Workflow No. 0000039439-0003

Image ID: 000001893264 Type: CRP
Recorded: 12/30/2010 at 03:56:05 PM
Fee Amt: $52.00 Page 1 of 12
Revenue Tax: $0.00
Workflow# 0000039439-0003
Craven, NC
Sherri B. Richard Register of Deeds
BK 2968 PG 931

STATE OF NORTH CAROLINA

DEED OF PRESERVATION EASEMENT

CRAVEN COUNTY

Tax Parcel ID No.: 8-001-C-089

This **DEED OF PRESERVATION EASEMENT** (the "Easement") is made this 30th day of December, 2010 (the "Effective Date"), by and between **BUDBECK, LLC**, a North Carolina Limited Liability Company (hereinafter "Grantor") having a mailing address of 329-A Middle Street, New Bern, North Carolina 28560; and **NEW BERN PRESERVATION FOUNDATION, INC.**, a North Carolina nonprofit corporation having a mailing address of 510 Pollock Street, New Bern, North Carolina 28562 (hereinafter "Grantee").

WITNESSETH:

WHEREAS, Grantor owns all of the real property (the "Property") and improvements thereon (the "Structure") located at 313 Pollock Street, New Bern, Craven County, North Carolina, more commonly referred to as "The National Bank of New Berne Building," and more particularly described in Exhibit A, attached hereto and incorporated herein ; and

WHEREAS, Grantee is a nonprofit corporation whose purposes include the preservation and conservation of sites, buildings, and objects of national, regional or local architectural, historic or cultural significance, and is a qualifying recipient of qualified conservation contributions under Section 170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (collectively, the "Code"); and

WHEREAS, the Structure and Property (collectively, the "Project") have certain architectural, historic, and/or cultural significance, which attributes are collectively, described in Exhibit B attached hereto and incorporated herein by reference (the "Conservation Values"), and the Structure is located in a National Register Historic District and/or certified state or local historic district known as the New Bern Historic District and has been deemed by the United States Department of the Interior as being contributing to the historic significance of the New Bern Historic District; and

Prepared By
Sumrell, Sugg, Carmichael, Hicks and Hart, P.A.
Attorneys at Law
416 Pollock Street
New Bern, North Carolina 28560

WHEREAS, the grant of this Easement by Grantor to Grantee on the Structure will assist in preserving and maintaining the Structure and the Conservation Values for the benefit of the general public.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and restrictions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to Section 170(h) of the Code, Grantor does hereby give, grant, release, transfer and convey to Grantee, its successors and assigns, an easement (the "Easement") to preserve the Structure and the Conservation Values as hereinafter described. The area of the Easement encompasses the exterior of the Structure, including but not limited to wall surfaces, railings, decorative metalwork, doors, windows, roofs, and decorative elements (collectively, the "Easement Area").

TOGETHER WITH the right to implement said Easement in the manner hereinafter provided.

TO HAVE AND TO HOLD the Easement, to Grantee and its successors and assigns in perpetuity or until the earlier termination in accordance with the terms of this Easement, reserving to Grantor and their successors and assigns forever, the fee title to the Property and Structure and incidents of ownership therein other than this Easement, including the right to exclusive use and occupancy of the Structure, all to the extent not inconsistent with the terms and purposes of the Easement granted herein.

AND Grantor and Grantee for themselves, their successors and assigns, hereby covenant and agree as follows:

1. Scope of Easement. This Easement conveys to Grantee an interest in the Structure as hereinafter specifically provided, which includes the benefit of the following covenants, conditions and restrictions:

   (a) The exterior of the Structure is not to be visually or structurally altered from the condition existing as of the Effective Date of this Easement without the Grantee's Consent, except with respect to structural alterations which have no visual impact whatsoever with respect to the exterior of the Structure. Nothing shall be erected on the Property that impairs the visibility of the Structure from the street or grade level.

   (b) The Structure shall not be demolished and no new structures or additions of any kind to the exterior of the Structure may be constructed at the Property without the Grantee's Consent, except as may be required by law.

Image ID: 000001893266 Type: CRP
Page 3 of 12
BK 2968 PG 933

(c) The Project shall be maintained in a good and sound state of repair in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* as modified from time to time (the "Standards"), to prevent deterioration in its exterior appearance existing on the date hereof, as depicted in Exhibit B. Such maintenance and repair includes replacement, repair, and reconstruction by Grantor whenever reasonably necessary to preserve the Project in substantially the same condition and state of repair as that existing on the date hereof.

