

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Costa Mesa City Hall
Attn: Economic and Development Services Department
77 Fair Drive, 2nd Floor
Costa Mesa, CA 92626

(SPACE ABOVE THIS LINE IS FOR RECORDER'S USE)

Exempt from SB2 fee per Government Code 27388.1(a)(1)(2)(D))

HISTORICAL PROPERTY PRESERVATION AGREEMENT (Mills Act Contract)

BY AND BETWEEN THE CITY OF COSTA MESA,
A MUNICIPAL CORPORATION, AND

(PRINT NAME OF EACH OWNER AS LISTED ON TITLE)

FOR THE PRESERVATION AND BENEFIT OF THE
HISTORIC PROPERTY LOCATED AT

(ADDRESS)

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, _____ (herein referred to as the "Effective Date"), by and between by the CITY OF COSTA MESA ("City"), and _____ (referred to herein as the "Owner"). City and Owner are each a "party" and collectively the "parties" to this Agreement.

RECITALS

- (i) WHEREAS, the Mills Act (Government Code Section 50280 et seq.) authorize cities to enter into Agreements with the owners of Qualified Historical Properties to provide for the use, maintenance and restoration of such historical properties so as to retain their characteristics as properties of historical significance; and
- (ii) WHEREAS, the City Council of the City of Costa Mesa (hereinafter "City Council") has approved by resolution the use of such Agreements as an incentive to support the preservation, maintenance, and appropriate rehabilitation of the City's cultural resources; and
- (iii) WHEREAS, the property that is subject to this Agreement satisfies the requirements under Government Code Section 50280.1 as a Qualified Historical Property in that it is privately owned property which is not exempt from property taxation and is either: individually designated or located within a designated district which is listed on the National Register of Historic Places, California Register of Historical Resources, California Historical Landmarks, California Points of Historical Interest, or on the Local Register of Historic Places;

- a. Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the _____ and located at the street address _____, Costa Mesa, California _____ (hereinafter such property shall be referred to as the "Property"), and recorded with the Orange County Clerk-Recorder with the following legal description: _____
 - b. On _____, ____: (a) the City Council declared the Property a designated cultural resource pursuant to Title 13, Chapter IX , Article 14 of the City's Municipal Code and is thus listed in the Local Register of Historic Places.
- (iv) WHEREAS, City and Owner, for their mutual benefits, now desire to enter into this Agreement to prevent inappropriate alterations, to protect, preserve, and maintain the characteristics of historical significance of the Property in an exemplary manner, and to carry out the purposes of California Government Code, Chapter 1, Part 5 of Division 1 of Title 5, Article 12, Sec. 50280 et seq., and to qualify for an assessment of valuation pursuant to Article 1.9, Sec. 439 et seq., Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

NOW, THEREFORE, based on the above recitals and the mutual promises and covenants contained herein, the parties agree as follows:

AGREEMENT

1. AGREEMENT SUBJECT TO GOVERNMENT CODE SECTIONS 50280-50290.

This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the pertinent provisions of the Government and Revenue and Taxation Code, they are superseded by those Code Sections.

2. ASSESSMENT OF VALUATION.

Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.

3. COMMENCEMENT, TERM AND RENEWAL OF AGREEMENT.

- A. EFFECTIVE DATE. This Agreement shall be effective and commence on the date it is recorded as first above written (hereinafter referred to as the "Effective Date").
- B. TERM. The Agreement shall remain in effect for a term ten (10) years from the effective date unless canceled as provided in Section 8 of this Agreement.
- C. AUTOMATIC RENEWAL. On the ten year anniversary of the effective date of this Agreement hereinafter referred to as the "Renewal Date"), and each year thereafter, one year shall be added to the term of this Agreement such that the initial term shall automatically be extended for one additional year after the initial 10-year term unless written notice of nonrenewal is given as provided in Section 9 of this Agreement.

4. CONDITIONS, REQUIREMENTS AND AGREEMENTS FOR THE PROPERTY.

During the term of this Agreement, the Property shall be subject to the following conditions, requirements and agreements.

- a. Owner agrees to preserve and maintain the Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style,

materials, design, scale, details, mass, roof line and other aspects of the appearance of the exterior of the Property.

- b. The *Secretary of the Interior's Standards for Rehabilitation* (the "Secretary's Standards") (Exhibit A) and City's minimum maintenance standards (Exhibit B), both attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation, restoration, and rehabilitation of the Property, and shall apply to the Property throughout the term of this Agreement. Owner shall, where necessary, restore and rehabilitate the Property to conform to the current rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the Secretary's Standards, and the City's minimum maintenance standards. Owner shall utilize the State Historical Building Code when rehabilitating the Property.
- c. As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in with the Rehabilitation/Restoration/Maintenance Plan for the Property (Exhibit C), attached hereto and incorporated herein by reference, within the times established in Exhibit C. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on Exhibit C and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into.
- d. Owner shall maintain during the life of this Agreement a homeowners insurance policy in a minimum amount of x, which policy shall name the City as an additional insured.

