

Draft

INDE Deed Restriction and Rights Reserved by USA 1-14-2010

TO HAVE AND TO HOLD the above premises, subject to the following specified easements, exceptions, restrictions, conditions, covenants, and reservations reserved in and to the United States of America, herein enumerated and set forth, unto the Grantee, its successors and assigns, forever.

A. Restrictions imposed by the United States of America:

1. **Height Limitation:** The maximum building height of any replacement or new structure is limited to a height of not greater than sixty five (65'-0") feet with the exception of the following areas, as depicted on the attached Exhibit A. All references herein to height measurements shall be measured vertically starting from the average grade of the centerline of Third Street between Chestnut and Dock Streets.

Area 1: The maximum height shall be no greater than fifty-two feet (52'-0"). Area 1 begins at the northwest corner of the property and runs southerly along the 3rd Street property line for 102.57 feet, more or less to a point; then turning and running east at a 90 degree angle for twenty-eight (28') feet, more or less, to a point; then turning and running north at 90 degree angle for one hundred two and fifty-seven hundredths (102.57) feet to a point; then turning and running west at a 90 degree angle along Chestnut St. twenty-eight (28') feet, more or less, to the point of beginning.

Area 2: The maximum height shall be no greater than fifty feet (50'-0"). Area 2 begins at the southwest corner of Area 1 and continues southerly along the 3rd Street property line for 102.57 feet, more or less to a point; then turning east at a 90 degree angle and running for twenty-eight (28') feet, more or less, to a point; then turning north at a 90 degree angle and running one hundred two and fifty seven hundredths (102.57) feet to a point; then turning east at a 90 degree angle and running for twenty-eight (28') feet to the point of beginning .

Area 3: The maximum building height shall be no greater than seventy-five feet (75'-0"). Area 3 begins at a point which is setback twenty eight feet (28') south of Chestnut and twenty eight (28') east of Third Street; then running easterly parallel to Chestnut Street ninety feet (90') more or less to a point; then turning southerly at a 90 degree angle for a one hundred ten (110') feet, more or less, to a point; then turning west at a 90 degree angle for a distance of fifty five (55') feet, more or less, to a point; then turning north at a 90 degree angle for a distance of seventy five (75') feet, more or less, to a point; then turning west at a 90 degree angle for a distance of thirty five (35) feet, more or less, to a point; then turning north at a 90 degree angle for a distance of forty five (45') feet, more or less, to the point of beginning. The vertical area between 65 feet and 75 feet shall be used for the purpose of providing daylight to the interior of the building.

Area 4: The maximum building height shall be no greater than eighty feet (80'-0"). Area 4 begins at a point on the property line of American Street which is fifty-three feet (53'-0") south of Chestnut Street; then running south along the American Street property line for one hundred-thirty (130') feet, more or less, to a point; then turning west at a 90 degree angle for sixty five (65'-) feet, more a less, to a point; then turning north at a 90 degree angle for one hundred thirty (130') feet, more or less, to a point; then turning east at a 90 degree angle for sixty five (65') feet, more or less, to the point of beginning. This area shall be used only as a mechanical penthouse, parapet wall, roof or any other accessory structure.

Area 5: The maximum building height shall be no greater than eighty-five feet (85'-0"). Area 5 begins at a point on the American Street property line which is twenty eight feet (28'-0") south of Chestnut Street; then running south along American Street for twenty-five (25') feet, more or less, to a point; then turning west at a 90 degree angle for sixty-five (65) feet, more or less, to a point; then turning north at a 90 degree angle for twenty five (25') feet, more or less, to a point; then turning east at a 90 degree angle for sixty five (65) feet, more or less, to the point of beginning. This area is shall be used only to provide a screened exterior rooftop area for required cooling towers, generator, and other mechanical/electrical rooftop appurtenances found in Area 4.

