

When recorded, mail to:
Utah Heritage Foundation
P.O. Box 28
Salt Lake City, Utah 84110-0028

TOOELE COUNTY CORPORATON
CONTRACT # 12-03-01

GRANT OF PRESERVATION EASEMENT

THIS PRESERVATION EASEMENT ("Easement") is granted this 10th day of March, 2012 by Tooele County, a body politic and corporate of the State of Utah(hereinafter referred to as "Grantor"), having an address at 47 South Main Street, Tooele, Utah, in favor of UTAH HERITAGE FOUNDATION, a Utah non-profit corporation (hereinafter referred to as "Grantee"), having an address at P.O. Box 28, Salt Lake City, Utah 84110-0028. Historic Wendover Airfield, Inc. a Utah non-profit corporation hereafter referred to as ("Lessee"), having an address at 1940 East 10980 South, Sandy, Utah 84092 is the Lessee under that certain Memorandum of Agreement between Grantor and Lessee and Lessee has certain rights and obligations under this Easement.

WHEREAS, the Wendover Air Force Base is listed on the National Register of Historic Places as a historic site and this Air Force Base includes the property known as the Enola Gay Hangar; and

WHEREAS, the Enola Gay Hangar is one of the structures still remaining from the original Wendover Army Air Force Base and there are very few original Army Air Force hangars still standing on an operating airfield in the United States; and

WHEREAS, the Property possesses historical and architectural values (hereinafter referred to as the "Preservation Values") of great importance to the Grantor, the people of Wendover, the people of the State of Utah, the people of the United States of America and the Grantee. The Enola Gay Hanger was used during the training of the 509th Composite Group, under the command of Col. Paul Tibbets, for the development of the atomic weapons against Japan in World War II. This hangar was home to the Enola Gay, the B-29 bomber known for dropping the atomic bomb "Little Boy" on Hiroshima, Japan. The Enola Gay Hangar is constructed entirely of prefabricated steel framing. Its roof structure is of steel trusses. The walls and roof are sheathed with corrugated sheet iron. The floor is of reinforced concrete. The north and south walls are fenestrated by two bands of small paned windows running continuously along the length of the walls; and

WHEREAS, Grantor has entered into a long-term lease with Lessee under that certain Memorandum of Agreement between Tooele County and Historic Wendover Airfield, Inc., which is dated February 23, 2010 (Exhibit "A"), Lessee for the lease of those certain improvements owned by Grantor known as the Enola Gay Hangar, Building 1831 in Wendover, Utah (the "Property"), which is located on a parcel of real property more particularly described in Exhibit B hereto; and

WHEREAS, Grantor and Lessee have taken steps to preserve and restore the Property with financial assistance from the National Park Service of the United States Department of the Interior ("NPS"); and

WHEREAS, the purpose of this Easement is to protect and preserve the historic integrity and character of the building, and to prevent any use of the Property that will significantly impair or interfere with the Preservation Values of the Property. Grantors intend that this Easement will confine the use of the Property to such activities that are consistent with the purpose of the Easement; and

WHEREAS, Grantee is a charitable organization described in §501(c)(3) of the Internal Revenue Code of 1986 as amended (the "Code"), was created more than two (2) years prior to the execution of this Easement and is a "qualified organization" as defined in §170(h)(3) of the Code, and is qualified under §57-18-3 and §9-8-501 of the Utah Code Annotated to acquire this Easement; and

WHEREAS, Grantor is willing to convey and Grantee is willing to accept this Preservation Easement in exchange for the consideration articulated herein; and

WHEREAS, Grantor acknowledges receipt of the information and disclosures required by Utah Code Ann. §57-18-4 more than three (3) days prior to the execution of this Easement.

NOW, THEREFORE, in consideration of the recitals as set forth above and the covenants terms and conditions and restrictions contained herein, which the Parties hereby agree constitute good and adequate consideration for this Grant and pursuant to the laws of the State of Utah and in particular the Land Conservation Easement Act, Utah Code Ann. § 57-18-1 et seq. and

Historic Preservation Act, Utah Code Ann. § 9-8-501 et seq. Grantors hereby irrevocably grants and conveys to Grantee and its successors in interest a fifty (50) year Preservation Easement over the Property. This Easement is made over and across all of the Property to preserve and protect the Preservation Values present on the Property as of the date hereof. This Easement shall bind Grantors and Grantors' successors in interest and use of the Property, as well as Grantee and any qualified successor of Grantee for the term of this Preservation Easement. Any mortgage, lien or other encumbrance, other than encumbrances of sight or record existing at the time of this instrument's signing, shall be subordinate to the rights and intentions of this Easement and Grantee's ability to enforce the protection of the Preservation Values described and authorized herein. Grantor intends that upon the granting of this Easement, the uses of the Property will be confined to those which are consistent with the Preservation Values described and authorized herein. If one or more of the above preservation purposes can no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate this Easement, so long as any other preservation purpose may be accomplished.

1. **Purposes.** The Purposes of this Easement are to ensure the architectural, historic and cultural features of the Property will be retained and maintained substantially in their current or better condition for conservation and preservation purposes and to prevent any use or change of the Property that will significantly impair or interfere with the Property's conservation and preservation values.

