open to the general public following published notice. Grantor may have a representative present during such public access, and access may be subject to reasonable restrictions to ensure security of the property and safety of the visitors. At other reasonable times, upon request of Grantee made with reasonable notice to Grantor, persons affiliated with educational organizations, professional architectural associations, and historical societies shall be admitted to study the property. In addition, Grantee may make photographs, drawings, or other representations documenting the significant historical and cultural character and features of the Property and may use or publish them (or authorize others to do so) ~~to fulfill its charitable or educational purposes~~. Furthermore, Grantor agrees that Grantee may, but is not obligated to, provide programs for the public interpreting the conservation and preservation values of the Property subject to advance written approval of a program locations and schedule by Grantor.

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

7. **Casualty Damage or Destruction.** In the event that the Property or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within thirty (30) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee; this report shall include the following:

(a) an assessment of the nature and extent of the damage;

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(b) a determination of the feasibility of the restoration of the Property and/or reconstruction of damaged or destroyed portions of the Property; and

(c) a report of such restoration/reconstruction work necessary to return the Property to the condition existing at the effective date of this instrument.

8. **Review After Casualty Damage or Destruction.** If, after reviewing the report provided in Paragraph 7 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9, Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Property in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under Paragraph 9, Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Easement would not be served by such restoration/reconstruction, Grantor may, but only with the prior written consent of Grantee, alter and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of Delaware and Paragraph 23.2 of this instrument.

9. **Insurance.**

(a) Grantor shall keep the Property insured by an insurance company rated "Secured" by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage.

(b) Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property without cost or expense to Grantor or contribution or coinsurance from Grantor. Such insurance shall include Grantee's interest and name Grantee as an additional insured.

(c) Grantor shall deliver to Grantee a certificate of insurance annually or when coverage is renewed by Grantor. If Grantor fails to submit proof of insurance coverage annually or at the time of renewal, Grantor must deliver proof of coverage, within ten (10) business days of Grantee's written request for documentation of coverage.

(d) Whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

INDEMNIFICATION AND TAXES

10. **Indemnification.** Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, trustees, directors, officers and employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person; physical damage to the Property; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter

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defined, listed, or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury or other damage occurring on or about the Property, unless such injury or damage is caused by Grantee or any agent, trustee, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

11. **Taxes.** Grantor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and other charges which may become a lien on the Property unless Grantor timely objects to the amount or validity of the assessment or charge and diligently prosecutes an appeal of the charge, in which case the obligation to pay such charges as defined in this paragraph shall be suspended for the period permitted by law for prosecuting such appeal and any applicable grace period following completion of such action. In place of Grantor, Grantee is hereby authorized, but in no event required or expected, to make or advance upon three (3) days prior written notice to Grantor any payment relating to taxes, assessments, water rates, sewer rentals and other governmental or municipality charge, fine, imposition, or lien asserted against the Property. Grantee may make such payment according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement, or assessment or into the validity of such tax, assessment, sale, or forfeiture. Such payment if made by Grantee shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

ADMINISTRATION AND ENFORCEMENT

12. **Written Notice.** Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods: by overnight courier postage prepaid, facsimile transmission, registered or certified mail with return receipt requested, or hand delivery; if to Grantor, then at [address], and if to Grantee, then to [address].

Each party may change its address set forth herein by a notice to such effect to the other party.

13. **Evidence of Compliance.** Upon request by Grantor, Grantee shall promptly furnish Grantor with a certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of this Easement, or that otherwise describes the status of this Easement to the extent of Grantee's knowledge.

14. **Inspection.** With appropriate prior notice to Grantor, Representatives of Grantee shall be permitted at all reasonable times to inspect the Property.

15. **Grantee's Remedies.** Grantee may, following reasonable written notice to Grantor, institute suit(s) to enjoin any violation of the terms of this easement by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Property to the condition and appearance that existed prior to the violation complained of in the suit. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations contained in this instrument.

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In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Easement, including but not limited to all reasonable court costs, and attorney's, architectural, engineering, and expert witness fees.

Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

Grantor agrees that if it does not maintain the Property as covenanted in section 2.1 above, Grantee shall have the right but not the obligation to perform such maintenance activities.

16. **Notice from Government Authorities.** Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

17. **Notice of Proposed Sale.** Grantor shall promptly notify Grantee in writing of any proposed offer to sell the Property or of any listing of the Property for sale and provide the opportunity for Grantee to explain the terms of the Easement to the real estate listing agent and potential new owners prior to sale closing.

18. **Liens.** Any lien on the Property created pursuant to any paragraph of this Easement may be confirmed by judgment and foreclosed by Grantee in the same manner as a mechanic's lien, except that no lien created pursuant to this Easement shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

19. **Plaque.** Grantor agrees that Grantee may provide and maintain a plaque on the Property, which plaque shall not exceed 24 by 24 inches in size, giving notice of the significance of the Property and the existence of this Easement.

