

**HISTORIC PROPERTY PRESERVATION AGREEMENT
CONTAINING COVENANTS, CONDITIONS AND RESTRICTIONS
AFFECTING REAL PROPERTY LOCATED AT 755 MAIN STREET,
WITHIN THE CITY OF HUNTINGTON BEACH**

**HISTORIC PROPERTY PRESERVATION AGREEMENT CONTAINING
COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING REAL PROPERTY
BY AND BETWEEN THE CITY OF HUNTINGTON BEACH AND JANE FRANCES
HILTZ FOR THE REAL PROPERTY LOCATED AT 755 MAIN STREET, WITHIN
THE CITY OF HUNTINGTON BEACH
("MILLS ACT CONTRACT")**

THIS AGREEMENT is made this _____ day of _____, 20____, by
and between the City of Huntington Beach, a municipal corporation ("City") and Jane Frances
Hiltz ("Owner").

WHEREAS, California Government Code Section 50280, et. seq. allows cities the
discretion to enter into contracts with the owners of qualified historic properties, as that term is
defined in Government Code Section 50280.1, for the purpose of providing for the use,
maintenance, protection, and restoration of such historic property so as to retain its
characteristics as property of historic significance; and

Owner holds fee title in and to that certain real property, together with associated
structures and improvements thereon, generally located at the street address 755 Main Street
Huntington Beach, California ("Historic Property"). A legal description of the Historic Property
is attached hereto as Exhibit "A" and incorporated herein by this reference; and

By approving this Agreement, the City Council hereby designates the Historic Property
as a Qualified Historic Property as defined by Resolution 2014 - 82, Section 5; and

City and Owner desire to enter into this Agreement for the purpose of protecting and
preserving the characteristics of historical significance of the Historic Property that help provide
the community with its own unique civic identity and character; and

Owner, in consideration for abiding by the terms of this Agreement, shall be entitled to
qualify for a reassessment of valuation of the Historic Property, pursuant to the provisions of
chapter 3, Part, 2, of Division 1 of the California Revenue and Taxation Code, and any

corresponding adjustment in property taxes resulting therefrom,

NOW, THEREFORE, the City and Owner in consideration of mutual covenants and conditions set forth herein, do hereby agree as follows:

1. EFFECTIVE DATE AND TERM OF AGREEMENT.

This Agreement shall be effective and commence on _____, 20__ ("Effective Date") and shall remain in effect for a minimum initial term of ten (10) years thereafter unless canceled by the City pursuant to Section 8 or 9 of this Agreement.

2. RENEWAL. Upon each anniversary of the effective date of this Agreement ("Renewal Date"), an additional one (1) year shall automatically be added to the term of the Agreement unless a notice of nonrenewal is delivered as provided in Section 3 of this Agreement.

3. NONRENEWAL.

If either the Owner or City desires in any year not to renew this Agreement, Owner or City shall serve a written notice of nonrenewal upon the other party in advance of the Renewal Date ("Notice of Nonrenewal"). The Notice of Nonrenewal shall be effective only if served by Owner upon City at least ninety (90) days prior to the Renewal Date, or if served by City upon Owner, the Notice of Nonrenewal shall be effective only if served upon Owner at least sixty (60) days prior to the Renewal Date. If either City or Owner serves a Notice of Nonrenewal in any year, this Agreement shall remain in effect for the balance of the term then remaining. City shall notify the County of Orange of any nonrenewal of this Agreement.

4. OWNER PROTEST OF CITY NONRENEWAL.

Within fifteen (15) days of Owner's receipt of the Notice of Nonrenewal from City, Owner may file with City a written protest of the Notice of Nonrenewal. Upon receipt of

the written protest, the City Council shall set a hearing prior to the expiration of the Renewal Date of this Agreement. Owner may furnish the City Council with any information which Owner deems relevant and shall furnish the City Council with any information it may require. The City Council may, at any time prior to the annual Renewal Date, withdraw its Notice of Nonrenewal.

