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CRAVEN County,North Carolina
Sherri B. Richard Register of Deeds

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STATE OF NORTH CAROLINA

DEED OF PRESERVATION EASEMENT

CRAVEN COUNTY

Tax Parcel ID No.: 8-002-C-054

This **DEED OF PRESERVATION EASEMENT** (the "Easement") is made this 19th day of May, 2020 (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 415 Broad Street, New Bern, Craven County, North Carolina, more commonly referred to as "The Alexander Miller House and Store," 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 Grantee certifies under penalty of perjury that: (i) it is a qualified organization under the Code with a purpose of environmental protection, land conservation, open space preservation, or historic preservation; and (ii) it has the resources to manage and enforce the restrictions contained herein and a commitment to do so; and

WHEREAS, the Structure and Property (collectively, the "Project") have certain architectural, historic, and/or cultural significance, which attributes are collectively, described in

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

Exhibit B attached hereto and incorporated herein by reference (the "Conservation Values"), and the Structure is listed in the National Register or is located in a certified state or local historic district and has been certified by the Secretary of the United States Department of the Interior or his designee as being of historic significance to the district; and

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" or "Deed of Preservation Easement") to preserve the Structure and the Conservation Values as hereinafter described. The area of the Easement encompasses the entire exterior of the Structure, including but not limited to wall surfaces, railings, decorative metalwork, doors, windows, roofs, decorative elements, front, side, rear and height (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, 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 in any way inconsistent with the historical character of the exterior as of the Effective Date of this Easement without the Grantee's Consent, except as provided in this Easement and with respect to structural alterations which have no visual impact whatsoever with respect to the exterior of the Structure. Provided that no such alterations shall be permitted if they would cause the Deed of Preservation Easement to fail to qualify as a qualified conservation contribution under the Code. 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. 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 set forth in this Easement and as may be required by law. Provided that no new structures or additions shall be permitted if they would cause the Deed of

Preservation Easement to fail to qualify as a qualified conservation contribution under the Code.

(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 described 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. Provided that any proposed subdivision or division described in this paragraph (e) shall not be allowed if they would cause the Deed of Preservation Easement to fail to qualify as a qualified conservation contribution under the Code.

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 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 immediately own a

vested 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 (numerator) to the aggregate value of the Project as of the Effective Date (denominator). 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.

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 by a judicial proceeding, provided that any proceeds from any subsequent sale, exchange, involuntary conversion or disposition of the Project shall be allocated to Grantee by multiplying such proceeds by the Easement Ratio Value. All proceeds shall be used by Grantee in a manner consistent with the conservation purposes of the original contribution. Proceeds shall also include, without limitation, insurance proceeds and condemnation proceeds.

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 proceeds calculated in accordance with the provisions of paragraph 6.

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, 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 Project in perpetuity and are binding upon Grantor and the successors and assigns of Grantor for the benefit of Grantee.

10. Assignment, Successors and Assigns. The Grantee is prohibited from subsequently transferring the Easement, whether or not for consideration, unless the Grantee, as a condition of the subsequent transfer, requires that the conservation purpose which the Easement was originally intended to advance continues to be carried out. Moreover, subsequent transfers must be restricted to organizations qualifying, at the time of the subsequent transfer, as an eligible donee under paragraph (c)(1) of 26 CFR § 1.170A-14.

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(s) identified in Exhibit C attached hereto. Concurrently herewith, the holder of the security instrument(s) 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.

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. No amendment or modification of this Easement shall be permitted if said amendment or modification: (i) could adversely affect the perpetual duration of the Easement, (ii) is not consistent with the conservation and preservation purposes of this Easement, or (iii) would cause the Easement to not qualify as a qualified conservation contribution under the Code or 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

By: _____ (SEAL)
STEVEN L. BENGEL, Member/Manager

By: _____ (SEAL)
SABRINA D. BENGEL, Member

GRANTEE:

NEW BERN PRESERVATION FOUNDATION, INC.

