

# MODEL REHABILITATION AGREEMENT

**\*\* Highlighted sections are subject to change depending on circumstances. All anticipated alternatives are included in this document.**

## REHABILITATION AGREEMENT

STATE OF NORTH CAROLINA

PIN:

COUNTY OF WAKE

Prepared by and After Recording Return to:

Capital Area Preservation, Inc.  
Post Office Box 28072  
Capitol Station  
Raleigh, North Carolina 27611-8072

Brief Description for Index:

**THIS REHABILITATION AGREEMENT** ("Agreement") is made by and between \_\_\_\_\_, (hereinafter "Grantor"), of \_\_\_\_\_, the County of \_\_\_\_\_, State of North Carolina and **CAPITAL AREA PRESERVATION, INC.** (hereinafter "Grantee"), a North Carolina non-profit corporation with offices located at 1111 Haynes Street, Raleigh, County of Wake, State of North Carolina. The Effective Date of this Agreement shall be the date this Agreement is signed by Grantor, if Grantor is the last to sign, or by Grantee, if Grantee is the last to sign.

### I. RECITALS

A. Whereas, Grantor owns the \_\_\_\_\_ House, located at \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_ County, North Carolina (hereinafter the "House"), which is a property of recognized historical, cultural and architectural significance; and

B. Whereas, Grantee and Grantor made and entered into that certain Deed of Easement for Historic Preservation on \_\_\_\_\_, (hereinafter "Preservation Agreement") incorporating by reference this Agreement and the provisions herein; and

C. Whereas, 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; and

D. Whereas, Grantee and Grantor desire that the House be rehabilitated and preserved for the enjoyment and edification of future generations; and

E. Whereas, The House, and the land it sits upon (hereinafter collectively referred to as the "Property") is commonly identified by PIN \_\_\_\_\_, Records of the \_\_\_\_\_ County Revenue Collector, \_\_\_\_\_ County, North Carolina, and is more particularly described on the attached Exhibit "A" which is incorporated herein by reference; and

OR

Whereas, Grantee and Grantor desire that the House be moved to that certain premises at \_\_\_\_\_ in \_\_\_\_\_, North Carolina, more particularly described as that parcel with PIN No. \_\_\_\_\_, Records of the Wake County Revenue Collector, Wake County, North Carolina, as further described in the map attached as Exhibit "A" and incorporated herein by reference (hereinafter the "Parcel" and collectively with the House referred to as the "Property"); and

F. Whereas, the Grantor and Grantee agree that the interior and exterior architectural and landscape features listed below are elements contributing to the architectural significance of the Property, and may be hereinafter collectively referred to as the Property's "Conservation Values" or "Architectural Features:"

Examples: **MIRROR EASEMENT LIST**  
Wrap-around porch,

Exterior wood siding (retain or replace in kind),  
Wood floors (as existing or restore original floor underneath),  
Door and window surrounds,  
Mantels and fireplace surrounds,  
Baseboards,  
Windows and hardware,  
Doors and hardware,  
Staircase, newel posts, balustrades, and  
Any significant landscaping features.

**NOW, THEREFORE**, in consideration of the promises and the mutual benefits recited in the above mentioned Preservation Agreement, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Grantor agrees to rehabilitate the House according to the following terms, conditions, and deadlines.

## II. DEADLINES FOR REHABILITATION

### REHAB IN PLACE

A. Plan for Use. Not less than \_\_\_\_ (\_\_\_) days before rehabilitation work is scheduled to begin, Grantor shall, at Grantor's sole expense, prepare a plan for use for the Property and submit same to Grantee for Grantee's written approval. No rehabilitation work shall begin until Grantee has approved Grantor's plan for use in writing.

B. Photographs. Not less than \_\_\_\_ (\_\_\_) days before rehabilitation work is scheduled to begin, Grantor shall photograph all exterior sides of the House, and all interior walls and trim in order to document the appearance, configuration, and condition of the House prior to rehabilitation. No rehabilitation work shall begin until Grantor has submitted such photographs to Grantee.

C. Heating, Plumbing and Electrical. Not less than \_\_\_\_ (\_\_\_) months after the date of this Agreement, Grantor shall provide modern heating, electrical, and plumbing systems, as needed.

D. Completion of Work. Not less than \_\_\_\_ (\_\_\_) months after the date of this Agreement, Grantor shall complete all interior and exterior work needed to make the House habitable and to comply with the terms, conditions, and deadlines of this Agreement.

