

RECORDING REQUESTED BY:

CITY CLERK  
CITY OF CARMEL-BY-THE-SEA

WHEN RECORDED MAIL TO:

NAME: CITY CLERK  
CITY OF CARMEL-BY-THE-SEA

ADDRESS: CITY HALL  
P.O. Box CC  
CARMEL-BY-THE-SEA, CA 93921

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**CITY OF CARMEL-BY-THE-SEA  
MILLS ACT AGREEMENT  
HISTORIC PROPERTY PRESERVATION CONTRACT**

THIS AGREEMENT is made and entered into this \_\_\_th day of MONTH, 2017 by and between the CITY OF CARMEL-BY-THE-SEA a municipal corporation (hereinafter referred to as "City"), and Sandra J. Markowski (hereinafter referred to as "Owner").

**RECITALS**

- (i) California Government Code Section 50280, et seq. (known as the Mills Act) authorizes cities to enter into contracts with the owners of qualified historic properties to provide for their appropriate use, maintenance and restoration such that these historic properties retain their historic characteristics;
- (ii) The Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, located at the Northwest corner of Santa Rita Street and Ocean Avenue (APN: 010-039-007), Carmel, California, (hereinafter 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;
- (iii) The property is identified as a historic resource on the City of Carmel's Register of Historic Resources;
- (iv) 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 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

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

1. **EFFECTIVE DATE AND TERM.** This Agreement shall be effective and commence on 1 January 2018, unless otherwise indicated by Monterey County, and shall remain in effect for a term of ten (10) years thereafter.

2. **AUTOMATIC RENEWAL.** Each year, upon the anniversary of the effective date of this Agreement (hereinafter referred to as “annual renewal date”), one (1) year shall be added automatically to the term of this Agreement, unless timely notice of nonrenewal is given as provided in paragraph 3 of this Agreement. The total length of the contract shall not exceed twenty (20) years.
3. **NOTICE OF NONRENEWAL.** If City or Owner desires in any year not to renew this Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of this Agreement as follows: Owner must serve written notice of nonrenewal at least ninety (90) days prior to the annual renewal date; City must serve written notice of the nonrenewal at least sixty (60) days prior to the annual renewal date. Upon receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. At any time prior to the annual renewal date, City may withdraw its notice of nonrenewal.
4. **EFFECT OF NOTICE OF NONRENEWAL.** If either City or Owner serves timely notice of nonrenewal in any year, and this contract is not renewed, this Agreement shall remain in effect only for the remaining nine (9) years from the last annual renewal date.
5. **VALUATION OF PROPERTY.** During the term of this Agreement, Owner is entitled to seek assessment of valuation of the Historic Property pursuant to the provisions of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.
6. **PRESERVATION OF PROPERTY.** Owner shall preserve and maintain the characteristics of historical significance of the Historic Property. Attached hereto marked as Exhibit “B”, and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Property, which shall apply to such property throughout the term of this Agreement. The Owner agrees to complete rehabilitation and/or maintenance activities of the structure and comply with such conditions as specified in Exhibit “B” including the conditions outlined by the City’s Historic Preservation Consultant. Requests for substantial revisions to the maintenance and rehabilitation plan shall be reviewed by the Historic Resources Board prior to implementation. In addition, Owner shall comply with the terms of the City’s Historic Preservation Ordinance (CMC 17.32). Owners shall not be permitted to further impede the view corridor with any new structure, such as walls, fences, or shrubbery, so as to prevent the viewing of the Historic Property from the public right-of-way.
7. **RESTORATION OF PROPERTY.** Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, U. S. Secretary of the Interior’s Standards for Rehabilitation, State Historical Building Code, and the City of Carmel-by-the-Sea, all as amended.
8. **INSPECTIONS.** Owner shall allow periodic examinations, with reasonable notice thereof, 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, the City and other agencies as may be necessary to determine Owner’s compliance with the terms and provisions of this Agreement.
9. **PROVISION OF INFORMATION.** Owner shall furnish the City with any and all information requested by City, which City deems necessary or advisable to determine compliance with the terms and provisions of this Agreement.
10. **ANNUAL REPORT.** Owner shall submit an annual report at least 90 days prior to each annual renewal date to the Department of Planning and Building specifying all work that has been done to maintain

and preserve the historic resource over the preceding year in compliance with the approved maintenance plan.

11. CANCELLATION. The City has the right to cancel the contract if the historic resource is damaged or destroyed by unauthorized additions, alterations or remodeling. The City also has the right to cancel this contract if the owners(s) have repeatedly failed to comply with the provisions of paragraph's # 6, 7, 8 or 10 of this Agreement after the City has provided reasonable notice of any failure to comply with the agreement. Cancellation of a contract by the City consistent with the provisions of this paragraph requires a public hearing and, if cancelled, results in the immediate termination of the contract and a penalty equal to 12.5 percent of the assessed market value of the property. City's right to cancel this Agreement pursuant to this paragraph shall in no way limit or restrict its rights or legal remedies arising from City's Historic Preservation Ordinance and Municipal Code.
12. ENFORCEMENT OF AGREEMENT. In lieu of and/or in addition to any provisions to cancel this Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement.
13. WAIVER. City does not waive any claim or default by Owner if City does not enforce or cancel this Agreement. All remedies at law or in equity, which are not otherwise provided for this Agreement or in City's regulations governing historic properties are available to City to pursue in the event 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.
14. BINDING EFFECT OF AGREEMENT. Owner hereby subjects the Historic Property to the covenants, reservations and restrictions set forth in this Agreement. City and 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 Owner's successors and assigns in title or interest to the Historic Property. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who executed the Agreement.

Each and every contract, deed or other instrument hereinafter executed, governing 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 expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

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 it restricts 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 historic characteristics and significance of the Historic Property for the benefit of the public and Owner.

15. 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, by personal delivery or United States mail, postage prepaid, addressed as follows:

City: Carmel-by-the-Sea  
Community Planning & Building Department  
P.O. Box CC  
Carmel-by-the-Sea, CA 93921

Owner: Sandra J. Markowski  
907 Elm Terrace  
Newton, N.J. 07860

16. 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 Monterey.
17. The Owner or agent of Owner shall provide written notice of this Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement.
18. GOVERNING LAW; VENUE. This Agreement shall be constructed and governed in accordance with the laws of the State of California. Should either party to this agreement bring legal action against the other, the case shall be handled in Monterey County, California and the party prevailing in such action shall be entitled to a reasonable attorney fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgment together with all costs.
19. AMENDMENTS. This agreement may be amended in whole or in part, only by a written-recorded instrument executed by the parties hereto.
20. DESTRUCTION OF PROPERTY; EMINENT DOMAIN; CANCELLATION. 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 preplaced, 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 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 paragraph.
21. INDEMNIFICATION. 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 government agency, arising out of or incident to 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; and (iii) any restriction on the use of development of the Historic Property, from application or enforcement of the City's Municipal Code, 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 the City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. 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.
22. 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 affected thereby.

IN WITNESS THEREOF, the City and Owners have executed this Agreement on the day and year written above.

CITY OF CARMEL-BY-THE-SEA:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Chip Rerig

Title: City Administrator

PROPERTY OWNER(S):

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: Sandra J. Markowski