2. **Grant of Preservation Easement.** In consideration of the sum of \$511,600.00 received in grant-in-aid financial assistance from the NPS and for other valuable consideration as set forth above and herein, Grantor hereby grants to Grantee, its successors and assigns, a Preservation Easement in, on and to the Property, more particularly described in Exhibit B hereto, for the purpose of assuring preservation of the Property. This Easement is granted as a condition of the eligibility of Lessee for the financial assistance received from the NPS appropriated from the Historic Preservation Fund for the Save America's Treasures Grant Program. This Preservation Easement is intended to be of the type described in Utah Code Ann. §9-8-501 *et seq.*

3. This Easement is intended to be of the type described in Utah Code Ann. §9-8-501 *et seq.* and §57-18-1 *et seq.* and is granted for fifty (50) consecutive years from the date hereof. The burdens imposed hereby upon the Property are deemed to run with the land and to be binding upon the Grantor's successors in interest to the Property. Grantor's estate is to be the servient estate; Grantee's estate is to be the dominant estate. Grantor agrees that this Easement gives rise to a property right vested in Grantee immediately upon its granting, with a fair market value that is equal to the difference between the current fair market value of the Property immediately before and after its granting. According to its terms, the Easement precludes development of the Property.

4. **Baseline Documentation.** The parties hereto have prepared an inventory of the Property's relevant resources, features, and conditions which inventory is attached, in part,

hereto as Exhibit C, including reports, drawings, and photographs, and by this reference made a part hereof. The Baseline Documentation in its entirety is on file at the office of the Grantee.

5. Rights of the Grantee.

a) Grantee agrees to hold this Easement exclusively for preservation purposes. Any transfer by Grantee shall be conditioned upon the transferee being qualified in Grantee's opinion and agreeing to hold this Easement exclusively for preservation purposes and continuing the preservation purpose which this Easement was originally intended to carry out. "Qualified" means qualified within the meaning of §170(h)(3) of the Code. Grantee agrees to give written notice to Grantor at least thirty (30) days prior to the date of transfer.

b) Grantee and its representatives shall be permitted at all reasonable times to inspect the Property. Except in the case of the need for immediate entry in accordance with (c) below, at least seven (7) days advance notice of inspection shall be given to Grantor or its successors. Inspections will normally take place from the outside of the Property; however, Grantor agrees that representatives of Grantee shall, as the need arises, be permitted to enter and inspect the interior of the Property to insure maintenance of structural soundness and compliance with this Easement. Inspection of the interior of the Property will be at a time mutually agreed upon by Grantor and Grantee, and Grantor covenants not to unreasonably withhold Grantor's consent in determining a date and time for such inspection.

c) If Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon reasonable prior notice to Grantor, and shall not in any case unreasonably interfere with the use and quiet enjoyment of the Property by Grantor.

d) Grantee may employ or contract with individuals, agencies, or other entities for the express purpose of assisting with monitoring activities, including the preparation of all reports and data related thereto. If Grantee is no longer able to fulfill the requirements outlined herein, their duties to monitor these Preservation Values shall be transferred and assigned to an organization of Grantee's choosing that qualifies under Section 170(h)(3) of the Code as has the ability to advance or continue the preservation purposes of this Easement.

e) Grantee shall be given prior written notice by Grantor of any proposed alterations to the Property and have sufficient opportunity to respond to the proposal. The purpose of requiring notice to Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to provide comment on the proposal, accept or decline the proposal in whole or in part, and monitor the activities in question to insure that they are designed and carried out in a manner that is consistent with the purpose of this Easement.

6. **Prior Approval.** If any provision of this Easement requires Grantor to obtain Grantee's approval prior to performing any act or undertaking any enterprise, Grantor shall not perform that act or undertake that enterprise until the notice and approval provisions of this Section have been fully satisfied. Nothing in this Section shall in any way prohibit or limit the Grantee's ability to obtain writs or injunctive relief relating to any violation of this Easement.

a) Grantor's Written Notice. Prior to the commencement of any activity, use, or enterprise which requires Grantee's approval, Grantor will first notify Grantee in writing of the proposed activity, use, or enterprise. The notice must fully inform Grantee of all material aspects of the proposed activity, use or enterprise. Grantor will send such notices to Grantee by registered or certified mail, return receipt requested, addressed to Utah Heritage Foundation, a

Utah non-profit corporation at P.O. Box 28, Salt Lake City, Utah 84110-0028, or to such other address as Utah Heritage Foundation may designate in writing.

b) Grantee's Response. Grantee shall have forty five (45) days from the date such notice is received (as indicated by the registered or certified return receipt) to review the proposed activity, use, or enterprise and to notify Grantor of any objections it may have to the activity, use, or enterprise. The objections, if any, shall be based upon Grantee's opinion that the proposed activity, use or enterprise is likely to cause material damage to the Property's Preservation Values or is otherwise inconsistent with the purpose and/or provisions of this Easement. If, in the Grantee's judgment, the proposal presented by Grantor can be modified to avoid material damage to the Preservation Values and otherwise comply with the purpose and provisions of this Easement, then the response shall inform Grantor how the proposed activity, use or enterprise may be modified to conform to this Easement. Grantor may commence the proposed activity, use, or enterprise only after it receives Grantee's express written approval, and only in the manner explicitly proposed by the Grantor and approved by Grantee. The Grantee will send such response to Grantor by registered or certified mail, return receipt requested, addressed to Grantor at Grantor's address as set forth on page one, or to such other address as Grantor may designate in writing.

c) Grantee's Failure to Respond. If Grantee fails to post its response to a proposal presented by Grantor within forty five (45) days after it receives the proposal by registered or certified mail, or within forty five (45) days after Grantee has received adequate information to evaluate the proposed activity, whichever is later, then the proposed activity, use or enterprise shall be deemed consistent with the terms of this Easement, and Grantee will have no further

right to object to the activity, use or enterprise described in the proposal. The forty five (45) day period shall not begin to run for purposes of this paragraph until such time Grantee have received adequate information from Grantor to effectively evaluate the proposed activity. In the event the Grantee requires additional information to evaluate the proposed activity, Grantee shall request the information from Grantor as soon as practicable as and in any case not later than 45 days after the receipt of the notice of the proposed activity.

d) Force Majeure. Grantor will not be obligated to send a notice to Grantee, and Grantee will not be entitled to bring an action against Grantor for undertaking any prudent activity in a bona fide emergency situation to prevent, abate, or mitigate the immediate threat of significant damage to the Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement. Grantor will promptly notify Grantee of any injury to the Property caused by such events or the efforts to prevent, abate, or mitigate any damage caused by such events.

