

26084 778

31/6
10308 Montgomery

Parcel I.D. No.
13-01023314

DEED OF EASEMENT

THIS DEED OF EASEMENT (the "Deed") is granted as of this 16th day of November 2003, by JOHN C. RATHER and LUCIA J. RATHER, TRUSTEES OF THE JOHN C. RATHER REVOCABLE TRUST (u/t/a 11/30/90) and JOHN C. RATHER AND LUCIA J. RATHER, TRUSTEES OF THE LUCIA J. RATHER REVOCABLE TRUST (u/t/a 11/30/90) (individually, a "Grantor"; and jointly, the "Grantors") to and for the benefit of MONTGOMERY COUNTY, MARYLAND, a body corporate and politic (the "Grantee").

WITNESSETH:

WHEREAS, each Grantor owns an undivided one-half (1/2) interest as a tenant in common in certain real property known as 10308 Montgomery Avenue, Kensington, Maryland 20895, consisting of two (2) whole lots and part of a third (3rd) lot and as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Real Estate") and which consists of land containing approximately 22,540 square feet in size (the "Property") and upon which certain improvements have been developed (the "Improvements"); and

WHEREAS, the single-family home currently on the Property is situated on one of the two whole lots and on a part of the third lot; and

WHEREAS, the Real Estate is located in an historic district listed in the National Register which historic district has been acknowledged and accepted by the Grantee and the Maryland-National Capital Park and Planning Commission and incorporated into the Grantee's master plan for historic preservation; and

WHEREAS, Grantee is a body corporate and politic and has established laws and environmental settings, and districts of historic, archeological, architectural or cultural character for the purpose is generally to protect, preserve and enhance sites, structures with their appurtenances all as is more particularly provided for by law; and

WHEREAS, this Deed will promote the conservation and preservation of the substantial historic, architectural, cultural and scenic character of the Real Estate; and

WHEREAS, the Grantors hereby express their desire to treat and preserve all of the Property as a single unitary parcel in furtherance of their wishes to permit only one single-family home on the Property and prohibit the construction of an additional single-family home on the Property except as otherwise provided for herein; and

WHEREAS, Grantee is possessed with the power and duty to accept and hold this Deed; and

WHEREAS, the Historic Preservation Commission of Montgomery County, Maryland (the "Historic Preservation Commission") has been established with the power and duty to administer this Deed; and APPROVED BY DC C 1 2003

APPROVED BY DC C 1 2003

DEC C 1 2003

REGISTRATION TAX PAID
TRANSFER TAX PAID

WHEREAS, Grantee has determined that this Deed is exclusively for conservation and preservation purposes.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantors hereby grant and convey to Grantee with Special Warranty of Title an easement (the "Easement") in the Property which is all of that certain lot or parcel of land known as 10308 Montgomery Avenue, Kensington, Maryland 20895, together with all of the rights and interests thereto belonging, which is situate, lying and being in Montgomery County, State of Maryland, and which is more particularly set forth in Exhibit A.

2. The definitions of the words "Real Estate," "Property" and "Improvements" set forth in the Recitals are incorporated herein by reference.

3. The terms of the Easement are as follows:

(A) Duration and Nature of the Easement.

The Easement shall be perpetual in duration. The parties agree that the Easement is and shall be considered an easement in gross and as such is inheritable and assignable and runs with the land as an incorporeal property interest in the Property enforceable by Grantee and its successors, transferees and assigns with respect to the Property and against Grantors and Grantors' heirs, successors, transferees and assigns. The Easement is subject to any and all presently existing valid encumbrances, easements and rights-of-way upon the Property.

(B) Subdivision Prohibited.

Grantors hereby acknowledge that the Property consists of two (2) lots and part of a third (3rd) lot. The Grantors hereby memorialize their desire to treat and preserve all of the Property as a single unitary parcel in furtherance of their wishes to permit only one single-family home on the Property and prohibit the construction of an additional single-family home on the Property except as otherwise provided for herein and, accordingly, the Grantors hereby covenant and agree that they there shall exist only one single-family home on the Property and they shall not cause, permit or suffer the construction of an additional single-family home on the Property.

(C) Public Access.

Grantors hereby agree to make the Property open to the public on two days per year, from 10:00 A.M. until 4:00 P.M., by prearrangement and appointment through the Grantee for inspection and viewing of the grounds and exterior structure; and to further permit the Grantee access to the grounds on such days or at other times by appointment as may be determined by the Grantor, to (1) photograph the grounds and exterior structure and to distribute such photographs to magazines, newsletters, or other publicly available publications, and (2) to arrange for educational organizations, professional architectural associations, and historic societies to study the Property and the exterior of the structure.

