

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

**HISTORIC PRESERVATION
AGREEMENT
N.C.G.S. 121-34, et seq.**

THIS **HISTORIC PRESERVATION AGREEMENT** (the “Agreement”), made this _____ day of _____, 2021, is by and between _____ and _____ (hereinafter together referred to as the “Grantor”), and **PRESERVE MECKLENBURG, INC.**, a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal office being in Charlotte, North Carolina (hereinafter referred to as “PMI”);

WITNESSETH:

WHEREAS, Grantor owns certain real property (hereinafter referred to as the “Subject Property”), a description of which is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the Subject Property will contain permanent improvements consisting of a two-story house, a detached garage, and pertinent landscape features, all being within the boundaries of the Subject Property as same is shown on the attached Site Plan and survey of the Subject Property as shown on **Exhibit B** and **Exhibit C**, respectively, which exhibits are incorporated herein; and

WHEREAS, the Subject Property, located at 342 Ridgewood Avenue in Charlotte, Mecklenburg County, North Carolina, is a property of recognized cultural significance; and

WHEREAS, PMI and Grantor both desire that the Subject Property shall retain its culturally significant features, while being sympathetically adapted and altered, where necessary, to provide for contemporary uses; and

WHEREAS, PMI and Grantor both desire that in order to preserve its integrity of site, the Subject Property shall not be subdivided; and

WHEREAS, PMI is a charitable organization which accepts preservation easements on buildings and properties having historical or architectural importance, said easements subjecting such buildings and grounds to restrictions that will ensure that they are preserved and maintained for the benefit of future generations; and

WHEREAS, the North Carolina General Assembly has enacted the Historic Preservation and Conservation Agreements Act validating restrictions, easements, covenants, conditions, or otherwise, appropriate to the preservation of a structure or site significant for its cultural importance, its architecture, archaeology or historical associations, and

WHEREAS, Grantor and PMI intend this document to be a Preservation Agreement as defined in the Act, and by their execution thereof, Grantor and PMI intend to create an interest in real property and a covenant running with the Subject Property;

NOW, THEREFORE, for and in consideration of the Grantor's interest in historic preservation and its support for PMI and its purposes, and for and in consideration of the sum of ONE DOLLAR (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, Grantor, for itself, its successors and assigns, hereby covenants and agrees to abide by the following restrictions (hereinafter referred to as "Covenants"), said Covenants to be restrictions of record to attach to the Subject Property described in **Exhibit A** as follows:

Administration of Covenants

1. These covenants shall be administered solely by PMI, its successors in interest (by corporate merger or otherwise) or assigns (collectively, the "PMI Parties") and in all subsequent conveyances of the Subject Property, the PMI Parties shall be the sole party entitled to administer these Covenants. In the event that the PMI Parties cease to exist then in such event the PMI Parties shall assign all of its or their rights and interest in these Covenants subject to such duties and obligations which it assumes hereby, to a nonprofit corporation or governmental agency, which exists for substantially the same reasons as PMI, as described herein above. If no such corporation is available for such assignment then, under such circumstances, such assignment shall be made to the State of North Carolina which shall be a sole party entitled to administer these Covenants. PMI reserves the right at any time without the consent of Grantor, but upon written notice to Grantor, to assign its interest and the authority and powers stated herein to the Board of Directors of the Wing Haven Foundation, Incorporated, a North Carolina non-profit corporation.

Prior Approval Required for Structure and Modifications

2. No material alteration or addition to an exterior feature of the contemplated or subsequently constructed two-story house or the contemplated or any subsequently constructed detached garage within the Subject Property is permissible without the prior written approval of the President of PMI (the "President") or the Chairman of the Board of Directors of PMI (the "Chairman") or their successors and/or assigns, said President or Chairman acting on behalf and at the direction of the Board of Directors of PMI (the "Board"; *See also* Paragraph 20 hereinafter). In no case will the contemplated or subsequently constructed house or contemplated or subsequently constructed garage extend beyond the boundaries as identified and labeled in **Exhibit B** as the "Building Envelope," and in no case will any structures be placed within the thirty (30) foot wide conservation easement described in Section 4 below, and as also shown in **Exhibit B**. Further, the contemplated or subsequently constructed house and any subsequently constructed house or garage will not include more than two stories in total, nor exceed forty (40) feet in height (such measurement being inclusive of both the roofline and attic space).

