

RECORDING REQUESTED )  
 City of Coronado )  
 Community Development Department )  
 )  
 For the Benefit of City of Coronado )  
 No Recording Fee Gov. Code 27383 )  
 )  
 AFTER RECORDING RETURN TO: )  
     Office of the City Clerk )  
     City of Coronado )  
     1825 Strand Way )  
     Coronado, CA 92118 )

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Space Above for Recorder's Use Only

**HISTORIC RESOURCE PRESERVATION (MILLS ACT) AGREEMENT**

Commonly known as: (Address)  
 Assessor's Parcel Number: (APN)

THIS HISTORIC RESOURCE PRESERVATION AGREEMENT ("Agreement") is made and entered into by and between the City of Coronado, a municipal corporation (hereinafter referred to as the "City"), and (Owner name) (hereinafter referred to as the "Owner").

**Recitals**

1. WHEREAS, California Government Code Section 50280, *et seq.* ("Mills Act") authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance.

2. WHEREAS, the Historic Resource Preservation Agreement procedures are set forth in Chapters 84.10 and 84.20 of the Coronado Municipal Code.

3. WHEREAS, on October 2, 2018, the City Council of the City of Coronado adopted Resolution 8968 requiring the City to take into consideration the amount of property tax revenue decreases resulting from Historic Resource Preservation (Mills Act) Agreements in considering how many Mills Act Agreements to approve in any given year.

4. WHEREAS, Resolution 8968 limits the maximum property tax savings realized by a property owner in association with a Historic Resource Preservation Agreement to 50% of the regular property taxes. The restricted value of the Historic Property is the value of the property for which the property owner cannot receive a tax savings pursuant to a Historic Resource Preservation Agreement.

5. WHEREAS, Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, bearing Assessor's Parcel Number (APN) located at the street address of (Address), Coronado, California (hereinafter such property shall be referred to as the "Historic Property"). A legal description of the Historic Property is attached hereto, marked as Exhibit "A" and is incorporated herein by this reference.

6. WHEREAS, on (Date), the Historic Resource Commission of the City of Coronado adopted Resolution Number HR (Number) thereby declaring and designating the Historic Property as a Historic Resource pursuant to the terms and provisions of, and as defined in, Chapter 84.10 of the City of Coronado Municipal Code.

7. WHEREAS, both the City and Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historic Property and to qualify the Historic Property for an assessment of valuation pursuant to the provisions of Article 1.9 of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code, and Coronado City Council Resolution 8968.

### **Agreement**

NOW, THEREFORE, both the City and Owner, in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits derived therefrom, do hereby agree as follows:

1. Applicability of Government Code and Revenue and Taxation Code. This Agreement is made pursuant to Article 12 (commencing with Section 50280) of Chapter 1 of part 1 of Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3 of part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of these statutes as they may be amended from time to time.

2. Compliance with Historic Preservation and Zoning Laws. Owner shall comply with any applicable federal, state or local historic preservation and zoning laws, including but not limited to Title 84 of the Coronado Municipal Code regulating Historic Resources and Title 86 of the Coronado Municipal Code pertaining to zoning regulations as they may be amended from time to time.

3. Preservation of Property. The Owner agrees to preserve and maintain the Historic Property, and when necessary, to restore and rehabilitate the Historic Property to conform to the rules and regulations published by the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as they may be amended from time to time. In particular, the Owner agrees to make all of the improvements identified in Attachment "B" during the initial term of this Agreement and within the milestones and deadlines set forth therein. On or before each of such milestones and deadlines, Owner shall provide the City with evidence showing compliance with the same. The Owner shall obtain a Historic Resource Alteration permit from the Historic Resource Commission prior to obtaining a building permit for any addition or alteration to the exterior of the Historic Property.

4. Inspections. The Owner agrees to permit the periodic examination of the Historic Property by the City, the County Assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be requested to determine the Owner's compliance with this Agreement, including an inspection upon execution of this Agreement and every five years thereafter pursuant to Government Code Sections 50281(b)(2) and 50282(a). The City may conduct additional inspections upon reasonable notice when the City receives a complaint or has other information suggesting that the Owner is not in compliance with this Agreement or to follow-up on compliance related issues at the Historic Property.

