

HISTORIC PRESERVATION EASEMENT

Overview for Bidders

At closing, the Purchaser shall grant to the Seller a Historic Preservation Easement with respect to portions of the interior of the main house.

The purpose of the easement is to protect interior elements identified as contributing in the “Helm Place: Inventory of Contributing Interior Features.” (referred to as Exhibit B). This report is posted under the “Documents” section of the real estate listing at www.biedermanrealestate.com.

Most of the features to be protected are affixed ornamentation – baseboards, plaster work, woodwork around windows and doors as well as the murals by Katherine Helm. The internal flow and configuration of the dwelling is also protected.

Several spaces are omitted, based on their utilitarian nature or lack of significant interior detail. These include the following: both glassed-in porches, the butler’s pantry, the bathrooms, and the kitchen.

HISTORIC PRESERVATION EASEMENT

THIS EASEMENT (this “**Easement**”) is executed this [____] day of [____], 2022, between [____], a [____], with an address of [____] (“**Grantor**”); and **KENTUCKY MANSIONS PRESERVATION FOUNDATION, INC.**, a Kentucky nonprofit corporation, with an address of P.O. Box 132, Lexington, Kentucky, 40588 (“**Grantee**”).

RECITALS:

A. Grantor owns in fee simple certain real property situated having an address of 2650 Bowmans Mill Road, Lexington, Fayette County, Kentucky 40513, commonly known as “Helm Place,” containing approximately 150.98 +/- acres, as more particularly described on **Exhibit A** attached hereto and made a part hereof and incorporated herein by reference (the “**Real Property**”), together with the improvements situated thereon (the “**Improvements**”). For purposes of this Easement, the Real Property and the Improvements are sometimes referred to herein collectively as the “**Property**.”

B. On August 3, 1978, the Property was individually listed on the National Register of Historic Places (the “**National Register**”) because of its architectural, historic and cultural significance and is therefore a “certified historic structure” under Section 170(h)(4)(C)(i) of the U.S. Code (the “**Code**”). In 1990, the Property was listed as a Local Landmark with an H-1 Overlay Zone by the Lexington-Fayette Urban County Government. In 1999, Helm Place was listed as a contributing feature in the National Register designation of the Bowman Mill Road Rural Historic District. The historic character of the Property, justifying its listing on the National Register, designation as a Local Landmark, and status as a contributing feature to the Bowman Mill Road Historic District include the following:

1. The historic residential dwelling described in these recitals and more particularly the interior shown on **Exhibit B** attached hereto and made a part hereof and incorporated herein by reference as “Helm Place: Inventory of Contributing Interior Features” (the “**House**”) is a two-and-one half story brick dwelling with a central passage, double pile plan, and is remarkably intact. Though the date of construction is uncertain, the antebellum dwelling is a high-style example of Greek Revival architecture in Fayette County, Kentucky. Taking both the original National Register nomination and the H-1 Landmark Designation in to account, the Period of Significance for the interior contributing features is 1850-1920. This span includes both the initial period of construction as well as the early 20th century remodeling by the Helm family, who purchased the property in 1912.

2. The House is a significant example of mid-19th century Greek Revival architecture in Fayette County, Kentucky. It illustrates both forms and techniques indigenous to the region in which it was built, and influences from outside sources acting on the region, as exemplified by the Eastern architectural pattern books, which formed the most important outside influence upon the Greek Revival style in Central Kentucky.

3. The main block of the House is a two-and-one half story brick dwelling with a central passage, double pile plan.

4. Certain elements of the interior of the House, including but not limited to the main entry hallway, murals, woodwork, molding, mantles and doors throughout the first and second floor also evidence the historic character of the Property. In addition to the finish elements, the internal flow and configuration of the dwelling are significant and important feature of the dwelling. Such interior elements are further detailed in this Easement, including in particular **Exhibit B** hereof. Those interior elements categorized as “Key Elements,” “Features,” “Key Feature,” “Significant,” “Contributing Feature,” and/or documented in Figure 5 to Figure 54 at **Exhibit B** are hereinafter referred to as the “**Interior Elements**.”

