

Property Address: \_\_\_\_\_  
Property Owner(s) \_\_\_\_\_  
Lot: \_\_\_\_\_ Square: \_\_\_\_\_

**CONSERVATION EASEMENT DEED OF GIFT**

**THIS IS A DEED of a Scenic, Open Space and Architectural Facade Easement**, made on the

\_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ by \_\_\_\_\_

("Grantor," the term being used collectively if there is more than one owner of the Property) to The L'Enfant Trust ("Grantee").

**I.**

A. The Grantee is a District of Columbia non-profit corporation chartered to promote a public aesthetic in land use planning, including open space preservation and historic preservation. The Grantee and Grantor, by their signatures below, certify under penalties of perjury that the Grantee is a “qualified organization” as defined in Section 170(h)(3) of the Internal Revenue Code and has both the resources to manage and enforce the restrictions of the Easement created hereunder and a commitment to do so.

B. The Grantee is authorized to accept and administer gifts of real and personal property, including easements for conservation purposes, in furtherance of its public purposes.

C. The Grantor warrants to Grantee that Grantor is the owner in fee simple of improved real property with the street address \_\_\_\_\_, Washington, D.C. and fully described in Exhibit "A" attached hereto and incorporated herein by this reference; and this real property, together with any adjacent government-owned property with respect to which the owner of such real property has any significant development authority (whether or not subject to governmental approval) is hereinafter collectively called the "Property."

D. The Property constitutes an important element in the architectural ensemble of the Historic District in which it is located and/or is listed on the National Register of Historic Places, and the grant of the easement as set forth in this instrument will, *inter alia*, assist in preserving an historically important land area or historic structure and in preserving open space for the scenic enjoyment of the general public.

E. Grantor desires to grant to the Grantee and the Grantee desires to accept a scenic, open space and architectural facade easement on the Property, exclusively for conservation purposes.

F. The term "Facade" as used herein consists of all exterior surfaces of the improvements on the Property, including all walls, roofs, and chimneys (the existing improvements at the Property hereinafter sometimes referred to as the "Building"). Written descriptions and photographs of the Facade are "Exhibit B" hereto and are on file at the offices of the Grantee but are not appended hereto. It is the intent of the parties that the Facade, Building and Property (except for minor changes in landscaping) remain essentially unchanged, and in case of ambiguity, the photographs and descriptions constituting Exhibit B shall control.

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## II.

The Grantor does hereby grant and convey to the Grantee, TO HAVE AND TO HOLD, an easement in gross, in perpetuity, in, on, and to the Property, the Building and the Façade, being a scenic, open space and architectural facade easement on the Property, with the following rights:

A. Without the express written consent of the Grantee, which consent may be withheld, conditioned or delayed in the sole and absolute discretion of the Grantee, the Grantor will not undertake nor suffer nor permit to be undertaken:

1. any alteration, construction or remodeling of existing improvements on the Property, or the placement thereon or on the Building of signs or markers, which would materially alter or change the appearance of the Facade or involve the use or installation of materials or elements of the façade of a different kind from those existing at the time of such alteration, construction or remodeling;

2. the exterior extension of existing improvements on the Property or the erection of any new or additional improvements on the Property or in the open space above or surrounding the existing improvements (including the erection of new improvements to replace existing improvements which have been wholly or partially destroyed by fire or any other cause);

3. the painting of the Façade including repainting if it involves a change in paint color or scheme, or the cleaning of the Facade in a manner incompatible with its protection and preservation, provided, however, that the maintenance, reconstruction, repair and refinishing of presently existing elements of the Facade, damage to which has resulted from casualty loss, destruction or deterioration, is permitted without consent of the Grantee so long as it is conducted in a manner which will maintain or recreate the essential appearance of the Facade as it exists at this date or as it existed at the time the improvements were first constructed; and provided, further, that dignified signs or markers may be placed on the Facade without consent of the Grantee so long as they (i) indicate no more than the street address and occupants of the premises; or (ii) are necessary to direct pedestrians or vehicular traffic; or (iii) commemorate the history of the Property or the grant of this easement; or

4. the consummation of any sale or transfer of any interest in the Property without having first given written notice of this easement to the buyer or transferee with a copy to Grantee.

B. The Grantor further undertakes periodically to clean the Facade, to keep the Grantee's marker polished and visible from the street, and to maintain the Property, Building and Facade in good repair and condition at all times.

C. Grantor agrees that any work on the Property, the Building or the Facade described in Section (A) of this Article II, whether or not Grantee has given consent to undertake the same, will comply with the requirements of all applicable federal, state and local governmental laws and regulations and will not be inconsistent with the historical character of the Property, Building or Façade. Without limiting the foregoing, Grantor's attention is directed to the Secretary of the Interior's Standards for Rehabilitating Historic Buildings, presently codified at 36 Code of Federal Regulations Part 67, and to the District of Columbia Landmarks Preservation Ordinance.

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### III.