(D) Development of the Property. Notwithstanding anything herein to the contrary, the Grantors reserve the right to construct on or otherwise develop, renovate or alter

the Property with any improvement including, but not limited to, (i) an addition to, upgrade of or change in the use and purpose of any existing structure currently on or subsequent to the date hereof constructed on the Property, (ii) a barn, (iii) a garage, (iv) a swimming pool, (v) an accessory apartment or apartments, or (vi) a fence or other barrier separating the Property from any adjacent or contiguous property; provided, however, that in all events any such construction, development, renovation, alteration or improvement, shall be developed, planned and implemented in accordance with the applicable rules and regulations of and approved by the Historic Preservation Commission and any other governmental or quasi-governmental agency having authority over the development of the Property.

(E) Inspection. Grantee shall have the right to enter the Property on reasonable notice to the Grantors for the purpose of inspecting the Property to determine whether there is compliance by the Grantors with the terms of this Deed. Grantors and Grantee agree that they shall be governed by Chapter 24A of the Montgomery County Code and that all renovations and alterations made to the structure shall be reviewed and approved by the Historic Preservation Commission.

(F) Enforcement. Upon any breach of any of the material terms, conditions or restrictions contained in the Easement by the Grantors, the Grantee may exercise any or all of the following remedies, but only after fifteen (15) days prior written notice and opportunity to cure such breach:

- (i) institute a suit to enjoin any breach or enforce any covenant by executive parte, temporary and/or permanent injunction;
- (ii) demand that the Property be restored promptly to the condition required by the Easement; and
- (iii) correct any breach, and hold Grantors responsible for the resulting cost.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity. If the Grantors are found to have breached any of their obligations under the Easement, Grantors shall jointly or severally reimburse Grantee for any reasonable costs or expenses incurred by Grantee, including, but not limited to, court costs and reasonable attorneys' fees.

(G) Waiver. No failure on the part of Grantee to enforce any covenant or provision herein nor the waiver of any right hereunder by Grantee shall discharge or invalidate such covenant or provision or any other covenant, condition, or provision hereof, or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

(H) Notice. Any notice required to be given hereunder shall be in writing and shall be given by certified or registered mail, with postage prepaid and return receipt requested, if to the Grantors, addressed to the Grantors as follows:

John and Lucia Rather
(or the then current owner of the Real Estate)
10308 Montgomery Avenue
Kensington, Maryland 20895

or to the Grantors at such other address as the Grantors may from time to time designate by notice to the Historic Preservation Commission, or, if to the Grantee, addressed to the Grantee as follows:

Chairperson
Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

or to the Grantee at such other address as the Chairperson of the Historic Preservation Commission may from time to time designate by notice to the Grantors. Any notice given in the foregoing manner shall be deemed to have been given upon receipt thereof, which shall be presumed to be two (2) days after the day notice has been deposited with the United States Post Office.

(I) Construction. The Easement is for the purpose of promoting and shall be construed to promote the purposes of Chapter 24A of the Montgomery County Code and of Section 2-118 of the Real Property Article of the Annotated Code of Maryland and to preserve the historic, architectural, cultural and scenic character of the Real Estate.

(J) Subsequent Conveyance. Grantors agree that the restrictions set forth in this Deed will be inserted, verbatim or by express reference, in any subsequent deed or other legal instrument by which the Grantors' fee simple title to the Real Estate or any other possessory interest in the Real Estate, or any part thereof, is divested or conveyed.

(K) Transfer of Ownership. The Grantors agree to notify the Grantee in writing of the names and addresses of any party to whom the Real Estate, or any part thereof, is being transferred before or within thirty (30) days of the time the transfer is consummated.

(L) Conservation Purposes. Grantee agrees that it will hold this Deed exclusively for conservation purposes, i.e., that it will not transfer this Deed whether or not for consideration. However, subject to the provisions of any applicable federal law, Grantee may assign or transfer its interest in this Deed to a governmental unit or organization which qualifies at the time of the transfer as an eligible donee of this Deed under any pertinent provisions of federal law including, but not limited to, the Maryland Historical Trust, which will continue to hold this Deed exclusively for conservation purposes.

(M) Property Right. Grantors agree that the donation of this Deed gives rise to a property right, immediately vested in the Grantee, with a fair market value equal to the proportionate value that this Deed at the time of the donation bears to the value of the Property as a whole.