5. PERIODIC EXAMINATION OF PROPERTY.

Owner agrees to allow the periodic examination, by prior appointment, of the interior and exterior of the premises of the Property by representatives of the City, the Orange County Assessor, the State Department of Parks and Recreation, and the State Board of Equalization, or their designees, as necessary to determine Owner's compliance with the terms of this Agreement. Refusal to allow such inspection shall be grounds for cancellation of this Agreement.

6. PAYMENT OF FEES.

Owner agrees to pay any such fees associated with the administration of the Agreement to be established by the City and may be revised from time to time, so long as the fee does not exceed the City's and County's reasonable cost of providing the service pursuant to this article for which the fee is charged. Fees may include but are not limited to an inspection fee for each required inspection of the Property for the purpose of covering the reasonable cost of performing required periodic inspections.

7. FURNISHING OF INFORMATION OF COMPLIANCE.

Owner hereby agrees to furnish the City with any and all information requested by the City which may be necessary or advisable to determine Owner's compliance with the terms and provisions of this Agreement.

8. CANCELLATION OF AGREEMENT.

- A. CANCELATION BY CITY. City may cancel and/or terminate this Agreement if City determines Owner has breached any of the terms, conditions and/or covenants of this Agreement or has allowed the Property to deteriorate to the point that it no longer meets the standards for a Qualified Historical Property per Government Code Section 50280.1 or if the City determines that the Owner has failed to maintain,

restore or rehabilitate the Property in accordance with the terms, standards and conditions set forth in Exhibit C or any other manner specified in this Agreement.

- i. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after the City has given notice and has held a public hearing as required by Government Code Section 50285. City shall serve written notice of proposed cancellation on Owner stating the grounds for cancellation and setting a public hearing date on the matter. Notice of the hearing shall also be sent by registered or certified mail to the address stated in this Agreement, the last known address of each owner of the Qualified Historical Property and shall be published pursuant to Government Code Section 6061.
 - ii. CANCELLATION FEE. If the City cancels this Agreement in accordance with this Section, the Owner shall pay the State of California a cancellation fee of twelve and one-half percent (12 ½%) of the current fair market value of the Property at the time of cancellation as determined by the County Assessor without regard to any restrictions on the Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
- B. CANCELLATION BY CITY AT OWNER REQUEST. City may also cancel this Agreement, at Owner's request, if the Property has been destroyed in whole or in part by fire, earthquake, or other Act of God or accidental cause such that, in the sole opinion of the City, the historic value of the Property has been destroyed. The City may cancel this Agreement, at the Owner's request, if the Property is damaged to the extent that (1) the then fair market value of the structure is reduced by 51 percent or more; or (2) 51 percent or more of the structure's floor area is destroyed or irreparably damaged; or (3) 51 percent or more of the structure's historic features are destroyed or irreparably damaged; or (4) the cost to the Owner (exclusive of insurance proceeds) to restore the structure to its prior condition would exceed X percent of the property value. Under these circumstances, no cancellation fee shall be imposed upon the Owner. However, the Owner shall reimburse the City for all expenses incurred by City in determining the extent of damage or destruction. If the Owner desires to cancel this Agreement under this Section, written notice shall be given to the City within 90 days after such damage or destruction occurs. In the event the Owner desires to cancel this Agreement due to the circumstances outlined above, owner or City may request a hearing before the City Council to determine (a) the extent of diminution of value, (b) the extent of the damage or destruction to the floor area of the Property, and/or (c) the extent of damage or destruction to the character defining features of the Property.
- C. CANCELLATION OF CONTRACT DUE TO ACQUISITION OF PROPERTY BY EMINENT DOMAIN; INAPPLICABILITY TO DETERMINATION OF VALUE. In the event that the Property is acquired in whole or part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City to frustrate the purpose of the Agreement, the Agreement shall be cancelled, and no fee shall be imposed under Section 9(A)(ii), above. The Agreement shall be deemed null and void for all purposes of determining the value of the Property so acquired. If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Property included in this Agreement shall, without further agreement of the parties, be reinstated and the terms of this Agreement shall continue in full force and effect.

9. NOTICE AND EFFECT OF NONRENEWAL.

If Owner or City desires in any year not to renew this Agreement, such party shall serve written notice of nonrenewal on the other party in advance of the annual renewal date.

- A. If served by Owner, notice of nonrenewal must be served on City at least ninety (90) days prior to the annual renewal date. If served by City, notice of renewal must be served on Owner at least sixty (60) days prior to the annual renewal date. Failure to meet the notice deadlines above will result in one year being automatically added to the term of this Agreement.