OR

### MOVE REAHB

A. Relocation of House. Not less than \_\_\_\_ (\_\_\_) days after the date of this Agreement, Grantor shall move the House to the Parcel.

B. Plan for Use. Not less than \_\_\_\_ (\_\_\_) days before rehabilitation work is scheduled to begin, Grantor shall, at Grantor's sole expense, prepare a plan for use for the Property and submit same to Grantee for Grantee's written approval. No rehabilitation work shall begin until Grantee has approved Grantor's plan for use in writing.

C. Photographs. Not less than \_\_\_\_ (\_\_\_) days before rehabilitation work is scheduled to begin, Grantor shall photograph all exterior sides of the House, and all interior walls and trim in order to document the appearance, configuration, and condition of the House prior to rehabilitation. No rehabilitation work shall begin until Grantor has submitted such photographs to Grantee.

D. Heating, Plumbing and Electrical. Not less than \_\_\_\_ (\_\_\_) months after the date of this Agreement, Grantor shall provide modern heating, electrical, and plumbing systems, as needed.

E. Completion of Work. Not less than \_\_\_\_ (\_\_\_) months after the date of this Agreement, Grantor shall complete all interior and exterior work needed to make the House habitable and to comply with the terms, conditions, and deadlines of this Agreement.

OR

### SALE-REHAB IN PLACE

A. Sale. Not less than \_\_\_\_ (\_\_\_) months after the date of this Agreement, Grantor will list the Property for sale and will keep the Property continuously listed until it is sold. Sale of the Property shall be on the condition that the purchaser of the Property (hereinafter the "Owner") will assume the obligations of Grantor under this Agreement. Grantor will take all reasonable measures necessary to preserve the House in its present condition and to prevent further deterioration until transfer of ownership to the Owner.

B. Plan for Use. Not less than \_\_\_\_ (\_\_\_) days before rehabilitation work is

scheduled to begin, Owner shall, at Owner's sole expense, prepare a plan for use for the Property and submit same to Grantee for Grantee's written approval. No rehabilitation work shall begin until Grantee has approved Owner's plan for use in writing.

C. Photographs. Not less than \_\_\_\_ (\_\_\_\_) days before rehabilitation work is scheduled to begin, Owner shall photograph all exterior sides of the House, and all interior walls and trim in order to document the appearance, configuration, and condition of the House prior to rehabilitation. No rehabilitation work shall begin until Owner has submitted such photographs to Grantee.

D. Heating, Plumbing and Electrical. Not less than \_\_\_\_ (\_\_\_\_) months after the date of acquiring title to the House, Owner shall provide modern heating, electrical, and plumbing systems, as needed.

E. Completion of Work. Not less than \_\_\_\_ (\_\_\_\_) months after the date of acquiring title to the House, Owner shall complete all interior and exterior work needed to make the House habitable and to comply with the terms, conditions, and deadlines of this Agreement.

OR

#### MOVE/SALE REHAB

A. Relocation of House. Not less than \_\_\_\_ (\_\_\_\_) days after the date of this Agreement, Grantor shall move the House to the Parcel.

B. Sale. Not less than \_\_\_\_ (\_\_\_\_) months after the House has been moved to the Parcel, Grantor will list the Property for sale and will keep the Property continuously listed until it is sold. Sale of the Property shall be on the condition that the purchaser of the Property (hereinafter the "Owner") will assume the obligations of Grantor under this Agreement. Grantor will take all reasonable measures necessary to preserve the House in its present condition and to prevent further deterioration until transfer of ownership to the Owner.

C. Plan for Use. Not less than \_\_\_\_ (\_\_\_\_) days before rehabilitation work is scheduled to begin, Owner shall, at Owner's sole expense, prepare a plan for use for the Property and submit same to Grantee for Grantee's written approval. No rehabilitation work shall begin until Grantee has approved Owner's plan for use in writing.

D. Photographs. Not less than \_\_\_\_ (\_\_\_\_) days before rehabilitation work is scheduled to begin, Owner shall photograph all exterior sides of the House, and all interior walls and trim in order to document the appearance, configuration, and condition of the House prior to rehabilitation. No rehabilitation work shall begin until Owner has submitted such photographs to Grantee.

E. Heating, Plumbing and Electrical. Not less than \_\_\_\_ (\_\_\_\_) months after the date of acquiring title to the House, Owner shall provide modern heating, electrical, and plumbing systems, as needed.

