IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. STEVEN McCLAIN, 4541 W. Street, N.W. Washington, D.C. 20007, and the TRUST FOR ARCHITECTURAL EASEMENTS, f/k/a the NATIONAL ARCHITECTURAL TRUST, INC., 1906 R Street, N.W. Washington, D.C. 20009, Defendants.	)	Civil No. _____ Case: 1:11-cv-01087 Assigned To : Kessler, Gladys Assign. Date : 6/14/2011 Description: General Civil

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff the United States of America, for its Complaint against Defendants Steven McClain and the Trust for Architectural Easements, formerly known as the National Architectural Trust, Inc. (the "Trust"))(collectively, the "Trust Defendants"), states as follows:

Nature of Action

1. The United States brings this complaint pursuant to 26 U.S.C. ("I.R.C.") §§ 7402 and 7408 to enjoin the Trust Defendants, and any other person or persons in active concert or participation with them, from directly or indirectly engaging in conduct subject to penalty under

I.R.C. §§ 6700 and 6701, and from engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and I.R.C. §§ 7401 and 7402(a). Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and I.R.C. § 7408(a) because the Defendants are subject to personal jurisdiction in the District of Columbia, and because a substantial part of the events or omissions giving rise to the claims at issue occurred herein.

Authorization

3. This action has been requested by a delegate of the Secretary of Treasury and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to I.R.C. §§ 7402 and 7408.

Overview of Defendants' Activities

4. The Trust Defendants designed the scheme that is the subject of this lawsuit to grossly overstate the amount of charitable contribution deductions participants could claim for tax purposes. Activities undertaken by the Trust Defendants, with the assistance of various associates with whom they contracted and/or employed, effectively aided and abetted the understatement of tax by individuals induced by their marketing tactics. The Trust Defendants, the individuals that they directed, as well as certain outside appraisers, repeatedly made false and fraudulent statements to donors and prospective donors in order to misrepresent certain tax benefits available under the law for the donors of façade easements. Furthermore (and contrary to Defendant McClain's sworn

testimony in 2005 before a Congressional subcommittee investigating the Trust's façade easement program), the Trust Defendants have perpetuated this scheme by repeatedly and intentionally subverting the appraisal process in order to inflate the value of the donated façade easements.

5. The Trust Defendants' scheme takes advantage of an existing provision of the Internal Revenue Code - I.R.C. § 170(h) - that permits tax deductions for the contribution of a façade conservation easement that satisfies specific statutory and regulatory requirements. In particular, to support the amount of the claimed deduction, the contributed easement must be shown by the donor (as established by a qualified appraisal) to result in the diminution of value of the underlying property. Examinations the Internal Revenue Service (the "IRS") conducted of specific charitable contribution deductions claimed by easement donors connected to the Trust Defendants, however, revealed a pattern of gross overvaluation of the façade easements, coupled with a consistent failure to meet all statutory requirements necessary under Section 170 to claim the deduction. Accordingly, the IRS has generally disallowed in whole or in part amounts claimed by taxpayers for the value of the façade easements donated to or facilitated by the Trust Defendants.

6. The Trust Defendants targeted owners of residential and commercial properties located primarily in the historic districts of New York City, Baltimore, Washington D.C., and Boston. Despite the fact that the historic properties were already subject to strict preservation laws regulating their exterior appearance and structure, the Trust Defendants "sold" to potential donors the tax benefits of obtaining façade easements on their properties, even though in most cases the easements themselves imposed no additional restrictions on the use of the property. They also routinely, and falsely, claimed that eligible property owners were entitled to charitable contribution deductions

ranging from 10 to 15 percent of the fair market value ("FMV") of the property, and that this deduction "range" was approved by the IRS when this was not the case.

7. In addition, the Trust Defendants manipulated the appraisers working with them to provide appraisals for the façade easements that were wholly rooted in this false appraisal construct, based upon the erroneous premise that a façade easement would always be valued within the 10 to 15 percent valuation range. This false appraisal construct does not, however, constitute an acceptable appraisal methodology under Section 170 to support a charitable deduction for an easement contribution. The Trust Defendants, working with personnel they trained and directed, served as the gatekeepers for the entire appraisal process and in so doing, effectively influenced the outcomes of the valuations performed by appraisers and thwarted any concept of independence normally associated with the appraisal function. Thus, the appraisers the Trust recommends to its donor customers "know" without needing to be directly told the appraisal results they should reach.

8. The consequences of this illegal promotion have been lucrative for the façade easement donors/customers as well as the Trust Defendants themselves. Working with their associates and directing others, the Trust Defendants were able to solicit and process approximately 800 façade easements donated to the Trust Defendants by owners of historic properties from 2002 to the present date. The corresponding gross value of these easements believed to be claimed by taxpayers as charitable contribution deductions is in excess of $1.2 billion.

9. Based upon the above, the Trust Defendants' practices of making false statements about certain federal income tax benefits derived from façade easement charitable contribution deductions, in connection with their solicitation and promotion of the same, is subject to penalty under Sections 6700 and 6701 of the Internal Revenue Code. In addition, the Trust Defendants' conduct

substantially interferes with the proper administration and enforcement of the internal revenue laws. Because the Trust Defendants continue to promote improper façade easement contributions, the Trust Defendants should be enjoined from doing so under Sections 7402 and 7408.

Factual Background

The Defendants

10. McClain is a resident of the District of Columbia. He is a licensed real estate broker and has extensive knowledge of the real estate markets in Maryland and D.C. McClain is also a member of the Society of Architectural Historians and the Institute for Classical Architecture and Classical America. McClain is not a licensed appraiser, but he has a great deal of familiarity with the appraisal process as it relates to the contribution of façade easements.

11. As set forth in greater detail below, McClain (who participated in the formation of the Trust and its related affiliates and entities) was central to the Trust Defendants' scheme. McClain conducted many of the initial seminars when the Trust Defendants were introducing their program in New York. He also frequently attended conferences organized and/or sponsored by various professional groups within the accounting, real estate, and appraisal industries. And he was largely responsible for hiring and training employees. It was through McClain's training program that the abusive nature of the Trust Defendants' façade easement program gained momentum.

12. The Trust is a not-for-profit organization with its principal place of business in Washington, D.C. The Trust was previously known as the National Architectural Trust, but in 2007 was forced to change its name to the "Trust for Architectural Easements" as the result of a 2004 trade name infringement lawsuit initiated by the National Trust for Historic Preservation (an unrelated organization dedicated to the preservation of historic buildings and neighborhoods).