7. **Grantor's Covenants: Covenant to Maintain.** The exterior and interior surfaces of the improvements (including, without limitation, the walls and roofs on the structures) on the Property are those depicted in the photographs attached hereto and incorporated herein as Exhibit C, being essentially those exterior and interior surfaces of improvements on the Property which are visible from the roads and properties near the Property but in the event of uncertainty the exterior surfaces of improvements visible in the photographs of Exhibit C shall control. Grantor agrees that the photographs in Exhibit C are an accurate representation of the Property at the time of the granting of this Easement.

a) Grantor shall maintain the interior and exterior of the Property in a good and sound state of repair (subject to casualty loss as provided herein) and shall maintain the structural soundness and safety of the Property and undertake a minimum maintenance program so as to prevent deterioration of the Property. This obligation to maintain shall require replacement, rebuilding, repair, and reconstruction whenever necessary to preserve the exterior of the Property at all times.

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

c) Grantor's obligation to maintain shall also require that the Property's landscaping be maintained in good/better appearance with substantially similar plantings, vegetation, and natural screening to that existing on the effective date of this Easement.

d) Subject to the casualty provisions of paragraphs 13 and 14, the obligation to maintain shall require replacement, repair, and/or reconstruction of the Property whenever necessary in accordance with *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, and *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (36 C.F.R. 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

e) Insurance. The Grantor shall keep the premises insured for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage

policies and shall also maintain comprehensive general liability insurance against claims for personal injury, death, and property damage of a type and in such amounts as would, in the opinion of Grantee, normally be carried on a property such as the Property protected by an Easement. Such insurance shall include Grantee's interest and name Grantee as an additional insured and shall provide for at least thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Furthermore, Grantor shall deliver to Grantee fully executed copies of such insurance policies evidencing the aforesaid insurance coverage at the commencement of this grant and copies of new or renewed policies at least ten (10) days prior to the expiration of such policy. Grantee shall have the right to provide insurance at Grantor's cost and expense, should Grantor fail to obtain same. In the event Grantee obtains such insurance, the cost of such insurance shall be a lien on the Property until repaid by Grantor.

8. **Grantors Covenants: Prohibited Activities.** Grantor agrees that:

- a) Any activity on or use of the Property inconsistent with the purpose of this Easement as set forth herein is prohibited.
- b) In cleaning or painting the exterior of the Property, sandblasting or other forms of abrasive cleaning will not be used.
- c) Grantor shall not make permanent substantial topographical changes, such as, by example, excavation for the construction of roads or sidewalks.
- d) Utility or transmission lines, except that those required for the existing structure and use may be created on said land.

- e) The legal or *de facto* division, subdivision, or partitioning of the Property for any purpose;
- f) Any agricultural, manufacturing, or industrial use of or activity on the Property except for those uses described in this Easement as being permitted;
- g) Overnight stays on the Property;
- h) Exploration and drilling for and extraction of oil and gas from any site on the Property;
- i) Dumping of ashes, sawdust, bark, trash, rubbish, or any other unsightly or offensive materials which are visible from the roads, or streets or nearby properties;
- j) Using the visible property for storage whereas the Property becomes a nuisance;
- k) Quarrying, mining, excavation, depositing or extracting sand, gravel, soil and rocks and other minerals or materials from the Property;
- l) Dumping, depositing, discharging, releasing or abandoning any solid or hazardous wastes, hazardous substances or material, pollutant or debris in, on or under the Property or into the surface or groundwater on or under the Property;
- m) Any use or activity that causes or is likely to cause significant soil quality degradation or soil erosion, interference with natural drainage, or depletion or pollution of any surface or subsurface waters;
- n) The placement or maintenance of signs, billboards, or any other outdoor advertising of any kind or nature on the Property except for the following purposes:
 - (i.) signs required by Wendover or Tooele County in connection with safety or traffic control;
 - (ii.) signs relating to the use or limitations on use applicable to the Property;
 - (iii.) directional and regulatory signs relating to the Property;

(iv.) signs of an informational or educational nature relating to the Property (such as interpretation), Preservation Values, and the Purposes of this Easement, all as previously approved by Grantee, which approval shall not be unreasonably withheld.

9. Grantors Covenants: Conditional Rights Subject to Approval.

a) Without the prior written permission of Grantee, no construction, alteration, remodeling, demolition, movement, or any other thing shall be undertaken or permitted to be undertaken on the Property which would, in Grantee's opinion, affect either the exterior surfaces herein described, or increase or decrease the height, or alter the exterior facade (including, without limitation, exterior walls and roofs) or the appearance of the Property, insofar as they are depicted in the photographs attached hereto and incorporated herein as Exhibit C or which would, in Grantee's opinion, adversely affect the structural soundness of the Buildings.

b) Grantee shall be given prior written notice by and the right of Prior Approval from Grantor of any proposed alterations to the Property. The purpose of requiring notice to Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to provide comment on the proposal, accept or decline the proposal in whole or in part, and monitor the activities in question to insure that they are designed and carried out in a manner that is consistent with the purpose of this Easement.