C. Protection of the Interior Elements would prevent changes to the interior of the House that would destroy or alter the historic character of the interior.

D. Grantor and Grantee recognize the significance of the Interior Elements and the associated Historic Value of the Property (the “**Historic Value**”), and they have the common purpose of conserving and preserving the significance and Historic Value of the Property.

E. The grant of a Historic Preservation Easement on the Property by Grantor to Grantee shall assure that the Interior Elements of the House will be conserved and maintained and assist in preserving and maintaining the significance and Historic Value of the Property.

F. Grantor intends the Interior Elements of the House to be preserved and maintained by this Easement, in perpetuity.

G. Grantee wishes to acquire, and Grantor desires to grant to Grantee, this Easement with respect to the Interior Elements, pursuant to the terms of this Easement.

H. Grantee agrees by accepting this Easement that Grantee shall endeavor to honor the intentions of Grantor stated herein and endeavor to preserve and protect in perpetuity the Interior Elements and associated Historic Value of the Property from man-induced disturbances for the benefit of this generation and future generations.

I. Grantor further intends as owner of the Property, to convey to Grantee the right to preserve and protect the Interior Elements and associated Historic Values of the Property in perpetuity.

NOW THEREFORE, in consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the Commonwealth of Kentucky and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant and convey unto

Grantee, and its successors and permitted assigns, a perpetual easement in, on and over the Property in the form of this Easement for the preservation and protection of the Interior Elements and associated Historic Value.

This Easement, to be of the nature and character hereinafter further expressed, shall constitute a binding servitude upon the Property, and to that end Grantor covenants on behalf of itself, its successors and assigns, with Grantee, its successors and permitted assigns, that such covenants are deemed to run as a binding servitude, in perpetuity, with the Property, to impose upon the Property each of the following covenants, restrictions and stipulations, which contribute to the public purpose in that they aid significantly in the conservation of the historic and cultural qualities of the Property:

1. Description of the Interior Elements and Baseline Documentation. In order to make more certain the full extent of Grantor's obligations and the restrictions on the Property and in order to document the Property's Interior Elements and associated Historic Value as of the date hereof, Grantee has obtained Baseline Documentation titled "**Helm Place: Inventory of Contributing Interior Features**" (which – including photographs – is attached hereto as **Exhibit B**). Copies of the Baseline Documentation in its entirety shall be in the possession of Grantee and have been provided to Grantor as of the date hereof. The Baseline Documentation includes narrative descriptions, photographs, and other documentation, that the parties agree provide collectively, an accurate representation of the Interior Elements at the time of this Easement and which are intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement. By execution of this Easement, the parties confirm and acknowledge that the Baseline Documentation has been read and all elements thereof reviewed, and each party hereto has signed a separate acknowledgement form attached to the Baseline Documentation. The photographs in the Baseline Documentation depict the Interior Elements of the House contributing to the Historic Value of the Property.

The Baseline Documentation Report includes a complete description of those interior features of the House that are deemed architecturally, culturally and historically significant. Among the interior features are those features categorized within the Baseline Documentation **Exhibit B** hereof as "Key Elements," "Features," "Key Feature," "Significant," "Contributing Feature," and/or documented in Figure 5 to Figure 54 hereinafter called "**Interior Elements**", the latter which Grantor and Grantee stipulate are those "**Interior Elements**", hereinafter also further defined are protected by this Easement. In the event of any disparity between the photographic counterparts held by Grantor and Grantee, the counterpart held by Grantee of the photographs included in the Baseline Documentation shall govern. Grantor and Grantee hereby agree that the Baseline Documentation may be updated from time-to-time, to reflect approved alterations and changes to the Property s these relate to the Interior Elements. At the times of such updates, the parties will sign an acknowledgement of the updated Baseline Documentation Report's accuracy and applicability to this Easement.

2. Purpose. It is the purpose of this Easement to assure that, subject to the Reserved Rights, (as defined in **Section 4(c)**), the Interior Elements will be retained substantially in their present historic condition.