3. The construction or placement of additional buildings and structures is permissible within the Subject Property and the Building Envelope only with the prior written approval of the President or Chairman.

4. No material alteration of a landscape feature, including the location, size, and character of planting beds, walkways, driveways, and fences within the thirty (30) foot wide conservation easement (the "Conservation Easement") as depicted on the attached Site Plan as shown on **Exhibit B** is permissible without the prior written approval of the President or Chairman. All landscape plans and/or any changes to the Conservation Easement as depicted on **Exhibit B** will be subject to the approval of the President or Chairman.
5. No portion of the Subject Property may be subdivided without the prior written approval of the President or Chairman.
6. The removal of the large oak tree in the front portion of the Subject Property is permissible only if a professional arborist certifies in writing to the President or Chairman that said tree constitutes a clear and imminent danger to the public safety or that said tree is unsustainable.
7. The design and materials related to any fence that might now or hereafter be erected on any portion of the western boundary of the Subject Property must be approved by the President or Chairman.
8. The existing plantings or any subsequent plantings located in the area extending ten (10) feet in a perpendicular line from the western boundary of the Conservation Easement as depicted on the attached Site Plan as shown on **Exhibit B** shall be no more than six (6) feet in height, except for hedges along the property line, which are limited to eight (8) feet in height.
9. The contemplated driveway or any subsequently installed driveway within the Subject Property shall consist entirely of permeable material, except that the final fifteen (15) feet from the entrance to the detached garage may be paved with impermeable material. Impermeable surfaces are not allowed in the first ten (10) feet of (as measured perpendicular to) the western boundary of the Subject Property, beginning at the point that is thirty (30) feet from Ridgewood Avenue, and extending to the rear (north) boundary of the Subject Property. The construction of additional areas consisting of impermeable material in the Subject Property is permissible only with the prior written approval of the President or Chairman.

Covenant to Obey Public Laws

10. The Grantor shall abide by all federal, state and local laws and ordinances regulating the rehabilitation, maintenance and use of the subject property.

Right of First Refusal

11. In case of any contemplated sale of the Subject Property or any portion thereof by the Grantor or any successor in title thereto, a first refusal as to any bona fide offer of purchase must be given to PMI. If PMI decides to purchase, it shall notify the then owner of its willingness to buy upon the same terms within fifteen (15) days of receipt of written notice of such bona fide offer. Failure of PMI to notify the then owner of its intention to exercise this right of first refusal within such fifteen (15) day period shall free the owner to sell pursuant to the bona fide offer. PMI may, in its discretion, waive its right of first refusal in writing, upon written receipt of such bona

fide offer. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price at the election of PMI.

Inspection

12. Representatives of PMI shall have the right to enter the Subject Property at reasonable times, after giving reasonable notice, for the purpose of inspecting the exterior of the buildings and the grounds to determine if there is compliance by the Grantor with the terms of these covenants.

Hazardous Materials

13. Some of the properties PMI seeks to protect may contain certain hazards as a result of outdated building practices or use of certain materials that may contain lead paint, asbestos, or some other hazards that may need to be removed or encapsulated before the buildings are habitable. PMI does not have the resources to correct these problems and cannot take responsibility for the condition of the properties being sold. PMI is not liable in any way for any hazards, defects, or other problems with the properties under covenants.

