

10308 Montgomery Ave Easement Donat.
Kensington Historic District



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

June 30, 2004

Gwen Marcus Wright, Coordinator
Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: Rather Deed of Easement

Dear Gwen:

Enclosed please find the original Deed of Easement from John and Lucia Rather recorded among the land records on December 1, 2003.

Please maintain this Easement with the Commission's files. If you have any questions, please call me at 240-777-6716.

Thank you very much!

Sincerely,

Vickie L. Gaul
Associate County Attorney

Enclosure

cc: Arnold B. Sherman, Esq. (w/ copy)

DEED OF EASEMENT

THIS DEED OF EASEMENT (the "Deed") is granted as of this 26th 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 whose purpose is generally to protect, preserve and enhance sites, structures with their appurtenances and environmental settings, and districts of historic, archeological, architectural or cultural interest 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") is possessed with the power and duty to administer this Deed; and

APPROVED BY [Signature]

DEC 01 2003

\$ 0 RECORDATION TAX PAID
\$ 12/18 TRANSFER TAX PAID

FILED
MOLLY D. WHELAN
CLERK OF COURSE
MONTGOMERY CO.
2003 DEC -1 P 3:02 PM

IMP FD SURE 0.00
RECORDING FEE 0.00
MONTGOMERY STATE 0.00
TOTAL 0.00
RAN 10081 Dec 01 2003
MOR FS BIK#574
Dec 01, 2003 02:58 PM

NO FEE - MONTG. CO., MD.

FS

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 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 ex 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
(u/t/a 11/30/90)

Amold B She

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

Amold B She

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

THE LUCIA J. RATHER REVOCABLE TRUST
(u/t/a 11/30/90)

Donald B. Shen

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

Donald B. Shen

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

JoAnne Poore

Douglas M. Duncan
Douglas M. Duncan, County Executive
Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY

William L. Paul, Assoc. County Atty.
Office of the County Attorney 11/21/03

ACKNOWLEDGMENTS

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

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 (u/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.



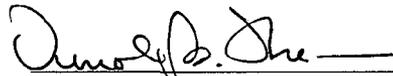
Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

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 LUCIA J. RATHER, a Trustee of THE JOHN C. RATHER REVOCABLE TRUST (u/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.



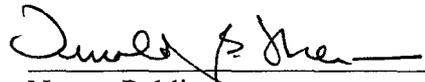
Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

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 LUCIA J. RATHER REVOCABLE TRUST (u/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.


Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

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 LUCIA J. RATHER, a Trustee of THE LUCIA J. RATHER REVOCABLE TRUST (u/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.


Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this 26th 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 Poole
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

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.



26084 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,

Vickie L. Gaul
Associate County Attorney

I:\GJ\Gaul\record_itr.wpd

State of Maryland Land Instrument Intake Sheet
Baltimore City County: Montgomery

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

1 Type(s) of Instruments
2 Conveyance Type Check Box
3 Tax Exemptions (if Applicable)
Cite or Explain Authority

4 Consideration and Tax Calculations
Table with columns: Consideration Amount, Finance Office Use Only, Transfer and Recordation Tax Consideration

5 Fees
Table with columns: Amount of Fees, Doc. 1, Doc. 2, Agent, Tax Bill, C.B. Credit, Ag. Tax/Other

6 Description of Property
SDAT requires submission of all applicable information.
A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

7 Transferred From
Doc. 1 - Grantor(s) Name(s)
Doc. 2 - Grantor(s) Name(s)

8 Transferred To
Doc. 1 - Grantee(s) Name(s)
Doc. 2 - Grantee(s) Name(s)
New Owner's (Grantee) Mailing Address

9 Other Names to Be Indexed
Doc. 1 - Additional Names to be Indexed (Optional)
Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information
Instrument Submitted By or Contact Person
Name: VICKIE GALL Assoc County Atty
Firm: Office of City Atty
Address: 101 Monroe St, Rockville MD 20852
Phone: (301) 240-777-6700

11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER
Assessment Information
Yes/No Will the property being conveyed be the grantee's principal residence?
Yes/No Does transfer include personal property? If yes, identify:
Yes/No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line
Terminal Verification, Agricultural Verification, Whole, Part, Tran. Process Verification
Transfer Number, Date Received, Deed Reference, Assigned Property No.

REMARKS:
Table with columns: Year, Land, Buildings, Total, Geo., Zoning, Use, Town Cd., Map, Grid, Parcel, Ex. St., Sub, Plat, Section, Ex. Cd., Block, Lot, Occ. Cd.

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

Space Reserved for Circuit Clerk Recording Station



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

December 2, 2003

Arnold B. Sherman, Esq.
Paley, Rothman, et al.
4800 Hampden Lane, 7th Floor
Bethesda, Maryland 20814

RE: John and Lucia Rather
Historic Preservation Easement

Dear Arnie:

I am enclosing two copies of the historic preservation easement recorded yesterday (one for your clients and one for your files). Both copies contain the clerk's date-stamp and a copy of the receipt we received from the clerk indicating that the easement was filed yesterday.

Thank you very much. My best to you and the Rathers for a happy holiday season.

Sincerely,

Vickie L. Gaul
Associate County Attorney

Enclosures

cc: Gwen Wright, w/encls. ✓

Parcel I.D. No.

13-01023314

DEED OF EASEMENT

THIS DEED OF EASEMENT (the "Deed") is granted as of this 26th 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 whose purpose is generally to protect, preserve and enhance sites, structures with their appurtenances and environmental settings, and districts of historic, archeological, architectural or cultural value, 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") is possessed with the power and duty to administer this Deed; and

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.

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(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.

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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.

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- (i) institute a suit to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction;
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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.

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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.

