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Craven, NC
Sherri B. Richard Register of Deeds
BK 3260 PG 118

NORTH CAROLINA
CRAVEN COUNTY

HISTORIC PRESERVATION AGREEMENT

THIS AGREEMENT, made this 13 day of Feb., 2014, by and between FIRST PRESBYTERIAN CHURCH OF NEW BERN, INC. (hereinafter referred to as the "Grantor"), and the NEW BERN PRESERVATION FOUNDATION, INC., a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal office being in New Bern, North Carolina (hereinafter referred to as the "Foundation"), Grantee;

W I T N E S S E T H

WHEREAS, the Grantor owns certain real property (hereinafter referred to as the "Property"), situated at 411 Johnson Street, in New Bern, a more particular description of which is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, the Property currently has certain permanent improvements consisting of a two and one half story wood-frame dwelling known as the JOHN RICE GREEN HOUSE and a one-story frame single-car garage; and

WHEREAS, the JOHN RICE GREEN HOUSE is a building of recognized historical and architectural significance; and

WHEREAS, both the Foundation and Grantor desire that the Property shall retain its historically and architecturally significant features, while being sympathetically adapted and altered, where

Prepared by: W. H. Hollows

Return to
Sumrell, Sugg, Carmichael,
Hicks, & Hart, PA
216 Pollock Street
New Bern, NC 28560

WORKFLOW No. 0000108800-0001

MAP 1

necessary, to provide for contemporary uses; and

WHEREAS, the Foundation is a charitable organization that accepts preservation easements on buildings having historical or architectural importance, said easements subjecting such buildings to restrictions that will insure that they are preserved and maintained for the benefit of future generations; and

WHEREAS, the North Carolina General Assembly has enacted the Historic Preservation and Conservation Agreements Act validating restrictions, easements, covenants, condition, or otherwise, appropriate to the preservation of a structure or site significant for its architecture, archeology, or historic associations,

NOW, THEREFORE, for and in consideration of the Grantor's interest in historic preservation and its support for the Foundation and its purposes and for and in consideration of the sum of ONE DOLLAR ($1.00), the Grantor, for itself, its successors and assigns, hereby covenants and agrees to abide by the following restrictions (hereinafter referred as "covenants"), said covenants to be restrictions of record to attach to the land described in Exhibit A and shall be included in any future deed to the Property:

1. These covenants shall be administered solely by the Foundation its successors or assigns.

2. Neither the house nor any part of the Property may be removed or demolished without the prior written approval of the Foundation.

3. The Property shall be used only as a single family residence.

4. No addition to the existing building, nor any additional new structure, either interior or exterior, shall be built on the Property unless the plans and designs for such addition or structure have been approved in advance by the Foundation. Grantor or any successor in title thereto shall request any desired changes in writing.

The Foundation shall have 30 days to consider any such request. Failure by the Foundation to respond within thirty (30) days shall constitute approval by the Foundation of the requested changes. Like kind repairs, both as to materials and workmanship, are hereby exempt from this restriction.

5. The architecturally significant features of the Property shall not be changed, added to, or altered without prior written approval of the Foundation. These features include the following:
A) Original three bay Federal Section of the 2-1/2 story structure, including but not limited to
i) the transverse arch and panelled pilasters in the side hall
ii) the Federal stair with its molded and ramped handrail and stylized wave brackets
iii) the first floor mantel with sunburst and rope molding
iv) the cornices in the hall and original front room
v) all windows and doors and window and door surrounds throughout the original 2-1/2

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story structure

vi) the stair and stairwell going to the basement

vii) the early cabinet hanging on the basement wall

viii) 3rd floor - east side - original exterior window & surround and all original wood siding

ix) all 3rd floor original heart pine floors

x) the early architectural elements now being stored in the crawl space; however; these elements may be relocated to another suitable storage area as recommended by Carolina Foundation Repairs, Inc., provided further that these elements will be donated to the Foundation if such elements are no longer kept on the Property.