2. **Signage:** No exterior signs shall be placed on the premises without the prior review and approval in writing of the Grantor. Approval or comments will be provided within 30 days of submission of a proposed sign design package which will include specifications with respect to size, materials and location. In the event that the Grantor fails to provide notice of its approval or disapproval within thirty (30) days, the signs shall be deemed approved by Grantor, In the event that the Grantor does not approve a sign package submitted for approval, the Grantee may appeal to the National Park Service, Regional Director of the Northeast Region, who will review the sign submission package and the reasons for disapproval and attempt to resolve any differences.
3. **Subdivision Limitation:** The above premises shall not be subdivided for any purpose at any time provided that nothing contained herein shall be interpreted to apply to a lease or creation of a condominium within the premises hereby conveyed provided that the exterior surface of any structure or structures constructed or erected thereon shall either (i) be under the ownership, management and control of a single legal entity, or (ii) if under separate ownership, any instrument creating such separate ownership shall provide that all owners shall designate, in writing delivered to Grantor, a single agent or representative (who may but need not be an owner) expressly authorized to bind and act on behalf of all such owners with respect to all matters arising under these covenants.

B. Rights reserved by the Grantor:

1. **Right of First Offer:** (a) If at any time the Grantee, its successors and assigns elects, in its sole discretion, to convey the Property to an independent third party unrelated to Grantee, then, except as hereinafter provided, Grantee shall notify the Grantor by notice to the Superintendent of Independence National Historical Park, or its successor agency, in writing (the "Offer Notice") that the Property will be available for sale, which Offer

Notice shall set forth the Purchase Price for the Property and the other terms and conditions to which the prospective purchasers shall be asked to agree.

(b) Within ten (10) days following receipt by Grantor of an Offer Notice, or within ten (10) days following receipt by Grantor of a writing notifying Grantor that Grantee expects to provide an Offer Notice and requesting Grantor's response under this section B.1.(b), Grantor may request in writing that Grantee provide Grantor an appraisal (an "Appraisal") of the fair market value of the Property prepared by an MAI appraiser or an appraiser who has similar experience and education, provided that Grantor shall agree in such request to pay the fees and costs charged by such appraiser. Such Appraisal shall be prepared in accordance with the Interagency Land Acquisition Conference Uniform Standards for Federal Land Acquisitions (USFLA) or the current Federal Land Acquisition appraisal standard. Grantee shall not be obligated to provide such Appraisal unless (i) Grantor issues its written request within such 10-day period, and (ii) agrees in writing to pay the fees and costs charged by such appraiser (collectively, a "Qualifying Request").

(c) The Grantor may elect to purchase the Property upon the same terms and conditions as contained in the Offer Notice. If the Grantor shall elect to purchase the Property on the terms and conditions contained in the Offer Notice, the Grantor shall notify Grantee in writing ("Park Service Election Notice") within forty-five (45) days after the later of (i) receipt of the Offer Notice or (ii) receipt of the Appraisal if a Qualifying Request shall have been issued by Grantor, time being of the essence, of its election to so purchase the Property. If the Grantor timely delivers a Park Service Election Notice, then, subject to section B.1. (d) below, the Grantor shall be irrevocably obligated to purchase the Property in accordance with the provisions of this section. If the Grantor shall fail to notify Grantee of such election within such applicable forty-five (45) day period, the Grantor shall be deemed to have irrevocably waived its right to purchase the Property and Grantee shall have the right to offer the Property to a third party, on substantially the same terms as contained in the Offer Notice. Grantee shall have the right to sell the Property to a third party on such terms as Grantee may elect in its sole discretion; provided, however, such terms may include a Purchase Price of ninety percent (90%) of the Purchase Price contained in the Offer Notice and Grantee may sell the Property at a Purchase Price of ninety percent (90%) or more of the Purchase Price without Grantee first reoffering the Property to the Grantor pursuant to the terms and conditions contained in this section.