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(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
(u/t/a 11/30/90)

James B. She

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

James B. She

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

THE LUCIA J. RATHER REVOCABLE TRUST
(u/t/a 11/30/90)

Donald B. Shea

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

Donald B. Shea

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

JoAnne Poore

Douglas M. Duncan
Douglas M. Duncan, County Executive
Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY

William L. Paul, Assoc. County Atty.
Office of the County Attorney 11/21/03

ACKNOWLEDGMENTS

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

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 (u/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.



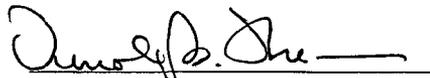
Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

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 LUCIA J. RATHER, a Trustee of THE JOHN C. RATHER REVOCABLE TRUST (u/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.



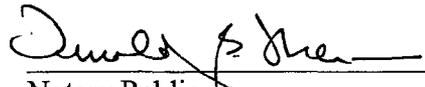
Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

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 LUCIA J. RATHER REVOCABLE TRUST (u/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.

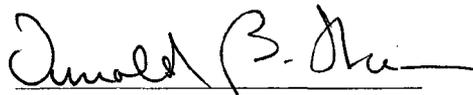

Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

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 LUCIA J. RATHER, a Trustee of THE LUCIA J. RATHER REVOCABLE TRUST (u/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.


Notary Public

My Commission expires: 11-1-06

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this 26th 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 Poole
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

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.

State of Maryland Land Instrument Intake Sheet
Baltimore City & County

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only - All Copies Must Be Legible)

1. **Type(s) of Instruments** (Check Box if Addendum Intake Form is Attached)
 Deed Mortgage Other *US 1145* Other
 Deed of Trust Lease Multiple Accounts Not an Arms

2. **Conveyance Type Check Box**
 Improved Sale Unimproved Sale Multiple Accounts Not an Arms
 Arms Length [1] Arms Length [2] Arms Length [3] Length Sale [9]

3. **Tax Exemptions (if Applicable)**
 Recordation
 State Transfer
 County Transfer
 Cite or Explain Authority

4. Consideration and Tax Calculations	Consideration Amount		Finance Office Use Only	
	Purchase Price/Consideration	\$ 0	Transfer and Recordation Tax Consideration	
Any New Mortgage	\$	Transfer Tax Consideration	\$	
Balance of Existing Mortgage	\$	X(%) % =	\$	
Other:	\$	Less Exemption Amount	\$	
Other:	\$	Total Transfer Tax	\$	
Full Cash Value	\$	Recordation Tax Consideration	\$	
		X(%) per \$500 =	\$	
		TOTAL DUE	\$	

5. Fees	Amount of Fees		Doc. 1	Doc. 2	Agent
	Recording Charge	\$ N/A			
Surcharge	\$	\$	\$	C/B Credit	
State Recordation Tax	\$	\$	\$	Ag. Tax/Other	
State Transfer Tax	\$	\$	\$		
County Transfer Tax	\$	\$	\$		
Other	\$	\$	\$		
Other	\$	\$	\$		

6. **Description of Property**
 SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District: 13 Property Tax ID No. (1): 010 23317 Grantor/Liber/Folio: 111 13 Map: Parcel No.: Var. EOG: (5)
 Subdivision Name: 15/15/15/15/15 Lot (3a): Block (3b): Sect/AR(3c): Plat Ref.: SqFt/Acreage (4): 3,153 sq ft
 Location/Address of Property Being Conveyed (2): 10508 MONTGOMERY AVE, KENSINGTON MD 20895
 Other Property Identifiers (if applicable): 10510, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40
 Residential or Non-Residential Fee Simple or Grant Rent Amount:
 Partial Conveyance? Yes No Description/Amt. of SqFt/Acreage Transferred:
 If Partial Conveyance, List Improvements Conveyed:

7. **Transferred From**
 Doc. 1 - Grantor(s) Name(s): JOHN C. RATHER AND LUCIA J. RATHER TRUSTEES OF A TRUST;
 JOHN C. RATHER REVOCABLE TRUST AND LUCIA J. RATHER REVOCABLE TRUST
 Doc. 2 - Grantor(s) Name(s):

8. **Transferred To**
 Doc. 1 - Grantee(s) Name(s): MONTGOMERY COUNTY, MD
 Doc. 2 - Grantee(s) Name(s):
 New Owner's (Grantee) Mailing Address: 101 MONROE ST ROCKVILLE MD 20850

9. **Other Names to Be Indexed**
 Doc. 1 - Additional Names to be Indexed (Optional): N/A
 Doc. 2 - Additional Names to be Indexed (Optional):

10. **Contact/Mail Information**
 Instrument Submitted By or Contact Person
 Name: VICKIE GUIL ASSOC COUNTY APY
 Firm: OFFICE OF CTY APY
 Address: 101 MONROE ST
 Rockville MD 20850 Phone: 240-777-6100
 Return to Contact Person
 Hold for Pickup
 Return Address Provided

11. **IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER**

Assessment Information
 Yes No - Will the property being conveyed be the grantee's principal residence?
 Yes No - Does transfer include personal property? If yes, identify:
 Yes No - Was property surveyed? If yes, attach copy of survey (if recorded, no copy required)

Assessment Use Only - Do Not Write Below This Line

Terminal Verification	Agricultural Verification	Whole	Part	Trans Process Verification
Transfer Number	Date Received	Deed Reference	Assigned Property No.	
Year	19	Geo	Map	Sub
Land	20	Zoning	Grid	Plat
Buildings	21	Use	Parcel	Section
Lot	22	Town/Cd	Ext/Sh	EX CD

REMARKS

Distribution: White - Clerk's Office
 Canary - SDAT
 Pink - Office of Finance
 Goldenrod - Preparer
 AOC-CC-300 (6/95)

Space Reserved for Circuit Court Clerk Recording Voice

State of Maryland Land Instrument Intake Sheet
Baltimore City & County

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only - All Copies Must Be Legible)