c) No extension of the existing structures or erection of additional structures anywhere on the Property shall be permitted, except that in the event of damage resulting from casualty loss to an extent rendering repair or reconstruction of the existing improvements impracticable in

Grantee's opinion, erection of a comparable structure, the design of which shall be subject to prior approval by Grantee, shall be permitted.

d) Grantor shall not erect, construct, or move anything onto, off of, or within the Property that would encroach on the open land area surrounding the Property or be incompatible with the historic or architectural character of the Property. This includes but is not limited to garages, carports, sheds, fences, landscaping walls and other potential barriers that may obscure the view of the Property or be incompatible with the historic or architectural character of such.

e) In cleaning or painting the exterior of the Property, prior written permission of Grantee, as to the cleaning process(es) to be employed or the quality or color of paint to be used, if significantly different from that presently existing must first be obtained.

f) Except as provided herein, no buildings or structures, including satellite receiving dishes, camping accommodations, or mobile homes not presently on the Property shall be erected or placed on the Property hereafter, except for temporary structures required for the maintenance or rehabilitation of the Property, such as construction trailers.

g) Grantor shall have the right to use the Property consistent with historical use and, in addition, shall have the following rights for permitted uses and activities on the Property:

- (i.) To build, maintain, and repair fences as reasonably appropriate, but only after the notice and approval process has been completed.
- (ii.) To conduct on the Property walking tours, home tours, and social events.

10. **Indemnification.** Grantor agrees to pay, protect, indemnify, hold harmless, and defend at its own cost and expense, Grantee, its agents, director, trustees, and employees, and independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements

hereafter incurred) arising out of or in any way relating the administration, performed in good faith, of this Easement, including, but not limited to, the granting or denial of consents hereunder, the reporting on or advising as to any condition on the Property, and the execution of work on the Property. In the event that Grantor is required to indemnify Grantee pursuant to the terms of the Easement, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

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

12. **Violations.**

a) Grantor will, at Grantor's expense, cure any breach or violation of the terms of this Easement after receiving notice or knowledge thereof and diligently pursues the cure to completion.

b) Upon any breach of the terms of this Easement by Grantor, Grantee shall, in addition to the rights conferred on Grantee by the paragraph above, have the following rights which shall be cumulative and shall be in addition to any other rights and remedies available to Grantee, at law or in equity:

(i.) to require restoration of the Property to its condition at the time of the granting of this Easement or to the enhanced condition of the Property as a result of the requirements for repair, restoration or maintenance contained in this Easement;

(ii.) to enjoin any further breach or enforce any covenant hereof by action in an appropriate court of competent jurisdiction;

(iii.) to recover damages for any breach of the conditions hereof or for the purpose of accomplishing the restoration of the Property thereon by Grantee; and/or,

(iv.) to enter upon the Property, correct any such violation, and hold Grantor, their successors, and/or assigns, liable for the cost thereof, and, any amounts expended by Grantee to correct said violation shall accrue interest at the rate of two percent (2%) per month until paid. Any amounts so expended by Grantee, together with interest as aforesaid, shall constitute a lien upon the property, which lien may be foreclosed in the manner provided by the laws of the State of Utah, and Grantor shall be liable for any costs and expenses incurred in connection with all aspect of this exercise of Grantee's rights, including a reasonable attorney's fee.

c) Rights under this Agreement apply equally in the event of either actual or threatened violations of the terms of this Easement. Remedies of law for any violation of the terms of this Easement may be inadequate, and, in such event, injunctive relief, both prohibitive and mandatory, shall be appropriate in addition to such other relief to which the enforcing party may be entitled, including specific performance of the terms of this Easement.

13. Grantees Remedies.

a) In the event Grantor is found to have violated any of its obligations, or if Grantor has required Grantee to seek expert advice outside the normal course of business, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement

of the terms of this Easement, including but not limited to all reasonable court costs, and attorney's, architectural, engineering, and expert witness fees.

b) Damages may be recovered for violation of the terms of this Easement or injury to any Preservation Values protected by this Easement, including reasonable damages for the remediation of lost scenic, aesthetic, environmental, and Preservation Values. Any damages recovered shall be applied to the cost of undertaking any corrective or remedial action on the Property. Any costs of restoration or remediation necessitated by violation of the terms of this Easement shall be borne by the party causing such violation.

14. **Grantee's Covenants.** Grantee hereby warrants and covenants that:

a) Grantee is a Qualified Organization for purposes of §170(h)(3) of the Code, or a comparable provision in any subsequent revision of the Code. In the event that the Grantee's status as a Qualified Organization is successfully challenged by the Internal Revenue Service, then the Grantee shall promptly select another qualified organization for purposes of §170(h)(3) of the Code and transfer all of its rights and obligations under this Easement to it.

b) In the event that Grantee shall at any time in the future become the fee simple owner of the Property, Grantee covenants and agrees, in the event of a subsequent conveyance of the same to another entity, to create a new Preservation Easement containing the same restrictions and provisions as are contained herein, and either to retain such easement in itself or to convey such easement to a similar unit of federal, state, or local government, or local, state, or national organization whose purposes, *inter alia*, are to promote preservation of historical, cultural, or architectural resources, and which is a qualified organization under §170(h)(3) of the Code.