3. Rights of Grantee.

(a) To accomplish the purpose of this Easement, the following rights are granted to Grantee by Grantor:

(i) To monitor and protect the Interior Elements and the associated Historic Value of the Property;

(ii) To enter the interior of the House at all reasonable times, provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to the Grantor and Grantee shall not in any case unreasonably interfere with Owner's use and enjoyment of the Property; and

(iii) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any activity or use prohibited under this Easement to their condition immediately preceding any violation of the provisions of this Easement.

(b) Inspection. Grantor hereby agrees that representatives of Grantee shall be permitted at all reasonable times to inspect the Property, including the interior of the House. Grantor agrees that representatives of Grantee shall be permitted to enter and inspect the interior of the House to assess maintenance of any specific restriction set forth in Exhibit B. Inspection of the interior shall not, in the absence of evidence of deterioration or casualty, take place more often than annually, and may involve reasonable testing of interior structural soundness and safety. Inspection of the interior will be made at a time mutually agreed upon by Grantor and Grantee, and Grantor covenants not to withhold unreasonably its consent in determining a date and time for such inspection.

4. Definitions. In addition to those capitalized terms defined elsewhere within this instrument, as used herein, the following capitalized terms shall have the following meanings:

(a) **"House"** shall mean the historic residential dwelling described in the recitals.

(b) **"Interior Elements"** shall be those interior features of the House which characterize its historic and cultural importance, and which are specifically identified in Exhibit B attached hereto.

(c) **"Reserved Rights"** shall mean, collectively, all other rights expressly reserved by Grantor in this Easement.

5. Restrictions, Prohibited Uses, and Reserved Rights. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following provisions govern activities on the Property to the extent indicated:

(a) **Preservation of the Interior Elements.**

(i) Grantor shall not apply to have the Property or any portion thereof removed or “de-listed” from the National Register.

(ii) Grantor shall not apply to have the Property or any portion thereof “de-listed” as Local Landmark with an H-1 Overlay Zone by the Lexington-Fayette Urban County Government.

(iii) Grantor shall not change, alter, remove, move, injure or otherwise impair any of the Interior Elements except as provided in **Section 5(b)** below.

(iv) Except for the Interior Elements as otherwise specifically provided in this Easement, Grantor may make interior renovations to the House not inconsistent with the purpose of this Easement that do not impair the integrity and preservation of the Interior Elements and associated Historic Value.

(v) Grantor agrees at all times to maintain the Interior Elements in accordance with the Secretary of Interior’s Standards for Treatment of Historic Properties with Guidelines for Rehabilitating Historic Buildings (36 CFR §67.7), as the same may be updated or amended from time to time (the “Secretary’s Standards”). In the event the Secretary’s Standards are abandoned, Grantee may apply reasonable alternative standards agreed to in writing by Grantor, provided, however, that any alternative standards shall be subject to any requirements imposed by the National Park Service in connection with historic preservation, conservation, and scenic easements and/or properties listed on the National Register of Historic Places.

(b) Casualty and Damage to, and Reconstruction of the Interior Elements.

(i) Casualty Damage or Destruction. In the event that the Interior Elements or any part thereof shall be damaged or destroyed by casualty, Grantor shall notify Grantee in writing within twenty-one (21) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. For purposes of this Easement, the term “casualty” is defined as such sudden damage or loss as would qualify for a loss deduction pursuant to Section 165 (c)(3) of the Code (construed without regard to the legal status, trade or business of Grantor or any applicable dollar limitation). No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without express prior written consent of Grantee. Within ninety (90) days of the date of damage or destruction, Grantor shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer, if required, acceptable to Grantor and Grantee which shall include the following:

(1) an assessment of the nature and extent of the damage;

(2) a determination of the feasibility of the restoration of the Interior Elements, and/or reconstruction of damaged or destroyed portions thereof; and

(3) a report of such restoration/reconstruction work necessary to return such damaged portions substantially to the condition existing immediately prior to the casualty.

If in the opinion of the Grantee, after reviewing such report, the purpose and intent of the Easement will be served by such restoration/reconstruction, Grantor shall within eighteen (18) months after the date of such damage or destruction complete the restoration/reconstruction of the Interior Elements in accordance with plans and specifications consented to by Grantee, at a cost not to exceed the total of the casualty insurance proceeds.