B) EXTERIOR: Windows, doors, door and window surrounds, shutters, weatherboards, corner boards and pilasters, cornice, roof shape and pitch.

C) INTERIOR: All floors, doors, windows, door and window surrounds, baseboards, wainscot, cornices, partition walls.

D) EXCLUSIONS: Notwithstanding any other provision of these covenants, excluded from these restrictions are:

i) the interiors of all bathrooms and the kitchen.

ii) the expansion of the second floor bathroom on the east side to incorporate 1) the adjacent area now occupied by the closet serving the bedroom to the south of the bathroom and 2) the adjacent area immediately outside the existing entrance to the bathroom. The door and door surrounds of the existing bathroom entrance shall be used as the relocated entrance, which shall be located no farther west than the existing western wall of the closet area to be incorporated in the expanded bathroom. The door and door surrounds of the entrance to the closet to be incorporated in the expanded bathroom may be removed, but shall be maintained if removed. If the door and door surrounds of the closet entrance are removed, the bedroom wall will be repaired so as to match the existing wall.

iii) the installation of a partition, with opening doors and glass transom, across the opening at the eastern side of the original Federal Section on the second floor. This partition will be made of wood, painted white, and will be installed in such a manner as to be removable without significant damage to the adjoining walls.

iv) the work recommended in the December 19, 2013 Report from Sean Corcoran, P. E.

v) no further approval by the Foundation shall be required for any of these exclusions.

E) PAINT: No paint stripping of woodwork shall be made without first giving notice in writing of the intended paint stripping. The Foundation must respond in writing within ten (10) business days of their interest to conduct research on original paint finishes. The Foundation shall be given ninety (90) days from the receipt of written notice in the Foundation office to conduct research as to original paint colors, graining, and similar decorative schemes. Any such research conducted by the Foundation shall be at the sole expense of the Foundation.

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F) PHOTOGRAPHIC RECORD : A photographic record will be made of the architecturally significant features of the Property and shall establish the state and condition of the Property as of the date of this agreement. Said record will be kept on file at the Foundation office.

6. In the case of a 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 the Foundation. If the Foundation decides to purchase the Property, it shall notify the then owner of its willingness to purchase upon the same terms within fifteen (15) days of receipt of written notice of such bona fide offer. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the Property, any right to repurchase shall be subject to said deeds of trust or encumbrances, and they shall either be satisfied or assumed as part of the purchase price.
Failure of the Foundation to notify the then owner of its intention to exercise its right of first refusal within such fifteen (15) day period shall free the owner to sell pursuant to the bona fide offer. The Foundation may, in its discretion, waive its right of first refusal in writing, upon written receipt of such bona fide offer.

7. In the event of a violation of covenants contained in Paragraphs 2, 3, 4 or 5 hereof, the Foundation shall have an option to purchase the Property, provided that it shall give the Grantor or any successor in title thereto written notice of the violation and the Grantor or any successor in title thereto shall have not corrected the same within 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 as determined by agreement of the Grantor or any successor in title thereto and the Foundation, or in the absence of such agreement, by a committee of three (3) appraisers, one (1) to be selected by the Foundation, one (1) by the Grantor or any successor in title thereto, and the third to be chosen by agreement of the first and second appraisers. Provided however, that if there are any outstanding deeds of trust or other encumbrances against the Property, any right to re-purchase shall be subject to said deeds of trust or encumbrances and they shall be either satisfied or assumed as part of the purchase price. Within thirty (30) days after the expiration of the ninety (90) day period during which the Grantor will be allowed to cure a violation of covenants, the Foundation will notify the Grantor or any successor in title thereto either (1) of its intent to exercise the Option to Purchase or (2) of its intent to pursue other legal or equitable remedies.

8. Representatives of the Foundation shall have the right to enter the Property at reasonable times during business hours, no more than three (3) times in any one calendar year, after giving at least one (1) week's notice in writing, for the purpose of inspecting the building and grounds to determine if there is compliance by the Grantor or any successor in title thereto with the terms of these covenants.

