

DEED OF EASEMENT
FOR HISTORIC PRESERVATION

STATE OF NORTH CAROLINA	PIN Portion of 0710713968
COUNTY OF WAKE	
Prepared by and After Recording Return to:	Capital Area Preservation, Inc. Post Office Box 28072 Capitol Station Raleigh, North Carolina 27611

Brief Description for Index: Utley-Horton Farm Deed of Easement

THIS DEED OF EASEMENT FOR HISTORIC PRESERVATION ("Preservation Agreement") is made by and between **KB HOME RALEIGH-DURHAM, INC.**, a Delaware Corporation, with offices located at 1800 Perimeter Park Drive, suite 140 Morrisville, NC 27560 (herein after "**Grantor**") and **CAPITAL AREA PRESERVATION, INC.** (hereinafter "**Grantee**"), a North Carolina non-profit corporation with offices located at 1101 Haynes Street, Suite 001, Raleigh, Wake County, North Carolina. The Effective Date of Preservation Agreement shall be the date this Preservation Agreement is signed by the Grantor, if Grantor is the last to sign, or by Grantee, if Grantee is the last to sign.

I. RECITALS

- A. The Grantee is a non-profit corporation organized under the laws of North Carolina chartered to preserve historically important real property and is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code, and a qualified holder pursuant to NCGS Chapter 121, Article 4, the "North Carolina Conservation and Historic Preservation Agreements Act" (hereinafter the "**Act**").
- B. The Grantee is authorized to accept and administer gifts of real and personal property, including easements for conservation purposes, in furtherance of its public purposes.
- C. The Grantor is the owner of the Utley-Horton House located at 3720 Old US 1 Highway, New Hill in the planning jurisdiction of the Town of Apex, County of Wake, North Carolina, which is a house of historical, cultural, and architectural significance (hereafter the "**House**") and the 1.0 acre of land on which the House sits (hereinafter the "**Land**").

D. Grantor desires to grant to Grantee, and Grantee desires to accept a Deed of Easement for Historic Preservation on the House and Land (hereinafter collectively referred to as the "**Property**"). The Legal Description of the Property is attached hereto as **Exhibit "A"** and further described in **EXHIBIT "B"** and incorporated in this agreement by reference as if fully set forth herein.

E. Grantor and Grantee agree that the site features of the Land and the interior and exterior architectural elements of the House listed below, contribute to the historic, architectural, and scenic significance of the Property, and may be hereinafter collectively referred to as the Property's "Conservation Values" and/or "Architectural Features:"

Site Features:

- Living trees greater than twelve (12) inches in diameter at a point four (4) feet above the ground
- Setting of the House
- 2-story frame gambrel-roof barn with shed additions
- Frame Smokehouse/wash house with chimney

Exterior:

- Wood siding
- Wood window sash and glass
- Door and window surrounds
- Roof
- Chimneys and foundation
- All cornerboards, trim, fascia, and soffits
- Wrap around porch
- Craftsman porch columns

Interior:

- Floor plan
- Wood flooring
- All wood trim, baseboards, and molding
- Living Room Mantel
- Door and window surrounds
- Doors and hardware

F. Grantor and Grantee desire that the House be preserved for the enjoyment and edification of future generations and shall remain on the Land.

G. Grantor and Grantee recognize that the House may need to be adapted and altered, where necessary, to provide for contemporary conveniences, and to accommodate contemporary uses, while at the same time retaining its historically and architecturally significant features.

H. The parties hereto acknowledge that the conveyance from Grantor to Grantee of this Deed of Easement pursuant to the Act will provide a method for preserving the House and the site features of the Land for the enjoyment and edification of future generations.

I. The parties hereto intend this document to be a conservation agreement as defined in the Act, and to create an interest in real property.

J. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter

gender as required by context.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, and pursuant to the Act and Section 170(h) of the Code, the parties hereto enter into this Preservation Agreement, the Grantor hereby unconditionally and irrevocably gives, grants and conveys forever and in perpetuity to the Grantee, its successors and assigns, and the Grantee hereby accepts an easement in gross, in perpetuity, in, on, and to the Property, of the nature and character and to the extent hereinafter set forth, together with the right to preserve and protect the values and to further the conservation purposes as described herein.