History of the Trust and its Affiliated Organizations

13. McClain met an individual by the name of James Kearns sometime in or after 1996, when Kearns opened the Washington D.C. area office of a California company for which he worked. Kearns was looking to purchase a new home in the historic Dupont Circle neighborhood of Washington D.C.; McClain was Kearns's real estate agent. After helping Kearns with the purchase of an historic home, McClain also advised him on donating a façade easement on the property.

14. Through this initial meeting, McClain and Kearns learned of their mutual interest in architecture and the preservation of historic properties. Their subsequent efforts were instrumental in the Trust Defendants' expanding into new territories and processing as many easements as possible using a combination of the abusive methods and techniques described in detail herein.

15. McClain and Kearns decided to join forces and start a consulting business focused on the "Federal Historic Preservation Tax Incentive Program" ("FHTIP"), a program administered jointly by the IRS and the National Park Service ("NPS") that encourages private sector rehabilitation of historic buildings. To that end, in 1998 they formed the Capital Preservation Alliance ("CPA") as a general partnership in the District of Columbia. CPA was organized and operated both to inform property owners about the potential tax incentives associated with façade conservation easements, and to facilitate the contribution process for those property owners interested in the program. McClain and Kearns both possessed partnership interests in CPA.

16. During the period that CPA operated, McClain and Kearns generally charged donors a fixed fee, typically ranging from $2,000 - $2,500, to process a "façade easement contribution" application on behalf of a prospective homeowner donor. CPA was not a qualified conservation

easement organization, however, so it enlisted the help of other organizations willing to accept façade easement contributions, one of which was the L'Enfant Trust ("L'Enfant").

17. In 1998, L'Enfant was an established and qualified conservation easement organization, having operated in the Washington D.C. area since 1978. Although some of the façade easements initially solicited by the Trust Defendants were donated to L'Enfant, CPA entered into a separate contract with each prospective donor regarding the services to be rendered by McClain and Kearns, which included arranging for an independent appraisal by a "qualified appraiser" (as required by Section 155(a) of the Deficit Reduction Act, P.L. 98-369 (later codified in 2004 in I.R.C. Section 170(f)(11)(C)), and the regulations under Section 170 and the Deficit Reduction Act).

18. At that time, the valuation of façade easements was a relatively obscure and specialized area of expertise within the appraisal industry. Because there were few individuals willing or experienced enough to perform such appraisals, McClain and Kearns had to compile and maintain a list of available appraisers. CPA's activities were limited to the Washington D.C. metropolitan area and accordingly, McClain and Kearns came to know and be in close contact with the few appraisers who conducted façade easement valuations. McClain and Kearns would use these contacts, as well as their own expertise acquired while working with L'Enfant, to engage in much of the illegal conduct violative of the Internal Revenue Code alleged herein, because the Trust Defendants soon made it their practice to steer donors to select favored appraisers whom they trusted to arrive at the "right" valuation.

Formation of The Trust

19. The Trust Defendants incorporated in the District of Columbia on February 14, 2001 a new not-for-profit corporation which they named the "National Architectural Trust." Because

L'Enfant was already well-established in D.C. as an easement holding organization, the Trust Defendants' entry into this "market" for façade easements would be difficult. However, the Trust Defendants came to learn of the large untapped market of residential and commercial properties located in the historic districts of New York City, Boston, and Baltimore. In addition, the Trust Defendants entered into a non-compete agreement with L'Enfant in 2002, further forcing them to look elsewhere to promote their easement scheme.

20. Soon after formation, The Trust filed a Form 1023 application seeking recognition as a tax-exempt organization under I.R.C. § 501(c)(3). Based upon the information in the application, as well as the expectation that The Trust would operate in the manner reflected in the application, the IRS subsequently issued a determination letter dated March 26, 2001, recognizing The Trust as exempt from Federal income tax under section 501(a) of the Code by reason of being a charitable organization described in Code section 501(c)(3).[1] Although The Trust Defendants' primary objective was to target New York City, Boston, and other historic cities, through 2002 the Trust Defendants continued to facilitate façade easement contributions for L'Enfant through their prior entity CPA.

21. During The Trust's first year, McClain and Kearns made occasional trips to New York City in order to market FHTIP to potential donors and to solicit contributions of façade easements

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1. To qualify as a tax exempt organization as the term is described in Section 501(c)(3), an organization must be organized and operated exclusively for one or more exempt purposes as set forth in the section. Although this lawsuit contains allegations about the profit-seeking conduct of the Trust Defendants, this action focuses on the abusive charitable contribution scheme employed by the Trust Defendants. Accordingly, the complaint does not address the separate question of whether the Trust is organized and operated exclusively for exempt purposes consistent with the requirements of section 501(c)(3), but rather seeks to enjoin the Trust Defendants for their violation of other provisions of the Internal Revenue Code. That matter is properly addressed in a different forum.

on "qualified properties" located within NYC's designated historic districts.[2] Because the FHTIP was relatively unknown in NYC and at that time there appeared to be no façade easement organizations operating within the city limits, McClain and Kearns set about marketing their program in New York by conducting seminars in local churches and other public meeting spaces.

22. Typically, McClain and Kearns would advertise an upcoming meeting by circulating flyers in a particular historic residential neighborhood or by placing an advertisement in a local newspaper. Not being familiar with the concept of façade easements and not having heard about potential tax deductions available for such contributions, many attendees voiced their concerns and expressed doubts about the viability of the program. Some individual prospective donors questioned why a tax deduction was available for a façade easement contribution when their properties were already subject to restrictions imposed under existing preservation laws.

23. Despite the initial setbacks, the Trust Defendants began to make some headway, particularly with those individuals lured by the expectation of the tax benefits pitched at the meetings. In fact, during those early seminars, the two men planted the seed for donor expectations by regularly referring to a tax deduction equal to 10 to 15 percent of the value of the property for façade easement contributions.

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2. The façade of a building is not automatically considered a "qualified real property interest" for conservation and related charitable contribution purposes merely because it is located within the confines of a registered historic district. Rather, in order for a property owner to make a contribution of a façade easement sufficient to meet the requirements of Section 170, the subject property must meet a number of criteria set forth in that section. In particular, the building must be considered a "certified historic structure" and satisfy certain eligibility criteria defined in Section 170. Although Section 170 was amended in 2006 as part of the Pension Protection Act, the changes with respect to this particular set of requirements were not meaningful for purposes of this analysis.

Reliance on Unofficial IRS Materials Discussing Easement Valuation

24. In order to bolster the representations they made to donors that donors could expect to receive a sizable charitable contribution deduction for a donated façade easement, the Trust Defendants repeatedly made reference to and/or distributed copies of certain IRS materials - in particular, an internal IRS training document created by the IRS for use in internal IRS market-specialization training. It was this document, the Trust Defendants represented to potential customers, that set forth the IRS policy that an appropriate valuation for the fair market value of a façade easement was 10 to 15 percent of the overall value of the property.