(d) If the Grantor elects to purchase the Property, then the parties shall close on the sale of the Property within one hundred and twenty (120) days after the date of the notice from the Grantor to Grantee so electing to purchase the Property, time being of the essence. Notwithstanding anything contained in this Agreement, if the Grantor shall fail to close on the purchase within the one hundred and twenty day (120) day period, the Grantor shall be irrevocably deemed to have waived its rights to any other first offer of the Property from Grantee to the Grantor.

(e) Should Grantee fail to enter into a contract to sell the Property at the purchase price permitted hereunder within a period of nine (9) months from the date that the Grantor fails to timely elect to purchase the Property at the Purchase Price contained in the Offer

Notice, if Grantee is still desirous of selling the Property, Grantee shall then be obligated to re-offer the Property to the Grantor with a revised Offer Notice (Revised Offer Notice) at a price and on terms and conditions solely determined by Grantee which price may be the lower, the same or higher than that contained in the original Offer Notice. Thereafter, Grantee and the Grantor shall be obligated to repeat the process contained herein within the same time frames (time being of the essence) until the Grantor purchases the Property or Grantee sells the Property to an independent third party.

(f) If Grantee does not desire to sell the Property after any such period, unless the Grantor has irrevocably waived its rights hereunder, Grantee shall nonetheless continue to provide the Grantor with a Right of First Offer in accordance with the terms and conditions of this Agreement.

(g) This section B.1., and the rights of Grantor and obligations of Grantee under this section B.1., shall be applicable only to a sale of the Property in its entirety, and specifically but without limitation shall not apply to (i) the granting of any mortgage, deed of trust or other security device or security interest in the Property or any part thereof, (ii) the creation of any lease and leasehold estate in all or any part of the Property, (iii) the granting of any easement(s) on or affecting the Property or any part thereof, (iv) the establishment of any condominium regime of ownership pertaining to the Property or any part thereof, or the conveyance of any common elements of any such condominium to any condominium association or similar entity, and (v) the sale of any one or more condominium units within such condominium unless such sale shall be a sale of all such condominium units, comprising all of the Property, to a single purchaser in a single transaction or a series of related transactions intended to result in the ownership of all such units by the single purchaser thereof.

(h) B.1. The rights granted to Grantor under this section B.1. are personal to and may be exercised only by Grantor. The rights granted to the Grantor under this section B.1 shall be extinguished automatically and in their entirety by and upon any foreclosure or exercise of any power of sale or similar right under or deed or other conveyance in lieu to the holder of any present or future mortgage or deed of trust upon the interest of Grantee in the Property (or to the assignee or designee of such holder or purchaser at any such foreclosure or sale), provided that the foregoing shall not apply if Grantee or any affiliate controlling, controlled by or under common control with Grantee is the holder of such mortgage or deed of trust at the time of such foreclosure, or the recipient of such deed in lieu of foreclosure.

2. **Right to Access Bell Tower:** As long as the Bell Tower is retained by the Grantee, the Grantor reserves the right to access the premises for the purpose of normal maintenance, repair and removal of the Bicentennial Bell, Portrait Plaque and Commemorative Plaque as described in Attachment A, but is not required to repair or maintain the “Bicentennial Bell”, Portrait Plaque and “Commemorative Plaque. The Grantor will provide the Grantee with twenty-four (24) hours advanced notice of said access, except in event of an emergency situation that requires immediate access. The Grantee shall provide the Grantor not less than sixty (60) days notice in writing of Grantee’s intention to remove the Bell Tower.

3. **Archeological Resources:** In the event the Grantee plans an undertaking requiring ground disturbing activities to a depth of greater than eight (8) inches, the Grantee shall identify all significant archeological resources which may be affected by these actions. The Grantee will determine if any identified or suspected archeological resources would meet the eligibility requirements for listing on the National Register of Historic Places. The Grantee will consider ways to avoid the effects of ground disturbing activities on those archeological resources that are found to be eligible for listing on the National Register. If avoidance is not feasible the Grantee will mitigate the adverse effects of the proposed ground disturbing activities through archeological excavation and documentation, or other suitable alternative methods consistent with the definition of “mitigation” as used in the National Environmental Policy Act regulations of the Council on Environmental Quality [Section 1508.20(c)-(e)].