The Grantee, in order to ensure the effective enforcement of this easement shall have, and the Grantor hereby grants it, the following rights:

A. at reasonable times and upon reasonable notice, the right to enter upon the Property and inspect the Facade and any improvement thereon, but not including the inside of the Building;

B. the right (a) to place a marker on the Facade providing historical information and/or indicating the Grantee's ownership of this easement, and (b) to keep such marker clean and visible from the street;

C. in the event of a violation of this easement and upon reasonable notice to the Grantor:

(1) the right to institute legal proceedings to enjoin such violation by temporary, and/or permanent injunction, to require the restoration of the Property or the improvements thereon, including the Facade and open space, to its prior condition, to collect damages, and to avail itself of all other legal and equitable remedies;

(2) the right (i) to enter upon the Property and improvements thereon in order to correct such violation and (ii) to hold Grantor responsible for the cost thereof; and

(3) the right to be reimbursed by Grantor for all reasonable costs and attorneys fees incurred by Grantee as a result of such violation or in connection with legal proceedings as aforesaid;

D. the right to defend the validity and/or the enforceability of this easement in any action brought by or on behalf of Grantor or Grantor's successors in interest, and if Grantee should prevail in its defense, or if the action is otherwise resolved such that the easement remains valid, the right to be reimbursed by Grantor or Grantor's successors in interest for all of Grantee's reasonable costs and attorneys fees incurred in connection with the action.

### IV.

A. This easement and the obligations it imposes upon Grantor hereunder are binding not only upon Grantor but also upon Grantor's successors, heirs and assigns and all other successors in interest to the Grantor, and shall continue as a servitude running in perpetuity with the land. It is understood that Grantor (and any other person bound by Grantor's obligations) shall have no liability under this Deed with respect to actions or omissions which occur after Grantor (or such other person) no longer has any legal or beneficial interest in Property. This easement shall survive any termination of Grantor's or the Grantee's existence. The rights of the Grantee under this instrument shall run for the benefit of and may be exercised by its successors and assigns, or by its designees duly authorized in a deed of appointment. In any legal proceeding involving the enforcement or validity of this easement, Grantor consents to the jurisdiction of the courts of the District of Columbia and waives all rights to a jury trial.

B. Grantee covenants and agrees that it will not transfer, assign or otherwise convey this conservation easement except to another "qualified organization" described in Section 170(h)(3) of the Internal Revenue Code of 1986 and controlling Treasury regulations, and Grantee further agrees that it will not transfer this easement unless the transferee first agrees to continue to carry out the conservation purposes for which this easement was created, provided, however, that nothing herein contained shall be construed to limit the Grantee's right to give its consent (e.g., to changes in a Façade) or to abandon some or all of its rights hereunder.

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C. In the event this easement is ever extinguished, whether through condemnation, judicial decree or otherwise, Grantor agrees on behalf of itself, its heirs, successors and assigns, that Grantee, or its successors and assigns, will be entitled to receive upon the subsequent sale, exchange or involuntary conversion of the Property, a portion of the proceeds from such sale, exchange or conversion equal to the same proportion that the value of the initial easement donation bore to the entire value of the property at the time of donation, unless controlling state law provides that the Grantor is entitled to the full proceeds in such situations, without regard to the easement. Grantee agrees to use any proceeds so realized in a manner consistent with the conservation purposes of the original contribution.

IN WITNESS WHEREOF, the Grantor has executed this Conservation Easement Deed on the date first written above.

\_\_\_\_\_  
Grantor

\_\_\_\_\_  
Grantor

Accepted:  
The L'Enfant Trust

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Notary Form for The L'Enfant Trust**

Subscribed to and sworn to before me  
by Grantee this \_\_\_\_\_ day of  
\_\_\_\_\_, 2\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

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**Notary Form for Individual Donors**

\_\_\_\_\_) )  
\_\_\_\_\_) ss.:

I, \_\_\_\_\_, a notary public in and for the jurisdiction aforesaid, do hereby certify that \_\_\_\_\_, the Grantor in the foregoing Deed bearing the date on the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, and hereto annexed, personally appeared before me in said jurisdiction the said \_\_\_\_\_, being personally well-known to me as the persons who executed the said Deed, and acknowledged the same to be his/her/their act and deed. Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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**Standard Lender Subordination and Acknowledgment**

The Property which is the subject of the foregoing Conservation Easement Deed of Gift is currently encumbered by a Deed of Trust recorded in the land records of the District of Columbia securing a loan payable to \_\_\_\_\_ ("Lender"). Lender hereby subordinates its rights in the Property to the right of the Grantee, its successors or assigns, to enforce the conservation purposes of this easement in perpetuity, and joins in the execution of this Conservation Easement Deed for the sole and limited purpose of so subordinating its interest.

IN WITNESS WHEREOF, The aforesaid Lender has on this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, caused these presents to be signed by \_\_\_\_\_ [print name], its \_\_\_\_\_ [title of executive officer], and attested by its \_\_\_\_\_ [title of attesting officer e.g., corporate secretary] and its corporate seal to be affixed and hereby appoints \_\_\_\_\_ its true and lawful attorney in fact to acknowledge and deliver these presents as its act and deed.

\_\_\_\_\_, Lender  
Name of Lending Institution

Attest:

By: \_\_\_\_\_  
Executive Officer or Attorney in Fact

\_\_\_\_\_  
Attesting Officer

[CORPORATE SEAL]

**Notary Form For Lender**

\_\_\_\_\_) )  
\_\_\_\_\_) ) ss.:

I, \_\_\_\_\_, a notary public in and for \_\_\_\_\_, do hereby certify that \_\_\_\_\_, who is personally well known to me as the person named as the attorney in fact in the foregoing and annexed deed, bearing date on the \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ personally appeared before me as the executive officer or attorney in fact (circle one) as aforesaid, and by virtue of the power vested in him/her by said deed, acknowledged the same to be the act and deed of the \_\_\_\_\_. Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]