1. Type(s) of Instruments	<input type="checkbox"/> Deed	<input type="checkbox"/> Mortgage	<input checked="" type="checkbox"/> Other	<input type="checkbox"/> Other
	<input type="checkbox"/> Deed of Trust	<input type="checkbox"/> Lease		
2. Conveyance Type Check Box	<input type="checkbox"/> Improved Sale	<input type="checkbox"/> Unimproved Sale	<input type="checkbox"/> Multiple Accounts	<input type="checkbox"/> Not an Arms-Length Sale
	Arms Length (1)	Arms Length (2)	Arms Length (3)	Length Sale (9)
3. Tax Exemptions (if Applicable)	Recording:			
	State Transfer			
Cite or Explain Authority: County Transfer				

4. Consideration and Tax Calculations	Consideration Amount		Finance Office Use Only	
	Purchase Price/Consideration	\$ 0	Transfer and Recording Tax Consideration	
	Any New Mortgage	\$	Transfer Tax Consideration	\$
	Balance of Existing Mortgage	\$	Less Exemption Amount	\$
	Other	\$	Total Transfer Tax	\$
	Other	\$	Recording Tax Consideration	\$
Full Cash Value		\$	Recording Tax per \$500 =	\$
TOTAL DUE		\$		

5. Fees	Amount of Fees	Doc. 1	Doc. 2	Agent
	Recording Charge	\$ N/A	\$	
	Surcharge	\$	\$	Tax Bill
	State Recording Tax	\$	\$	
	State Transfer Tax	\$	\$	C.B. Credit
	County Transfer Tax	\$	\$	
	Other	\$	\$	As Tax/Other
Other	\$	\$		

6. Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOC
	13	010-233-00	JOHN C. RATHER	111-13		
	Subdivision Name	Lot (3a)	Block (3b)	Sec/AR (3c)	Flat Ref.	SqFU/Acreage (4)
	15/7th Addition	111-13	2			3,153 sqft
	Location/Address of Property Being Conveyed (2)					
	10308 MONTGOMERY AVE. ROCKVILLE MD 20875					
Other Property Identifiers (if applicable)						
E-05-10-8-11 R-1 Single Family Det. Part of Lot 9 - 11-06-0-2						
Residential or Non-Residential						
Partial Conveyance? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Description/Amt. of SqFU/Acreage Transferred:						

7. Transferred From	Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
	JOHN C. RATHER AND LUCIA J. RATHER, TRUSTEES OF A TRUST; JOHN C. RATHER REVOCABLE TRUST and LUCIA J. RATHER REVOCABLE TRUST	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)		Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8. Transferred To	Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
	MONTGOMERY COUNTY, MD	
New Owner(s) (Grantee) Mailing Address		
101 MONROE ST ROCKVILLE MD 20850		

9. Other Names to Be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)
	N/A	

10. Contact/Mail Information	Instrument Submitted By or Contact Person		<input checked="" type="checkbox"/> Return to Contact Person
	Name:	VICTOR GRUB ASSOC COUNTY ATTY	
	Firm:	OFFICE of CTY ATTY	
	Address:	101 MONROE ST ROCKVILLE MD 20850 Phone: 301-770-1116/100	
<input type="checkbox"/> Hold for Pickup			
<input type="checkbox"/> Return Address Provided			

IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER.

Assessment Information	Yes	No	Will the property being conveyed be the grantee's principal residence?
	Yes	No	Does transfer include personal property? If yes, identify:
	Yes	No	Was property surveyed? If yes, attach copy of survey (if recorded, no copy required)

Assessment Use Only - Do Not Write Below This Line									
Parcel No.	Assessment No.	Assessment Date	Assessment Year	Assessment District	Assessment Class	Assessment Status	Assessment Type	Assessment Method	Assessment Date

Distribution: White - Clerk's Office
 Canary - SDAT
 Pink - Office of Finance
 Goldenrod - Preparer
 AOC-CC-300 (6/85)

Space Reserved for Certain County Use Recording Unit

Circuit Court for
MONTGOMERY COUNTY
Clerk of the Court,
MOLLY Q RUHL

Parcel I.D. No.

13-01023314

DEED OF EASEMENT

DEED OF EASEMENT (the "Deed") is granted as of this 26th day of
MAY 2003, by JOHN C. RATHER and LUCIA J. RATHER, TRUSTEES OF THE
ROCKVILLE, MD 20850-2393, JOHN C. RATHER REVOCABLE TRUST (u/t/a 11/30/90) and JOHN C. RATHER AND
(240) 777-9400 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
*** NO CHARGE ***
MONTGOMERY COUNTY, MARYLAND, a body corporate and politic (the "Grantee").

EASEMENT
IMP FD SURE
RECORDING FEE
TR TAX STATE

AMOUNT
0.00
0.00
0.00

WITNESSETH:

TOTAL CHARGED:

WHEREAS, Grantor owns an undivided one-half (1/2) interest as a tenant in
common to certain real property known as 10308 Montgomery Avenue, Kensington, Maryland
20898, consisting of two (2) whole lots and part of a third (3rd) lot and as more particularly
*** NO CHARGE *** 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 certain improvements have been developed (the "Improvements"); and

Cashiers: ES, Reo # M008
Rcpt # 999999

Date: Dec 01, 2003 Time: 02:58 pm

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 whose
purpose is generally to protect, preserve and enhance sites, structures with their appurtenances
and environmental settings, and districts of historic, archeological, architectural or cultural value,
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
and

WHEREAS, the Historic Preservation Commission of Montgomery County, Maryland
(the "Historic Preservation Commission") is possessed with the power and duty to administer
this Deed; and

FILED
MOLLY Q. RUHL
CLERK OF COURT
MONTGOMERY CO. MD
2003 DEC -1 P 3:02 PM



Montgomery County Government

November 21, 2003

The Honorable Douglas M. Duncan
Montgomery County Executive
101 Monroe Street
Rockville, MD 20850

Dear Mr. Duncan:

The Montgomery County Historic Preservation Commission (HPC) is pleased to forward to you the attached historic preservation easement, which is being offered to the county by John and Lucia Rather, owners of 10308 Montgomery Avenue in the Kensington Historic District. The purpose of this easement is to prohibit, in perpetuity, the construction of an additional single-family house on the property at 10308 Montgomery Avenue.