II. DURATION OF EASEMENT

This Preservation Agreement shall remain in effect in perpetuity unless terminated or extinguished in accordance with the terms of this Preservation Agreement. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its personal representatives, heirs, successors, successors in title, assigns, lessees, agents, and licensees.

III. CONSERVATION PURPOSE

It is the purpose of this Preservation Agreement to assure that the Property will be retained and maintained forever for conservation and preservation purposes, and to prevent any use or change to the Property that will significantly impair or interfere with their Conservation Values. Grantor and Grantee agree that to preserve the House, no removal, relocation, or alteration of the House should be made except as provided for herein.

IV. GRANTOR'S RESERVATION OF RIGHTS AND DECLARATION OF WARRANTIES, COVENANTS AND OBLIGATIONS

The Grantor, for itself, its administrators, successors, successors in title and assigns, agrees as follows:

A. Title. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Preservation Agreement; that there is legal access to the Property, that the Property is free and clear of any and all encumbrances, except matters of record and survey, excluding, however, monetary encumbrances other than ad valorem taxes, none of which would nullify, impair or limit in any way the terms or effect of this Preservation Agreement; Grantor shall defend its title against the lawful claims of all persons claiming by, through, or under Grantor, except for the exceptions herein stated, and Grantor covenants that the Grantee, its successors and assigns, shall have the right to monitor and defend the terms of the aforesaid Preservation Agreement.

B. Reservation of Rights. Grantor reserves unto itself and for the benefit of its successors, successors in title and assigns all rights that are not inconsistent with the express terms of this Preservation Agreement, including, without limitation, the right to engage in all those acts and uses that (i) are permitted by law; (ii) do not substantially impair the Property; and (iii) are not inconsistent with the conservation purpose hereof.

C. Rehabilitation and Maintenance. Grantor shall continuously maintain, repair, and administer the House in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (hereinafter the "Secretary's Standards") so as to preserve the

historical integrity of features, materials, appearances, workmanship, and environment of the Property. Said standards are attached hereto as **Exhibit "C"** and incorporated in this agreement by reference as if fully set forth herein. For the purpose of clarity, this obligation shall run with the land and be a present obligation on each party or parties currently holding title to the Property. Prior owners divested of interest in the Property shall have no further responsibilities or obligations under this Section.

D. Masonry. No cleaning, repointing, waterproofing, or painting of the exterior masonry of the House shall be undertaken unless the prior written approval of the Grantee shall have been obtained. No sandblasting under any circumstances.

E. Landscaping. Grantor's obligation to maintain shall also require that the Property's landscaping be maintained in good appearance. Lawn areas shall be maintained and regularly mown. Absent the express written approval of Grantee, no living trees greater than twelve (12) inches in diameter at a point four (4) feet above the ground shall be removed from the Property unless immediate removal is necessary for the protection of any persons coming onto the Property, or of the general public; for the prevention or treatment of disease; for the protection and safety of the Property or other permanent improvements on the Land. Any tree of the aforementioned size that must be removed shall be replaced within a reasonable time by a new tree of the same species. If so requested, Grantee may, in its discretion, approve the use of an alternate species. For the purpose of clarity, this obligation shall run with the land and be a present obligation on each party or parties currently holding title to the Property. Prior owners divested of interest in the Property shall have no further responsibilities or obligations under this Section.

F. Compliance with Laws. Any rehabilitation work or new construction work on the House will comply with the requirements of all applicable federal, state, and local governmental laws and ordinances. Also, that in making use of the House, Grantor shall abide by all federal, state, and local laws and ordinances. If Grantor receives a notice of violation or lien relating to the House from any governmental authority, Grantor shall immediately and in no event less than five (5) days from the date of receipt of said notice, furnish to Grantee a copy of such notice.