BINDING EFFECT AND ASSIGNMENT

20. **Runs with the Land.** Except as provided in Paragraphs 8 and 23.2, the obligations imposed by this Easement shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Easement shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all such persons in the future claiming under or through Grantor and Grantee; the words "Grantor" and "Grantee" when used in this instrument shall include all such persons. Any right, title, or interest granted in this instrument to Grantee also shall be deemed granted to each successor and assign of Grantee and each following successor and assign; the word "Grantee" shall include all such successors and assigns.

An owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Easement shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property.

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21. **Assignment.** Grantee may convey, assign, or transfer this Easement ~~to a unit of federal, state, or local government or to a similar local, state, or national organization that is a "qualified organization" under Section 170(h) of the Code whose purpose, among other things, is to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Easement was granted will continue to be carried out~~.

22. **Recording and Effective Date.** Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of the City of Dover, County of Kent and State of Delaware. Grantor and Grantee intend that the restrictions arising under this Easement take effect on the day and year this instrument is recorded in the land records of the City of Dover, County of Kent and State of Delaware.

PERCENTAGE INTERESTS AND EXTINGUISHMENT

23.1 **Percentage Interests.** For purposes of allocating proceeds pursuant to Paragraphs 23.2 and 23.3, Grantor and Grantee stipulate that as of the date of this Easement, Grantor and Grantee are each vested with real property interests in the Property and that such interests have a stipulated percentage interest in the fair market value of the Property. These percentage interests shall be determined by the ratio of the Easement's value on its effective date to the value of the Property, without deduction for the value of the Easement, on the effective date of this Easement. ~~The values on the effective date of the Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code.~~ The parties shall include the ratio of those values with the Baseline Documentation (on file with Grantor and Grantee) and shall amend such values, if necessary, to reflect any final determination by ~~the Internal Revenue Service or~~ court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Property thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the effective date of this Easement is reserved to Grantor.

23.2 **Extinguishment.** Grantor and Grantee hereby recognize that circumstances may arise that may make the continued ownership or use of the Property in a manner consistent with the Purpose of this Easement impossible and that extinguishment of the Easement may be necessary. Such circumstances may include, but are not limited to, partial or total destruction of the Property resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and any costs or expenses associated with such sale, Grantor and Grantee shall share in any net proceeds resulting from such sale in accordance with their respective percentage interests in the fair market value of the Property, as such interests are determined under the provisions of Paragraph 23.1, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. ~~All such proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's primary purposes.~~ Net proceeds shall also include, without limitation, net insurance proceeds.

In the event of extinguishment, the provisions of this paragraph shall survive extinguishment and shall constitute a lien on the Property with the same effect and priority as a mechanic's lien, except

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that such lien shall not jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of the Grantor and Grantee that any such changes will not be deemed to be circumstances justifying the termination, extinguishment, or modification of this Easement. In addition, the inability of Grantor, or its successors or assigns to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, will not impair the validity of this Easement or be considered grounds for its termination, extinguishment, or modification.

23.3 **Condemnation.** If all or any part of the property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. After the satisfaction of prior claims and net of expenses reasonably incurred by Grantor and Grantee in connection with such taking, Grantor and Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of Paragraphs 23.1 and 23.2 unless otherwise provided by law.

INTERPRETATION

24. **Interpretation.** The following provisions shall govern the effectiveness, interpretation, and duration of the Easement.

(a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Property shall not apply in the construction or interpretation of this Easement, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use contained in this instrument.

(b) This instrument may be executed in two counterparts, one of which may be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern.

(c) ~~This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being~~It is the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether or not this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to its subject matter.

(d) Nothing contained in this instrument shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms of this instrument, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the ap-

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plicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(e) To the extent that Grantor owns or is entitled to development rights which may exist now or hereafter under any applicable zoning or similar ordinance, that would permit the Property to be developed to a use or uses more intensive (in terms of height, bulk, number of structures, assemblage of lots, subdivision, or other criteria related by such ordinances) than that to which the Property is devoted as of the date of this Easement, such development rights shall not be exercisable on, above, or below the Property during the term of the Easement, nor shall they be transferred to any adjacent or other parcel.