(ii) Grantee's Remedies Following Casualty Damage. The foregoing notwithstanding, in the event of damage resulting from casualty, as defined at **Section 5(b)(i)**, which is of such magnitude and extent as to render repairs or reconstruction of the Interior Elements impossible using all applicable insurance proceeds, as determined by Grantee by reference to bona fide cost estimates obtained by Grantor, then the following shall apply:

(1) Grantor may elect to reconstruct such damaged portions using insurance proceeds, donations or other funds received or contributed by Grantor on account of such casualty; or

(2) Grantor and Grantee may elect to modify or amend this Easement in accordance with **Section 14**, or to seek the partial extinguishment of the Easement pursuant to **Section 13**.

(iii) Review After Casualty Loss of the Interior Elements. If in the opinion of Grantor and Grantee, restoration/reconstruction of the Interior Elements would not serve the purpose and intent of the Easement, then the Grantor shall continue to comply with the provisions of the Easement, but, with the prior written consent of Grantee, which shall not be unreasonably withheld, Grantor may alter, demolish, remove or raze such damaged portions (in which event the provisions of **Section 5(b)(ii)(2)** shall become applicable).

(c) **Title, Liens, Mortgages, Leases.**

(i) Mortgages. This Easement is expressly made subject to all easements, restrictions, stipulations, and other matters of record as of the date this Easement is recorded; provided, however, that any mortgages of record on the Property as of the date hereof shall be subordinated to this Easement as provided for in **Section 21** hereof.

(ii) Leases. The right to lease or grant other less-than-fee interests in all or a portion of the Property for any use permitted to the Grantor under this Easement, provided that such lease or other interest is consistent with and subject to the terms of this Easement.

(d) **General Restrictions and Rights.**

(i) Any unanticipated activity or use or misuse of the Property which would impair the preservation of the Interior Elements and associated Historic Value is prohibited. Whether an unanticipated activity would impair the Interior Elements shall be determined by Grantee in its reasonable discretion. If an unanticipated activity is necessary for the protection of the Interior Elements and associated Historic Values that are the subject of this Easement, as determined by Grantee in its reasonable discretion, such use or activity shall be subject to the prior approval of Grantee as provided in **Section 6** below.

(ii) As owner of the Property, and in addition to the Reserved Rights expressly set forth herein, Grantor retains the right to perform any act not expressly prohibited or limited by government statute or regulation, not expressly prohibited by this Easement and not inconsistent with the purpose of this Easement. These ownership rights include, but are not limited to, the right to privacy, the right to exclude any member of the public from trespassing on the Property, and the right to sell, lease, devise, or otherwise transfer the Property to anyone Grantor may choose.

6. Notice and Approval.

(a) The purpose of requiring Grantor to secure Grantee's approval or to notify Grantee prior to undertaking certain permitted activities, as provided in this **Section 6**, is to afford the Grantee an adequate opportunity to review, approve, or deny requests and/or monitor the activities in question (as the case may be) to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever the consent, approval or permission of Grantee is required hereunder, Grantor shall give written notice of any request to Grantee not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. For the purposes of any activity requiring notice and approval of Grantee and also requiring Grantor's application to any governmental authority for approval or permits, Grantor shall give such written notice to Grantee not less than sixty (60) days prior to the date on which Grantor intends to file such application to the applicable governmental authority. Filing an application for governmental approval prior to obtaining Grantee's approval shall be deemed a material breach of this Easement. The notice to Grantee shall contain precise details of the action that Grantor proposes, including nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Grantor shall be limited to seeking two approvals per calendar year, except in the case of emergencies or casualty. Multiple approvals may be grouped or aggregated under one submission to Grantee for the purposes of qualifying as one of the two permitted annual approvals.