25. This document, however, not only did not reflect official IRS public guidance or policy, but instead reflected tentative assumptions relating to a single market. It was originally created in connection with the IRS's Market Segment Specialization Program, implemented in the 1980s. As part of this program, the IRS developed audit guidelines intended to train its personnel in audit techniques. A section of one such guide that dealt with the issue of façade easements was revised in February 2002 and made available on the IRS website to the public.

26. In its first iteration, this revised audit guide included discussion of a 10 to 15 percent appraisal value "benchmark," but this section of the guide had been taken from a 1994 memorandum reflecting anecdotal views of proper façade easement valuation pertinent solely to the Philadelphia metropolitan region - not nationwide. In 2003, however, after IRS personnel determined that this language was being misconstrued (by parties like the Trust Defendants), it was removed from the internal audit guide in which it had originally appeared.

27. Thus, from the start the Trust Defendants mischaracterized these IRS materials as if they

set forth the official IRS policy for valuing the FMV of façade easements in all U.S. markets.[3] Even if the materials had set forth a true "safe harbor" FMV percentage range (which they did not and could not, as no such safe harbor has ever existed), Section 170 of the Internal Revenue Code still requires a proper appraisal valuation performed in accordance with the terms of the statute. At no time did the IRS ever indicate that donors seeking to claim a charitable deduction relating to the contribution of a façade easement could simply assume FMV in a 10 to 15 percent range - but that is precisely what the Trust Defendants told their donors.

Formation of Springfield Management Services, Inc.

28. Once the Trust was up and running, it became evident to McClain and Kearns that their efforts were bearing fruit. During the first half of 2002, The Trust received sufficient donations of façade easements on New York City properties to earn it approximately $1.5 million from mandatory cash contributions. The Trust Defendants at this point began to evaluate ways to restructure their business in order to maximize its profitability (despite The Trust's non-profit Section 501(c)(3) status).

29. Accordingly, in July 2002, the Trust Defendants created a new, for-profit entity called Springfield Management Services, Inc. ("SMS"). With the exception of the monitoring and investment functions, all easement business activities previously conducted by The Trust (hiring of outside employees, for example) would be delegated to and carried out by SMS. The new entity would require approximately $4 million in risk capital. The Trust invested $600,000 in SMS in

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3. The Trust Defendants are unquestionably aware that the IRS has never made the 10 to 15 percent FMV valuation benchmark official policy or law - as evidenced by the Trust Defendants' lobbying efforts from the summer of 2009 to encourage the IRS to adopt officially this "rule of thumb" for valuing façade easements. *See* Paragraph 81, *infra.*

exchange for a 15% ownership stake in SMS. McClain and Kearns would furnish the balance of the risk capital and own the remaining equity stake (85%) of SMS.

30. The Trust subsequently entered into a contractual arrangement with SMS, endorsed by The Trust's board, in which SMS was to receive 50 percent of all mandatory cash payments received by The Trust, in exchange for the various services rendered in connection with the marketing, solicitation, processing, and recording of donated easements. This arrangement was especially important to McClain and Kearns because donors were required to make a cash payment, marketed as a tax-deductible charitable contribution, to The Trust (generally 10 percent of the FMV figure). McClain and Kearns's ownership interest in SMS meant that these contributions benefitted them personally. And indeed, after SMS's creation, the Trust Defendants realized a dramatic increase in the number of façade easements and mandatory cash payments received by the Trust that were processed by SMS during the period from 2002 through 2005, directly attributable to the promotional activities of the Trust Defendants and their desire for profitability.[4]

31. In order to attract more New York façade easement customers, but avoid incurring the time and expense of traveling to New York, McClain and Kearns hired and trained a New York-based individual experienced in real estate matters to continue holding seminars and soliciting contributions. Eventually they chose to expand the number of representatives and employees based in New York, and also to pursue easements on commercial as well as residential properties. McClain and Kearns thus actively recruited individuals based in New York and experienced in NYC

4. Prior to 2002, a relatively small number of easement applications (less than 200 per year) were initiated. Thereafter, however, the number of façade easement applications increased by 120% (155 in 2001 to 335 in 2002), and nearly doubled again in 2003 (711).

residential and commercial real estate matters (whom they referred to as "Area Representatives") to work for SMS.

32. Area Representatives were assigned a specific territory to solicit façade easement contributions and charged with scheduling and conducting seminars for the public. Because the Trust Defendants paid these recruiters on a commission basis, with the payment based on a percentage of the cash contribution accompanying each easement contribution, the Area Representatives had a financial incentive to both solicit as many contributions as possible and, when possible, to encourage appraisers to use the higher end of the 10 to 15 percent valuation range promised to donors.

33. The Trust Defendants took other steps to increase their profitability. In 2003, the Trust Defendants brought in a marketing head to assist in promoting the easement program to thousands of real estate firms, attorneys, CPAs and other professionals who could then advise their clients about the potential tax benefits. The Trust also created and maintained a website (today bearing the url address "http://www.architecturaltrust.org/") to serve as a central source of information concerning its easement program. The website allowed the Trust Defendants to reach a large pool of prospective donors beyond those individuals attending local seminars.

34. In addition, the Trust Defendants began looking for ways to capitalize on the lucrative D.C. easement market - despite the fact that they had previously signed a non-compete agreement with L'Enfant. To that end, they initially attempted to persuade L'Enfant to enter into a relationship with SMS similar to the one they had structured between SMS and The Trust, but L'Enfant rejected their proposal. Thereafter they encouraged a local real estate attorney who was also a business acquaintance and friend (Karen Leonel) to establish a new easement-holding organization in the

District of Columbia, with her elderly mother serving as the President. Thus, with the help of Kearns and McClain, the Capitol Historic Trust ("CHT") was formed under its original name, Tri-State Architectural Trust. Soon after CHT was formed, CHT contracted with SMS to perform virtually all services, with the exception of the monitoring function (to ensure that the restrictions on use contained in donated easements were honored). The agreement signed by CHT was virtually identical to the one blessed by The Trust's board a year earlier and paved the way for SMS to have unfettered access to the Washington, D.C. market. Upon information and belief, CHT has historically derived a great deal of corporate and technical support for its operations from SMS and the Trust.