5. STANDARDS FOR HISTORICAL PROPERTY.

During the term of this Agreement, the Historic Property shall be subject to the following conditions, requirements, and restrictions:

A. Owner shall preserve and maintain the characteristics of the cultural and historical significance of the Historic Property. Compliance or non-compliance with this section shall be determined by the Director of Community Development or his/her designee. In addition, Owner shall obtain any applicable permits necessary to protect, preserve, restore, and rehabilitate the Historic Property so as to maintain its historical and cultural significance.

B. Owner, when necessary as determined by the City, shall restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior's Standards for the Treatment of Historic Properties, and the State Historical Building Code. The condition of the exterior of the Historic Property on the effective date of this Agreement is documented in photographs attached as Exhibit "B" and incorporated herein by this reference. The Owner shall continually maintain the exterior of the Historic Property in the same or better condition as documented in Exhibit "B."

C. Owner shall carry out specific restoration, repair, maintenance, and/or rehabilitation projects on the Historic Property, as outlined in the attached Exhibit "C," which is

incorporated herein by this reference. All such projects shall be undertaken and completed in keeping with the historic nature of the property. Projects may be interior or exterior, but must utilize all property tax savings over the ten (10) year contract period or according to the schedule for Exhibit "C." Each year during the term of this Agreement, Owner shall submit a work plan for implementation of the items listed on Exhibit "C" to City's Director of Community Development for possible modifications, review and approval.

D. 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.

6. INSPECTIONS.

Upon reasonable advance notice and at Owner's expense, Owner shall allow the City to inspect the interior and exterior of the Historic Property every five (5) years after the Effective Date, and as may be necessary to determine Owner's compliance with this Agreement. Additionally, Owner shall allow reasonable periodic examinations, specific to where the work is being performed, of the interior and exterior of the Historic Property by representatives of the County Assessor, the State Department of Parks and Recreation, the State Board of Equalization and/ or City, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. Owner shall give priority to, and shall promptly abate, any city or state code violations related to zoning, health or safety issues.

7. PROVISIONS OF INFORMATION OF COMPLIANCE; YEARLY ADMINISTRATIVE FEE.

Owner hereby agrees to furnish City with any and all information requested by City, which City deems necessary or advisable to determine eligibility of the Historic Property

and compliance with the terms and provisions of this Agreement. Requested information may include, but not be limited to, required annual reports, as well as receipts documenting property maintenance and/or improvement expenditures that equal or exceed annual estimated property tax savings. Owner shall also pay City a yearly administrative fee as outlined in City's Master Fee Resolution.

8. BREACH OF AGREEMENT; REMEDIES.

A. Notice of Breach; Opportunity to Cure. If Owner breaches any provision of this Agreement, City may give written notice to Owner by registered or certified mail detailing Owner's violations. If such violation is not corrected to the reasonable satisfaction of City within thirty (30) days after the date of notice of violation, or within such a reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within thirty (30) days and thereafter diligently pursued to completion), the City may, without further notice, declare Owner to be in breach of this Agreement. Upon City's declaration of Owner's breach, City may pursue any remedy available under local, state, or federal law, including those specifically provided for in this section.

B. Remedy - Cancellation. City may cancel this Agreement if City determines, following a duly noticed public hearing in accordance with Government Code section 50285, that Owner breached any of the conditions of the Agreement, Owner allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historic property, or Owner failed to restore or rehabilitate the Historic Property in accordance with the terms of this Agreement as per Government Code 50284. If this Agreement is cancelled, under this paragraph, Owner shall pay a cancellation fee to the Office of the Auditor for the County of Orange as required by Government Code section 50286. The cancellation fee

will be equal to 12 ½ percent of the current fair market value of the property as determined by the county assessor as though the property were free of the contractual restriction.

C. Alternative Remedies. As an alternative to cancellation of this Agreement for Owner's breach of any condition, City may bring an action in court necessary to enforce this Agreement including, but not limited to, an action to enforce this Agreement by specific performance, injunction, or receivership.