- B. Within fifteen (15) calendar days of the date of the City's notice of nonrenewal, Owner may make a written protest to the City. Upon timely receipt of such protest, the City Council shall hold a public hearing on the matter prior to the annual renewal date. At such hearing, Owner may present any information which Owner deems relevant. Based on Owner's protest and the information presented at the hearing, the City Council may withdraw the City's notice of nonrenewal at any time prior to the annual renewal date.
- C. Any notice of nonrenewal which has not been withdrawn prior to the next annual renewal date, shall be recorded with the Orange County Recorder. Unless this Agreement is otherwise canceled as provided herein, after notice of nonrenewal has been served and not withdrawn, this Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

10. BINDING EFFECT OF AGREEMENT.

The Owner hereby voluntarily subjects the Property hereto to the conditions, requirements and agreements as set forth in this Agreement. City and Owner hereby declare their specific intent that the conditions, requirements and agreements as 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 Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the conditions, requirements and agreements expressed in this Agreement whether or not such conditions, requirements and agreements are set forth in any other contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the conditions, requirements and agreements set forth herein may burden the Property that the Owner holds legal interest and may therefore render the land less valuable. The City and Owner hereby further declare their understanding and intent that the benefit of such conditions, requirements and agreements touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Property for the benefit of the public and Owner.

- A. **SUCCESSORS AND ASSIGNS.** This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
- B. **REQUIREMENTS RELATED TO TRANSFER OF PROPERTY.** In the event of any sale, transfer, assignment or conveyance of the Property (herein referred to as a "Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.

C. ENFORCEMENT OF AGREEMENT.

In lieu of and/or in addition to any provisions to cancel the Agreement as referenced herein, City may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address

stated in this Agreement and to the last known address of the Owner of the Qualified Historic Property. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such longer period of time as specified or agreed to by City, or within such reasonable time as may be required to cure the breach or default as determined by the City, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then the City may, without further notice, institute legal action.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any of its right and remedies as to a breach of any of the conditions, requirements or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other conditions, requirements or agreements set forth in this Agreement.

11. 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 in writing.

TO CITY:

City of Costa Mesa
Economic and Development Services Department
77 Fair Drive, 2nd Floor
Costa Mesa, CA 92626
Attn: _____

TO OWNER:

Name _____

Address _____

12. GENERAL PROVISIONS.

- A. **NON-PARTNERSHIP.** 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 venturers or members of any joint enterprise.
- B. **DEFENSE, INDEMNIFICATION AND HOLD HARMLESS.** Owner agrees to and shall hold City and its elected and appointed officials, officers, employees and/or agents harmless from any and all 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 and/or other person acting on Owners behalf which relate to the use, operation and maintenance of the Property. Owner hereby agrees to and shall defend, with the attorneys of City's choosing, the City and its elected and appointed officials, officers, employees and/or agents with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the 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 whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Property.

In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations 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.

- C. **REMEDY IF AGREEMENT HELD NOT ENFORCEABLE.** All of the conditions, requirements or agreements 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 Property, whether by operation of law or in any manner whatsoever.

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 affected thereby.

- D. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement with the same effect as if all parties had signed the same signature page.
- E. **NO COMPENSATION.** Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Property on account of the restrictions on the use and preservation of the Property.
- F. **INDEPENDENT ADVICE OF LEGAL COUNSEL.** The parties hereto and each of them, represent and declare that in executing this Agreement they rely solely on their own belief, knowledge and judgment, and the advice and recommendations of their own independently selected legal counsel, concerning the nature, duration and extent of their rights and or claims, and that they have not been influenced to any extent whatsoever in executing this Agreement by any of the parties hereto or by any person representing them, of any of them.
- G. This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue shall be in a court of competent jurisdiction in Orange County, California.
- H. Owner understands that it is Owner's responsibility to apply for the reassessment of valuation afforded by this Agreement pursuant to Chapter 3, Part 2, of Division 1 of the California Revenue and Taxation Code.

13. RECORDATION OF AGREEMENT.

The City shall record this Agreement with the Orange County Recorder within twenty (20) days of its execution by both parties.

14. ENTIRE AGREEMENT.

This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior discussions, negotiations, and agreements whether oral or written.

15. AMENDMENTS.

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

16. ADMINISTRATION.

This Agreement shall be administered by the City's Director of Economic and Development Services (hereinafter "Director" including his/her designee) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the Director. The Director shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Property or the purpose of this Agreement, and such amendments may include extensions of time specified in Exhibit C. All other waivers or amendments shall require the written approval and consent of the City Council.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES ON NEXT PAGE)

DRAFT

17. AUTHORITY TO ENTER AGREEMENT.

This Each person executing this Agreement warrants that they have the authority to enter into this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, the City and Owner have caused this contract to be duly executed.

“OWNER”

Dated: _____, 20__ By: _____
Owner Signature*

Print Name

Dated: _____, 20__ By: _____
Owner Signature*

Print Name

“CITY”

CITY OF COSTA MESA, a municipal corporation

Dated: _____, 20__ By: _____
Mayor

ATTEST:

City Clerk City

APPROVED AS TO FORM:

City Attorney

*Approved Recording Signature Method: The contract signature(s) and printed names(s) above MUST BE IDENTICAL to the printed names(s) on the first page of the contract and the Notary Acknowledgement Form. If not, the contract will be rejected by the County Recorder.