Termination of SMS and Creation of the Trust

35. In December 2004, the Trust Defendants decided to restructure the Trust/SMS arrangement once again, and to that end they executed a formal agreement severing the ties between the two ostensibly separate entities. However, the Trust Defendants did not stop soliciting façade easements; The Trust simply took over where SMS had left off. All of the top producing Area Representatives previously working for SMS remained with The Trust, and new contracts were drawn up similar to those that had been in place with SMS. Both McClain and his brother Duncan McClain, formerly employed by SMS, were simply hired back by The Trust in their respective roles. Kearns served as the President of The Trust when the SMS arrangement was terminated. Rather than create a new title or position for McClain, both he and Kearns agreed to serve as Co-Presidents. The Trust also took over the processing function for CHT as well. Following Kearns's formal resignation as both an officer and Board member of The Trust in May 2006, McClain assumed his duties and responsibilities.

Section 170 and Charitable Contribution Deductions

36. The Internal Revenue Code sets forth a number of requirements that must be met before an individual taxpayer is permitted to take a charitable contribution deduction. A Section 170 deduction is generally not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust. However, a deduction may be allowed under Section 170(f)(3)(B)(iii) for the value of a qualified conservation contribution if certain requirements are met. A qualified conservation contribution is defined as the contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. I.R.C. § 170(h)(1); Treas. Reg. §1.170A-14(a). To be eligible for a deduction, the conservation purpose must be protected in perpetuity. I.R.C. § 170(h)(5).

37. Section 170(h)(2) defines a "qualified real property interest" as the entire interest of the donor other than a mineral interest; a remainder interest; and a restriction (granted in perpetuity) on the use which may be made of the real property. A restriction granted in perpetuity on the use of the property must be based upon legally enforceable restrictions that will prevent uses of the retained interest in the property that are inconsistent with the "conservation purpose" of the contribution. *See* Treas. Reg. §1.170A-14(g)(1).

38. In the instant case, the purported conservation purpose for the façade easements pursued by the Trust Defendants fall under I.R.C. §170(h)(4)(A)(iv) -- the preservation of a certified historic structure.

39. Pursuant to I.R.C. § 170(h)(4)(C), a property will be certified as a historic structure if it is listed on the National Register or is located in a registered historic district and is certified by the Secretary of the Interior as being of historic significance to the district. However, the contribution of the easement with respect to such a historic structure must be exclusively for conservation purposes. Furthermore, according to Treas. Reg. § 1.170A-14(g)(2), "no deduction will be permitted under this section for an interest in property which is subject to a mortgage unless the mortgagee subordinates its rights in the property to the right of the qualified organization to enforce the conservation purposes of the gift in perpetuity."

40. A deduction will not be disallowed merely because, as of the date of the gift, there is a negligible risk of a "remote future event" that the property interest passing to the donee organization will be defeated (Treas. Reg. § 1.170A-14(g)(3)) (although the subordination requirement of Treas. Reg. § 1.170A-14(g)(2) demonstrates that the drafters of these regulations did not consider the risk of mortgage foreclosure to be remote or negligible). Where a subsequent unexpected change in the conditions surrounding the property makes it impossible to continue to use the property for conservation purposes, the perpetuity requirement will nonetheless be deemed satisfied so long as (a) the restrictions on use imposed by the easement are judicially extinguished, and (b) all of the donee's proceeds from a subsequent sale of the property are used in a manner consistent with the easement's original conservation purpose. Treas. Reg. § 1.170A-14(g)(6). With respect to the requirements of the treatment of proceeds in the event of extinguishment of the conservation purpose, the relevant regulations require that at the time of the gift of the easement the donor agrees that the donation vests in the donee entity a property right with a value "at least equal to the proportionate value that the perpetual conservation easement . . . bears to the value of the property as a whole," so

that at the time of extinguishment the donee is entitled to a portion of the proceeds equivalent to this interest. Treas. Reg. § 1.170A-14(g)(6)(ii).

41. Under Treas. Reg. § 1.170A-14(h)(3)(i), the value of the contribution of a perpetual conservation restriction on a given property is its fair market value as of the date of contribution, as determined by an appraisal performed by a "qualified appraiser."[5] This regulation also sets forth the following principals that the appraisal should follow for determining fair market value:

> If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the sales prices of such comparable easements. If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction.
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> If, as a result of the contribution of a perpetual conservation restriction, the donor or a related person receives, or can reasonably expect to receive, financial or economic benefits that are greater than those that will inure to the general public from the transfer, no deduction is allowable under this section.

42. In addition, the applicable regulations provide that the analysis of a property's fair market value before and after the contribution of a conservation restriction must take into account "how immediate or remote the likelihood is that the property, absent the restriction, would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use." Indeed, "there may be instances where the grant of a conservation restriction may have no material effect on the value of the property," in which

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5. The rules for what constitutes a "qualified appraiser" are set forth in I.R.C. § 170(f)(11)(E)(ii) and Treas. Reg. § 1.170A-13(c)(5).

case "no deduction would be allowable." See Treas. Reg. §§ 1.170A-14(h)(3)(ii) and 1.170A-14 (h)(3)(ii).

43. Accordingly, the applicable Treasury Regulations elaborate on the requirement embodied in Section 170 of the Internal Revenue Code that in order for the donor of a façade easement to qualify for a charitable contribution deduction, ***the contribution of the façade easement must materially diminish the value of the underlying property***. Generally, if there is no material diminution in the value of the property after it is encumbered by an easement, the donor is not entitled to a charitable contribution deduction.

Summary of Easement-Processing Procedures

44. Although the Trust Defendants occasionally revised and fine-tuned their policies and procedures for processing easements over the years, they typically follow the same script once a prospective donor expresses an interest in the program. Prospective donors first complete and sign an application form accompanied by a required upfront "cash endowment" payment of $1,000 to defray initial costs. Donors were advised that this upfront payment was tax-deductible as a charitable contribution, and also that it would be refunded should the underlying property not qualify as a historic structure eligible for an easement contribution. In the case of a building that qualified as a certified historic structure, the initial payment was deducted from the larger, mandatory cash contribution accompanying the contribution of the façade easement.

45. After receiving a completed application, the Trust Defendants conduct a title search on the relevant property, in order to determine whether the prospective donor was in fact the true owner of record of the subject property, and to learn of any outstanding liens that required additional work

on their part. Properties located in the historic districts targeted by the Trust Defendants were generally high-end properties purchased by affluent people.

46. Donors often had mortgages or other liens on their property, so the Trust Defendants and their employees would also assist donors in securing subordination agreements from the relevant lenders. Lenders could be reluctant to subordinate their rights to an easement that (in theory) diminishes the value of the property on which they had a lien. However, the SMS administrators and Area Representatives would strive to persuade mortgage lenders that their risk, if any, was minimal. Where subordination became an obstacle to obtaining a donated easement, the easement was modified. Alternatively, the donor/mortgagee (or, in some cases, the Trust Defendants) made representations to lenders that effectively contradicted the concept that the underlying property's value was negatively impacted by the easement. In some instances, a sham subordination agreement was prepared that merely acknowledged the existence of the easement without actually making any subordination. On a few occasions, where the lender charged a fee to agree to subordinate its lien to the easement, the Trust Defendants advised affected customers to treat it like the cash contribution to the Trust and simply deduct it.