G. No Alterations without Approvals. Grantor shall not undertake the following without the prior written approval of Grantee: (i) Increase or decrease the height of, make additions to, change the exterior construction materials or finishes, nor move, improve, alter, reconstruct, or change the facades (including fenestration) and roofs of the House; (ii) Remove, demolish, or alter historic features, materials, and finishes located within the interior of the House; (iii) Change the floor plan of the House; (iv) Erect or allow to grow on the Property anything which would impair the visibility of the house from the public right-of-way; (v) Erect any external signs or external advertisements except a marker as permitted under Paragraph D, Section V, a sign stating solely the address of the Property, or a temporary sign to advertise the sale or rental of the Property; and (vi) Make permanent substantial topographical changes to the Property.

H. Archaeology. Archaeologically significant deposits, sites or features discovered on the Land shall not be further disturbed or excavated except by or under the supervision of a professionally qualified archaeologist and provided plans for such archaeological activity have been submitted to and approved in writing by the Grantee prior to any ground-disturbing activities. Artifacts and objects of antiquity professionally excavated from archaeological deposits, sites, or features shall be treated and preserved according to North Carolina Office of State Archaeology Curation Standards. The Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Land from looting, vandalism, erosion, mutilation, or destruction from any cause.

I. No Permits without Approval. No addition to the House shall be constructed, nor shall permits for any such construction be applied for or obtained, unless the plans and designs for such structure or addition have been approved in advance in writing by Grantee.

J. Demolition/Removal. Neither the House nor any part thereof may be demolished and/or removed from the Land, except as may otherwise be allowed herein and with the express prior written permission of Grantee.

K. Timing of Requests for Approval. When seeking such approvals as are contemplated herein, Grantor shall give written notice to Grantee at least thirty (30) days prior to the anticipated date the work is to be undertaken.

L. Taxes. Grantor shall pay prior to delinquency, all taxes, special assessments and any other fees or charges that may become a lien on the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same. If the Grantee ever elects to pay any taxes or assessments due on the Property to protect its interest in the Property, the Grantor will immediately reimburse the Grantee for the same. For the purpose of clarity, this obligation shall run with the land and be a present obligation on each party or parties currently holding title to the Property. Prior owners divested of interest in the Property shall have no further responsibilities or obligations under this Section.

M. No Subdivision. No portion of the Land may be subdivided.

N. Upkeep, Maintenance, and Insurance. Grantor shall be solely responsible for the upkeep and maintenance of the House, and the Grantee shall have no obligation therefor; (ii) Grantor shall keep insurance on the House and keep the House in good repair. The property insurance shall be obtained from an insurance company rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged House without cost or expense to Grantor or contribution or coinsurance from Grantor. Such general liability insurance shall include Grantee's interest and name Grantee as an additional insured. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefore, certificates of insurance coverage. For the purpose of clarity, this obligation shall run with the land and be a present obligation on each party or parties currently holding title to the Property. Prior owners divested of interest in the Property shall have no further responsibilities or obligations under this Section.

O. Casualty Loss. In the event that the House or any part thereof is damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. Grantor shall undertake no repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the House and to protect public safety, without Grantee's prior written consent. Within thirty (30) days of the date of the damage or destruction, Grantor at its expense shall submit to Grantee a written report prepared by a qualified restoration architect and an engineer who are mutually acceptable to the parties hereto, which shall include the following: (i) an assessment of the nature and extent of the damage; (ii) a determination of the feasibility of the restoration of the House and/or reconstruction of damaged or destroyed portions of the House; and (iii) a report of such restoration/reconstruction work necessary to return the House to the condition existing on the date hereof.

If, after reviewing the report prescribed hereinabove and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims, if Grantor and Grantee agree that the purpose of this Preservation Agreement will be served by such restoration/reconstruction, then Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the House. Such restoration/reconstruction (iv) shall be in accordance with plans and specifications prepared by an architect, (v) shall comply with the Secretary's Standards, (vi) shall be approved by Grantor and Grantee, and (vii) shall provide for restoration/reconstruction of the House up to the total of the casualty insurance proceeds available to Grantor plus any deductible which shall be paid by Grantor but not more unless Grantor so elects in its sole and absolute discretion.