F. Completion of Work. Not less than \_\_\_\_ (\_\_\_\_) months after the date of acquiring title to the House, Owner shall complete all interior and exterior work needed to make the House habitable and to comply with the terms, conditions, and deadlines of this Agreement.

## II. APPROVALS

A. Approvals. When seeking any approval from Grantee, Grantor shall request such approval in writing. If Grantee fails to respond within thirty (30) days of receipt of such request, Grantee will be deemed to have given its approval.

## III. REQUIREMENTS FOR REHABILITATION

### A. General.

1. Grantor shall adhere to and abide by the Secretary of the Interior's Standards for Rehabilitation (36 CFR §67), a copy of which is attached as "Exhibit B" and incorporated herein by reference.

2. The terms and conditions of this Agreement may be changed with the approval of both Grantee and Grantor as new and unforeseen circumstances arise. Changes in the terms and conditions of this Agreement shall be made in writing and signed by both parties.

3. Except as specifically set forth herein, this Agreement does not constitute waiver of any rights of Grantee retained by it in its Preservation Agreement with Grantor.

4. Grantor shall give priority to repairs needed to prevent deterioration of the House.

B. Exterior.

1. The roof shall be repaired as needed with materials sympathetic to the age and design of the House if such materials are available.

2. Masonry shall be repaired or replaced as needed with the same or comparable material that matches the strength, bond, size, color and texture as the existing material. Mortar used shall match the color and texture of existing mortar.

3. The exterior Architectural Features of the House shall be retained and repaired with materials and in a style compatible with the character of the House. Grantor shall obtain the written approval of Grantee prior to any physical alteration, removal, or destruction of any exterior Architectural Features of the House.

4. Grantor shall repaint the exterior of the House in its original colors if such colors are available. Grantor may use another color scheme with Grantee's written approval.

C. Heating, Air Conditioning, and Insulation.

1. Grantor shall choose methods of insulation which will protect and preserve the Architectural Features of the House.

2. Methods of insulation which have not been tested for possible adverse effects on historic structures shall be not be used.

3. Foam-in-place and loose-fill insulation shall not be used.

4. Grantor shall install any new heating and/or air conditioning systems using methods which will protect and preserve the Architectural Features of the House.

D. Interior.

1. The interior Architectural Features of the House shall be retained and repaired with materials and in a style compatible with the character of the House. Grantor shall obtain the written approval of Grantee prior to any physical alteration, removal, or destruction of any interior Architectural Features of the House.

2. Grantor shall obtain written approval of Grantee prior to the addition of any new interior walls or prior to the removal of any existing interior walls.

3. Grantor shall obtain written approval of Grantee prior to any new plumbing or electrical installations.

4. Grantor shall repair walls and ceilings as needed and shall paint or wallpaper the walls and ceilings in a manner compatible with the character of the House.

E. Landscaping.

1. Grantor shall fully landscape the premises in a manner compatible with the style and period of the House.

2. Grantor shall maintain a clean and neat construction site while rehabilitation of the House takes place.

**V. ADMINISTRATION, ENFORCEMENT AND REMEDIES**

A. Remedies; Delay no Waiver. In the event of a violation of the terms, conditions, and deadlines of this Agreement, all legal and equitable remedies, including injunctive relief, specific performance, and damages, and the option to purchase the Property as further described below, shall be available to Grantee. 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. If Grantor shall violate any of the terms, conditions, and deadlines of this Agreement, Grantee then shall have an option to purchase the Property, provided it shall give Grantor written notice of the nature of the violation of this Agreement and Grantor shall not have corrected same within the ninety (90) days next following the giving of said notice. The purchase of the Property, pursuant to the exercise of the option retained hereby, shall be at a price equal to the then market value of the Property, subject to restrictive covenants, as determined by agreement of the then owner and Grantee, or, in the absence of such an agreement, by a committee of three appraisers, one to be selected by Grantee, one to be selected by the then owner and the other to be designated by the two appraisers selected by

Grantee and the owner 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.

C. Acts Beyond Grantor's Control. Nothing contained in this 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 Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by 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.

D. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Agreement against Grantor, including, without limitation, attorney's fees, costs of mediation, and any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms, conditions, and deadlines of this Agreement, shall be paid by Grantor.