47. Every donor of a façade easement who wishes to take a tax deduction for the donation must first obtain a written appraisal from an independent and qualified appraiser. I.R.C. § 170(h)(4)(B)(iii)(I) *et seq.*[6] Treasury Regulation Section 1.170A-13(c)(3)(i)(A) requires that the appraisal be made not earlier than 60 days prior to the date of contribution of the appraised property

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6. Before passage of the Pension Protection Act of 2006, when Section 170 was amended, the Internal Revenue Code required qualified appraisals only for façade easements valued at more than $5,000. I.R.C. § 170(f)(11)(C) (2004). Now, qualified appraisals are required with respect to all façade easement contributions. I.R.C. § 170(h)(4)(B)(iii)(I) (2007).

and not later than the due date (including extensions) of the return on which the deduction is first claimed.

48. The form of the appraisal reports connected with the façade easements that the Trust Defendants solicited is fairly standard, and consists generally of the following information: (1) a detailed description of the subject property (including the interior), (2) a copy of the draft, *pro forma* deed of easement (the legal contract executed by, and between, the Trust and each property owner/donor to convey certain rights (i.e., the right to approve proposed changes to the exterior of the property), and (3) the actual valuation portion of the appraisal itself.

49. Rather than preserve the integrity of the appraisal process and require that each donor contact an appraiser or appraisal firm directly, however, the Trust Defendants took control over and subverted the process to ensure that valuations were performed by their hand-picked appraisers, who would then issue appraisals consistent with the Trust Defendants' statements to donors. They did so, among other things, by (a) propagating the use of an appraisal methodology that was invalid and designed to reach a predetermined range of FMV figures for all donated easements, (b) steering customers to compliant appraisers who the Trust Defendants knew would reach the "right" result, and (c) policing the appraisals themselves to make sure this result was reached in every case.

50. Once an easement was in place and ready to be donated, the Trust Defendants typically required donors to pay an amount of cash based on a percentage (until recently 10 percent) of the claimed FMV of the easement. In the case of contributions on commercial properties where the issue of economies of scale became readily apparent, the Trust Defendants implemented a "cash contribution" formula based on a sliding scale tied to both the property's fair market value and the claimed easement value. The applicable percentage to be applied is inversely proportional to the

value of the property - although, interestingly, the fee in such cases was typically set based upon an assumed easement value of 11 percent (consistent with the Trust Defendants' claim that a 10 to 15 percent FMV valuation was appropriate in all cases of a donated easement).

Specific Illegal Aspects of Trust Defendants' Conduct

51. In soliciting the contribution of façade easements, the Trust Defendants have engaged in a number of specific practices that violate the Internal Revenue Code. They include as follows:

False Assertion of Existence of Fixed Percentage Rate Easement FMV Valuation

52. The Trust Defendants have repeatedly represented to easement donors that the IRS had promulgated a 10 to 15 percent valuation "safe harbor" for the FMV of façade easements. There is inherent uncertainty associated with a truly independent appraisal performed in accordance with Section 170, and it therefore can never be assumed at the outset that an easement will have a negative impact on an historic property's value. Yet the Trust Defendants repeatedly reinforced the notion, to customers and appraisers alike, that the appraisal reports must reflect a decrease in value of that specified magnitude. They did this in order to validate the Trust Defendants' marketing claims, and to make the mandatory cash payment to the Trust Defendants "required" with the easement more palatable for donors. In so doing, they ignored the plain language of Section 170 and the implementing regulations.

Promotion of "Court Case History Measurement Method" Among Appraisers

53. Through their control of the appraisal process, the Trust Defendants successfully promulgated, and promoted to appraisers, their own favored methodology for appraising a façade easement's FMV - the "Court Case History Measurement Method" - among a diverse group of appraisers. This methodology - which adopts the 10 to 15 percent valuation model represented to easement donors as the "official" IRS policy - has a singular deficiency: it is not an acceptable appraisal methodology for establishing the FMV of an easement for purposes of substantiating a charitable deduction under Section 170 or its implementing regulations. Indeed, it is not an accepted appraisal methodology *in any respect*.

Control of the Appraisal Process

54. In order for the Trust Defendants to ensure that appraisals would reach the favored result, they took control of and, as a result, tainted the entire appraisal process in order to maintain control over, and limit donor access to, the appraisers who performed the façade easement appraisals. The Trust Defendants routinely coached appraisers unfamiliar with façade easement valuations, which included numerous appraisers in the New York City, Boston, and Baltimore markets. They also recruited new appraisers, trained them about the nature of façade easement valuations, and then maintained control over these appraisers even after SMS was terminated. Appraisers willing to embrace the false valuation premises and methodology, and produce appraisals with conclusions in the Trust Defendants' desired range, were added to "the list" of available appraisals and could expect a steady supply of work referred by SMS (and later the Trust). By contrast, in some cases where an appraiser did not agree with a donor and/or the Trust Defendants on the proper easement valuation

for a given property, they removed the appraiser from the approved list. In this way, the Trust Defendants influenced the outcomes of the valuations performed by appraisers and thwarted any concept of independence normally associated with the appraisal function.

Misrepresentations to Donors About Easement Valuation and Effect of Contribution

55. The reason it was important to the Trust Defendants to not only assert the existence of the "Court Case History Measurement Method" as an appraisal methodology, but to make sure as well that appraisers followed the "rules" in applying that methodology, was simple: this is what the Trust Defendants had promised to their donor/customers. The business of promoting the contribution of easements was lucrative to the Trust Defendants. Maintaining those profits meant persuading customers that the contribution of a façade easement would always result in a significant tax deduction without any real depreciation in the value of their property.

56. As a result, the Trust Defendants, in both oral as well as written statements to customers, repeatedly assured them that the results of the appraisal process were preordained to reach a 10 to 15 percent valuation, reflecting the loss in value to the property once encumbered by an easement in perpetuity - yet, at the same time, that donating an easement would not adversely impact the market value of the property at issue. The contradiction between these two statements was ignored by the Trust Defendants.