If, after reviewing the report and assessing the availability of insurance proceeds (net of any mortgagee's/lender's claims), the Grantor and Grantee agree that restoration/reconstruction of the House is impractical or impossible, or agree that the purpose of this Preservation Agreement would not be served by such restoration/reconstruction, the Grantor and/or Grantee may initiate a judicial proceeding for the extinguishment of this Easement, in whole or in part, in accordance with the procedures of paragraph VI D hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims prescribed herein below, Grantor and Grantee are unable to agree that the purpose of the Preservation Agreement will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the procedures of paragraph VII A hereof.

P. Liability and Indemnification. Grantor agrees to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the Grantee, its agents, directors and employees, from and against any and all third party claims, actions, liabilities, damages, fines, penalties, costs and expenses (including reasonable attorneys fees) arising out of or in connection with injury to or death of any person; damage to property; suffered as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation, or of the use or presence of any hazardous substance, waste or other regulated material in, on or under the property, unless such injury or damage is caused by the acts or omissions of Grantee, or any agent, director, or employee of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien. Provided, however, that nothing contained herein shall jeopardize the priority of any recorded lien of mortgage or deed of trust given in connection with a promissory note secured by the Property.

Q. Environmental Condition. Grantor acknowledges (i) that the Property may contain certain hazards as a result of outdated House 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 House is usable; (ii) addressing these problems is one of the challenges of owning and restoring a historic property; (iii) Grantee does not have the resources to correct these problems and will not take responsibility for the condition of the House; and (iv) Grantee is not liable in any way for any hazards, defects, or other problems of the Property.

Grantor specifically disclaims any representation, warranty or guaranty with respect to the environmental condition of the Property, express or implied, including, but not limited to, any representation or warranty as to the Property's condition, fitness for a particular purpose, quality, freedom from defects, or contamination (whether or not detectable by inspection).

V. GRANTEE'S RIGHTS AND OBLIGATIONS

This Preservation Agreement shall be administered solely by Grantee, its successors in interest or assigns; and in all subsequent conveyances of the Property, Grantee, its successors in interest or assigns shall be the sole party entitled to administer these covenants. To ensure the effective enforcement of this Preservation Agreement, Grantee shall have, and the Grantor hereby grants the Grantee, the following rights and the Grantee hereby accepts said rights and affirms the following obligations:

A. Right of Entry. At reasonable times and upon reasonable notice, the right to enter upon the Land for the purpose of inspecting the House to determine if there is compliance by the Grantor with the terms of this Preservation Agreement, and for the purpose of enforcing the terms of this Preservation Agreement. Grantee shall have no right to enter the interior of the House without Grantor's prior written consent which shall not be unreasonably withheld or conditioned.

B. Right to Monitor and Enforce. The right to prevent any activity or use of the House that is inconsistent with the purpose of this Preservation Agreement and to require the restoration of such areas or features of the House that may be damaged by inconsistent activity or use, pursuant to the remedies set forth herein below.

C. Review of Plans. In reviewing the plans and designs for any addition or changes to the House or Land, Grantee will consider the following criteria: building materials; height, fenestration; roof shapes, forms and materials; surface textures; expression of architectural detailing; scale; relationship or any additions to the main structure; general form and proportion of structures; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; Land coverage; use of local or regional architectural traditions; and effect on archeological resources. Designs for additions or additional structures shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is contemporary compatible with the size, color, material and character of the Property and its environment.

D. Historical Marker. The right to place a marker on the House providing historical information and/or indicating the Grantee's ownership of this easement, and (ii) to keep such marker clean and visible.

E. Use for Education Purposes. Researchers, scholars, and groups especially interested in historic preservation shall have access to view the House by special appointment at various times and intervals during each year upon written notice and approval by Grantor which shall not be unreasonably withheld or conditioned. Grantee may make photographs, drawings, or other representations documenting the significant historical, cultural, and architectural characteristics and features of the House, and distribute them to magazines, newsletters, or publicly available publications, or use them to fulfill its charitable and educational purposes.