5. Visibility of Property. The Owner agrees to allow for and maintain the visibility of the Historic Property from the public right-of-way(s) at all times. Owner shall not allow any hedges, shrubs or grasses to become overgrown or interfere with the visibility of the Historic Property from the public right-of-way(s) and shall keep the same appropriately trimmed and pruned consistent with requirements of the Coronado Zoning Ordinance.

6. Annual Income to be Capitalized.

(a) In order to accomplish the purpose set forth in City Council Resolution 8968 and as provided in Section 439.2(a) of the Revenue and Taxation Code, the income to be capitalized when valuing a restricted historical property is the Historic Property's fair rent less allowed expenditures, or allowed expenses. Both the City and Owner agree to stipulate a minimum annual income to be capitalized, in which the income to be capitalized may not be less than the stipulated amount. Both the City and the Owner agree that the minimum annual income to be capitalized for the Historic Property is \$(Amount) if the Historic Property is the property owner's primary residence, and \$(Amount) if the Historic Property is not the property owner's primary residence.

(b) Both the City and the Owner agree that, each year, the minimum annual income to be capitalized shall be re-calculated such that the restricted value of the Historic Property shall be equal to or greater than half of the Factored Base Year Value.

(c) Both the City and the Owner agree that at a minimum every 5 years, and upon any sale or transfer of the property, the parties shall execute a written amendment to Section 6(a) of this Agreement to update the minimum annual income to be capitalized, calculated such that the restricted value of the Historic Property shall be equal to or greater than half of the Factored Base Year Value. Owner shall promptly respond to the City's request for such an amendment and shall execute and return such an amendment within thirty (30) days of the City's request for the same. Failure to return an executed amendment to the City within such thirty (30)-day period shall automatically and immediately cause this Agreement to lapse, expire and be of no further force and effect after conclusion, in the City's discretionary election, of either the process set forth in section 10 for non-renewal or sections 12 and 13 for cancellation. Upon such lapse, the Owner hereby authorizes the City to record a notice of expiration of this agreement or other instrument indicating, in the official records of the County of San Diego, that the Historic Property is no longer the subject of a Mills Act agreement. The City shall give notice to the Owner of any automatic expiration of this Agreement pursuant to this paragraph.

(d) Both the City and the Owner agree that consistent with Resolution 8968, the maximum property tax savings realized by Owner under this Agreement shall not exceed 50% of the regular property taxes. In the event that the County Tax Assessor fails to assess and collect the full amount of property taxes due under this Agreement in any given year, the amount of the unassessed property taxes shall become a lien on and charge against the property, including within the meaning of Revenue and Taxation Code section 2187. Upon discovery of any such error by the County Tax Assessor, the City shall give the Owner written notice of the error and the amount of the unassessed property taxes due under this Agreement. Owner shall have thirty (30) days from the date of the notice to pay the amount owing under this Agreement. The City may, but is not required to, record a notice of tax lien against the property for the amount of real property taxes that were unassessed and which exceed 50% of the regular property taxes.

7. Exclusion from Agreement. (Exclusions), as well as any new addition or structure completed on the property, shall be considered "unrestricted" for the purposes of determining the Mills Act restricted value, resulting in a mixed valuation.

8. Term of Agreement. This Agreement shall be effective and shall commence on the date this Agreement is approved by the City Council and shall remain in effect for a term of ten (10) years thereafter, unless earlier canceled pursuant to Section 12 below or subject to automatic expiration pursuant to Section 6(c) above.

9. Automatic Renewal. Each year on the anniversary of the effective date of this Agreement (hereinafter referred to as the "renewal date"), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein or the Agreement has been earlier canceled pursuant to Section 12 or was subject to an automatic expiration pursuant to Section 6(c) above.