The aforementioned archeological review and evaluation will be conducted at the Grantee’s sole expense by individuals meeting or exceeding the minimum professional qualifications in archaeology published in Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716), as amended or updated. The review and evaluation produced by the Grantee will include a written and well documented assessment of potential impacts on significant archeological resources (as defined above) and will include a work plan specifying proposed testing, mitigation, cataloging, and conservation of archeological resources within the affected area. All proposed actions will adhere to guidance provided in Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-740) and will result in the successful resolution of all potential adverse effects, as defined at 36 CFR PART 800.5, through avoidance or mitigation.

The proposed work plan, referenced above, will include a curation plan which will identify a facility that will serve as the designated repository for archeological artifacts and associated documentation produced during execution of archeological excavations resulting from any archeological review and evaluation conducted by the Grantee. The designated repository identified in the curation plan will meet the standards published by the American Association of Museums.

The Grantee will provide the Grantor with the opportunity to comment on documentation produced during review, identification and mitigation of ground disturbing activities. The Grantee will provide for Grantor review of the work plan for any proposed archeological mitigation measures at least sixty (60) calendar days in advance of execution of the mitigation measures. The Grantee and Grantor will endeavor in good faith to resolve any disagreement concerning any proposed action affecting archeological resources and the proposed mitigation of such actions.

In the event that Grantor and Grantee are unable to reach agreement upon the potential effect of proposed actions on archeological resources or on a mutually satisfactory plan to mitigate these effects, the Grantor or Grantee shall initiate arbitration proceedings pursuant to the Commercial Arbitration Rules of the American Arbitration Association. In these circumstances, the Grantor and Grantee shall each select an arbiter. The two arbiters, within ten (10) days of selection, must agree to the selection of a third arbiter to

complete the arbitration panel. To the extent applicable to the matter presented for arbitration, the arbitration panel shall give effect to the requirement, set forth above, that all proposed actions will adhere to guidance provided in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-740).

4. **Native American Resources: Suggested Deed Restrictions relating to Indian Tribes:**

(a) Consultations regarding potential adverse effects on Native American archeological resources that may be discovered on the property: Should there be a discovery of Native American archeological resources in the course of development of the site, the Grantee shall implement a review process similar to that described in Section 106 of the National Historic Preservation Act of 1966 for consultations with three federally recognized Indian tribes (Delaware Nation, Delaware Tribe of Indians, and the Stockbridge-Munsee Community). Federal regulations (36 CFR 800) have created a series of steps by which federal agencies identify and evaluate historic properties that may be affected by federal undertakings, assess adverse effects to those properties, and through consultation among interested parties (in this case, three Indian tribes) seek to avoid, minimize, or mitigate any adverse effects. The park will provide assistance in facilitating these consultations.

(b) Custody of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony that occur in Intentional Excavations or are discovered inadvertently, and Consultation with American Indian tribes: If previously unknown Native American human remains, funerary objects, objects of cultural patrimony and sacred objects are uncovered during an activity, work in the immediate vicinity of the discovery shall be halted, the discovery shall be reported to the park superintendent, and the physical site of the discovery protected. The park superintendent will notify the appropriate federally recognized tribal entities whose ancestral homelands include the subject plot about the discovery immediately. The Grantee shall follow a process similar to that described in provisions of the Native American Graves Protection and Repatriation Act [NAGPRA] for inadvertent discoveries at 43 CFR Part 10 Subpart B (Sections 10.3-10.6). Prior to resuming activity, the Grantee will consult with the three federally recognized tribes that are culturally affiliated with such items, prepare a written Plan of Action and execute the actions called for in it. The park will provide assistance in facilitating these consultations.