(N) Extinguishment. This Easement may be extinguished by a judicial proceeding if an unexpected change in the conditions applicable to the Real Estate including, but not limited to, a casualty which substantially destroys the structure, makes it impossible or impractical to continue the use of the Easement for conservation purposes. In the event of such judicial extinguishment of this Easement, and upon a subsequent sale, exchange or involuntary conversion of the Real Estate, or any portion thereof, Grantee shall be entitled to a portion of the proceeds of the sale, exchange or involuntary conversion which are allocated to the Property (as defined herein and which does not include the value of any improvements) equal to the proportionate value that the Easement, at the time of its donation, bore to the value of the Property as a whole at that time, but which in no event shall be less than five percent (5%) of the value allocated to the Property at the time of such sale, exchange or involuntary conversion, and any and all compensation so received by the Grantee shall be used by the Grantee in a manner for conservation purposes consistent with this Easement.

(O) Interpretation. This Deed shall be interpreted under the laws of the State of Maryland and Montgomery County, Maryland resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its historic preservation purpose.

(P) Perpetual Duration. The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantors or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.

(Q) Responsibilities of Grantors Not Affected. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any existing obligation of the Grantors as owners of the Real Estate.

To have and To Hold, this Deed of Easement unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantors and Grantee intending to legally bind themselves have set their hands and seals on the date first written above.

Witness:

THE JOHN C. RATHER REVOCABLE TRUST
(w/t/a 1/13/90)

By: John C. Rather, Trustee
John C. Rather, Trustee

John C. Rather
By: Lucia J. Rather, Trustee
Lucia J. Rather, Trustee

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THE LUCIA J. RATHER REVOCABLE TRUST
(w/ta 11/30/90)

Owned by John C. Rather, Trustee

Owned by Lucia J. Rather, Trustee

John C. Rather, Trustee
By: John C. Rather, Trustee

Douglas M. Duncan, County Executive

Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY

Lucia J. Rather, County Attorney
Office of the County Attorney
11/21/03

784 4808976

ACKNOWLEDGMENTS

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)
) SS:

I hereby certify that on this 13th day of November, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me JOHN C. RATHER, a Trustee of THE JOHN C. RATHER REVOCABLE TRUST (w/t/a 1/13/90) and acknowledged the foregoing instrument to be his act and deed and that he executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal,

James S. Hu
Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND
)
)
) SS:
)
 COUNTY OF MONTGOMERY)

I hereby certify that on this 13 day of November, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me LUCIA J. RATHER, a Trustee of THE JOHN C. RATHER REVOCABLE TRUST (w/ta 1130/90) and acknowledged the foregoing instrument to be her act and deed and that she executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal.

Dawn S. Dru
Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)
) SS:

I hereby certify that on this 13rd day of November, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me JOHN C. RATHER, a Trustee of THE LUCIA J. RATHER REVOCABLE TRUST (w/t/a 11/30/90) and acknowledged the foregoing instrument to be his act and deed and that he executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal.

John C. Rather
Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
COUNTY OF MONTGOMERY)
) SS:

I hereby certify that on this 13rd day of November, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me LUCIA J. RATHER, a Trustee of THE LUCIA J. RATHER REVOCABLE TRUST (w/t/a 11/30/90) and acknowledged the foregoing instrument to be her act and deed and that she executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal.

John C. Rather
Notary Public

My Commission expires: 11-1-06

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STATE OF MARYLAND)
COUNTY OF MONTGOMERY)
) SS:

I hereby certify that on this 24th day of November, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me Douglas M. Duncan and acknowledged that he is the County Executive of Montgomery County, Maryland and that the execution of the foregoing instrument is his free act as County Executive.

IN TESTIMONY WHEREOF, I have affixed my official seal.

JoAnne Peeler
Notary Public

My Commission expires: June 1, 2006

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him.

Daniel P. Hodin
Daniel P. Hodin, Esquire

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EXHIBIT A

Legal Description

Lots numbered Ten (10) and Eleven (11), and part of Lot numbered Nine (9) in Block numbered Two (2) in the Subdivision known as "Kensington Park" recorded among the Land Records of Montgomery County, Maryland in Plat Book B in Plat 4.

6084 788



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

December 1, 2003

Molly Ruhl
Circuit Court for Montgomery
County, Maryland
Courthouse
Rockville, Maryland 20850

RE: Historic Preservation Easement/John & Lucia Rather
10308 Montgomery Avenue, Kensington
Parcel ID No.: 13-01023314

Dear Ms. Ruhl:

Please record the attached Deed of Easement on behalf of Montgomery County, Maryland, and waive the usual recording fee.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Vickie L. Gaul".

Vickie L. Gaul
Associate County Attorney

\Vi\Gaul\Record.ltr.wpd