(b) **Grantee's Approval or Withholding of Approval.** Grantee shall respond to any such request within sixty (60) days from receipt of the request from Grantor. Grantee shall not unreasonably withhold consent or permission, but shall be guided by the purpose of this Easement as specified herein in rendering its decision. Unless otherwise provided in this Easement that review, approval, consent, or permission is required from Grantee, Grantor must obtain such approval, consent, or permission from Grantee before acting within the sixty (60) day review period. The failure of Grantee to respond within said period shall constitute the grant of permission by Grantee with respect to the subject request; provided, however, any proposed action requiring the prior approval of Grantee for which Grantee has not responded may not – irrespective of such failure of Grantee to respond – violate any other term or condition of this Easement. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons therefor, and the conditions, if any, on which approval might otherwise be given. Grantee reserves the right to notify Grantor in writing within the above-described sixty-day period of Grantee's need for reasonable additional time and reasonable additional information to review the subject request.

(c) **Breach.** Failure to secure such approval or give such notice as may be required under this **Section 6** shall be a material breach of this Easement notwithstanding any other

provision of this Easement and shall entitle Grantee to such rights and remedies as may be available under **Section 7**.

(d) **Expiration.** Any approval issued by Grantee shall expire upon the date that is one year from the date such approval is granted or deemed to have been granted, unless otherwise extended in writing by the Grantee.

7. **Grantee's Remedies.** Grantee shall have the following legal remedies to correct any material violation of any covenant, stipulation, or restriction herein, in addition to any other remedies now or hereafter provided by law:

(a) **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to the condition that existed prior to the violation in accordance with a plan approved by Grantee.

(b) **Injunctive and Other Relief.** If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue to diligently cure such violation until finally cured, Grantee may institute an action at law or equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin such violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury or to seek appropriate damages if restoration is not practical or possible.

(c) **Scope of Relief.** Grantee's rights under this **Section 7** apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement may be inadequate and that Grantee shall be entitled to the injunctive relief described in **Section 7(b)**, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this **Section 7** shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(d) **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Interior Elements protected by this Easement, including, without limitation, damages for the loss of associated Historic Value. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

(e) **Emergency Enforcement.** If Grantee in good faith determines that circumstances require immediate action to prevent or mitigate significant damage to the Interior Elements, Grantee may pursue its remedies under this **Section 7** without prior notice to Grantor or without waiting for the period provided for cure to expire.

(f) **Forbearance Not a Waiver.** Any forbearance by Grantee to exercise rights under this Easement in the event of any breach of any term of this Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(g) **Costs of Enforcement.** If Grantee is required to initiate an action in court to enforce this Easement or its rights and remedies hereunder and if Grantee is the prevailing party, or if Grantor acknowledges a violation of this Easement, then Grantor shall pay, on demand, but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination, or reduction, all fees (including, without limitation, reasonable attorneys' fees and expenses) and other direct costs and expenses incurred in connection with (i) Grantee's exercise and enforcement of its rights and remedies under this Easement or (ii) any declaratory or similar action instituted by Grantee in connection with this Easement. Grantee shall also be entitled to recover such reasonable costs incurred in enforcing this Easement and any costs of restoration incurred by Grantee in the event that such enforcement and restoration measures do not require Grantee to initiate an action in court. Grantor and Grantee agree that routine annual stewardship and monitoring expenses incurred by Grantee are not included in the costs of enforcing the terms of this Easement as described in this **Section 7(g)**.

(h) **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Interior Elements resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent abate, or mitigate significant injury to the Interior Elements resulting from such causes.

(i) **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

8. Evidence of Compliance/Estoppel Certificates. Upon receipt of a written request by Grantor, Grantee shall within sixty (60) days execute and deliver to Grantor a written document setting forth to the best of Grantee's knowledge Grantor's compliance with any obligation of Grantor contained in this Easement, or if Grantor is not in compliance with the Easement, stating the nature of such noncompliance and the steps necessary to correct such noncompliance, to the extent of Grantee's knowledge thereof. Such certification shall be limited to the condition of the Property as of the Grantee's most recent inspection(s). If Grantor requests more current certification, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefor.

9. Public View and Public Access. Grantor shall not be required to provide public access to the interior of the House or of the Interior Elements in connection with this Easement.