15. **Acts Beyond Control.** Nothing contained in the Easement shall be construed to entitle Grantee to bring any action for any injury to or change in the Property resulting from extraordinary causes, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

16. **Casualty Damage or Destruction and Review.**

a) In the event that the Building or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within thirty (30) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within sixty (60) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer who are acceptable to Grantor and Grantee; this report shall include the following:

- (i.) an assessment of the nature and extent of the damage;
- (ii.) a determination of the feasibility of the restoration of the Property and/or reconstruction of damaged or destroyed portions of the Property; and
- (iii.) a report of such restoration/reconstruction work necessary to return the Property to the condition existing at the effective date of this instrument.

b) If, after reviewing the report provided in paragraph 16(a) and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 7(e), Grantor and Grantee agree that the Purpose of the Easement will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Property in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 7(e), Grantor and Grantee agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the Purpose of the Easement would not be served by such restoration/reconstruction, Grantor may, but only with the prior written consent of Grantee, alter, demolish, remove, or raze one or more of the Buildings, and/or construct new improvements on the Property. Grantor and Grantee may agree to extinguish this Easement in whole or in part in accordance with the laws of the State of Utah and paragraph 22(b) of this instrument.

c) *Arbitration.* If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 7(e), Grantor and Grantee are unable to agree that the Purpose of the Easement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the State of Utah's arbitration statute then in effect or in accordance with the following arbitration process: Within thirty (30) days of the receipt of a request by either party, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two

arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or third arbitrator or both, as the case may be, in accordance with [state arbitration statute/other appropriate body of rules] then in effect. The sole matter to be considered and determined pursuant to the arbitration shall be whether restoration/reconstruction of the Property is impractical or impossible or whether the Purpose of the Easement would not be served by restoration/reconstruction following casualty loss. The matter shall be settled in accordance with state arbitration statute/other appropriate body of rules then in effect, and a judgment on the arbitration award may be entered in any court having competent jurisdiction over this dispute. The prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators and attorneys' fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award.

17. **Evidence of Compliance.** Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with any obligation of Grantor contained herein.

18. **Public Access.** The Grantor agrees to provide public access to view the grant-assisted work or features no less than 12 days a year on an equitably spaced basis. The dates and times when the Subject Property will be open to the public must be annually published and

provided to the Grantee. At the option of the Grantor, the relevant portions of the Subject Property may also be open at other times in addition to the scheduled 12 days a year. Nothing in this agreement will prohibit a reasonably nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

19. **No Waiver.** No failure on the part of Grantee to enforce any provisions herein, nor any waiver of any right hereunder by Grantee shall discharge or invalidate such provision, nor shall same operate to affect the right of Grantee to enforce the terms and conditions hereof in the event of a subsequent breach or default.

20. **Transfer of Easement.** In the event Grantee ceases to exist, no longer qualifies as a "qualified organization" under §170(h)(3) of the Code or a comparable provision in any subsequent revision of the Code, or determines that it no longer is able to enforce its rights under this instrument or that it no longer desires to enforce said rights, or is otherwise prevented from enforcing its rights under this instrument, Grantee shall as soon as practical convey in perpetuity all its rights under this instrument and deliver a copy of this instrument to another organization designated by the Grantee to ensure that the Easement is enforced. Further, this Easement is transferable by Grantee, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization pursuant to §170(h)(3) of the Code and which is authorized to acquire and hold easements under Utah Code Ann. §57-18-1 *et seq.* or §9-8-501 (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the Preservation Values that this grant is intended to advance continue to be

carried out. Grantee agrees to give written notice to Grantor of an assignment at least thirty (30) days prior to the date of such assignment.

21. Amendment.

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Easement, provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the State of Utah. Any such amendment shall be consistent with and have a neutral or beneficial impact on the protection of the conservation and preservation values of the Property and the Purpose of this Easement; shall not affect its duration; shall not permit additional residential, commercial, and/or institutional development on the Property other than the residential, commercial, and/or institutional development permitted by this Easement on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Easement. Any such amendment shall be recorded in the land records of Tooele County, Utah. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

22. Percentage Interests, Extinguishment and Condemnation.

a) *Percentage Interests.* For purposes of allocating proceeds pursuant to paragraphs 22(b) and 22(c), Grantor and Grantee stipulate that as of the date of this Easement, Grantor and Grantee are each vested with real property interests in the Property and that such interests have a

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

b) *Extinguishment.* If circumstances arise in the future that render the purposes of this Easement impossible to accomplish as determined by judicial proceedings in a court of competent jurisdiction, this Easement shall terminate and Grantee shall not be entitled to any compensation for value of the Easement or Property, otherwise this Easement may only be terminated with the written consent of Grantee, in Grantee's sole discretion.

c) *Condemnation.* If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantee shall be entitled to recover, and Grantor shall have no interest therein, the full value of Grantee's Easement interests in the Property, subject to the taking or in lieu purchase shall be paid out of the amount

recovered. Grantor agrees that Grantee shall be entitled to a proportionate share of Grantor's proceeds from such sale, exchange or use. The value of Grantee's interest in the Property shall be determined by negotiation or independent appraisal at the discretion of Grantee.

23. General Provisions.

a) *Controlling Law.* The interpretation and performance of this Easement shall be governed by the laws of the State of Utah. Activities prohibited by local ordinances are not permitted by this document.

b) *Construction.* Any general rule of construction to the contrary notwithstanding, this Easement shall be construed liberally to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) *Severability.* If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstance other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) *Entire Agreement.* This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless in writing and recorded in the office of the Tooele County Recorder.

e) *Joint Obligation.* The obligations imposed by this Easement upon Grantor shall be joint and several.

f) *Successors.* The covenants, terms, conditions and restrictions of this Easement shall be binding upon, and insure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

g) *Termination of Rights and Obligations.* A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

h) *Heading.* The paragraph and other headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of the Easement.

i) *Counterparts.* The parties may execute this instrument in two or more counterparts, which shall in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any of the parties. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

24. Public Law 109-280 "Special Rules" Compliance.

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

b) *Inconsistent Changes Prohibited.* Grantor and Grantee agree that Grantor shall not undertake, and Grantee shall not permit, any change to the exterior of the Building which would be inconsistent with the historical character thereof.