(d) Grantor at its expense shall keep the Project insured by a reputable insurance company licensed and in good standing in the State of North Carolina, with a replacement cost insurance policy against loss or damage resulting from fire, windstorm, vandalism, explosion and such other hazards as typically required by prudent property owners in the same geographic area as the Project; and will carry and maintain comprehensive public liability insurance under a policy issued by an insurance company which names Grantee as an additional insured party thereunder.

(e) The Project shall not be subdivided or otherwise divided into more than one parcel without Grantee's consent, unless the resulting property interests remain subject to this Easement in all respects.

2. Grantee Review Procedures. Grantee has the discretion when reviewing applications under Section 1, to give or withhold its Consent, conditionally or unconditionally, but such consent shall not be unreasonably withheld, conditioned or delayed. "Consent" as used herein, means that Grantee shall have given or withheld its prior written consent to the requested action, or approval. The basis for Grantee's review of and Consent to proposed changes to the Project shall be the Standards.

3. Right of Entry. Grantor agrees that representatives of Grantee may upon prior reasonable notice and at times reasonably acceptable to Grantor inspect the Project. Inspections will normally occur outside the Project, except if Grantee determines interior access is reasonably necessary to establish compliance with this Easement.

4. Obligations of Grantor. Grantor shall pay before delinquency all real estate taxes, assessments, fees or charges properly levied upon the Project and shall furnish Grantee with evidence of payment upon request. Grantor shall keep the Project free of any liens or encumbrances for obligations incurred by Grantor, other than liens or encumbrances secured by the Project which are subordinate to this Easement. Grantee has no liability or

Image ID: 000001893267 Type: CRP
Page 4 of 12
BK 2968 PG 934

responsibility of any kind related to the Project including the ownership, operation, insurance, or maintenance of the Project.

5. Percentage Interests. For purposes of allocating proceeds under Paragraphs 6 and 7, Grantor and Grantee stipulate that as of the date of recordation of this Easement in the applicable real property records (the "Effective Date"), Grantor and Grantee shall each own real property interests in the Project. Grantor and Grantee agree that each of them owns a specified percentage interest of the fair market value of the Project determined by the ratio of the value of the Easement as of the Effective Date to the aggregate value of the Project as of the Effective Date. These values are the 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 Conservation Values, on file with Grantor and Grantee, and shall amend such values, if necessary, to reflect any final determination thereof 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 Project unencumbered by the Easement (the "Easement Ratio Value") shall remain constant, and the percentage interests of Grantor and Grantee in the fair market value of the Project thereby determinable shall remain constant, except that the value of any improvements made by Grantor after the Effective Date of this Easement and subject to the requirements of this Easement is reserved to Grantor (the "Improvements Value").

6. Extinguishment. If unexpected circumstances arise after the Effective Date which render impossible or impractical the purposes of this Easement, then this Easement may be extinguished but only with the Consent of Grantee, provided that any net proceeds, after the satisfaction of prior claims, including, but not limited to, all principal and interest payments due under any obligation secured by one or more mortgages on the Project, and payment to the Grantor of the Improvements Value, from any disposition of the Project shall be allocated to Grantee by multiplying such net proceeds by the Easement Ratio Value. All proceeds shall be used by Grantee in a manner consistent with Grantee's charitable purposes. Net proceeds shall also include, without limitation, net insurance proceeds, but only to the extent not used by the Grantor, its successors or assigns, for the reconstruction or restoration of the Structure.

7. Condemnation. Grantor shall notify Grantee of any condemnation proceeding with respect to the Project. Grantee has the option (but not the obligation) to participate in any action or settlement with respect to any condemnation and to claim the Easement Ratio Value of any net proceeds calculated in accordance with the provisions of paragraph 6.

Image ID: 000001893268 Type: CRP
Page 5 of 12
BK 2968 PG 935

8. Remedies for Breach.

(a) Upon a breach of any provision of this Easement, Grantee may pursue all available legal and equitable remedies, including injunction, to prevent or seek remedy for such violation.

(b) If the Project has substantially deteriorated as a result of a breach of subparagraph 1(c), then Grantee may send written notice to Grantor requesting that the Project be repaired to achieve a level of maintenance consistent with subparagraph 1(c). If, within ninety (90) days of receipt of such notice, the Grantor fails to commence the implementation of repair actions reasonably satisfactory to Grantee, then Grantee, or its agents, may (without being obligated), enter upon the Property and have repairs made at the Grantor's sole expense. Any amounts expended by Grantee to further the purposes of this Easement and not reimbursed by Grantor within ten (10) days after receipt by Grantor of an invoice for same with reasonable supporting documentation, shall to the maximum extent permitted by law constitute a lien on the Project, subordinate to the lien of any mortgage on the Project, accruing interest at the lesser of the maximum per annum rate permitted by law or 12% per annum. Upon payment by Grantor of any such amounts due, including accrued interest as herein provided, Grantee shall simultaneously therewith deliver to Grantor a release of lien or waiver of mechanics lien, as the case may be, in the customary form and duly executed and acknowledged for recording.