By: _____ (SEAL)
ERVIN TIMOTHY THOMPSON, President

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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 and Managers 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 19th day of May, 2020.

Lisa M. Carman
NOTARY PUBLIC

My Commission Expires: 4-30-2023

LISA M. CARMAN NOTARY PUBLIC CARTERET COUNTY, NC

NORTH CAROLINA
CRAVEN COUNTY

I, the undersigned Notary Public of the County or City of New Bern and State of North Carolina, do hereby certify that **Ervin Timothy Thompson** personally appeared before me this day and acknowledged (i) that he is the President of the **NEW BERN PRESERVATION FOUNDATION, INC**, a North Carolina non-profit corporation, and (ii) that by authority duly given and as the act of such corporation, he signed the foregoing instrument in the name of such corporation on such corporation's behalf as its act and deed; and that he made a vow of truthfulness on penalty of perjury while invoking a deity or using a form of the word "swear".

WITNESS my hand and notarial seal, this 19th day of May, 2020.

Lisa M. Carman
NOTARY PUBLIC

My Commission Expires: 4-30-2023

LISA M. CARMAN NOTARY PUBLIC CARTERET COUNTY, NC

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain lot or parcel of land in the City of New Bern, Number Eight (8) Township, Craven County, North Carolina, bounded on the North by Broad Street, on the East by Dale M. Stroud and wife, Linda A. Stroud, and on the West by Walter C. Jones Jr., and being more particularly described as follows:

Beginning at a point marked by an iron pipe set at the intersection of the southern right-of-way line of Broad Street and the eastern right-of-way line of Hancock Street, thence from this Beginning Point South 80° 00' 00" East 169.50 feet along and with the southern right-of-way line of Broad Street to a Mag Nail set, which said Mag Nail marks the true point and place of BEGINNING; thence from said BEGINNING, South 80° 00' 00" East 47.00 feet along and with the southern right-of-way line of Broad Street to an existing iron spike; thence South 10° 00' 00" West 154.50 feet to a Mag Nail set in a curb and marking the northeast corner of the property of the City of New Bern as described in Book 1668, Page 382, Craven County Registry; thence North 80° 00' 00" West 47.00 feet to a Mag Nail set; thence North 10° 00' 00" East 154.50 feet to the point and place of BEGINNING. The above description is taken from a map or survey entitled "Plat of Survey for Gull Harbor Associates, LLC and John E. Sprague and wife, Elizabeth D. Sprague," by Edward B. Latham, P.L.S., dated March 25, 2005.

Being the same property as described in Deed recorded in Book 2300, Page 585, Craven County Registry.

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EXHIBIT B:

DESCRIPTION OF CONSERVATION VALUES

This handsome three-story brick house and store is one of only two such commercial buildings of the Greek Revival style to survive in New Bern. With its massive form and well-articulated brickwork and stone elements, the Miller Store is one of the most important components of a vanishing historic streetscape of Broad Street. High parapeted gable ends dominate the structure. At the western gable a pair of large chimneys flank an unusual demi-lunette window opening, now bricked over. Three to one common bond brickwork was used in conjunction with tooled brownstone lintels on the side and rear walls. The four bay façade boast finer Baltimore-type pressed brick laid in a running bond with the openings finished with more costly tooled granite lintels. Brick dentil cornices appear at the front and center. The present first floor storefront is a mid-twentieth century remodeling.

This building is representative of typical commercial structures of its period erected in New Bern. The building retains its original masonry exterior and contributes a substantial presence on one of the primary streets in the Downtown New Bern Historic District.

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.

EXHIBIT C:

SECURITY INSTRUMENT INFORMATION

1. Deed of Trust recorded in Book 3539, Page 27 of the Craven County Register of Deeds.

2. Assignment of Rents recorded in Book 3539, Page 46 of the Craven County Register of Deeds.

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