## VI. MEDIATION

A. Agreement to Mediate. The parties agree to make good faith efforts to resolve any controversies arising out of this Agreement through the process of mediation. They agree that any such controversies shall be resolved with the aid of a neutral and impartial third party who assists in the negotiation process and to the extent that the controversies arise from the interpretation of terms in the context of the House or Property will rely upon an architect experienced in historic preservation matters to serve as the "Mediator."

B. Goal of Mediation. The goal of the parties is through mediation to reach an agreement which resolves any controversy that arises under this Agreement in a manner that takes into account the interests of both parties and is fair to all.

C. Mediator's Qualifications. The Mediator will be compensated for time spent in the conduct of mediation and in working on behalf of the parties in related matters to achieve the goals of mediation. The parties agree to select as Mediator a person who is unaffiliated with either of the parties, is licensed to practice architecture in the State of North Carolina, and has had not less than ten (10) years of practical experience as a project architect dealing with the adaptive reuse of historic properties for office and/or commercial use. The role of the Mediator will be that of a neutral and impartial third party who will endeavor to assist the parties in achieving a fair, negotiated settlement of any controversy or controversies arising under this Agreement. In the event the parties are unable to agree on the Mediator, each party shall appoint an architect who is affiliated with the parties but otherwise qualified to serve and those two individuals shall appoint a third architect who is fully qualified to serve and who shall serve as Mediator hereunder.

D. Confidentiality Observed. To the extent the parties agree to allow individual caucuses or private sessions with the Mediator, it is understood that the Mediator will not disclose confidential information imparted by either party or their attorney unless specifically authorized to do so. Further, no information obtained during Mediation will be released to any outside person or organization unless both parties agree.

E. Settlement Negotiations. The parties agree that mediation sessions are considered as settlement negotiations and communications made in mediation shall be inadmissible in court or any legal proceeding.

F. Mediator No Witness. The parties agree that neither will call the Mediator or any of his or her employees as witnesses to testify in any proceeding, or subpoena any records of the Mediator, in any matter related to the mediation. If subpoenaed or otherwise noticed to testify, the Mediator will inform the participants immediately so as to afford them an opportunity to quash the process.

G. Mediation Voluntary. Mediation is a voluntary process, and either party or the mediator may terminate the mediation at any time. However, the parties agree that the party wishing to terminate mediation will do so during a mediation session so that both parties and the Mediator may have an opportunity to discuss termination of the mediation.

H. Mediation Binding. If the parties reach an agreement through mediation, such agreement shall be binding.

I. Inability to Agree. If the parties are unable to reach an agreement about any of the issues to be mediated, the parties and the Mediator will discuss options for resolution of the issues. These options may include separate sessions with the Mediator, referral or particular issues to other professionals, or suspension or termination of the mediation.

## VII. MISCELLANEOUS

A. Assignment. Grantee may convey, assign, or transfer this Agreement along with  
Capital Area Preservation Model Rehabilitation Agreement  
Revised on 8/16/07

the 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.

B. Interpretation. 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.

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

D. Entire Agreement. 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.

E. Headings. 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.

F. Amendments. 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 this Agreement or affects the perpetual duration of this Agreement. Such amendment(s) require the written consent of both Grantor and Grantee and shall be effective upon recording in the public records of \_\_\_\_\_ County, North Carolina.

**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:**

BY: \_\_\_\_\_ (SEAL)  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**GRANTEE:**

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

BY: \_\_\_\_\_ (SEAL)  
NAME: \_\_\_\_\_  
TITLE: President & CEO/ Board Chair

**NORTH CAROLINA**  
\_\_\_\_\_ **COUNTY**

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that \_\_\_\_\_, Grantor personally came before me this day and acknowledged the due execution of the foregoing and annexed instrument for the purposes and intents therein expressed. Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Notary Public  
Stamp/Seal

**NORTH CAROLINA**  
\_\_\_\_\_ **COUNTY**

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify

that \_\_\_\_\_ personally came before me this day and acknowledged that (s) he is President & CEO/Board Chair 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 instrument on behalf of the corporation. Witness my hand and official stamp or seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_ My Commission Expires:  
\_\_\_\_\_  
Notary Public  
Stamp/Seal

**EXHIBIT A**  
**Map or Legal Description of the Parcel**

**EXHIBIT B**  
***The Secretary of the Interior's Standards for Rehabilitation  
and Guidelines for Rehabilitating Historic Buildings (36 CFR §67)***

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall 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 architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall 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.