

Prepared by and return to Kim K. Steffan, Steffan & Associates, P.C.

NORTH CAROLINA

MEMORANDUM AGREEMENT

ORANGE COUNTY

THIS MEMORANDUM AGREEMENT is entered this ____ day of _____, 2021, by and between Kenneth Ostrand and Linda Ostrand (married), 208 W. Queen Street, Hillsborough, NC 27278 (herein, “the Ostrands”), the Town of Hillsborough, P.O. Box 429, Hillsborough, NC 27278, (herein, “the Town”), and the Hillsborough Arts Council, 102 N. Churton Street, Hillsborough, NC 27278, (herein, “the HAC”).

WHEREAS, the Ostrands own a unique historic property known as the Berry Brick House (ca. 1805 and boyhood home of local builder, politician, and entrepreneur John Berry) at 208 W. Queen Street, Hillsborough, NC 27278; and

WHEREAS, the Ostrands have furnished the Berry Brick House with period furniture, clocks, and objects from typical homes of the period; and

WHEREAS, the Ostrands desired to donate the Berry Brick House to the Town and its furnishings in the Ostrands’ Will to help preserve the historic nature of the house and to make it an asset to the community, particularly to arts in the community; and

WHEREAS, the Town has accepted this gift in a Resolution of the Town Council on November 12, 2019; and

WHEREAS, the Town is experienced in the ownership of historic properties; and

WHEREAS, the parties desire for HAC to take a leadership role in the management of the Berry Brick House and furnishings after the donation, and HAC is willing to do so; and

WHEREAS, the parties desire to have this Memorandum Agreement to memorialize their understanding of the arrangement;

THEREFORE, the parties agree as follows:

1. The Ostrands agree to make provision in their Last Wills and Testaments that, after both of the Ostrands are deceased, they give, devise, and bequeath the Berry Brick House and its furnishings to the Town in fee simple. The Berry Brick House is more particularly described as follows:

PIN # 9864-97-3626

The lot being designated as Lot 54A, as shown on the Plat recorded in the Orange County Registry in Plat Book 49 at Page 101.

The said property is subject to an Historic Preservation Easement dated March 20, 2020, and recorded at Book 6650, Page 1987 of the Orange County Registry.

If, prior to the death of both of the Ostrands, the Ostrands become unable to live in the Berry Brick House, the Ostrands (or the surviving spouse) may, but are not required to, deed the Berry Brick House to the Town in fee simple at that time, and such deed of gift shall be subject to the terms of this Agreement to the same extent as if the gift had been made by Will.

The Ostrands agree to maintain the Berry Brick House during their lifetimes in at least as good condition as it currently is.

The Ostrands or the Ostrand estate agree to provide an accurate floor plan of the Berry Brick House and an inventory of furnishings subject to this agreement prior to conveyance to the Town.

2. The Town accepts this gift. During the Town's ownership of the Berry Brick House and furnishings, the Town agrees to the following:
 - a. The Town shall follow the terms of the recorded Historic Preservation Easement.
 - b. As the owner of the Berry Brick House and furnishings, the Town will be responsible for maintenance and repairs. The Town will keep the Berry Brick House and furnishings insured.
 - c. To preserve the historic nature of the interior of the Berry Brick House, the Town agrees that the interior floorplan shall be preserved as shown on the provided floorplan, that any replacement of flooring that may be needed will be with antique floor boards, that plaster walls will remain as the wall surface, that painting and papering will be done with period design and décor, that wood trim shall remain in place or if replacement is needed shall be period in appearance and material, that fireplaces will remain in place or if needed to be re-built will retain their original features inside and out, that exterior repairs will be period in appearance and material, and that landscaping will be with period plants. If period furniture, as detailed in the provided inventory, needs to be replaced, the Town will make reasonable efforts to

obtain another period piece. The preservation easement will be used to identify those interior architectural features subject to this paragraph.

- d. The Town shall be responsible for seeing that the Berry Brick House will be used for purposes that may include, but are not limited to, housing an artist-in-residence, art or history events or workshops, literary readings, open house events, and educational programs. The Town may contract with the HAC or another non-profit organization (chosen at the Town's discretion) to manage the programing of the Berry Brick House and its furnishings on the terms set forth herein. Initially, the agreement is with HAC, whose obligations are set forth below. At its discretion and subject to agreed upon notice, the Town may at any time elect to contract with a different non-profit organization for program management of the Berry Brick House and its furnishings. The Town and HAC agree to manage and use the Berry Brick House and its furnishings for the benefit of the community with particular emphasis on the arts and history.
3. HAC agrees to do the following:
 - a. HAC will handle the operational and programming aspects of using the Berry Brick House and its furnishings for the benefit of the community with particular emphasis on the arts and history. This will include, but not be limited to, deciding on the specific uses for the property, e.g., housing an artist-in-residence, art or history events or workshops, literary readings, open house events, and educational programs, then scheduling and implementing these events and/or programs. When using the property for an artist-in-residence, HAC will be responsible for choosing a suitable artist, assisting them with setting up at the property, arranging for the community to have opportunities to interact with the artist and with their work, and choosing a suitable duration for each artist-in-residence tenure.
 - b. HAC will not have any responsibility for expenses related to upkeep of the Berry Brick House or its furnishings. If HAC becomes aware of a maintenance or repair item at the property, it will promptly notify the Town.
 - c. If HAC chooses to resign from this role, it may do so by giving 6 months' written notice to the Town. The Town will then contract with another non-profit to provide these services.
 4. The Town and HAC or other non-profit organization selected to manage the programing of the Berry Brick House are expected to develop detailed agreements, leases, or other memoranda of understanding closer to the time of conveyance of ownership to the Town to specify all details deemed necessary by the governing boards of the two parties.
 5. If, after receiving the gift, the Town no longer wishes to own the Berry Brick House and its furnishing, it shall have the right to sell or give the Berry Brick House and its furnishings to another governmental entity or a non-profit organization, provided that the transferee agrees in writing to be bound by the terms of this Agreement. The Town shall

use good faith judgment in making a determination that the transferee has or can obtain the financial means and the knowledge to comply with the transferee's obligations under this Agreement.

6. This Agreement shall remain in effect for the duration of the ownership of the Berry Brick House and its furnishings by the Ostrands and/or by the Town. This Agreement may be modified only in a signed written instrument, including partnership with a non-profit other than HAC under paragraph 2d or 3c and/or any transfer to a different owner under paragraph 5.

Entered the date signed below.

_____ [SEAL]
Kenneth Ostrand

_____ [SEAL]
Linda Ostrand
The Town of Hillsborough

By: _____ [SEAL]
Authorized Agent

Printed Name: _____

Title: _____

Hillsborough Arts Council

By: _____ [SEAL]
Authorized Agent

Printed Name: _____

Title: _____