Extinguishment

14. Grantor and PMI recognize that an unexpected change in the conditions surrounding the Subject Property may make impossible or impractical the continued use of the Subject Property for conservation purposes and necessitate the extinguishment of this Agreement. Such an extinguishment must comply with the following requirements:

(a) The extinguishment must be the result of a final judicial proceeding.

(b) PMI shall be entitled to share in the net proceeds resulting from the extinguishment in an amount in accordance with the then applicable regulations of the Internal Revenue Service of the U.S. Department of the Treasury.

(c) PMI agrees to apply all of the portion of the net proceeds it receives to the preservation and conservation of other properties or buildings having cultural, historical or architectural significance to the people of the State of North Carolina.

(d) Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Subject Property after the extinguishment.

Remedies

15. In the event of a violation of these Covenants contained herein, PMI shall give the Grantor written notice of the nature of the violation and the Grantor shall have ninety (90) days following the giving of said notice to remedy. Remedies shall include, but are not limited to: (1) Restoration

of property to a level satisfactory to PMI, (2) Remediation and restoration of impacted areas, including but not limited to adverse impact on the Elizabeth Lawrence House and Gardens, and (3) any restoration and remediation necessary to comply with the terms of this Easement.

16. In the event of a violation of these Covenants and restrictions, and a failure to remedy in accordance with Section 15. above, all legal and equitable remedies, including injunctive relief, specific performance, and damages, shall be available to PMI or its assigns. No failure on the part of PMI to enforce any covenant or restriction herein nor the waiver of any right hereunder by PMI shall discharge or invalidate such Covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of PMI to enforce the same in event of a subsequent breach or default. In any case where a court finds that a violation has occurred, the court may require the Grantor to reimburse PMI for all expenses incurred in stopping, preventing and correcting the violation, including but not limited to reasonable attorney's fees. In addition to the remedies set forth above, Grantor, their heirs, successors and assigns agree in the event the Grantor, their heirs, successors and assigns alter, repair, restore or demolish any landscape feature or any exterior feature of any building on the Subject Property without the prior written consent of PMI, then, the Grantor, their heirs, successors and assigns agree to restore the altered, repaired, restored or demolished landscape feature or exterior feature of any building on the Subject Property if so directed by PMI.

Insurance

17. Grantor shall insure the Subject Property against damage by fire or other catastrophe. If the original structure is damaged by fire or other catastrophe to an extent not exceeding fifty percent (50%) of the insurable value of those portions of the building, then insurance proceeds shall be used to rebuild those portions of the Subject Property in accordance with the standards in this Agreement, and, as applicable, the standards set forth in Exhibit D attached hereto. The Grantor shall keep the Subject Property insured under a comprehensive general liability policy that names PMI as an additional insured and that protects the Grantor and PMI against claims for personal injury, death and property damage.

Mortgage Subordination

18. All mortgages and rights in the property of all mortgagees are subject and subordinate at all times to the rights of PMI to enforce the purposes of the Covenants. Grantor will provide a copy of this Agreement to all mortgagees of the Subject Property and will cause all mortgagees as of the date the Agreement is recorded to subordinate the priority of their liens to the provisions of this Agreement. The subordination provisions as described above relate only to the purposes of this Agreement, namely the preservation of the historic architecture and landscape of the Subject Property.

Preservation Easement Duration; Successors and Assigns

19. This Agreement shall remain in effect in perpetuity unless terminated or extinguished in accordance with the terms of this Agreement. This Agreement shall be construed as an easement

appurtenant to and a covenant running with the land and shall be binding on Grantor, PMI, all persons, partnerships, corporations, or other entities owning any interest in the Subject Property, or any part thereof, and their respective heirs, successors, and assigns. The term successors includes any and all successors in interest by corporate merger or otherwise, also referred to as the PMI Parties herein. Every party hereafter acquiring the Subject Property, or any portion thereof, by acceptance of a deed conveying title thereto or by execution of a contract for the purchase thereof, whether from Grantor or PMI, herein, or a subsequent owner thereof, shall accept such deed or contract subject to the provisions of this Agreement.