10. Notice of Nonrenewal. If either Owner or City desires in any year not to renew the Agreement, that party shall serve written notice of non-renewal on the other party. If the Owner elects to serve a notice of nonrenewal, the notice must be served on the City at least ninety (90) days prior to the renewal date, otherwise one (1) additional year shall automatically be added to the term of this Agreement. Conversely, if the City elects to serve a notice of nonrenewal, the notice must be served on the Owner at least sixty (60) days prior to the renewal date, otherwise one (1) additional year shall automatically be added to the term of this Agreement. Upon receipt by the Owner of a notice of nonrenewal from the City, the Owner may make a written protest of the nonrenewal. The City may, at any time prior to the renewal date, withdraw its notice of nonrenewal.

11. Effect of Notice of Nonrenewal. If, in any year, either party serves a notice of nonrenewal as provided in Paragraph 8 above, this Agreement shall remain in effect for: (1) the balance of the period remaining under the initial term of this Agreement; or (2) the balance of the period remaining since the last automatic renewal, whichever the case may be.

12. Cancellation. The City may cancel this Agreement if the City determines the Owner has breached any of the conditions of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historic property. The City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the Historic Property in the manner specified in this Agreement. In the event of cancellation, Owner shall pay a cancellation fee as set forth in the California Government Code Section 50286 (fees are currently equal to 12.5% of the current fair market value of the property).

13. Notice of Cancellation. Notwithstanding the above, this Agreement cannot be canceled until after the City has given notice and has held a public hearing as required by California Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of properties within the same historic zone as the Historic Property and shall be published in accordance with California Government Code Section 6061.

14. Enforcement of Agreement. In lieu of and/or in addition to any provisions to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable

satisfaction of the City within thirty (30) days thereafter, or if not corrected within such a reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within (30) days provided that acts to cure the breach or default may be commenced within thirty (30) days and must thereafter be diligently pursued to completion by Owner, then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, apply to any court, state or federal for injunctive relief against any violation by Owner or apply for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default herein under.

15. Binding Effect of Agreement. The Owner hereby subjects the Historic Property described in Exhibit "A" hereto to the covenants, conditions and restrictions set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, conditions and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument herein executed, covering on conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, conditions and restrictions expressed in this Agreement regardless of whether such covenants, conditions and restrictions are set forth in such contract, deed or other instrument.

16. City and Owner hereby declare their understanding and intent that the burden of covenants, conditions and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Historic Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, conditions and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property for the benefit of the public and Owner.

17. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City:                      City Clerk  
   1825 Strand Way  
   Coronado CA 92118

To Owner:                    (Name)  
   (Address)  
   (Address)

18. General Provisions.

a. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

b. Owner agrees to and shall hold City and its elected officials, officers, agents and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of its contractor, subcontractor, agent, employee or other person acting on his behalf which relate to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected and appointed officials, officers, agents and employees with respect to any and all actions for damages cause by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

c. All of the agreements, rights, covenants, conditions and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

d. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, conditions or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

e. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be effected thereby.

f. This Agreement shall be construed and governed in accordance with the laws of the State of California, and any action brought relating to this Agreement shall be held exclusively in a State court in the County of San Diego. The parties hereby waive the right to remove any action from San Diego County as is otherwise permitted by California Code of Civil Procedure section 394.

19. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Diego.

20. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.

21. Signatories. Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this

agreement, and that all resolutions or other actions have been taken so as to enable it to enter into this agreement.

IN WITNESS WHEREOF, City and Owner have executed this Agreement as of the date set forth below.

**CITY OF CORONADO**, a Municipal Corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John Duncan, Mayor

ATTEST:

\_\_\_\_\_  
Kelsea Holian, MMC, CPM  
City Clerk

\_\_\_\_\_  
Date

**OWNER**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Owner)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Owner)

(Notarization "General Acknowledgment" statement of Owner signature is required to be attached.)

(Notarization "General Acknowledgment" statement of Mayor signature is required to be attached.)

**EXHIBIT A**  
**LEGAL DESCRIPTION**

(Legal Description)

Commonly known as: (Address)  
Assessor's Parcel Number: (APN)

**EXHIBIT B**  
**LIST OF IMPROVEMENTS**

(List of Improvements)