(c) Consultation with Indian tribes on Public Education programs and exhibits that contain Native American subject matter: When Indian tribes are described in educational programs, activities or materials developed or presented by the Grantee, the Grantee agrees to consult with the appropriate federally recognized tribal entities on the planning, development, presentation, and operation of such interpretive programs and media relating to their cultures and histories prior to release and viewing by the public. The Grantee shall follow a process for such consultation similar to that written in NPS *Management Policies 2006*, 7.5.6 and 1.11. The park will provide assistance in facilitating these consultations.

C. Definitions:

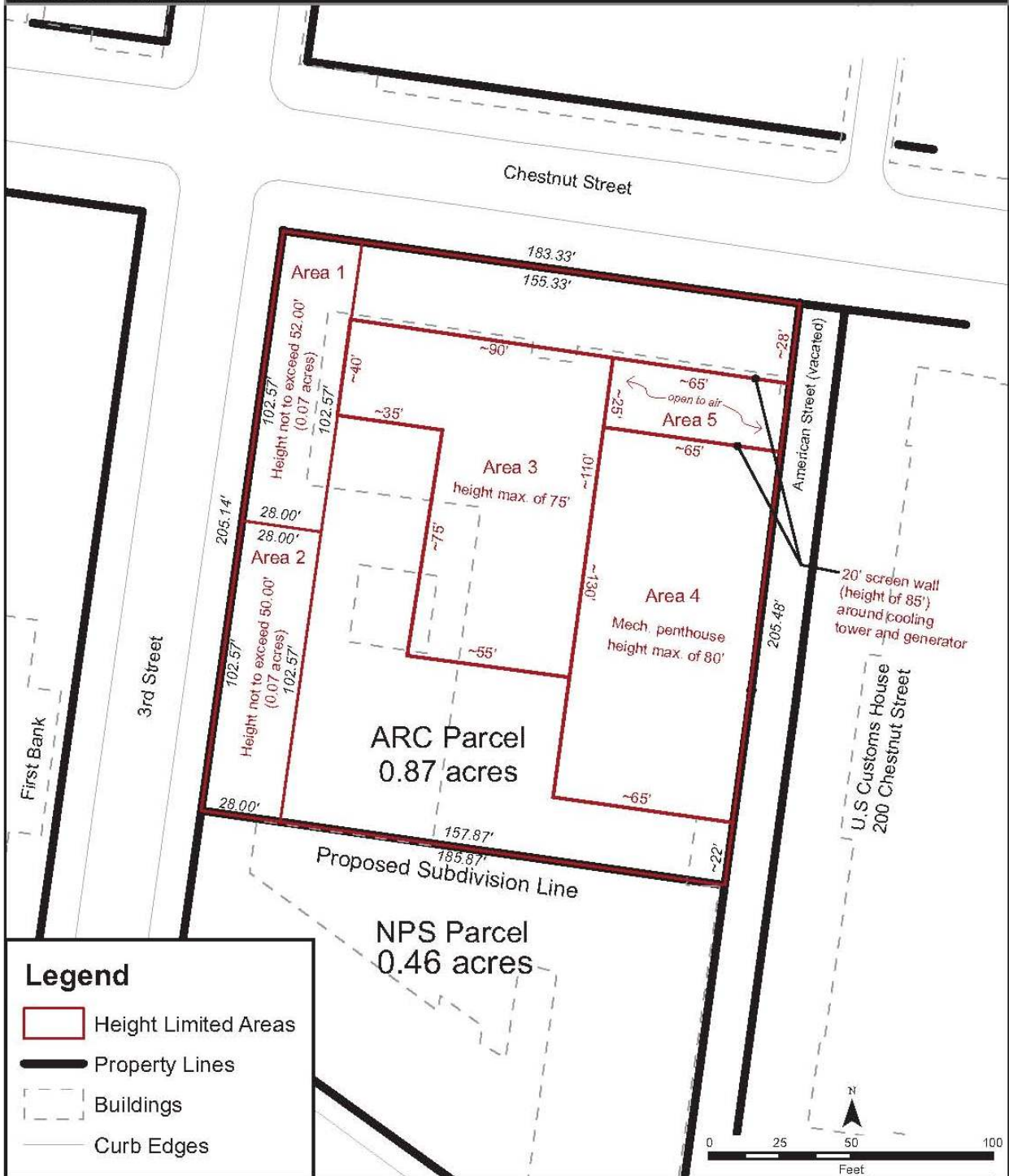
1. The term “GRANTOR” wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above named GRANTOR and its representatives, successors, and assigns. For the purposes of notifications and approvals required herein, the Grantor shall be represented by the Superintendent of Independence National Historical Park. The term “GRANTEE” wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the context, the above named GRANTEE and its authorized representatives, successors and assigns.
2. The words “Archeological Resources” as referenced herein shall mean any material remains of past human life or activities that are of archeological interest. This term includes, but shall not be limited to, objects made or used by humans, such as pottery, bottles, weapons, weapon projectiles, tools, structures or portions of structures, or any portion or piece of the foregoing items, and the physical site, location or context in which they are found or human skeletal materials or graves.
3. The words “ground disturbing activities” as referenced herein shall mean actions that dig into the soil more than eight (8) inches.
4. The term “Bicentennial Bell”, “Portrait Plaque” and “Commemorative Plaque” wherever used herein, and any pronouns used in place thereof, shall mean and include, unless repugnant to the contract, those items described herein and shall be considered USA personal property and are identified in the INDE museum catalog.