VI. ADMINISTRATION, ENFORCEMENT AND REMEDIES

A. Remedies; Delay no Waiver. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages shall be available to Grantee; provided, however, Grantor's total liability hereunder shall in no event exceed the value of its interest in the House. No failure on the part of Grantee to enforce any covenant or restriction herein nor the waiver of any right hereunder by Grantee shall discharge or invalidate such covenant or restriction or any other covenant, condition, or restriction hereof, or affect the right of Grantee to enforce the same in event of a subsequent breach or

default.

B. Option to Purchase. In the event of a violation of covenants contained hereunder, Grantee then shall have an option to purchase the Property, provided it shall give the Grantor written notice of the nature of the violation and the Grantor shall not have corrected same within the ninety (90) days next following the giving of said notice. The purchase of the House and the Land, pursuant to the exercise of the option retained hereby shall be at a price equal to the then market value of the Property as determined by agreement of the Grantor and Grantee, or, in the absence of such an agreement, by a committee of three appraisers, one to be selected by the Grantee, one to be selected by the Grantor and the other to be designated by the two appraisers selected by Grantee and the Grantor respectively. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the Property, any right to purchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied by the proceeds of sale or if the proceeds of sale will not satisfy the outstanding debt the assumed by Grantee as part of the purchase price.

C. Notice. Any notice which by any provision of this instrument is required or allowed to be given by either party to the other shall be in writing and shall be deemed to have been sufficiently given for all purposes when sent by certified or registered United States mail, postage prepaid, and addressed as follows:

If to Owner: KB Home Raleigh-Durham, INC
1800 Perimeter Park Drive, Suite 140
Morrisville, NC 27560
Attn: Jimmy Gaskins
Email: jagaskins@kbhome.com

With a copy to: KB HOME
10475 Fortune Parkway, Suite 100
Jacksonville, FL 32256
Attn: Lisa Bianchi, Esq.
Email: lbianchi@kbhome.com

If to Grantee: Capital Area Preservation, Inc.
PO Box 28072
Raleigh, NC 27611
Attn: President & CEO
Email: info@cappresinc.org

With a copy to: Capital City Law
Attn: Kyle Smalling
116 N. Person Street
Raleigh, NC 27601
Email: kyle@capitalcitylawnc.com

D. Changed Conditions. The grant or donation of this Preservation Agreement gives rise to a property right immediately vested in Grantee, with a fair market value equal to the proportionate value that the Preservation Agreement bears to the value of the Property as a whole. That proportionate value of Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Property for conservation purposes, the restrictions contained herein may only be extinguished by

judicial proceeding. Upon such proceedings, such portion shall be equal to the proportionate value that Grantee's interest in the Property bears to the value of the Property as a whole as of the date of the recording of this Preservation Agreement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the conservation area, or any damages otherwise awarded as a result of judicial proceeding, *minus* the Grantor's expenses from such transaction or proceeding. Grantee shall use its share of the proceeds of sale in a manner consistent with the conservation purposes set forth herein.

E. Condemnation. Whenever all or part of the Property are taken by exercise of eminent domain by public, corporate or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Preservation Agreement, the Grantor shall immediately give notice to Grantee and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking and all incidental or direct damages resulting from the taking, which any proceeds recovered in such actions shall be divided in accordance with the proportionate value of Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. The Grantee, its successors, and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that Grantee's interest in the Property bears to the value of the Property as a whole as of the date of the recording of this Preservation Agreement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the conservation area, or any damages otherwise awarded as a result of judicial proceeding, *minus* the Grantor's expenses from such transaction or proceeding. Grantee shall use its share of the proceeds of sale in a manner consistent with the conservation purposes set forth herein.

F. Acts Beyond Grantor's Control. Nothing contained in this Preservation Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

G. Costs of Enforcement. All costs incurred by Grantee in enforcing the terms of this Preservation Agreement against Grantor, including, but not limited to, arbitration costs, court costs, attorney fees, and any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Preservation Agreement, shall be borne by Grantor.