Accommodating Donors

57. The Trust Defendants took many improper steps to placate donors in order to ensure the donation of easements and the related mandatory cash payments. For examples, they allowed donors

who disputed the results of an appraisal to secure a *second* appraisal, this time paid for by the Trust Defendants. They also accommodated donors who wished to obtain the tax deduction associated with a façade easement in a particular year, despite the fact that the easement contribution had not yet closed in that year. In addition, in an effort to placate certain New York commercial property owners interested in donating a façade easement on buildings already protected by strict preservation ordinances, the Trust Defendants expressed their willingness to negotiate side agreements that carved out certain portions of the buildings from the Trust's restrictive covenants.

Subordination

58. Deductible façade easements are required to run with the underlying property in perpetuity. Thus, for a deduction to be allowable under the Internal Revenue Code, a mortgagee must subordinate its rights in the property to the right of the qualified donee organization to enforce the conservation purposes of the gift in perpetuity. I.R.C. § 170(h)(2)(C); Treas. Regs. §§ 1.170A-14(b)(2), (g)(1) and (g)(2). The Trust Defendants assumed the responsibility of obtaining subordination agreements on behalf of their easement donors. In order to do so, the Trust Defendants reassured banks that the easements in fact placed no meaningful restrictions on the property.

59. In addition, the Trust has assisted certain mortgage lenders concerned about subordination by helping them add or append language into the relevant deeds of easement providing that the lender reserves for itself a prior claim to proceeds in the event of a casualty or condemnation before the mortgage has been satisfied. In two recent decisions, the U.S. Tax Court has upheld disallowance of charitable contribution deductions relating to easements donated to the Trust because such amendments or revisions to the deed of easement violated the perpetuity requirement of Section

170(h)(5) - in particular, the requirement that the Trust as donee entity have a guaranteed right to a proportionate share of proceeds in the event a condemnation or casualty resulted in the easement's extinguishment. *See, e.g., Kaufman v. Commissioner*, 134 T.C. 182 (2010), *reconsideration denied*, 136 T.C. 13 (2011); *1982 East, LLC v. Commissioner*, T.C. Memo. 2011-84 (2011).

Termination of Easements

60. In support of their façade easement promotion, the Trust Defendants emphasized the perpetual nature of the relevant easements. Yet in numerous instances the Trust Defendants demonstrated a willingness to terminate façade easements that had already been formally executed and recorded, thereby exhibiting a complete disregard of the statutory requirements and obligations of the Trust to permanently protect the conservation purpose of the easements, and revealing the Trust Defendants' overriding interest in receiving remuneration for facilitation of the easements. In at least one case of which the IRS has learned, the Trust Defendants allowed the termination of an easement donated to The Trust, and then, after the property had been sold, accepted for donation a second, virtually identical easement relating to the same property from the property's new owner.

Scrutiny of the Trust Defendants' Illegal Practices Lead Solely to Cosmetic Changes

61. In late 2004, *The Washington Post* and *The Boston Globe* published a series of articles about the Trust Defendants and the rapid rise in façade easement contributions attributable to their activities. Drawing largely on investigative reporting and numerous interviews of knowledgeable witnesses, these newspaper articles were openly critical of the role played by the Trust Defendants and their association with the related Promoter entities. *See, e.g.,* Joe Stephens, "Loophole Pays Off

on Upscale Buildings," *Wash. Post*, Dec. 12, 2004 at A1; Joe Stephens, "Tax Break Turns into Big Business," *Wash. Post*, Dec. 13, 2004, at A1.

62. By this time, the IRS had independently modified those audit guidelines that purportedly established the 10 to 15 percent "safe harbor" to remove valuation references summarizing outdated data in order to avoid improper reliance on its statements. Also, and in the wake of the *Post* series, the IRS publicly identified in its 2005 list of "Dirty Dozen" tax schemes the potential abuses attributable to façade easement contributions being aggressively marketed by easement holding organizations such as the Trust Defendants. In addition, the IRS issued a notice intended to inform donors considering making easement contributions of the penalties they could face for improper easement contributions (*see* Notice 2004-41, 2004-1 C.B. 31 (advising of potential penalties relating to conservation easement contributions)), as well as a subsequent notice indicating that appraisals submitted in connection with noncash charitable contribution deductions needed to satisfy the relevant regulations for a "qualified appraisal" (meaning one performed in accordance with proper relevant standards)(*see* Notice 2006-96, 2006-2 C.B. 902). IRS appraisers assigned to evaluate donor appraisals of the façade easements under examination began advising the Trust donors and/or their representatives in the context of the review process that the "Court Case History Measurement Method" was not recognized by the IRS as a legitimate appraisal methodology.

63. In an effort to ward off such scrutiny and the dangers it posed to the existing façade easement promotion, the Trust Defendants took some pre-emptive measures beginning in 2004 to create the illusion that they took seriously criticisms of their practices. However, these efforts were largely cosmetic and did not constitute real substantive modification of the underlying conduct.

64. The Trust Defendants hired a team of lobbyists, political consultants, attorneys, and

public relations experts. Their efforts included contacting senior IRS officials and attempting to influence the outcome of any legislation that could adversely affect their façade easement program. In August of 2009, counsel for the Trust Defendants corresponded with IRS Chief Counsel in an effort to persuade him that the IRS should simply adopt the 10 to 15 percent valuation method as a "safe harbor" in examining charitable contribution deduction cases.

65. Two comprehensive market studies performed for the IRS (one in New York City and the other in Washington D.C.) that were recently issued by two separate outside appraisal firms show that manipulation of the appraisal process has not meaningfully decreased since 2005. The studies each concluded that the properties located in the historic districts of the relevant markets (the most likely properties to be considered for historic preservation façade easements) show no fluctuation downward in market value even after the easement is created.

Examples of Disallowed Easement Charitable Deductions

66. IRS examinations to date of the tax returns of Trust façade easement donors claiming large charitable deductions have repeatedly resulted in determinations disallowing all or most of the claimed deduction, based upon the IRS's findings that the proposed FMV for the easement was inflated, unsubstantiated, and/or that the appraisal offered in support of the deduction was not a "qualified appraisal" under Section 170. For example:

A. In 2003, a couple donated to the Trust a façade easement for their jointly-owned property on East 77th Street in New York City - a five-story, eight unit residential apartment building - and claimed a charitable deduction based upon an FMV for the easement of $1,100,000. The couple made a mandatory cash contribution to The Trust of $105,600. Examination of the appraisal by the IRS revealed the appraiser

had employed the false Court Case History Method to appraise the FMV, applying the flat 10 to 15 percent yardstick to come up with an FMV figure. The IRS disallowed the deduction, and the taxpayers were assessed approximately $270,000 in unpaid tax plus interest and penalties, to which they agreed;