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

25. **Subsequent notification.** Grantor shall insert a reference to this Easement in any subsequent deed, sales or purchase contract, financing instrument, or other legal instrument by which Grantor is divested of either the fee simple title to or equitable title, a possessory ownership of interest in the Property, or any part thereof. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. Said reference shall be substantially as follows:

The property conveyed herein is subject to a Preservation Easement which controls the ability of any owner or other possessor of the Property to alter its historic character and requires that the improvements thereon be maintained. This easement was recorded _____, [Year], as Entry No. _____, in Book _____, at Page _____, in the office of the [County] Recorder, State of Utah."

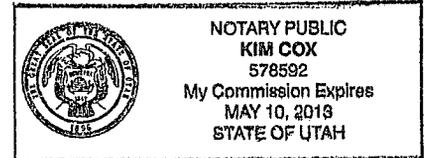
26. **Recordation.** Grantee shall record this instrument in a timely fashion in the official records of Tooele County, Utah, and may re-record it at any time as may be required to preserve its rights in this Easement

STATE OF UTAH)
COUNTY OF Salt Lake) ss.

On this 4 day of April, 2012 before me personally came Kirk Huffaker known to me to be the individual described herein and who executed the foregoing and duly acknowledged to me that he executed the same.

My Commission Expires:
5-10-2012

[Signature]
NOTARY PUBLIC
Residing at: Salt Lake



LESSEE:

[Signature]
JAMES S. PETERSEN

By: President, Historic Wendover Airfield
21 MARCH 2012

(date)

By:
(date)

STATE OF UTAH)
COUNTY OF Tooele) ss.

On this 21 day of March, 2012 before me personally came James S. Petersen known to me to be the individual described herein and who executed the foregoing and duly acknowledged to me that he executed the same.

My Commission Expires:
May 16, 2015

[Signature]
NOTARY PUBLIC
Residing at: Tooele



Exhibit A

Memorandum of Agreement between Tooele County and Historic Wendover Airfield, Inc.

MEMORANDUM OF AGREEMENT

BETWEEN

TOOELE COUNTY

AND

HISTORIC WENDOVER AIRFIELD, INC.

PARTIES

This is a memorandum of agreement between Tooele, a body politic and corporate of the State of Utah, having its principal place of business at 47 South Main St., Tooele, Utah ("the County"), and Historic Wendover Airfield, a public 501(c)(3) foundation, having its principal place of business at 1940 East 10980 South, Sandy, Utah ("HWA").

PURPOSES AND OBJECTIVES

This agreement is established for the purposes of restoring and preserving certain historic buildings and areas on the Wendover Airport, owned by the County. These building and properties will be operated under the non-profit Historic Wendover Airfield organization with the objective of providing a historic venue of museums and grounds for tourists visiting the Wendover Airport.

TERMS

- A. The County shall be given at least one seat on the HWA board of directors.
- B. The County properties converted into museums shall be open to the public a minimum of 1,000 hours per year after the completion of their renovation.
- C. The County shall be given the opportunity to review and provide information for all tourist related documents produced for the museum.
- D. All public materials shall acknowledge the County as the property owner and a sponsor of the museum properties.
- E. All museums shall provide a location for display of Tooele County tourism information for other museums and properties in the County.
- F. HWA shall be allowed to store and display artifacts in the museum buildings.
- G. The County shall be provided the museum and conference facilities, when requested, on a cost only basis.

- H. HWA shall provide financial support to the County in the production of tourism related materials, brochures, and videos to promote the airport.
- I. HWA shall provide volunteers and paid staff to operate the museum facilities as they are completed and open to the public.
- J. HWA will be allowed to raise funds and provide improvements on the properties listed in Attachment A.
- K. The County may, at its discretion, provide funding and/or personnel for certain projects, but is not obligated to do so.
- L. HWA will provide funds to Wendover Airport for those properties that generate a profit.

PERIOD OF PERFORMANCE

The term of this agreement shall be 99 years.

MODIFICATIONS TO AGREEMENT

Amendments or renewals may be proposed at any time during the period of performance by either party and shall become effective upon signing by both parties. No change to this agreement shall be binding unless and until reduced to writing and signed by duly authorized officials of both parties.

TERMINATION OF AGREEMENT

This Agreement may be voluntarily terminated in whole or in part as to any party hereto on notice by the party given in writing to all other parties hereto not less than ninety (90) days in advance of the contemplated termination.

Upon such termination, improvements to the County's buildings and property shall become the property of the County. Military artifacts acquired by the HWA shall remain the property of HWA. It shall be the responsibility of HWA to remove all artifacts that have been lent for display in the museums from County property. It shall also be HWA's responsibility to return the artifacts to their owners.

THIRD PARTY RIGHTS

Nothing in this agreement creates any enforceable rights in third parties.

IN WITNESS THEREOF each party hereto has caused this Agreement to be executed by an authorized official on the date set forth below.

Dated this 23rd day of February, 2010.

Colleen Johnson
Colleen Johnson, Chairman
Tooele County Commission

James Petersen
James Petersen
Historic Wendover Airfield, Inc.