VII. ARBITRATION

A. Agreement to Arbitrate. If Grantor and Grantee are unable to resolve any controversies arising out of this Preservation Agreement, Grantor and Grantee 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.

VIII. MISCELLANEOUS

A. Right of First Refusal. In case of any contemplated sale of the Property or any portion thereof by the Grantor or any successor in title thereto, first refusal as to any bona fide offer

of purchase must be given to Grantee, its successors or assigns. If Grantee so decides to purchase, it shall notify the then Grantor of its willingness to buy upon the same terms within thirty (30) days of receipt of written notice of such bona fide offer. Failure of Grantee to notify the then Grantor of its intention to exercise this right of first refusal within such thirty (30) day period shall free the Grantor to sell pursuant to the bona fide offer. In any event, Grantee shall have the opportunity to explain to the proposed purchaser the terms of the Preservation Agreement prior to the closing of any sale.

B. Subsequent Liens and Mortgages. Nothing in this Preservation Agreement shall be construed to prohibit Grantor's ability to use the Property as collateral for subsequent liens or mortgages. All subsequent mortgages and rights in the Property of all subsequent mortgagees are always subject to the rights of Grantee to enforce the purposes of this Preservation Agreement. Grantor will provide a copy of this Preservation Agreement to all mortgagees of the Property. The provisions as described above relate only to the purposes of the Preservation Agreement, namely the preservation of the Conservation Values of the Property.

C. Covenants Run with the Land. The Grantor hereby covenants to carry out the duties specified herein, and these restrictions shall be covenants and restrictions running with the land, which shall bind the Grantor, the Grantor's administrators, successors, successor in title and assigns, and the Grantor agrees for the Grantor's administrators, successors, successors in title and assigns that in the event the Property is sold or otherwise disposed of, the covenants and restrictions contained herein will be binding on its successor in title. Upon any such conveyance of the Property, the obligations of Grantor hereunder shall run with the land and bind the successor in title. With respect to any rights, powers, privileges, duties, obligations or liabilities of Grantor under this Preservation Agreement, the successor or successors in title to Grantor to the Property shall be bound by this Preservation Agreement, and Grantee shall then look solely to such owner or owners of the Property in connection with the performance of any responsibilities and obligations of Grantor.

D. Assignment. Upon written notice to Grantor, Grantee may convey, assign, or transfer this Preservation Agreement to a unit of federal, state, or local government or to a similar local, state, or national organization that is a *qualified organization* under Section 170(h) of the Code, and a *qualified holder* under the Act.

E. Interpretation. This Preservation 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.

F. Merger. The Parties agree that the terms of this Preservation Agreement shall survive any merger of the fee and easement interest in the Property or any portion thereof.

G. Entire Agreement. This Preservation 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.

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

I. Amendments. Grantor and Grantee are free to jointly amend this Preservation Agreement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Preservation Agreement or affects the perpetual duration of

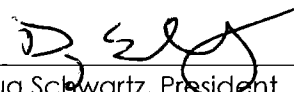
this Preservation Agreement. Such amendment(s) require the written consent of both Grantor and Grantee and shall be effective upon recording in the public records of Wake County, North Carolina.

Signature Pages Follow

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and if corporate, have caused this instrument to be signed and sealed by the appropriate corporate officers in accordance with the authority directed by the Board of Directors, all as of the day and year first above written.

GRANTOR:


KB HOME RALEIGH-DURHAM, INC.
a Delaware Corporation

By:  (Seal)
Doug Schwartz, President

NORTH CAROLINA

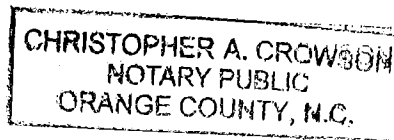
COUNTY OF ORANGE

I, the undersigned, CHRISTOPHER A. CROWSON, a Notary Public of the County and State aforesaid, hereby certifies that Doug Schwartz, personally came before me this day and acknowledged that he is President of **KB HOME RALEIGH-DURHAM, INC.**, and that by authority duly given and as an act of the corporation, executed the forgoing and annexed instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this 26th day of JUNE, 2024.