The HPC unanimously recommends acceptance of this easement and asks that you sign the proposed easement document on behalf of the county. Attached, you will find letters from the Chair of the Montgomery County Planning Board and from the Town of Kensington, also recommending acceptance of this easement.

This easement donation is a great step forward in the preservation of open space in the Kensington Historic District, which derives its significance not only from the architecture of the buildings in the district, but also from the character of the district as a Victorian garden suburb. The Rathers are the first property owners in the Kensington Historic District to step forward and offer an easement on their property, and they should be applauded for their generosity, foresight, and invaluable contribution to the preservation of Kensington.

Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink that reads "Susan Velasquez".

Susan Velasquez
Chair, HPC

Historic Preservation Commission

*Al Carr, Council Member
Traffic & Safety*



*Glenn Cowan, Council Member
Finance & Land Use Planning*

*Leanne Pfautz, Council Member
Parks & Infrastructure*

*Settled * 1873
Incorporated * 1894*

*Sara Timlin, Council Member
Revitalization & Strategic Planning*

Kitty L. Raufaste, Mayor

November 20, 2003

Susan Velasquez
Chair
Historic Preservation Commission
1109 Spring Street, Suite 801
Silver Spring, MD 20910

RE: Easement at 10308 Montgomery Avenue

Dear Ms. Velasquez: *Susan*

The Town of Kensington supports the historic preservation easement that John and Lucia Rather wish to donate to Montgomery County. This will be the first, we hope, of many easements to preserve land for open space in our Historic District.

The Town government commends John and Lucia Rather for their dedication to historic preservation in our Town and County. We hope that their example will help others see the benefit of historic preservation easements and follow suite.

Sincerely,

A handwritten signature in cursive script that reads "Kitty L. Raufaste".

Kitty L. Raufaste
Mayor

*Al Carr, Council Member
Traffic & Safety*

*Leanne Pfautz, Council Member
Parks & Infrastructure*



*Glenn Cowan, Council Member
Finance & Land Use Planning*

*Sara Timlin, Council Member
Revitalization & Strategic Planning*

Kitty L. Raufaste, Mayor

November 20, 2003

Susan Velasquez
Chair
Historic Preservation Commission
1109 Spring Street, Suite 801
Silver Spring, MD 20910

RE: Easement at 10308 Montgomery Avenue

Dear Ms. Velasquez: *Susan*

The Town of Kensington supports the historic preservation easement that John and Lucia Rather wish to donate to Montgomery County. This will be the first, we hope, of many easements to preserve land for open space in our Historic District.

The Town government commends John and Lucia Rather for their dedication to historic preservation in our Town and County. We hope that their example will help others see the benefit of historic preservation easements and follow suite.

Sincerely,


Kitty L. Raufaste
Mayor



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

October 31, 2003

Susan Velasquez, Chair
Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Ms. ^{Susan} Velasquez:

I strongly support acceptance of the historic preservation easement being offered on 10308 Montgomery Avenue in the Kensington Historic District.

I applaud the owners of this designated historic site for their interest in and desire to preserve the historic open space that characterizes the Kensington Historic District. They are excellent stewards of this Primary Resource in the Kensington Historic District.

Please transmit my recommendation to any appropriate governmental entities so that the donation of the easement may go forward.

Sincerely,

Derick P. Berlage
Chairman

DPB:gw

cc: Douglas M. Duncan, County Executive
John and Lucia Rather



Montgomery County Government

October 6, 2003

The Honorable Derick Berlage
Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RECEIVED
1352
OCT 08 2003

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dear Mr. Berlage:

Attached, you will find a copy of a historic preservation easement that John and Lucia Rather wish to donate to Montgomery County, Maryland. The purpose of this easement is to prohibit, in perpetuity, the construction of an additional single-family house on their property at 10308 Montgomery Avenue.

Under Section 24A-13(b)(2)(A) of the Historic Preservation Ordinance, the Planning Board has 45 days to review and comment on this proposed easement donation. The Board's comments should include an evaluation of the proposal using the criteria specified in Section 24A-13, as well as identification of competing or supporting land use priorities or other relevant factors or issues. The Board's recommendations may include proposed easement terms and conditions.

Please transmit your comments as soon as you have formulated them, but not later than November 21, 2003.

Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink that reads "Susan E. Velasquez".

Susan Velasquez
Chair
Historic Preservation Commission

**PALEY
ROTHMAN**
GOLDSTEIN, ROSENBERG
& COOPER CHARTERED

IN MERGER WITH EIG & SCHWARTZ CHARTERED

ATTORNEYS AT LAW
4800 HAMPDEN LANE, 7TH FLOOR
BETHESDA, MARYLAND 20814-2922
PH 301-656-7603 · FX 301-654-7354

September 30, 2003

GLENN M. COOPER
VICTOR J. ROSENBERG*
MARK S. GOLDSTEIN
MARK S. ROTHMAN
STEPHEN H. PALEY
PAULA A. CALIMAFDE
RONALD A. DWECK
ARTHUR H. BLITZ*
ROBERT H. MACLAY
STEVEN A. WIDDES
HOPE B. EASTMAN
WENDELIN I. LIPP*
ALAN S. MARK
DANIEL P. HODIN
DIANE A. FOX
JEFFREY A. KOLENDER
MARK A. BINSTOCK