B. An individual owned by tenancy in common a leased fee one-third interest in a five-story single family townhouse on Bank Street in New York City. In 2004 this taxpayer (along with the two co-owners of the property) donated an easement on the property. The FMV of the easement was appraised at $1,425,000, and the taxpayer claimed a charitable deduction of one-third of that amount, or approximately $475,000, reflecting his one-third share interest in the property itself; he also paid the Trust a cash contribution of $42,750. The IRS disallowed the charitable deduction and assessed taxes of $117,985 against the taxpayer because the appraisal applied the flat 10 to 15 percent valuation methodology rather than one permitted by the Internal Revenue Code. The taxpayer agreed to the assessment;

C. In 2004, an individual donated to the Trust a façade easement with respect to his townhouse on West 11th Street in New York City. The FMV for the easement, appraised by one of the Trust's standard appraisers, was valued at $943,000, with the owner/taxpayer making a fairly modest cash contribution of $25,000. As with the easements discussed above, however, the IRS upon examination found that the charitable deduction the taxpayer had claimed in his tax return was based on the flat rate percentage "methodology" of appraisal, and therefore disallowed the deduction in full. As a result, the taxpayer was assessed additional taxes in the amount of $330,050, to which he agreed; and

D. An individual donated to the Trust in 2004 an easement for his residential property in Brooklyn, New York. The Trust arranged for their usual Brooklyn appraiser at that time to perform the easement valuation, and the appraiser (using the fixed percentages embodied by the court case history method) valued the easement at $170,000; the donor's cash contribution was the standard ten percent of easement value, or $17,000. After IRS examination, the taxpayer agreed to full disallowance of the easement and unpaid taxes of $53,175 were assessed against him.

Harm to the Government from the Trust Defendants' Practices

67. The scope of the Trust Defendants' illegal conduct is wide-ranging and significant. In the years since its 2001 incorporation, the Trust has become a very large façade easement organization. Through 2008, the charitable deductions claimed pursuant to the scheme employed by SMS and the Trust exceeded $1.2 billion. In 2006 alone the Trust Defendants facilitated $343 million in charitable contribution deductions, largely because The Trust focused on commercial easements and development rights in that year.

68. As of the present date, the IRS has identified for examination the charitable contribution deduction claimed with respect to over 300 Trust façade easements donated since 2002. So far, 51 of those examinations involving the Trust Defendants' easements have closed, over 70 percent of which have resulted in the denial of the taxpayer's charitable contribution deduction - indicative of the improper and inflated valuations for easements being rooted out by the examination process.

69. Accordingly, the scheme promoted by the Trust Defendants harms the Government by fraudulently reducing their customers' reported tax liabilities. The IRS estimates $250 million in revenue lost through the close of the 2006 tax year as a result of the Trust Defendants' promotion of

improper façade easements. In addition, the IRS has incurred substantial administrative costs in examining the hundreds of façade easement contributions that have resulted from the Trust Defendants' promotion. In many of these cases, the IRS was required to expend financial resources to hire appraisal experts to appraise individual easements, as well as to conduct market studies to demonstrate the taxpayers' overvaluation of the easements.

70. Putting aside the immense financial loss to the Government from such fraudulent practices, the IRS is also specifically harmed by such improper conduct because it must dedicate scarce resources to detecting and examining inaccurate returns filed by Trust easement donors, and to attempting to determine and collect unpaid taxes. In addition, easement donors themselves may face significant penalties for improper deductions relating to false or grossly inflated FMV easement valuations.

71. The extensive involvement of the Trust Defendants in this scheme over the past several years, the high number of easements they have processed and solicited, and their persistence in promoting their scheme (and its related falsehoods about proper appraisal methodologies), even after becoming aware of increased IRS scrutiny of their conduct, all establish that the misconduct described in this complaint or other similar misconduct is likely to recur unless the Trust Defendants are permanently enjoined from promotion of façade easement charitable contribution deductions and similar schemes.

Count I: Injunction under I.R.C. § 7408 for violations of I.R.C. § 6700 and 6701

72. The United States incorporates by reference the allegations contained in paragraphs 1 through 71.

73. Section 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 from engaging in further such conduct or any other conduct subject to penalty under the Code.

74. Section 6700(a)(2)(A) imposes a civil penalty on any person who organizes or participates in the organization or sale of any plan or arrangement and who makes or furnishes or causes another person to make or furnish a statement with respect to the allowance of a tax deduction or credit or other tax benefit that the person knows or has reason to know is false or fraudulent as to any material matter.

75. A person can also be liable for penalty under Section 6700(a)(2)(B) if that person makes or furnishes or causes another person to make or furnish a "gross valuation overstatement," which is defined as "any statement as to the value of any property or services if (A) the value so stated exceeds 200 percent of the amount determined to be the correct valuation, and (B) the value of such property or services is directly related to the amount of any deduction or credit allowable under chapter 2 to any participant." I.R.C. § 6700(b)(1).

76. Section 6701 imposes a civil penalty on any person who aids, assists in, procures or advises with respect to the preparation of any portion of a return, affidavit, claim or other document, when that person knows or has reason to believe that portion will be used in connection with a material matter arising under the federal tax law, and the person knows that the relevant portion will, if used, result in the material understatement of the liability for the tax of another person.

77. The Trust Defendants organized a plan or arrangement to "sell" façade easement contributions. They knowingly made (and continue to make) false statements regarding the tax benefits and statutory requirements for façade easement contributions. The Trust Defendants

orchestrated an aggressive plan to undermine the independence of the appraisal process resulting in gross valuation overstatements as to a material matter. Accordingly, the Trust Defendants have engaged in Section 6700 and 6701 penalty conduct.

78. The penalty conduct and other misconduct includes:

- False marketing claims misrepresenting the tax benefits for façade easement contributions;
- Misuse and distortion of IRS materials to mislead participants in understanding the official IRS policy on valuation of façade easements as charitable deductions;
- A pattern of willful interference in the appraisal process to undermine the integrity and independence of the appraisers and discourage participants' access to other appraisers;
- Promotion and adoption of an invalid appraisal approach that does not meet the rules or regulations set forth by applicable federal law;
- Collusion with both appraisers and easement donors aimed at producing grossly overvalued easement FMVs;
- Execution of supplemental agreements with taxpayers allowing for the termination of the easement and/or refunds of the cash payments in the event of an IRS examination, despite the fact that such conduct invalidates the charitable nature of the easement under Section 170;
- Attempts to persuade lien holders to subordinate existing liens through misrepresentations regarding the conservation purpose of the restrictions and impact on property value of easements, contrary to information advocated to participants and the IRS; and
- Knowing acceptance of donated easements where the easement is not in perpetuity under applicable Treasury regulations.