9. Nature and Duration. The covenants, conditions and restrictions in this Easement run with the land constituting the Property in perpetuity and are binding upon Grantor and the successors and assigns of Grantor for the benefit of Grantee.

10. Assignment, Successors and Assigns. Grantee may only transfer this Easement to another charitable corporation or trust dedicated to the preservation of historic structures and/or urban scenic open space as and to the extent then required under the Code, subject to the prior written consent of the Grantor or its successors and assigns, as applicable, such consent not to be unreasonably withheld; provided that if Grantee ceases its corporate existence, or for any other reason is unable to act to enforce the restrictions provided for herein, then all rights of Grantee in this Easement shall be assigned to such other qualified non-profit organization dedicated to the preservation of historic structures and/or urban scenic open space as shall be selected by Grantor and consented to by Grantee, such consent not to be unreasonably withheld, conditioned or delayed, failing which the successor charitable corporation or trust

Image ID: 000001893269 Type: CRP
Page 6 of 12
BK 2968 PG 936

dedicated to the preservation of historic structures and/or urban scenic open space shall be designated by the Attorney General of the State of North Carolina.

11. Indemnity. Grantor shall hold harmless, indemnify and defend Grantee and its members, directors, officers, employees, agents and contractors, successors and assigns of each of them (collectively, "Indemnified Parties") from and against all liabilities, penalties, costs, damages, expenses, causes of action, claims, or judgments of any nature whatsoever (individually or collectively a "Claim" or "Claims"), including, without limitation, reasonable attorneys' fees, in any way connected with the Structure or the Property or any aspect thereof, including without limitation: (1) any real property taxes and general or special assessments assessed and levied against the Project; or (2) this Easement, the conveyance or possession thereof or the exercise of any rights hereunder, excluding, however, any Claims based in whole or in part upon the gross negligence or willful misconduct of any Indemnified Party, provided that the Indemnified Party gives Grantor prompt notice of each such Claim, cooperates in the defense thereof, and Grantor shall have the sole right to defend and/or settle each such Claim.

12. Entire Agreement and Severability. This instrument, the attached Exhibits and the Conservation Values contain the entire agreement of the parties with respect to the Easement and supersedes any prior agreements relating to the Easement. If any provision of this Easement is held unenforceable by a court of competent jurisdiction, the remainder of the Easement shall continue in full force and effect.

13. Subordination. Grantor represents and warrants to the best of its knowledge that the only mortgage or deed of trust encumbering the Project is the security instrument identified in Exhibit C attached hereto. Concurrently herewith, the holder of the security instrument hereto has agreed, by separate instrument to be recorded immediately after this Easement, to subordinate its rights in the Project to this Easement to the extent necessary to permit Grantee to enforce the purpose of the Easement in perpetuity and to prevent any extinguishment of this Easement by the holder thereof. The priority of any present or future security instrument with respect to any valid claim on the part of the holder thereof to the proceeds of any sale, condemnation proceedings, or insurance or to the leases, rents and profits of the Property or Structure shall not be affected by this Easement, and the liens created by Grantee's exercise of any of its rights under this Easement shall be junior to such present and future security instrument; provided that this Easement shall not be subordinated in any other respect whatsoever.

Image ID: 000001893270 Type: CRP
Page 7 of 12
BK 2968 PG 937

14. Notices. All notices given pursuant to this Easement shall be in writing and sent to the other party at the address set forth in the first paragraph hereof, by US Mail or overnight express courier. Either party may change its notice address by notice to the other party. Either party may, from time to time, specify one additional party to receive written notice in order for such notice to be binding.

15. Amendments. This Easement may only be amended by a written instrument signed by Grantor and Grantee provided that any amendment shall be null and void if it is not consistent with the conservation and preservation purposes of this Easement and would cause the Easement to not qualify as a conservation easement under any applicable federal or state laws, rules or regulations.

IN WITNESS WHEREOF, the undersigned have executed and accepted this Deed of Preservation Easement as of the Effective Date.

GRANTOR:
BUDBECK, LLC

_____(SEAL)
STEVEN L. BENGEL, Member

_____(SEAL)
SABRINA D. BENGEL, Member

GRANTEE:
NEW BERN PRESERVATION
FOUNDATION, INC.