10. Intentionally Omitted.

11. Costs, Liabilities, Taxes, and Environmental Compliance.

(a) Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

(b) Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is hereby authorized, but in no event required or expected, to make or advance any payment relating to taxes, assessments, water charges, sewer service charges, and other governmental or municipality charges, fines, impositions, or liens asserted against the Property and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or assessment or into the validity of such tax, assessment, sale, or forfeiture.

(c) Grantor hereby represents and warrants, from and after the date hereof and to the best of its knowledge, and hereby covenants as follows:

(i) Grantor is owner of the Property in fee simple, and as such, Grantor has access to the Property and has good right to convey to Grantee this Easement, and Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Easement;

(ii) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirements as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment shall exist or shall be released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

(iii) Grantor shall keep the Property compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(iv) Grantor shall keep the Property free from any litigation in any way affecting, involving, or relating to the Property; and

(v) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

(d) If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

(e) Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and KRS 224.01-010 et seq.

12. Indemnification. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "**Indemnified Parties**") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the gross negligence or willful misconduct of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and KRS 224.01-010 et seq., by any person, in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; or (4) the obligations, covenants, representations and warranties of **Sections 11(a)** through **11(e)**.

13. Extinguishment and Condemnation.

(a) **Change in Economic Conditions.** The fact that any use of the Property that is expressly prohibited by the terms hereof may become more economically valuable than uses permitted by the terms hereof, or that neighboring properties may, in the future, be put entirely to uses that are not permitted by the terms of this Easement, has been considered by Grantor in granting this Easement. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to **Section 13(b)** hereof. In addition, the inability of Grantor, its successors, or its assigns to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the

validity of this Easement or be considered grounds for its termination or extinguishment pursuant to **Section 13(b)** hereof.

(b) **Extinguishment.** If unexpected circumstances arise in the future that render the purpose of this Easement impossible to accomplish, the Grantor and Grantee may agree to extinguish this Easement, in whole or in part, provided any extinguishment complies with state law and a finding by Grantor and Grantee that this Easement has failed as to its essential purpose. Any such termination or extinguishment shall be conducted and concluded in a manner that does not jeopardize Grantee's status as a qualified holder of this Easement under applicable law.

(c) **Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of their respective interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Nothing contained herein shall preclude the parties from negotiating a transfer of less than fee interest in the property in lieu of condemnation, if in the reasonable discretion of Grantor and Grantee, such negotiation shall be in the best interest of the parties and not jeopardize the Historic Values sought to be protected under this Easement.

14. Amendment.

(a) For purposes of furthering the preservation and conservation of the Property and furthering the purpose of this Easement, and to meet changing conditions, Grantor and Grantee may agree to amend jointly the terms of this Easement in writing without notice to any other party; provided however that no such amendment shall: (i) limit the perpetual duration of this Easement; or (ii) interfere with the purpose of this Easement, or (iii) adversely affect the status of Grantee under any applicable laws, including the laws of the Commonwealth of Kentucky; or (iv) permit any private inurement or private benefit to any person or entity; or (v) adversely affect the Property's Historic Values protected by this Easement. Any such amendment shall be recorded in the Fayette County Clerk's Office, Lexington, Kentucky.

(b) Any request by Grantor to amend this Easement shall be subject to the standards and restrictions as outlined in **Section 14(a)** above. Grantor shall make such request for amendment in writing to Grantee, which notice shall contain precise details of the amendment that Grantor proposes. Grantee shall make reasonable efforts to respond in writing to any such request within thirty (30) days from receipt of the request from Grantor, which response may be to grant or deny approval of the request, or specify that Grantee is still reviewing the request. In the event that Grantor requests Grantee to amend this Easement, or attempts to undertake or promote any action that would require amendment of this Easement pursuant to this **Section 14(b)**, Grantor shall pay all reasonable attorneys' fees and expenses incurred by Grantee in connection with the review, negotiation, and consummation of such request and/or the resulting amendment, if any, including but not limited to recording fees, the cost of updating the Baseline Documentation Report, and reimbursement for staff salaries and overhead allocable to the amendment review, management, and negotiations. Reimbursement of Grantee's costs by Grantor shall be paid regardless of whether an amendment is ultimately approved by Grantee.