Notary Public

SEAL

My commission expires: 5/7/2029



GRANTEE:

CAPITAL AREA PRESERVATION, INC.,
a North Carolina non-profit corporation

By: Gary G. Roth (Seal)
Gary G. Roth, President & CEO

NORTH CAROLINA

WAKE COUNTY

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Gary G. Roth personally came before me this day and acknowledged that he is President & CEO of **CAPITAL AREA PRESERVATION, INC.**, a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, executed the foregoing and annexed instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this 24 day of June, 2024.

Todd Bowling
Notary Public

My commission expires: 03/19/2029

SEAL

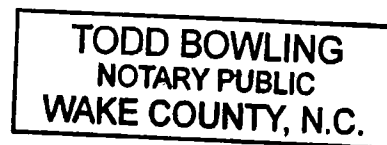


EXHIBIT A***Legal Description***

COMMENCING FROM A 1/2" EXISTING IRON PIPE ON THE NORTHERN RIGHT OF WAY OF OLD US HWY 1 (NCSR 1011), SAID IRON PIPE BEING THE EASTERN PROPERTY CORNER OF PIN# 0710713968, AS RECORDED IN DEED BOOK 7883 PAGE 737 IN THE WAKE COUNTY REGISTRY, SAID IRON PIPE ALSO BEING A CONTROL CORNER WITH NORTH CAROLINA STATE PLANE COORDINATES N: 701,964.41 & E: 2,018,187.30' (NSRS 2011 / NAD 83 / SPC) AS SHOWN ON AN EXHIBIT TITLED "HISTORICAL DESIGNATION EXHIBIT" PERFORMED BY BATEMAN CIVIL SURVEY COMPANY, DATED 05/14/2024 AND RUNNING THE FOLLOWING CALLS TO THE POINT OF BEGINNING:

S44°08'00"W, A DISTANCE OF 57.13' TO A 1/2" EXISTING IRON PIPE ON THE NORTHERN RIGHT OF WAY OF OLD US HWY 1 (NCSR 1011);
 THENCE, LEAVING SAID RIGHT OF WAY, S68°50'52"W, A DISTANCE OF 133.39' TO THE POINT OF BEGINNING, AND RUNNING THE FOLLOWING CALLS:

THENCE S44°45'01"W, A DISTANCE OF 30.03' TO A COMPUTED POINT;
 THENCE S46°28'04"W, A DISTANCE OF 47.79' TO A COMPUTED POINT;
 THENCE S55°02'07"W, A DISTANCE OF 116.95' TO A COMPUTED POINT;
 THENCE N34°42'55"W, A DISTANCE OF 172.75' TO A COMPUTED POINT;
 THENCE N74°37'56"W, A DISTANCE OF 68.37' TO A COMPUTED POINT;
 THENCE N21°17'29"E, A DISTANCE OF 105.53' TO A COMPUTED POINT;
 THENCE, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 225.00', A CHORD BEARING S77°35'52"E, AND A CHORD LENGTH OF 69.54', A DISTANCE OF 69.82' TO A COMPUTED POINT;
 THENCE S86°29'13"E, A DISTANCE OF 41.47' TO A COMPUTED POINT;
 THENCE, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 175.00', A CHORD BEARING S62°12'44"E, AND A CHORD LENGTH OF 143.89', A DISTANCE OF 148.29' TO A COMPUTED POINT;
 THENCE S37°56'14"E, A DISTANCE OF 66.72' TO A COMPUTED POINT, SAID POINT BEING THE POINT OF BEGINNING.

BEING 43,537 SQUARE FEET MORE OR LESS.

EXHIBIT C***The Secretary of the Interior's Standards for the Treatment of Historic Properties*****Standards for Preservation**

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 will 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, 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.

Standards for Rehabilitation

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 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. 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

1. A property will be used as it was historically or be given a new use which reflects the property's 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 not 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.

Standards for Reconstruction

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 which 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.