Exhibit A

Independence-Valley Forge Exchange Independence National Historical Park



DRAFT - Height Limitations Diagram
December 17, 2009



Attachment A

Bicentennial Bell Description:

- Cast at the Whitechapel Foundry in London, England
- Weighs 12,466 pounds
- Comprised predominantly of copper and tin
- Diameter 6 feet 10 inches; height 5 feet 6 inches
- Tuned to G below middle C
- Inscribed "For the People of the United States from the People of Britain 4 July 1976 Let Freedom Ring" and "Proclaim Liberty Throughout All the Land Unto All the Inhabitants Thereof"
- Installed 6/16/1976
- Dedicated by Queen Elizabeth II on 7/6/1976

Portrait Plaque Description:

- Bronze plaque measuring 28" wide x 33.5" high x 2 1/8" deep
- Haut relief, bust portrait in profile of Queen Elizabeth II. Subject faces left, wears crown, earring, necklace and draping below shoulder. Mottled background.
- Installed to commemorate the Queen's presentation of the Bicentennial Bell, July 16, 1976.

Commemorative Plaque Description:

- Bronze plaque measuring approximately 96" wide x 33.5" high x 2 1/8" deep.
- Installed to commemorate the Queen's presentation of the Bicentennial Bell, July 16, 1976.
- Queen Elizabeth II's remarks at the presentation are cast in base relief on the plaque:

HERE ON JULY 6, 1976, HER MAJESTY QUEEN ELIZABETH II OF GREAT BRITAIN PRESENTED THE BICENTENNIAL BELL TO THE PEOPLE OF THE UNITED STATES, IN THESE WORDS:

"I speak to you as the direct descendant of King George III. He was the last Crowned Sovereign to rule in this country, and it is therefore with a particular personal interest that I view those events which took place 200 years ago.

It seems to me that Independence Day, the Fourth of July, should be celebrated as much in Britain as in America. Not in rejoicing at the separation of the American colonies from the British Crown but in sincere gratitude to the Founding Fathers of this great Republic for having taught Britain a very valuable lesson.

We lost the American colonies because we lacked that statesmanship "to know the right time, and the manner of yielding, what is impossible to keep".