15. Grantee's Covenants. Grantee hereby warrants and covenants as follows:

(a) **Merger**. The Grantor and Grantee agree that the terms of this Easement shall survive any merger of the fee and easement interests in the Property. If necessary to perpetuate this Easement, in the event Grantee shall at any time in the future become the fee simple owner of the Property, then Grantee for itself its successors and assigns, covenants, and agrees that it will create a new conservation easement containing the same restrictions and provisions as are contained herein, and convey such easement to a similar unit of federal, state, or local government, or a local, state or national organization whose purposes, inter alia are to promote preservation or conservation of historic and cultural resources.

(b) **Standard of Care**. Grantee shall exercise reasonable judgment and care in performing its obligations and exercising its rights under the terms of the Easement.

(c) **Standards for Review**. In exercising any authority created by the Easement to inspect the Interior Elements; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Interior Elements following casualty damage, Grantee shall apply the Secretary's Standards. Grantor agrees to abide by the Secretary's Standards in performing all ordinary repair and maintenance work. In the event the Secretary's Standards are abandoned or materially altered or otherwise become, in the judgment of the Grantor and Grantee, inappropriate for the purposes set forth above, Grantee may apply reasonable alternative standards.

16. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of default or demand letters received by Grantor from any duly authorized governmental authority which if not complied with could result in a lien on the Property. Upon receipt of written request from Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or demand letter where compliance is required by law.

17. Assignment. This Easement is transferable (by assignment or otherwise) in whole or in part, but Grantee may transfer its rights and obligations in whole or in part under this Easement only to an organization that is at the time of transfer authorized to acquire and hold conservation easements under the applicable laws of the Commonwealth of Kentucky or the laws of the United States. As a condition of such transfer, the Grantee shall require that the purpose that this grant is intended to advance continues to be carried out. Grantee agrees to give written notice to Grantor of a transfer at least twenty (20) days prior to the date of such transfer. The failure of the Grantee to give such notice shall not affect the validity of such transfer nor shall it impair the validity of this Easement or limit its enforceability in any way.

18. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this **Section 18** shall not impair the validity of this Easement or limit its enforceability in any way.

19. Recording. Immediately upon execution of this Easement, the Grantee shall cause this Easement to be recorded in the land records of the Fayette County Clerk's Office, Lexington, Kentucky.

20. Existing Liens. Grantor warrants that to the best of its knowledge and belief there are no liens on the Property. Grantor shall immediately cause to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Property which would have priority over any of the rights, title or interest hereunder of Grantee; provided, however, Grantor may contest in good faith the assertion of any tax lien, mechanics' lien, or other lien on the Property through any administrative or judicial remedies available to Grantor, but Grantor shall promptly satisfy any such lien finally adjudged to be valid.

21. Subordination of Mortgages. The Property is unencumbered by mortgages or liens. Grantor has the right at any time after the effective date hereof to use the Property as collateral to secure the repayment of debt, provided that the right of the Grantee to enforce the terms, restrictions, and covenants created under this Easement shall not be extinguished upon foreclosure of any mortgage or any publicly or privately placed lien, regardless of date.

22. Leases. In the event Grantor elects to lease a portion of the Property to a tenant only as permitted in this Easement, Grantor shall submit a copy of this Easement to any such tenant and shall obtain from such tenant written acknowledgement that the lease is and shall be subordinate and subject to the terms of this Easement.

23. Notices. All notices hereunder shall be in writing and shall be personally delivered or sent by United States certified mail, postage fully paid, return receipt requested, or by overnight nationwide commercial courier addressed to the parties as follows:

Grantor: Kentucky Mansions Preservation Foundation, Inc.
P.O. Box 132
Lexington, Kentucky 40588

Grantee: Kentucky Mansions Preservation Foundation, Inc.
P.O. Box 132
Lexington, Kentucky 40588

or at such other address as any of the parties may from time to time designate by written notice given as herein required. Mailed notices shall not be deemed given or served until three business days after the date of mailing thereof or if delivery is by nationwide commercial courier, service of notice shall be deemed given one business day after the date of delivery thereof to said courier. Rejection or refusal to accept, or inability to deliver because of changed addresses or because no notice of changed address was given, shall be deemed a receipt of such notice.