9. DESTRUCTION OF PROPERTY; EMINENT DOMAIN.

If the Historic Property is destroyed by earthquake, fire, flood, or other natural disaster such that in the opinion of the City Building Official more than sixty percent (60%) of the original fabric of the structure must be replaced, this Agreement shall be cancelled because the historic value of the structure will have been destroyed. If the Historic Property is acquired in whole or in 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 Mayor and City Council to frustrate the purpose of this Agreement, this Agreement shall be cancelled. No cancellation fee pursuant to Government Code Section 50286 shall be imposed if the Agreement is cancelled pursuant to this Section.

10. WAIVER.

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 hereunder.

11. BINDING EFFECT OF AGREEMENT.

Owner hereby subjects the Historic Property 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 inure to and be binding upon Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions set forth herein.

12. COVENANTS RUN WITH THE LAND.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that they restrict development of the Historic Property. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the cultural and historical characteristics and significance of the Historic Property for the benefit of the public and the Owner.

13. 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:

City: City of Huntington Beach
City Manager's Office
2000 Main Street
Huntington Beach, CA 92648

Owner: Jane F. Hiltz
755 Main Street
Huntington Beach, CA 92648

14. EFFECT OF AGREEMENT.

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 the parties to be considered joint venturers or members of any joint enterprise.

15. INDEMNITY OF CITY.

Owner shall defend, indemnify, and hold harmless City and its elected officials, officers, agents and employees from any actual or alleged claims, demands causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state or local governmental agency, arising out of or incident to (i) the direct or indirect use, operation, or maintenance of the Historic Property by Owner or any contractor, subcontractor, employee, agent, lessee, licensee, invitee, or any other person; (ii) Owner's activities in connection with the Historic Property, or from the enforcement of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees and related costs or expenses, and the reimbursement of City, its elected officials, employees, and/ or agents for all attorney's fees, legal expenses and costs incurred by each of them. The costs, salaries and expenses of the City Attorney and members of his/her office in enforcing this Agreement on behalf of the City shall be considered as "attorneys' fees" for the purposes of this paragraph. Owner's obligation to indemnify shall survive the termination, cancellation, or expiration of this Agreement and shall not be restricted to insurance proceeds, if any received by City, its elected

officials, employees, or agents.

16. BINDING UPON SUCCESSORS.

All of the agreements, rights, obligations, covenants, reservations, 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.

17. ATTORNEYS' FEES AND LEGAL COSTS.

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, each party shall bear its own attorneys' fees and legal costs, and the prevailing party in such proceeding shall not be entitled to recover its attorneys' fees and legal costs from the non-prevailing party.

18. SEVERABILITY.

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.

19. RECORDATION.

No later than twenty (20) days after the Effective Date, City shall cause this Agreement to be recorded in the office of the County Recorder of the County of Orange. Owner shall provide written notice of the contract to the State Office of Historic Preservation within six (6) months of entering into the contract.

20. AMENDMENTS.

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

21. GOVERNING LAW AND VENUE.

This Agreement shall be construed and governed in accordance with the laws of the State of California. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Orange, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

22. REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY.

In the event of any sale, transfer, assignment or conveyance of the Historic 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 City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City Attorney of City or other such 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 Historic 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.

23. ENTIRETY.

The parties acknowledge and agree that they are entering into this Agreement

freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

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IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day
and year first above written.

OWNER:

CITY OF HUNTINGTON BEACH
A California municipal corporation



Jane Frances Hiltz

Mayor Gracey Van Der Mark

City Clerk Robin Estanislau

APPROVED AS TO FORM:

City Attorney Michael E. Gates



REVIEWED AND APPROVED:

Acting City Manager Travis Hopkins

Attachments

- Exhibit A: Legal Description of the Property
- Exhibit B: Photographs of the Property
- Exhibit C: Proposed Restoration, Repair, Maintenance or Rehabilitation Projects on Historic Property