~~(f) To the extent that any action taken by Grantee pursuant to this Easement gives rise to a claim of breach of contract, Grantor and Grantee agree that the sole remedy on the part of Grantor shall be reimbursement of actual direct out-of-pocket expenses reasonably incurred by Grantor as a result of such breach and that Grantor shall not have any right to indirect, consequential, or monetary damages in excess of such actual, direct, and reasonable out-of-pocket expenses.~~

(g) While it is the mutual intention of Grantor and Grantee that the grant of this Easement shall constitute a qualified conservation contribution under federal and/or state law, Grantor is solely responsible for ensuring that the terms of the Easement and the circumstances of the grant meet the qualifications necessary for Grantor to obtain federal or state benefits applicable to qualified conservation contributions. Grantee makes no representation that the grant of this Easement entitles Grantor to any tax or other benefit under federal, state, or local law, and Grantor's failure to qualify for any such benefit relating to the grant of this Easement shall not constitute grounds for the rescission, termination, extinguishment, or amendment of this Easement, or for any claim of damages.

AMENDMENT

25. **Amendment.** 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 made 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 Code and the laws of the State of _____. Any such amendment shall be consistent with the protection of the conservation and preservation values of the Property and the Purpose of this Easement; shall not affect its perpetual duration; shall not permit additional ~~residential [and/or commercial]~~ development on the Property other than the ~~residential [and/or commercial]~~ development permitted by this Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall historic and cultural values protected by this Easement. Any such amendment shall be recorded in the land records of the City of Dover, County of Kent and State of Delaware. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

PUBLIC LAW 109-280 "SPECIAL RULES" COMPLIANCE [as applicable]

26. **Protection of Entire Property~~Building~~**. Grantor and Grantee agree that that the restrictions of this Easement shall apply to the entire Property~~exterior of the Buildings (including the front, sides, rear, and height of the Buildings) and interior architectural features, as applicable, and that no change to the exterior of the Buildings may be made by Grantor except as provided herein~~.

SAMPLE

27. **Inconsistent Changes Prohibited**. Grantor and Grantee agree that Grantor shall not undertake, and Grantee shall not permit, any change to the Property which would be inconsistent with the historical character of Property.

~~28. **Certification of Qualification of Grantee Under Penalty of Perjury.** [As applicable.] By execution of this Easement, Grantor and Grantee agree, and hereby certify under penalty of perjury, that Grantee is a qualified easement-holding organization (as defined in Section 170(h)(3) of the Internal Revenue Code) with a purpose of environmental protection, open space preservation, or historic preservation, and that the Grantee has both the resources to manage and enforce the restrictions of this Easement and a commitment to do so.~~

~~**GIFT ACKNOWLEDGMENT** [as applicable for donated easements]~~

~~29. **Gift Acknowledgment**. Grantor hereby acknowledges the gift of the real property interest described in this Easement, and further acknowledges that no goods or services were provided to Grantor in exchange for the donation of the Easement or any accompanying cash contribution by Grantee.~~

THIS EASEMENT reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution of this agreement, unless set out in this instrument. Grantor acknowledges that this Easement affects important legal rights and obligations of Grantor, including the rights and obligations of Grantor's successors and assigns, and that Grantor has had the opportunity to consult with knowledgeable legal counsel of Grantor's own choosing prior to execution of the Easement.

GRANTOR, for itself, its successors and assigns, does hereby covenant with the Grantee and its assigns that Grantor is lawfully seized and possessed of the herein described Property in fee simple; that the same is free and clear of all encumbrances (except for covenants, easements, and restrictions of record, if any); that Grantor has the right to convey this Easement; that Grantor warrants, specially and generally, the title and quiet enjoyment of the Property; that Grantor, its successors and assigns will forever defend the same unto Grantor and its assigns against all lawful claims and demands thereof by others and will issue such further assurances as Grantor and/or its assigns may request,

GRANTEE, notwithstanding any provision to the contrary herein, shall not be required to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of compliance with the conditions of this Easement for the fiscal year; this Easement shall not bind Grantee under any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations; and nothing in this Easemnet may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies.

TO HAVE AND TO HOLD, the said Preservation and Conservation Easement, unto the said Grantee and its successors and permitted assigns forever. This **DEED OF PRESERVATION AND CONSERVATION EASEMENT** may be executed in two counterparts and by each party on a sepa-

SAMPLE

rate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands under seal on the days and year set forth below.

~~[As applicable: *Grantor and Grantee expressly acknowledge and understand that, by their execution of this document, the certification under Paragraph 28 is made under penalty of perjury*.]~~

WITNESS: **GRANTOR**:

_____ _____

_____ _____

(date)

ATTEST: **GRANTEE**:

_____ _____

By:_____ By:_____

(date)

[Notarizations to follow]

SAMPLE

MORTGAGE SUBORDINATION [as applicable]

30. **Subordination of Mortgage.** At the time of the conveyance of this Easement, the Property is subject to a Mortgage/Deed of Trust dated _____, recorded in the Land Records of [county, town, or district] at Book/Liber _____, Page/Folio _____ (hereinafter "the Mortgage"/"the Deed of Trust") held by _____ (hereinafter, "Mortgagee"/"Lender"). The Mortgagee/Lender joins in the execution of this Easement to evidence its agreement to subordinate the Mortgage/the Deed of Trust to this Easement under the following conditions and stipulations:

(a) The Mortgagee/Lender and its assignees shall have a prior claim to all insurance proceeds as a result of any casualty, hazard, or accident occurring to or about the Property and all proceeds of condemnation proceedings, and shall be entitled to the same in preference to Grantee until the Mortgage/the Deed of Trust is paid off and discharged, notwithstanding that the Mortgage/the Deed of Trust is subordinate in priority to the Easement; provided, however, that if the Easement is terminated under the circumstances described in Paragraphs 23.2 and 23.3, Grantee shall be entitled to compensation in accordance with the terms set forth therein.

(b) If the Mortgagee/Lender receives an assignment of the leases, rents, and profits of the Property as security or additional security for the loan secured by the Mortgage/Deed of Trust, then the Mortgagee/Lender shall have a prior claim to the leases, rents, and profits of the Property and shall be entitled to receive the same in preference to Grantee until the Mortgagee's/Lender's debt is paid off or otherwise satisfied, notwithstanding that the Mortgage/Deed of Trust is subordinate in priority to the Easement.

(c) The Mortgagee/Lender or purchaser in foreclosure shall have no obligation, debt, or liability under the Easement until the Mortgagee/Lender or a purchaser in foreclosure under it obtains ownership of the Property. In the event of foreclosure or deed in lieu of foreclosure, the Easement is not extinguished.

(d) Nothing contained in this paragraph or in this Easement shall be construed to give any Mortgagee/Lender the right to violate the terms of this Easement or to extinguish this Easement by taking title to the Property by foreclosure or otherwise.

[Signatures]

SAMPLE

SCHEDULE OF EXHIBITS

A. Property Description
B. Baseline Documentation [generally non-recordable]

SAMPLE

Status of FY-12 CDBG Projects

Monthly statistics for the month of December 2012

Sub-recipient agreements have been executed and the following projects are underway.

CDBG FY12 Projects

Homeownership Assistance Program
Three (3) families were provided settlement assistance to purchase properties in the City of Dover.

MHDC Homeowner Rehabilitation Program
CDBG funds will be used to rehabilitate owner occupied homes in the City of Dover found in violation of the City's housing code.

Dover Interfaith Mission to the Homeless
CDBG funds will be used for operations cost for the shelter.

MHDC Emergency Home Repair Project
CDBG funds will be used to assist very low income homeowners with emergency home repairs to eliminate severe housing conditions that constitute health and safety hazards.

NCALL Research
CDBG funds will be used for foreclosure prevention and pre-purchase homeownership counseling services to Dover residents.

Serenity Place
CDBG funds will be used for the reconstruction of a treatment facility for persons who suffer from substance abuse that was destroyed in a fire.

Elizabeth W. Murphey School
CDBG funds will be used to install a geothermal heating system in one of the facilities that services children that are at risk for homelessness.

Neighborhood Stabilization Program (NSP)

The city was awarded $1,426,740 for the acquisition and rehab of foreclosed properties to be sold to qualifying families. A total of $1,311,895 has been expended on the acquisition and renovations for 10 properties. The remaining balance of $114,844 will be utilized for renovations and acquisition. Eight properties have been sold, one is a lease purchase and one is a rental that serves persons with disabilities.

218 Ann Avenue (sold)

337 N. Governors Avenue (sold)

343 Mimosa Avenue (sold)

254 Green Blade Drive (sold)

907 Woodcrest Avenue (sold)

302 Stone Brook Place (lease purchase)

1430 S. Hancock (group home rental)

1415 S. Hancock (sold)

11 Westover Drive (sold)

110 Thames Drive (sold)

Status of FY-12 Program Funds Spent - Fiscal Year 7/1/12- 6/30/13

2012 Grant Projects	Project Details	Total Grant	Funds Expended	Unencumbered Balance
Homeownership Assistance Program	Three families have purchased homes	$40,000	$19,606	$20,394
NCALL Reaearch	housing counseling and foreclosure prevention	$7,803	$0	$7,803
Dover Interfaith Mission to Homeless	Funding for utility and lease cost	$27,500	$0	$27,500
Serenity Place	Reconstruction of a treatment facility	$30,000	$0	$30,000
MHDC Emergency Home Repairs	Emergency home repairs	$35,000	$0	$35,000
Elizabeth W. Murphey School	Installation of geothermal heating system	$32,782	$0	$32,782
MHDC Housing Rehabilitation Program	rehabilitation of owner occupied homes	$52,782	$0	$52,782
Total		$225,867	$19,606	$206,261