24. General Provisions.

(a) **Interpretation and Construction.** Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of property shall not apply in the construction or interpretation of this Easement, and this Easement shall be interpreted broadly to effect its purpose

and the transfer of rights and the restrictions on use herein contained, as provided under applicable law. The rule of construction resolving ambiguities against the drafting party shall not be employed in the interpretation of this Easement.

(b) **Joint Obligation.** Subject to the limitation of **Section 24(d)** hereof, the obligations imposed by this Easement upon Grantor and multiple successors and assigns of Grantor shall be joint and several.

(c) **Successors.** This Easement shall run with the land and shall extend to and be binding upon Grantor and all persons hereafter claiming under or through Grantor, and the word "Grantor" when used herein shall include all such persons whether or not such persons have signed this Easement or then have an interest in the Property. Any right, title, or interest herein granted to Grantee also shall be deemed granted to successors and assigns of Grantee and each such following successor and assign thereof and the word "Grantee" shall include its respective successors and assigns. Grantor shall provide notice to Grantee prior to marketing the Property for sale. Upon the sale or transfer of the Property by Grantor to a third party, such third party transferee shall pay Grantee a fee of \$1,000 to compensate Grantee for the time and manpower required to educate such third party transferee regarding the terms, conditions, obligations and rights under this Easement.

(d) **Termination of Rights and Obligations.** Anything contained herein to the contrary notwithstanding, a person shall have no obligation pursuant to this Easement where such person shall cease to have any interest (present, partial, contingent, collateral, or future) in the Property by reason of a bona fide transfer for full value.

(e) **Counterparts.** This Easement may be executed in one of more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(f) **Public Access.** Except as otherwise expressly set forth herein, nothing contained in this Easement grants, nor shall be interpreted to grant to the public any right to enter on the Property.

(g) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(h) **Enforceability.** This Easement is made pursuant to applicable law, but the invalidity of such statute or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their respective successors, heirs, and assigns in perpetuity to each term of this Easement whether this Easement be enforceable by reason of any statute, common law, or private agreement either in existence now or at any time subsequent hereto. This Easement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this Easement or any part thereof. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject matter hereof.

(i) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(j) **Entire Agreement.** This Easement reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof unless set out in this Easement.

(k) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(l) **Governing Law.** This Easement and the rights and obligations hereunder shall be construed according to the laws of the Commonwealth of Kentucky, and any claim or action arising out of this instrument shall be brought in the appropriate court in Jefferson County, Kentucky.

(m) **Compliance with Laws.** Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any law, regulation, ordinance, code, or requirement relating to build materials, construction method, or use of the Property. In the event of any conflict between any such ordinance, code, or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Easement and such ordinance or regulation.

(n) **Development Rights.** Grantor hereby acknowledges that any development right retained by Grantor under the terms of this Easement may be subject to the review and approval of governmental authorities and this Easement does not obviate Grantor's legal obligation to obtain federal, state, or local authorizations required by law for the exercise of any development rights retained by Grantor. Grantee make no representation of whether the exercise of any development right is permissible under applicable laws, statutes, ordinances, or regulations.

(o) **Grantor/Grantee Certification.** Under penalty of perjury, the Grantor and the Grantee hereby state that the Grantee (i) is an organization having a corporate purpose of historic preservation, and (ii) has the resources to manage and enforce this Easement and a commitment to do so. This grant preserves those Interior Elements deemed "Key Elements," "Features," "Key Feature," "Significant," "Contributing Feature," and/or documented in Figure 5 to Figure 54 at **Exhibit B** and prohibits any changes to the Interior Elements which are inconsistent with the historical character of such Interior Elements.

Remainder of Page Intentionally Left Blank; Signature Page Follows

Exhibit A

The Property

[legal description to be inserted]

Deed
(BOOK 3062, PAGE 99)

Exhibit B

“Helm Place: Inventory of Contributing Interior Features”

[to be inserted]

This report is posted in the “Documents” section of the real estate listing