79. The Trust Defendants knew or had reason to know that the representations and statements they made to donors about façade easements under the Internal Revenue Code (and the minimum tax benefits associated therewith) were false or fraudulent. The Trust Defendants possessed significant amounts of experience and knowledge, as evidenced by the extensive number of easements they have processed over a ten-year period, their business backgrounds, conferences attended, articles and books

written, and tax and case law cited. McClain himself went before Congress in 2005 and made unequivocal statements on the record establishing that he understood what constituted a properly substantiated FMV appraisal in order to claim a charitable deduction under Section 170.

80. The numerous false statements the Trust Defendants made in connection with the promotion of the façade easements were also "material" as that term is defined in Section 6700 and 6701. Those statements had a substantial impact on the decision-making process of a reasonably prudent prospective donor in choosing to donate a façade easement. False or inflated charitable deductions claimed by donors for donated, grossly overvalued façade easements were the direct product of the false and fraudulent representations made by the Trust Defendants as to the tax benefits associated with a façade easement contribution.

81. In addition, and regardless of whether the Trust Defendants knew or should have known, in numerous cases the Trust Defendants have made or furnished, or caused another person to make or furnish, gross valuation overstatements as defined in Section 6700(b) with respect to the true FMV of the façade easement contributions.

82. Unless enjoined by this Court, the Defendants are likely to continue to aid their customers in obtaining inflated tax refunds directly resulting from overstated FMVs for their façade easement charitable contributions, and/or to prepare tax returns containing false and fraudulent information and deductions and unrealistic positions, resulting in further understatements of their customers' tax liability.

Count II: Injunction under I.R.C. § 7402

83. The United States incorporates by reference the allegations contained in paragraphs 1 through 82.

84. Section 7402 authorizes courts to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

85. The Trust Defendants have substantially interfered with the enforcement of the internal revenue laws, by encouraging and helping taxpayers to claim grossly inflated charitable contribution deductions, and to ignore the requirements to claim such a deduction under Section 170. In this regard, they have promoted improper legal standards for determining for tax purposes the impact a façade easement has upon a property, despite knowledge of the falsity of their representations.

86. Accordingly, the Trust Defendants, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

87. The Trust Defendants' conduct results in irreparable harm to the United States for which the United States has no adequate remedy at law. The Trust Defendants' conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable. It requires remedial acts by the IRS that deplete scarce taxpayer resources. And it subjects the Trust Defendants' customers to possible tax penalties as well.

88. Unless the Trust Defendants are enjoined, the IRS will have to continue to devote substantial time and resources to reviewing the propriety and accuracy of FMV appraisals for façade easements donated to and/or solicited by the Trust Defendants. The burden of pursuing individual customers may be extremely difficult given the IRS's limited resources.

89. If the Trust Defendants are not enjoined, they likely will continue to engage in conduct that obstructs and interferes with the enforcement of the internal revenue laws.

Relief Sought

WHEREFORE, plaintiff the United States of America prays for the following:

A. That the Court find that the Trust Defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and that injunctive relief is appropriate under I.R.C. § 7408 to prevent the Defendants, and any business or entity through which they operate, and anyone acting in concert with them, from engaging in further such conduct;

B. That the Court find that the Trust Defendants engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against the Trust Defendants, and any business or entity through which they operate, and anyone acting in concert with them, is appropriate to prevent the recurrence of that conduct pursuant to the Court's powers under I.R.C. § 7402(a);

C. That the Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting the Trust Defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

(1) Representing and/or communicating to potential façade easement donors that (a) the IRS has promulgated a 10 to 15 percent "safe harbor" or benchmark for valuing the FMV of an easement for purposes of calculating the donor's charitable contribution deduction, and (b) that donors can and should expect the appraisal of the FMV of a contributed façade easement to produce an FMV determination that reflects 10 to 15 percent of the property's value before the easement was donated;

(2) Promoting in any form the existence of the 10 to 15 percent "safe harbor" or benchmark for valuing the FMV of an easement to potential donors, appraisers, or anyone else in the general public, whether through oral statements, speeches, or printed or published materials;

(3) Soliciting and/or accepting the donation of façade easement contributions where the appraisal has employed the 10 to 15 percent "safe harbor" or benchmark for valuing the FMV of an easement for purposes of calculating the donor's charitable contribution deduction;

(4) Recommending or referring to potential façade easement donors any appraisers known to accept or to apply in their appraisals of the FMV of a façade easement the 10 to 15 percent "safe harbor" or benchmark for purposes of calculating the donor's charitable contribution deduction;

(5) Engaging in any other conduct subject to penalty under I.R.C. § 6700(a)(2)(A), *i.e.*, by organizing or participating in the organization of any plan or arrangement and making or furnishing or causing another person to make or furnish a statement with respect to the securing of a tax benefit that the Trust Defendants know or have reason to know is false or fraudulent;

(6) Engaging in any other conduct subject to penalty under I.R.C. § 6700(a)(2)(B), *i.e.*, by organizing or participating in the organization of any plan or arrangement and making or furnishing or causing another person to make or furnish a gross valuation overstatement as to any material matter;

(7) Engaging in any other conduct subject to penalty under I.R.C. § 6701, *i.e.*, by aiding, assisting in, procuring, or advising with respect to the preparation of any portion of a return, affidavit, claim or other document, when the Trust Defendants know or have reason to believe that portion will be used in connection with a material matter arising under the federal tax law, and the Trust Defendants know that the relevant portion will result in the material understatement of the liability for the tax of another person;

(8) Engaging in any other conduct that interferes with the administration and enforcement of the internal revenue laws; and

(9) Engaging in any activity subject to penalty under any other section of the Internal Revenue Code.

D. That this Court, pursuant to I.R.C. § 7402, enter an injunction requiring the Trust Defendants to contact by mail (or by e-mail, if a mailing address is unknown) all persons and entities

who have, since January 1, 2002, donated a façade easement to the Trust and/or any of its affiliated or predecessor entities, including but not limited to SMS and/or CPA, and inform those persons and entities of the Court's findings concerning the falsity of the Trust Defendants' prior representations and attach a copy of the permanent injunction against them, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification signed under penalty of perjury stating that they have done so;

E. That this Court, pursuant to I.R.C. § 7402, enter an injunction requiring the Trust Defendants to produce to counsel for the United States their complete customer list, including the names, addresses, e-mail addresses, telephone numbers, and social security or tax identification numbers, of all persons and entities who have, since January 1, 2002, donated a façade easement to the Trust and/or any of its affiliated entities, including but not limited to NAT, SMS, and/or CPA, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification that they have done so;

F. That this Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction;

G. That this Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment; and

H. That the Court grant the United States such other and further relief as the Court deems proper.

June 13 , 2010

Respectfully submitted,

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