*ALSO ADMITTED IN VIRGINIA
**ALSO ADMITTED IN QUEBEC
† NOT ADMITTED TO DC BAR

LINDA D. SCHWARTZ
WAYNE D. EIG
PATRICIA M. WEAVER
ALAN D. EISLER*
DANIEL S. KOCH
KATHLEEN M. DUMAIS
JAMES R. HAMMERSCHMIDT
DEBORAH A. COHN
NICOLAS S. DUFOUR**
ARESH HOMAYOUN
HOWARD B. SOYPHER†
VIVIAN A. MIKHAIL†
PATRICIA C. MCLANE**
AUBREY L. MOSS
TIFFANY M. TURNER†

OF COUNSEL
PAUL G. MARCOTTE, JR.
KATHERINE PALUMBO
ARNOLD B. SHERMAN

WRITERS E-MAIL AND DIRECT D

asherman@paleyrothman.com
Direct Dial: (301) 951-9377

Hand Delivered

Ms. Gwen Wright
Historic Preservation Supervisor
Montgomery County Department of
Park and Planning
8787 Georgia Avenue, Maryland 20910

RE: Mr. and Mrs. John Rather - Deed of Easement
10308 Montgomery Avenue, Kensington, Maryland 20895
Our File No.: 26357.00000

Dear Ms. Wright:

Enclosed is a copy of a Deed of Easement which describes a specific easement which Mr. and Mrs. John Rather wish to donate to Montgomery County, Maryland. Mr. and Mrs. Rather request the Historic Preservation Commission of Montgomery County, Maryland to review, approve and forward the Deed of Easement to the County Executive. Vickie Gaul, Attorney-at-Law, at the County Attorney's office, has informed us that she will advise you in writing that her office has reviewed the Deed of Easement.

If you have any questions or comments or need additional information, do not hesitate to call.

Very truly yours,


Arnold B. Sherman

ABS/ks
Enclosure

cc: Mr. and Mrs. John Rather (with enclosure)
Vickie Gaul, Attorney-at-Law (with enclosure)

T: 101003 F:\WP_FILES\Clients\26357.000\asl-g-wright-deed-easement.doc

DEED OF EASEMENT

THIS DEED OF EASEMENT (the "Deed") is granted as of this _____ day of 2003, by JOHN C. RATHER and LUCIA J. RATHER (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, the Grantors are the owners of 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 whose purpose is generally to protect, preserve and enhance sites, structures with their appurtenances and environmental settings, and districts of historic, archeological, architectural or cultural value, 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") is possessed with the power and duty to administer this Deed; and

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 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 ex 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:

By: _____
John C. Rather

By: _____
Lucia J. Rather

SIGNATURES CONTINUED ON THE IMMEDIATELY FOLLOWING PAGE

Douglas M. Duncan, County Executive
Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY

Office of the County Attorney

ACKNOWLEDGMENTS

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me JOHN C. RATHER 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.

Notary Public

My Commission expires: _____

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me LUCIA J. RATHER 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.

Notary Public

My Commission expires: _____

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 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.

Notary Public

My Commission expires: _____

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, Esquire

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.



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

September 30, 2003

BY FACSIMILE AND FIRST CLASS MAIL

Gwen Wright
Historic Preservation Supervisor
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Historic Preservation Easement Proposed for
10308 Montgomery Avenue, Kensington, Maryland

Dear Gwen:

This is to advise you that I have reviewed the historic preservation easement proposed by John and Lucia Rather for the property located at 10308 Montgomery Avenue, Kensington, Maryland.

The proposed easement is approved by this Office as to form and legal sufficiency and I will be happy to sign it and forward it to the County Executive if it is accepted by the Historic Preservation Commission.

Please call me if you have any questions.

Thank you.

Sincerely,

Vickie L. Gaul
Associate County Attorney

cc: Arnold B. Sherman, Esq., attorney for Mr. and Mrs. Rather

DeSouza, Karina

From: Loehr, Charles
Sent: Friday, October 31, 2003 8:00 AM
To: DeSouza, Karina
Cc: Wright, Gwen
Subject: FW: CTRACK #2003-1352

OK Charlie

-----Original Message-----

From: Wright, Gwen
Sent: Thursday, October 30, 2003 5:48 PM
To: Zyontz, Jeff; Loehr, Charles
Cc: Sampson, Sheila
Subject: RE: CTRACK #2003-1352

Hope the attached letter is more clear in coming from the Chairman and not from the full Board...

Gwen Wright
Historic Preservation Supervisor
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910
(301) 563-3400
gwen.wright@mncppc-mc.org

-----Original Message-----

From: Wright, Gwen
Sent: Saturday, October 25, 2003 12:04 PM
To: Zyontz, Jeff
Cc: Sampson, Sheila
Subject: RE: CTRACK #2003-1352

Attached, please find a draft response for the Chairman's signature. Let me know if you need anything else...

Gwen Wright
Historic Preservation Supervisor
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910
(301) 563-3400
gwen.wright@mncppc-mc.org

-----Original Message-----

From: Zyontz, Jeff
Sent: Friday, October 10, 2003 3:49 PM

10/31/2003

To: Wright, Gwen
Cc: Sampson, Sheila
Subject: FW: CTRACK #2003-1352

Am I asking you to respond to yourself?