9. Researchers, scholars, and groups especially interested in historic preservation shall have access to view the interior of the Property at mutually agreed upon times or under the right of entry agreement in Paragraph 10 above.

10. Unless otherwise provided, the covenants and restrictions set forth in this Agreement shall run in perpetuity. In the event that the Property is damaged beyond restoration as a result of fire

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10. Unless otherwise provided, the covenants and restrictions set forth in this Agreement shall run in perpetuity. In the event that the Property is damaged beyond restoration as a result of fire or other catastrophe, the covenants and restrictions shall terminate and be of no further force or effect. Damage beyond restoration is defined as damage to an extent exceeding fifty percent (50%) of the tax value of the building in the year that the building was damaged.

11. 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 the Foundation. No failure on the part of the Foundation to enforce any covenant or restriction herein nor the waiver of any right hereunder by the Foundation shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of the Foundation to enforce the same in event of a subsequent breach or default. In any case where a court finds that a violation has occurred the court may require the Grantee to reimburse the Foundation for all expenses incurred in stopping, preventing and correcting the violation, including but not limited to reasonable attorney's fees.

IN WITNESS WHEREOF, First Presbyterian Church of New Bern, Inc. and New Bern Preservation Foundation, Inc. have each caused this instrument to be signed in its corporate name by its duly authorized officer by the authority of its Board of Directors.

FIRST PRESBYTERIAN CHURCH OF NEW BERN, INC.

By: _____
Christopher S. Kelso, President

NEW BERN PRESERVATION FOUNDATION, INC.

By: _____
Joseph J. Mansfield, President

Corporate Seal

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STATE OF NORTH CAROLINA
COUNTY OF Craven

I, Reta K. Lamb, a Notary Public of the County and State aforesaid, certify that CHRISTOPHER S. KELSO personally came before me this day and acknowledged that he is President of First Presbyterian Church of New Bern, Inc., a North Carolina corporation, and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 13 day of February 2014.

My Commission Expires: 5/23/14

Notary Public

RETA K. LAMB NOTARY PUBLIC CRAVEN COUNTY, N.C.

STATE OF NORTH CAROLINA
COUNTY OF CRAVEN

I, Reta K. Lamb, a Notary Public of the County and State aforesaid, certify that JOSEPH J. MANSFIELD personally came before me this day and acknowledged that he is President of THE NEW BERN PRESERVATION FOUNDATION, INC., a North Carolina corporation, and that by authority duly given the foregoing instrument was signed in its name by its President, sealed with its corporate seal.

Witness my hand and official stamp or seal, this 13 day of Feb, 2014.

My Commission Expires: 5-23-14

Notary Public

RETA K. LAMB NOTARY PUBLIC CRAVEN COUNTY, N.C.

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EXHIBIT A

Legal Property Description

All of that certain tract or parcel of land lying and being situated in Number Eight (8) Township, Craven County, North Carolina, and being more particularly described as follows:

Beginning at a point being a PK Nail located at the intersection of the centerline of Johnson Street with the center line of Hancock Street, thence running South 71°27'38" East 168.02 feet to an iron pipe found in the northern right of way line of Johnson Street, this being the TRUE POINT AND PLACE OF BEGINNING. Thence from this True Point and Place of Beginning, running along and with the northern right of way line of Johnson Street South 82°24'18" East a distance of 81.00 feet to an iron pipe found; thence running South 07°41'07" West a distance of 169.20 feet; thence running North 79°45'32" West a distance of 2.86 feet, thence continue running North 79°45'32" a distance of 78.22 feet to an iron pipe set; thence running North 07°41'07" East a distance of 165.46 feet to the Point and Place of Beginning, containing 13,553 square feet, more or less, and set forth and delineated on a survey prepared by Atlantic Survey and Design, PA, dated March 20, 2012, for First Presbyterian Church of New Bern.

Subject parcel being a portion of Tract 2 in deed recorded in Book 1140, Page 26, in the office of the Register of Deeds of Craven County, north Carolina.