

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

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

THE CITY OF POMONA
ATTN: Planning Division
505 South Garey Avenue
Pomona, CA 91766

[Exempt from recording fees per Gov't Code § 27383]

HISTORICAL PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this Xth day of XXXXX, 2019 by and between the CITY OF POMONA, a municipal corporation (hereinafter referred to as the “City”) and **James Chertkow and April Chertkow** (hereinafter referred to as the “Owners”).

WITNESSETH:

A. Recitals.

(i) California Government Code Section 50280, *et seq.*, 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 property of historical significance;

(ii) The Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, located at the street address **337 San Francisco Avenue, CA 91767** (hereinafter such property shall be referred to as the “Historical Property”). A legal description of the Historical Property is attached hereto, marked as Attachment “A,” and is incorporated herein by this reference;

(iii) On May 4, 1998, the City Council of the City of Pomona adopted its Resolution No. 98-48 thereby declaring and designating the Historical Property as a potentially contributing property within the Lincoln Park Historic District pursuant to the terms and provisions of Section .5809-13 of the Zoning Ordinance of the City of Pomona; and

(iv) The City and the Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historical Property and to qualify the Historical Property for an assessment of valuation pursuant to the Provisions of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

B. Agreement

NOW, THEREFORE, the City and the Owner, in consideration of the 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 XXXXXX X, 2019 and shall remain in effect for a term of ten (10) years thereafter. Each year thereafter, upon the anniversary of the effective date, such initial term will automatically be extended as provided in paragraph 2, below.

2. Renewal.

A. Yearly Renewal. Each year upon the anniversary of the Effective Date (“Renewal Date”), an additional one (1) year shall automatically be added to the remaining term of the Agreement unless a notice of nonrenewal is delivered as provided in Section 2.B. of this Agreement.

B. Nonrenewal. If either the Owner or City desire in any year not to renew this Agreement, Owner or City shall serve a written notice of nonrenewal upon the 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 serve a Notice of Nonrenewal in any year, this Agreement shall remain in effect for the balance of the term then remaining from the last Renewal Date (or from the Effective Date if no Renewal Date has yet occurred).

C. 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 deem 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.

3. Standards for Historical Property. During the term of this Agreement, the Historical Property shall be subject to the following conditions, requirements and restrictions:

A. The Owner shall, when necessary, restore and rehabilitate the Historical Property according to the rules and regulations of the State Office of Historic Preservation of the Department of Parks and Recreation (the "Office of Historic Preservation"); the United States Secretary of the Interior's Standards for Rehabilitation; the State Historical Building Code; and the City of Pomona Municipal Code, Historic Preservation Ordinance and Design Guidelines, and Historic Sites Tree Protection and Preservation Program, all of which shall be incorporated herein by this reference. All work under this Agreement shall be performed in accordance with the attached Restoration, Rehabilitation, and Preservation Plan ("RR&P Plan"), approved by the City Council of the City of Pomona on XXXXXX X, 2019, by adoption of its Resolution No. XXXX-XX, attached hereto as Attachment "B" detailing the work required to be completed by the Owner within the first ten (10) years of this Agreement. Any material amendments or modifications to the RR&P Plan shall be reviewed and approved by the Historic Preservation

Commission and submitted for final approval by the City Council and shall be recorded in accordance with Section 11 below.

B. The Owner shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historical Property by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization and the City, as may be necessary to determine the Owner's compliance with the terms and provisions of this Agreement. If the Owner's RR&P Plan includes work to be performed on the interior of the Historical Property, the Owner shall make the Historical Property accessible to the public during the term of this Agreement once every three (3) years for a tour, upon request by Pomona Heritage, the Historical Society of Pomona Valley or the Auxiliary of the Pomona Valley Hospital Medical Center. Nothing in this Section shall be construed to require that the Historical Property be made available for a tour more than once every three (3) years.

C. To have a baseline for comparison when future maintenance or alterations are being evaluated and for reconstruction of portions of the Historical Property in the event of a disaster, the Owner has created a photographic portfolio showing all elevations of all buildings and structures, all character-defining exterior details, and historic interior details or other details of special interest. A copy of the portfolio has been submitted by the Owner to the Planning Division of the Community Development Department, is kept on file with the City as a public record, and is hereby incorporated into this Agreement by reference. All structures, the entire grounds, and all major landscape features shall be included in the portfolio, along with copies of existing site plans, floor plans, architectural elevations and historical photographs that may be in the Owner's possession.

D. The Owner shall preserve, maintain and, where necessary, restore or rehabilitate the Historical Property and its character-defining features, notably the general architectural form; style; materials; design; scale; proportions; organization of windows, doors and other openings; textures; details; mass; roofline; porch; and other aspects of the exterior to

the satisfaction of the City and in compliance with all applicable City regulations and guidelines.