Jeff Zyontz
 Chief, County Wide Planning
 MNCPPC
 8787 Georgia Ave
 Silver Spring, Md 20850
 (301)495-4557

-----Original Message-----

From: DeSouza, Karina
Sent: Friday, October 10, 2003 3:31 PM
To: Zyontz, Jeff
Cc: Sampson, Sheila; DeSouza, Karina; Loehr, Charles
Subject: CTRACK #2003-1352

**CTrack ROUTING SLIP
 MONTGOMERY COUNTY PLANNING BOARD
 CHAIRMAN'S OFFICE**

File Number:	2003-1352	Date Received:	10/8/2003
Correspondence Type:		Date Of Letter:	10/6/2003
Agenda Date:	N/A		
To:	Derick Berlage		
From:	Susan Velasquez, Historic Preservation Commission		
Description:	Letter regarding the Historic Preservation easement		
Transmitted To:	Director and Chairman		
Action For:	Zyontz, J		
Copies To:	Sampson, S		
Date Due:	N/A		
Remarks From Chairman's Office:			
Prepare response for Chairman's signature			

IIA

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

October 15, 2003

MEMORANDUM

TO: Montgomery County Historic Preservation Commission
FROM: Gwen Wright, Historic Preservation Supervisor *[Signature]*
SUBJECT: Easement Donation Proposed for 10308 Montgomery Avenue, Kensington

STAFF RECOMMENDATION

The HPC should recommend the acceptance of this easement to the County Executive, who will sign the easement on behalf of the county.

BACKGROUND

Easements are legal documents by which a property owner may give away certain property rights in perpetuity. The resulting restrictions run with the land, and apply to all future property owners. There is a provision in Chapter 24A, Section 13, which provides Montgomery County with the option of accepting preservation easements if this acceptance would "further the county's historic preservation goals."

10308 Montgomery Avenue is a Primary Resource in the Kensington Historic District, which is both a locally-designated historic district and a National Register historic district. The property consists of two (2) lots and part of a third (3rd) lot – for a total of approximately 22,540 square feet – and the existing house straddles one of the two whole lots and the third partial lot.

The owners of 10308 Montgomery Avenue – John and Lucia Rather – are long-time supporters of historic preservation in Kensington. They wish to donate an easement to Montgomery County that would preserve all of the property as a single unitary parcel and would permit only one single-family home on the property. In essence, this easement would prohibit the construction of an additional single-family home on the vacant lot, which is currently an existing side yard.

The proposed easement is attached. It has been reviewed by the County Attorney's Office and approved as legally sufficient.

DISCUSSION

This easement donation is a great step forward in the preservation of open space in the Kensington Historic District, which derives its significance not only from the architecture of the buildings in the district, but also from the character of the district as a Victorian garden suburb.

①

Preservation of open space has been a major issue in Kensington for nearly 15 years, with much discussion but few solutions. Construction on vacant lots has been very controversial and the HPC has reviewed a number of these types of cases over the last few years.

The applicants seek to preserve the integrity of the open space around their home – a Primary Resource in the historic district – by donating an easement that will prohibit construction of a new single-family home on the vacant lot that currently serves as their side yard.

The Rathers are the first property owners in the Kensington Historic District to step forward and offer an easement on their property, and they should be applauded for their generosity, foresight, and invaluable contribution to the preservation of Kensington.

STAFF RECOMMENDATION

Staff strongly recommends that the HPC find this proposal consistent with the purposes of Chapter 24A-13(3):

...acceptance of the preservation easement would further the county's historic preservation goals.

And with Chapter 24A-13(3)(E):

...the easement will promote long-term survival of the historic resource.

And with the Secretary of the Interior's Guideline #2:

The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

**PALEY
ROTHMAN**
GOLDSTEIN, ROSENBERG
& COOPER CHARTERED

IN MERGER WITH EIG & SCHWARTZ CHARTERED

ATTORNEYS AT LAW
4800 HAMPDEN LANE, 7TH FLOOR
BETHESDA, MARYLAND 20814-2922
PH 301-656-7603 · FX 301-654-7354

September 30, 2003

GLENN M. COOPER
VICTOR J. ROSENBERG*
MARK S. GOLDSTEIN
MARK S. ROTHMAN
STEPHEN H. PALEY
PAULA A. CALIMAFDE
RONALD A. DWECK
ARTHUR H. BLITZ*
ROBERT H. MACLAY
STEVEN A. WIDDEN
HOPE B. EASTMAN
WENDELIN I. LIPP
ALAN S. MARK
DANIEL P. HODIN
DIANE A. FOX
JEFFREY A. KOLENDER
MARK A. BINSTOCK

* ALSO ADMITTED IN VIRGINIA
** ALSO ADMITTED IN QUEBEC
† NOT ADMITTED TO DC BAR

LINDA D. SCHWARTZ
WAYNE D. EIG
PATRICIA M. WEAVER
ALAN D. EISLER*
DANIEL S. KOCH
KATHLEEN M. DUMAIS
JAMES R. HAMMERSCHMIDT
DEBORAH A. COHN
NICOLAS S. DUFOUR**
ARESH HOMAYOUN
HOWARD B. SOYPHER*
VIVIAN A. MIKHAIL†
PATRICIA C. MCLANE**
AUBREY L. MOSS
TIFFANY M. TURNER†

OF COUNSEL
PAUL G. MARCOTTE, JR.
KATHERINE PALUMBO
ARNOLD B. SHERMAN

WRITER'S E-MAIL AND DIRECT DIAL

asherman@paleyrothman.com
Direct Dial: (301) 951-9377

Hand Delivered

Ms. Gwen Wright
Historic Preservation Supervisor
Montgomery County Department of
Park and Planning
8787 Georgia Avenue, Maryland 20910

RE: Mr. and Mrs. John Rather - Deed of Easement
10308 Montgomery Avenue, Kensington, Maryland 20895
Our File No.: 26357.00000

Dear Ms. Wright:

Enclosed is a copy of a Deed of Easement which describes a specific easement which Mr. and Mrs. John Rather wish to donate to Montgomery County, Maryland. Mr. and Mrs. Rather request the Historic Preservation Commission of Montgomery County, Maryland to review, approve and forward the Deed of Easement to the County Executive. Vickie Gaul, Attorney-at-Law, at the County Attorney's office, has informed us that she will advise you in writing that her office has reviewed the Deed of Easement.