J. Bruce Clegg
J. Bruce Clegg
Tooele County Commission

Jerry Hurst
Jerry Hurst
Tooele County Commission

ATTEST:

Marilyn K. Gillette
Marilyn K. Gillette
Tooele County Clerk

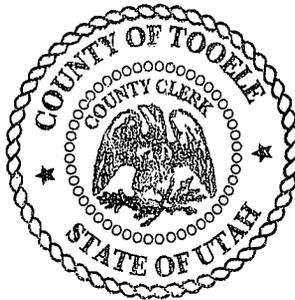


Exhibit B

Enola Gay Hangar Tax ID Number: 87-6000317

Enola Gay Hangar Legal Property Description

Enola Gay Hanger Legal Description

The North half of Section 20, Township 1 South, Range 19 West, Salt Lake Base and Meridian.

Less and Excepting that portion owned by the United States of America.

also,

Less and Excepting therefrom that portion lying within the boundaries of the Wendover Airport Industrial Park Phase 1, a subdivision of Wendover City, according to the plat thereof, recorded as Entry No. 161066 in the office of the Tooele County Recorder.

also,

Less and Excepting therefrom that portion lying within the boundaries of the Acord-Sorensen Estate, a subdivision of Wendover City, according to the plat thereof, recorded as Entry No. 008654 in the office of the Tooele County Recorder.

also,

Less and Excepting therefrom that portion lying within the boundaries of the following described property:

BEGINNING AT A POINT WHICH IS 30 FEET EAST AND 30 FEET NORTH. FROM THE CENTER OF THE INTERSECTION OF 5TH STREET AND "B" STREET, OF THE OLD WENDOVER MILITARY BASE PLAT; AND RUNNING THENCE NORTH 580 FEET ALONG THE EAST LINE OF SAID 5TH STREET TO THE SOUTHEAST CORNER OF THE INTERSECTION OF "C" STREET AND 5 TH STREET; THENCE EAST 640 FEET ALONG THE SOUTH LINE OF SAID "C" STREET TO THE SOUTHWEST CORNER OF THE INTERSECTION OF 7TH STREET AND "C" STREET; THENCE SOUTH 580 FEET ALONG THE WEST LINE OF SAID 7TH STREET TO THE NORTHWEST CORNER OF THE INTERSECTION OF "B" STREET AND 7TH STREET; THENCE WEST ALONG THE NORTH LINE OF SAID "B" STREET 640 FEET TO THE POINT OF BEGINNING.

THE STREETS REFERRED TO ABOVE ARE SHOWN ON THE WENDOVER MILITARY BASE PLAT. SAID PROPERTY BEING SITUATE IN SECTION 20, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SALT LAKE BASE AND MERIDIAN.

SAID PROPERTY IS ALSO DESCRIBED AS:
BEGINNING AT A POINT IN THE SOUTHERLY RIGHT OF WAY OF THE WESTERN PACIFIC RAIL ROAD AND THE TRUE EASTERLY LINE OF SECOND STREET, WENDOVER MILITARY BASE PLAT, SAID POINT ALSO BEING SOUTH 709.06 FEET AND EAST 1047.55 FEET FROM THE CLOSING CORNER OF SECTION 18 AND 19, TOWNSHIP 1 SOUTH, RANGE 19 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING SOUTH 677.38 FEET AND EAST 1047.73 FEET FROM A COAST & GEODETIC SURVEY CONTROL STATION (SOUTH MONUMENT) LOCATED ON THE UTAH-NEVADA STATELINE, AND RUNNING THENCE 1012.82 FEET NORTHEASTERLY ALONG THE ARC OF A 3574.17 FOOT RADIUS CURVE TO THE LEFT (RADIUS BEARS NORTH 9°30'50" WEST AT THE BEGINNING OF CURVE) THROUGH A CENTRAL ANGLE OF 16°14'10" TO A POINT WHICH IS SOUTH 25°45'00" EAST 500.00 FEET FROM THE POINT OF A CURVE SHOWN ON THE WENDOVER PLAT "A"; THENCE NORTH 64°15'00" EAST 527.16 FEET; THENCE NORTH 25°45'00" WEST 200.00 FEET; THENCE EAST 165.85 FEET TO THE TRUE POINT OF BEGINNING BEING THE CENTERLINE OF A 60.00 FOOT RIGHT OF WAY KNOWN AS 5 TH STREET; THENCE SOUTH ALONG SAID CENTER LINE 379.86 FEET; THENCE LEAVING SAID CENTERLINE AND RUNNING EAST 30.00 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE EAST RIGHT OF WAY LINE OF 5TH STREET AND THE SOUTH RIGHT OF WAY LINE OF C STREET AND RUNNING THENCE EAST 640.00 FEET; THENCE SOUTH 580.00 FEET; THENCE WEST 640.00 FEET; THENCE

NORTH 580.00 FEET TO THE TRUE POINT OF BEGINNING. BEING A PART OF ACORD-SORENSEN ESTATES.

also,

Less and Excepting therefrom that portion lying within the boundaries of the following described property:

A parcel of land in Sections 19 and 20, Township 1 South, Range 19 West, Salt Lake Base and Meridian, in Tooele County, Utah, generally described as follows; Beginning at the intersection of the center lines of Fourth and B Streets, this point being the Northeast corner of a rectangular parcel of land extending 180 feet Westerly along the centerline of B Street; and running thence 130 feet Southerly; thence 180 feet Easterly; thence 130 feet Northerly along the centerline of 4th Street to the point of beginning. All within the Wendover Air Force Base.

Said legal is also described as follows;

Beginning at a point which is South 984.0 East 1701.34 from closing corner of Section 18 and 19, Township 1 South, Range 19 West, Salt Lake Base and Meridian, said point also being South 952.32 feet and East 1701.52 feet from a U. S. Coast and Geodetic Survey Control Station (South Monument) located on the Utah-Nevada State Line; and running thence from said point of beginning East 180.00 feet; thence South 130.00 feet; thence West 180.00 feet; thence North 130.00 feet to the point of beginning.