Actions by PMI and Board

20. Any provision hereof that requires a specific action by the President of PMI or the Chairman of the Board of Directors of PMI shall be construed to mean the individuals acting as President or Chairman as of the date this Agreement is executed and their successors as President and or/or Chairman at any time thereafter. Any action taken by said President or Chairman pursuant to the provisions of this Agreement shall be on behalf of and at the direction of the Board of Directors of PMI.

Arbitration

21. In the event that Grantor and PMI are unable to resolve any controversies arising out of this Agreement, Grantor and PMI agree that matters in dispute may be referred by either party to binding arbitration and settled in accordance with the State of North Carolina's arbitration statutes then in effect.

Interpretation

22. This Agreement shall be construed and interpreted under the laws of the State of North Carolina, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes protected herein.

Merger

23. Grantor and PMI agree that the terms of this Agreement shall survive any merger of the fee and easement interest in the Subject Property or any portion thereof.

Entire Agreement

24. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

Headings

25. The headings of the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Agreement.

Amendments

26. Grantor and Grantee are free to jointly amend this Agreement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of the Agreement or that affects the perpetual duration of this Agreement. Any such amendment(s) will require the written consent of both Grantor and Grantee and shall be effective upon recording in the public records of Mecklenburg County, North Carolina.

[Signatures and notary acknowledgements set forth on following pages]

IN WITNESS WHEREOF, Grantor and PMI have caused this Agreement to be duly executed by authority duly given, as of the day and year first above written.

GRANTOR:

Name: _____

Name: _____

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for
_____ County, North Carolina, do hereby certify that
_____ and _____ came
before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the ____ day of _____, 2021.

Notary Public
Printed Name: _____

My commission expires: _____

[NOTARIAL SEAL]

PMI:

PRESERVE MECKLENBURG, INC., a North Carolina
non-profit corporation

By: _____
Thomas D. Lee, President

1031 South Caldwell Street
Ste 200
Charlotte, NC 28203

MECKLENBURG COUNTY

NORTH CAROLINA

I, _____, a Notary Public for Mecklenburg County, certify that Thomas D. Lee, personally came before me this day and acknowledged that he is President of Preserve Mecklenburg, Inc., a non-profit North Carolina corporation, and that he, as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the ____ day of _____, 2021.

Notary Public
Printed Name: _____

My commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A

Legal Description of Subject Property

BEING ALL of Lot 20 in Block 14 of WASHINGTON HEIGHTS, as same is shown on a map thereof recorded in Map Book 230 at Pages 228 and 299 in the Mecklenburg County Public Registry, reference to said map being hereby made for a more complete description.

EXHIBIT B

Property Site Plan

EXHIBIT C

Survey of Subject Property

EXHIBIT D

SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES (36 CFR §68.3)

STANDARDS FOR REHABILITATION

The Standards will be applied taking into consideration the economic and technical feasibility of each project.

1. A property will be used as it was historically or be given a new use that maximizes the retention of distinctive materials, features, spaces and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.
2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color and texture.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

Standards for Rehabilitation

The Standards will be applied taking into consideration the economic and technical feasibility of each project.

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alterations of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Standards for Restoration

The Standards will be applied taking into consideration the economic and technical feasibility of each project.

1. A property will be used as it was historically or be given a new use that interprets the property and its restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces and spatial relationships that characterize the period will not be undertaken.
3. Each property will be recognized as a physical record of its time, place and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection and properly documented for future research.

4. Materials, features, spaces and finishes that characterize other historical periods will be documented prior to their alteration or removal.
5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.
7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.
8. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will be used.
9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
10. Designs that were never executed historically will not be constructed.

Standard for Reconstruction

The Standards will be applied taking into consideration the economic and technical feasibility of each project.

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.
2. Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials , features and spatial relationships.
4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed.