If you have any questions or comments or need additional information, do not hesitate to call.

Very truly yours,


Arnold B. Sherman

ABS/ks

Enclosure

cc: Mr. and Mrs. John Rather (with enclosure)
Vickie Gaul, Attorney-at-Law (with enclosure)

T: 101003 F:\WP_FILES\Clients\26357.000\asl-g-wright-deed-easement.doc

DEED OF EASEMENT

THIS DEED OF EASEMENT (the "Deed") is granted as of this _____ day of 2003, by JOHN C. RATHER and LUCIA J. RATHER (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, the Grantors are the owners of 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 whose purpose is generally to protect, preserve and enhance sites, structures with their appurtenances and environmental settings, and districts of historic, archeological, architectural or cultural value, 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") is possessed with the power and duty to administer this Deed; and

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 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 ex 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:

By: _____
John C. Rather

By: _____
Lucia J. Rather

SIGNATURES CONTINUED ON THE IMMEDIATELY FOLLOWING PAGE

Douglas M. Duncan, County Executive
Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY

Office of the County Attorney

ACKNOWLEDGMENTS

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me JOHN C. RATHER 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.

Notary Public

My Commission expires: _____

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me LUCIA J. RATHER 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.

Notary Public

My Commission expires: _____

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this ____ day of _____, 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.

Notary Public

My Commission expires: _____

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, Esquire

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.



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

September 30, 2003

BY FACSIMILE AND FIRST CLASS MAIL

Gwen Wright
Historic Preservation Supervisor
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Historic Preservation Easement Proposed for
10308 Montgomery Avenue, Kensington, Maryland

Dear Gwen:

This is to advise you that I have reviewed the historic preservation easement proposed by John and Lucia Rather for the property located at 10308 Montgomery Avenue, Kensington, Maryland.

The proposed easement is approved by this Office as to form and legal sufficiency and I will be happy to sign it and forward it to the County Executive if it is accepted by the Historic Preservation Commission.

Please call me if you have any questions.

Thank you.

Sincerely,

Vickie L. Gaul
Associate County Attorney

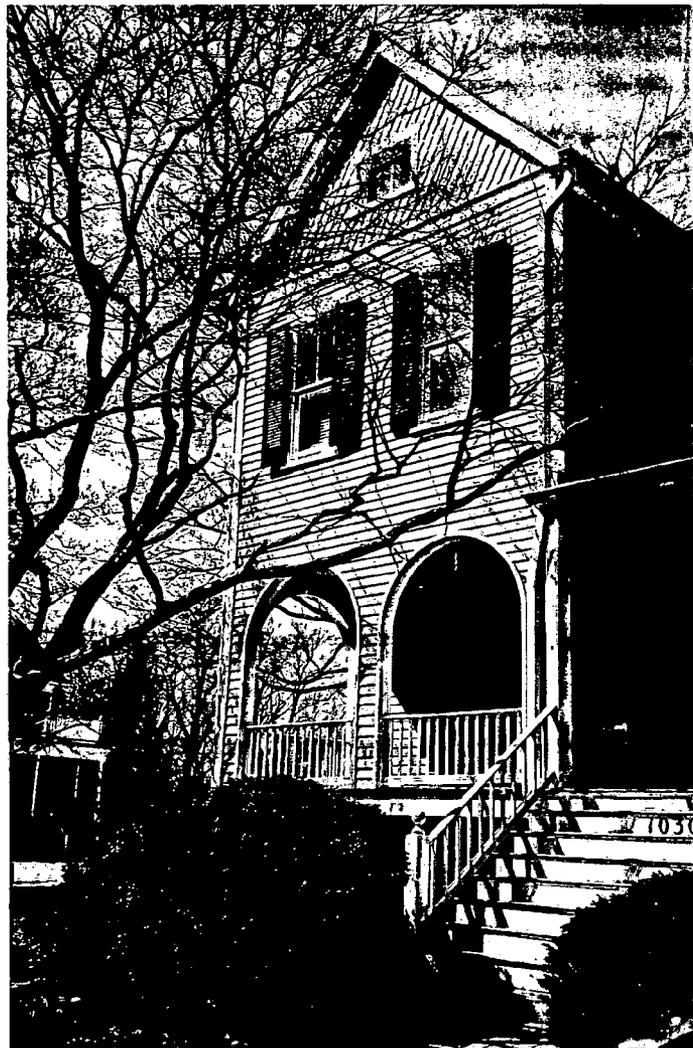
cc: Arnold B. Sherman, Esq., attorney for Mr. and Mrs. Rather

101 Monroe Street, Rockville, Maryland 20850-2540 • 240-777-6716 • TTD 240-777-2545 • Fax 240-777-6705
vickie.gaul@montgomerycountymd.gov

13



Left side
house



Front of house

10308 Montgomery Ave
Kensington, MD



Front of house above porch



10308 Montgomery Ave.
Kensington, MD

Front steps of house



Montgomery County Government

October 6, 2003

The Honorable Derick Berlage
Chair
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mr. Berlage:

Attached, you will find a copy of a historic preservation easement that John and Lucia Rather wish to donate to Montgomery County, Maryland. The purpose of this easement is to prohibit, in perpetuity, the construction of an additional single-family house on their property at 10308 Montgomery Avenue.

Under Section 24A-13(b)(2)(A) of the Historic Preservation Ordinance, the Planning Board has 45 days to review and comment on this proposed easement donation. The Board's comments should include an evaluation of the proposal using the criteria specified in Section 24A-13, as well as identification of competing or supporting land use priorities or other relevant factors or issues. The Board's recommendations may include proposed easement terms and conditions.

Please transmit your comments as soon as you have formulated them, but not later than November 21, 2003.

Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink that reads "Susan Velasquez". The signature is fluid and cursive, with a long, sweeping flourish at the end.