_____
VICE President

Image ID: 000001893271 Type: CRP
Page 8 of 12
BK 2968 PG 938

ATTEST:

Susan T. Haines
_____ Secretary

-seal-

NORTH CAROLINA

CRAVEN COUNTY

I, the undersigned Notary Public of the County and State aforesaid, certify that **STEVEN L. BENGEL** and **SABRINA D. BENGEL** personally appeared before me this day and acknowledged that they are all of the Members of **BUDBECK, LLC**, a North Carolina limited liability company, and further acknowledged the due execution of this document on behalf of **BUDBECK, LLC**.

Witness my hand and Notarial stamp or seal this 30 day of December, 2010.

Sharlene Dimpsey
NOTARY PUBLIC

My Commission Expires: 9-26-2015

SHARLENE DIMPSEY NOTARY PUBLIC CRAVEN COUNTY, N.C.

Image ID: 000001893272 Type: CRP
Page 9 of 12
BK 2968 PG 939

NORTH CAROLINA

CRAVEN COUNTY

I, Sharlene Dimpsey, a Notary Public of Craven County, North Carolina do hereby certify that Jean T. Hawes personally appeared before me this day and acknowledged that she/he is the _____ Secretary of, NEW BERN PRESERVATION FOUNDATION, INC., a North Carolina non-for-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by herself as its _____ Secretary.

WITNESS my hand and notarial seal, this 30 day of December, 2010

Sharlene Dimpsey
NOTARY PUBLIC

My Commission Expires: 9-26-2015

SHARLENE DIMPSEY
NOTARY
PUBLIC
CRAVEN COUNTY, N.C.

Image ID: 000001893273 Type: CRP
Page 10 of 12
BK 2968 PG 940

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain property conveyed from Steven L. Bengel, and wife, Sabrina D. Bengel to BudBeck, LLC, more particularly identified as Tract Seven (Parcel Id #: 8-001-C-089) in that certain Deed recorded in Deed Book 2479, at Page 935 in the Craven County Registry, which deed and description is incorporated herein by reference.

Saving and excepting therefrom any and all easements and encumbrances of record.

Image ID: 000001893274 Type: CRP
Page 11 of 12
BK 2968 PG 941

EXHIBIT B:

DESCRIPTION OF CONSERVATION VALUES

The National Bank of New Berne Building is an attractive pre-Civil War commercial structure. It was used almost continuously as the home of New Bern's most prominent banks from 1869 through the mid 1990s. It is believed that this building was originally completed around 1858, and replaced a similarly designed building which had been used for different commercial activities, the latest of which was an Apothecary shop. It is believed that from its inception, the building has been used almost exclusively for both commercial activities (first floor) and residential activities (second and third floors) through. Based upon the earliest photographs available, it had a 4-bay stuccoed façade with two major entrance doorways at the ground floor. The central door served the commercial portion, while the one at the east end opened into the side hall and stair to the upper floors. Both doorways were flanked by pilasters ornamented with notable Greek Rival fretwork in support of prominent bracketed cornices. The tall second story windows appear to rise from panelled jib-doors. All window lintels were either of brownstone, or of stucco painted in contrasting color. Above the plain frieze of the parapet was brick dentil course.

The first major remodeling, undertaken around 1910, involved removal of the original doorways and the shorting of the second story windows to remit the addition restrained Classical doorways, windows and a modillion cornices at the first story. During the period of 1915-1920, the entire façade was completely refaced from what appears to be terra cotta, giving the present unified scheme of full-height pilasters with Corinthian capitals supporting round arches above the third floor windows. Above was a prominent modillion cornice and a full balustrade. The third story retains most of its original late 1850s wood work, consisting of two-part late Greek Rival surrounds rising from plinth blocks, large four-panel doors, and several plain Greek Rival mantles. To the rear of the building is a two-story brick ell also dating from the 1850s.

The United States Department of the Interior- National Park Service has determined that this building contributes to the significance of the New Bern Historic District as a "certified historic structure" for a charitable contribution for conservation purposes and according to the Tax Treatment Extension Act of 1980.

Image ID: 000001893275 Type: CRP
Page 12 of 12
BK 2968 PG 942

EXHIBIT C:
SECURITY INSTRUMENT INFORMATION

1. Deed of Trust granted by BudBeck, LLC to BB&T Collateral Services Corporation, Trustee, for Branch Banking and Trust Company, in the principal amount of $249,500.00, recorded March 19, 2009 in Deed Book 2802 at Page 154 in the Craven County Registry.

2. Deed of Trust granted by BudBeck, LLC to BB&T Collateral Services Corporation, Trustee, for Branch Banking and Trust Company, in the principal amount of $300,000.00, recorded October March 29, 2009 in Deed Book 2868 at Page 230 in the Craven County Registry. Said Deed of Trust was re-recorded on March 9, 2010 in Deed Book 2895 at Page 704 in the Craven County Registry.

3. Any other liens and encumbrances of record.