E. Landscaping of the Historical Property shall be watered and maintained in accordance with recognized landscaping practices and in compliance with all applicable City regulations and guidelines.

F. The Owner shall provide the City with a written annual report that specifies actions taken by the Owner to fulfill the requirements of this Agreement. The report shall be submitted to the City annually, no later than the anniversary of the date that the City Council approved this Agreement.

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

5. Cancellation.

A. In General: The City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, *et seq.*, may cancel this Agreement if it determines that the Owner breached any of the conditions of this Agreement or has allowed the Historical Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the Historical Property in the manner specified in subparagraph 3(A) of this Agreement.

B. Penalties for Cancellation: In the event of cancellation, the Owner may be subject to payment of those cancellation fees set forth in California Government Code Sections 50280, *et seq.*, including but not limited to Section 50286, which provides for a cancellation fee equal to twelve and one-half percent (12½%) of the current fair market value of the property. The Owner hereby acknowledges the provisions of Government Code Section 50286, which are

duplicated herein as follows:

“(a) If a contract is canceled under Section 50284, the owner shall pay a cancellation fee equal to 12½ 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.

“(b) The cancellation fee shall be paid to the county auditor, at the time and in the manner that the county auditor shall prescribe, and shall be allocated by the county auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

“(c) Notwithstanding any other provision of law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for the purposes of Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.”

6. Destruction of Property; Eminent Domain; Cancellation. If the Historical 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 historical value of the structure will have been destroyed. If the Historical 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 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 this Agreement is cancelled pursuant to this Section.

7. Enforcement of Agreement. In lieu of and/or in addition to any provision to cancel this Agreement as referenced herein, the City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default by the Owner, under the provisions of this Agreement, the City shall give written notice to the 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 reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days (provided that acts to cure the breach or default may be commenced within thirty (30) days and must be pursued to completion by the Owner), then the 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 the Owner growing out of the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by the Owner or apply for such other relief against any violation by the Owner or apply for such other relief as may be appropriate.

The City does not waive any claim of default by the Owner if the 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 the City's regulations governing historical properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by the 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.

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

The City and the 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 the Owner's legal interest in the Historical Property is rendered less valuable thereby. The City and the 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 historical characteristics and significance of the Historical Property for the benefit of the public and the Owner.

9. 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 of Pomona
505 S. Garey Avenue
Pomona, CA 91769

Attention: Planning Division

To Owner(s): Owner(s) of Record
337 San Francisco Avenue
Pomona, CA 91767

10. 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. The Owner agrees to and shall hold the City and its elected officials, officers, agents and employees harmless from liability for damage or claims for damage for personal

injuries, including death, and/or claims for property damage directly or indirectly arising out of the Owner's performance under this Agreement, or operations of the Owner or those of the Owner's contractor, subcontractor, agent, employee or other person acting on the Owner's behalf which relates to the use, operation and maintenance of the Historical Property. The Owner hereby agrees to and shall defend the City and its elected officials, officers, agents and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of the Owner's activities in connection with the Historical Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the performance and 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 Historical Property.

C. All of the Agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the party herein, her heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historical 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, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the Prevailing Party (as such term is defined below) 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. The term "Prevailing Party" shall include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense. The attorney's fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorney's fees reasonably incurred.

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 affected thereby.

F. This Agreement shall be construed and governed in accordance with the laws of the State of California.

G. The Owner [or agent of the Owner] shall provide written notice of this Agreement to the Office of Historic Preservation within six (6) months of entering into this Agreement.

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

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

[Signatures on the following page]

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

THE CITY OF POMONA ("City")

_____, 2019

By: _____

Linda Lowry,
City Manager

STATE OF CALIFORNIA)
) s.s.
COUNTY OF LOS ANGELES)

On _____ before me, _____, Notary Public personally appeared Linda Lowry, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

Notary Public in and for said County and State

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

[SIGNATURE PAGE CONTINUES]

_____, 2019

By: _____
James Chertkow (“Owner”)

By: _____
April Chertkow (“Owner”)

STATE OF CALIFORNIA)
) s.s.
COUNTY OF LOS ANGELES)

On _____ before me, _____, Notary Public personally appeared Jeffery Sladick and Joy Sladick, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

Notary Public in and for said County and State

ATTACHMENT "A"

HISTORICAL PROPERTY – LEGAL DESCRIPTION

The real property in the City of Pomona, County of Los Angeles, State of California, described as:

LOT 5 OF SUBDIVISION OF THE HIGH SCHOOL TRACT IN THE CITY OF POMONA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 4 PAGE(S) 39 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

ALSO KNOWN AS: 337 San Francisco Avenue, Pomona, CA 91767
A.I.N: 8336 002 004

ATTACHMENT “B”

CITY COUNCIL RESOLUTION NO. XXXX-XX WITH
HISTORIC PRESERVATION COMMISSION RESOLUTION NO. XX-XXX AS AN
EXHIBIT
(Attached)