Susan Velasquez
Chair
Historic Preservation Commission

Historic Preservation Commission



Montgomery County Government

October 6, 2003

Mayor Lynn Raufaste
Town of Kensington
3710 Mitchell Street
Kensington, MD 20895

Dear Mayor Raufaste:

Attached, you will find a copy of a historic preservation easement that John and Lucia Rather wish to donate to Montgomery County, Maryland. The purpose of this easement is to prohibit, in perpetuity, the construction of an additional single-family house on their property at 10308 Montgomery Avenue.

Under Section 24A-13(b)(2)(B) of the Historic Preservation Ordinance, the municipality, in which the historic preservation easement will be located, has 45 days to review and comment on this proposed easement donation. Your comments should include an evaluation of the proposal using the criteria specified in Section 24A-13, as well as identification of competing or supporting land use priorities or other relevant factors or issues. Your recommendations may include proposed easement terms and conditions.

Please transmit your comments as soon as you have formulated them, but not later than November 21, 2003.

Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink that reads "Susan E. Velasquez".

Susan Velasquez
Chair
Historic Preservation Commission

Historic Preservation Commission

**PALEY
ROTHMAN**
GOLDSTEIN, ROSENBERG
& COOPER CHARTERED

IN MERGER WITH EIG & SCHWARTZ CHARTERED

ATTORNEYS AT LAW
4800 HAMPDEN LANE, 7TH FLOOR
BETHESDA, MARYLAND 20814-2922
PH 301-656-7603 · FX 301-654-7354

September 30, 2003

GLENN M. COOPER
VICTOR J. ROSENBERG*
MARK S. GOLDSTEIN
MARK S. ROTHMAN
STEPHEN H. PALEY
PAULA A. CALIMAFDE
RONALD A. DWECK
ARTHUR H. BLITZ*
ROBERT H. MACLAY
STEVEN A. WIDDES
HOPE B. EASTMAN
WENDELIN I. LIPP*
ALAN S. MARK
DANIEL P. HODIN
DIANE A. FOX
JEFFREY A. KOLENDER
MARKA. BINSTOCK

* ALSO ADMITTED IN VIRGINIA
** ALSO ADMITTED IN QUEBEC
† NOT ADMITTED TO DC BAR

LINDA D. SCHWARTZ
WAYNE D. EIG
PATRICIA M. WEAVER
ALAN D. EISLER*
DANIEL S. KOCH
KATHLEEN M. DUMAIS
JAMES R. HAMMERSCHMIDT
DEBORAH A. COHN
NICOLAS S. DUFOUR**
ARESH HOMAYOUN
HOWARD B. SOYPHER†
VIVIAN A. MIKHAI†
PATRICIA C. MCLANE**
AUBREY L. MOSS
TIFFANY M. TURNER†

OF COUNSEL
PAUL G. MARCOTTE, JR.
KATHERINE PALUMBO
ARNOLD B. SHERMAN

WRITER'S E-MAIL AND DIRECT DIAL

asherman@paleyrothman.com
Direct Dial: (301) 951-9377

Hand Delivered

Ms. Gwen Wright
Historic Preservation Supervisor
Montgomery County Department of
Park and Planning
8787 Georgia Avenue, Maryland 20910

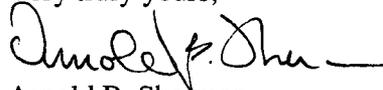
RE: Mr. and Mrs. John Rather - Deed of Easement
10308 Montgomery Avenue, Kensington, Maryland 20895
Our File No.: 26357.00000

Dear Ms. Wright:

Enclosed is a copy of a Deed of Easement which describes a specific easement which Mr. and Mrs. John Rather wish to donate to Montgomery County, Maryland. Mr. and Mrs. Rather request the Historic Preservation Commission of Montgomery County, Maryland to review, approve and forward the Deed of Easement to the County Executive. Vickie Gaul, Attorney-at-Law, at the County Attorney's office, has informed us that she will advise you in writing that her office has reviewed the Deed of Easement.

If you have any questions or comments or need additional information, do not hesitate to call.

Very truly yours,


Arnold B. Sherman

ABS/ks

Enclosure

cc: Mr. and Mrs. John Rather (with enclosure)
Vickie Gaul, Attorney-at-Law (with enclosure)

T: 101003 F:\WP_FILES\Clients\26357.000\asl-g-wright-deed-easement.doc

DEED OF EASEMENT

THIS DEED OF EASEMENT (the "Deed") is granted as of this ____ day of 2003, by JOHN C. RATHER and LUCIA J. RATHER (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, the Grantors are the owners of 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 whose purpose is generally to protect, preserve and enhance sites, structures with their appurtenances and environmental settings, and districts of historic, archeological, architectural or cultural value, 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") is possessed with the power and duty to administer this Deed; and

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 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 ex 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.

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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:

By: _____
John C. Rather

By: _____
Lucia J. Rather

SIGNATURES CONTINUED ON THE IMMEDIATELY FOLLOWING PAGE

Douglas M. Duncan, County Executive
Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY

Office of the County Attorney

ACKNOWLEDGMENTS

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me JOHN C. RATHER 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.

Notary Public

My Commission expires: _____

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2003, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me LUCIA J. RATHER 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.

Notary Public

My Commission expires: _____

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.



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

September 30, 2003

BY FACSIMILE AND FIRST CLASS MAIL

Gwen Wright
Historic Preservation Supervisor
Montgomery County Department of Park and Planning
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Historic Preservation Easement Proposed for
10308 Montgomery Avenue, Kensington, Maryland

Dear Gwen:

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Please call me if you have any questions.

Thank you.

Sincerely,

Vickie L. Gaul
Associate County Attorney

cc: Arnold B. Sherman, Esq., attorney for Mr. and Mrs. Rather