EXCEPTING THEREFROM, that portion thereof included in roads.

Exhibit C

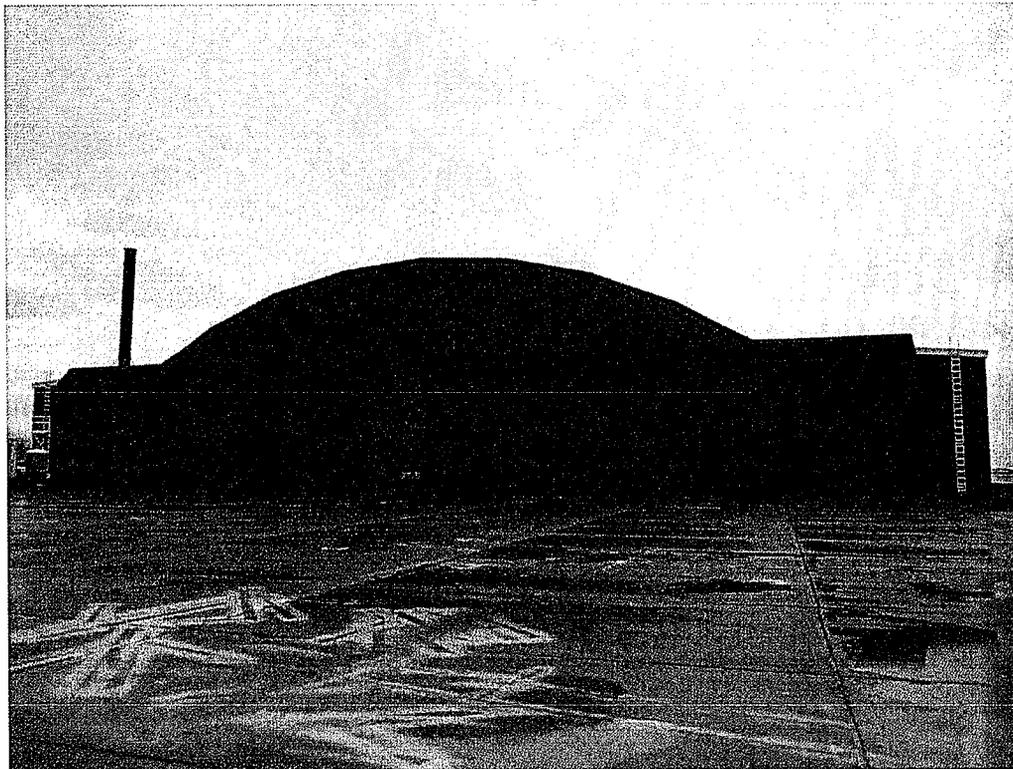
Baseline Documentation

Exhibit C
Baseline Documentation

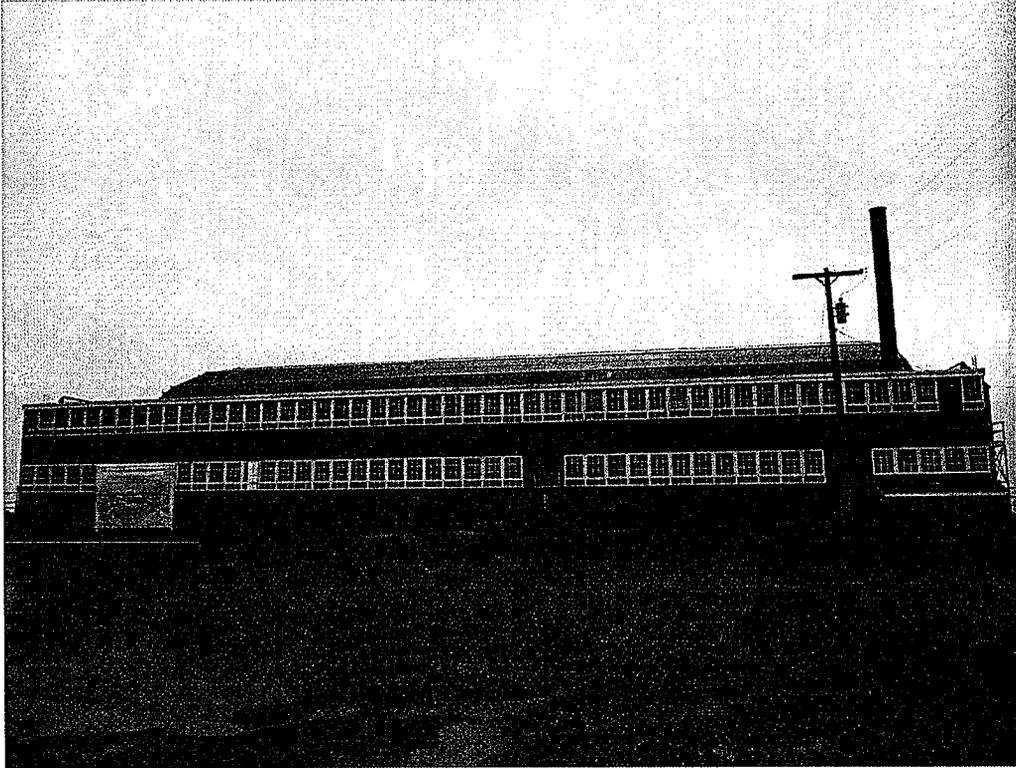
East Façade



West Façade



North Façade



South Façade

