

**RECORDING REQUESTED BY**  
CITY OF SAN DIEGO  
CITY PLANNING DEPARTMENT

**WHEN RECORDED MAIL TO:**  
HISTORIC RESOURCES BOARD  
ATTN: HRB STAFF  
202 C STREET, MS 413  
SAN DIEGO, CA 92101

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MILLS ACT AGREEMENT

FOR

HISTORICAL RESOURCES BOARD SITE NUMBER **1351**

**3853 8th Avenue, San Diego, California 92103**

ASSESSOR PARCEL NUMBER **452-093-2100**

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(Additional recording fee applies)

**AGREEMENT**

THIS AGREEMENT is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation ("City"), and Colleen E. Hart ("Owner(s)").

**RECITALS**

WHEREAS, California Government Code section 50280, et seq. authorizes legislative bodies of cities to enter into contracts with the owners of qualified historic properties to provide for the use, maintenance, and restoration of such historic properties so as to retain their characteristics as properties of historic significance.

WHEREAS, the City Council has delegated its authority to enter into and process historic property contracts ("Mills Act Agreements") pursuant to Council Policy 700-46.

WHEREAS, the Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, Assessor Parcel No. **452-093-2100** and generally located at **3853 8th Avenue, San Diego, CA 92103** (the "Historic Site").

WHEREAS, on **11/21/2019**, after a public hearing, the San Diego Historical Resources Board adopted Resolution No. **R-19112301** declaring and designating the above property as **Historic Site Number 1351** pursuant to San Diego Municipal Code Section 123.0201 et seq.

WHEREAS, City and Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historic significance of the Historic Site and to qualify the Historic Site 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 (and as amended from time to time).

NOW THEREFORE, in consideration of the mutual benefits and covenants, City and Owner agree as follows:

1. Compliance with Council Policy. Owner shall comply with Council Policy Number 700-46 incorporated herein by this reference.
2. Standards for Historic Site. During the term of this Agreement, the Historic Site shall be subject to the following conditions, requirements, and restrictions:

a. Owner shall preserve the regulated characteristics of historic significance of the Historic Site, and when necessary, shall restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, and the State Historic Building Code.

b. Owner shall allow for an inspection of the interior and exterior of the premises by the city, county, or city and county, prior to entering into this Agreement, and every five years from the effective date of this Agreement, to determine the Owner's compliance with this Agreement.

c. The Owner shall allow visibility of the exterior of the structure from the public right-of-way.

d. The Owner shall install a historic plaque in a clearly visible place from the public right-of-way within one (1) year of the effective date of the Agreement.

e. All landscaping and plant materials shall be maintained and pruned to allow visibility of the Historic Site from the public right-of-way.

f. When repair, replacement or removal of any existing exterior materials, including siding, stucco, wood, paint or other materials is required, the owner shall consult with and receive written approval from Historic Resources Board staff prior to selection of the materials or commencement of work.

g. When repair or replacement of existing roofing is required, the owner shall consult with and receive written approval from Historic Resources Board staff prior to selection of the materials or commencement of work.

h. An inspection of the property for leaks, wood rot, termites, foundation cracks and other structural damage or deficiencies shall be completed by a licensed professional within eight (8) years from the effective date of the Mills Act Agreement. The results of the inspection shall be provided to Historic Resources Board staff. Any identified damage or deficiencies shall be corrected within a time frame and in a manner determined by staff. The corrective measures and schedule for correction will be incorporated as new conditions to this Agreement at the time of annual renewal following the inspection.

i. The owner shall consult with and receive approval from Historic Resources Board staff prior to the design or construction of any site improvements, including but not limited to

fencing, hardscape, window modifications, photovoltaic installation, building additions and demolition.

j. The owner shall receive a permit in accordance with San Diego Municipal Code Section 143.0210 prior to any site improvements, including any of the work outlined in this Agreement.

k. The owner shall restore the leaded diamond transom window on the front porch per photo documentation in the Historical Resources Research Report. The work shall be completed within two (2) years of the effective date of this Agreement

l. The owner shall repair, prime, and paint or stain the wood window frames, sashes and exterior doors, as necessary. The work shall be completed within six (6) years of the effective date of this Agreement.

m. The owner shall repair, prime and paint the wood siding and trim, as necessary. The work shall be completed within eight (8) years of the effective date of this Agreement

n. The owner shall investigate the historicity of the concrete on the front porch and steps. If it is determined that the concrete is not original, the front porch and steps shall be restored to their original appearance. The work shall be completed within ten (10) years of the effective date of this Agreement.

o. The designation excludes the rear addition constructed outside of the period of significance.

3. Monitoring Fee. The Owner shall pay the City a monitoring fee to be paid with the initial signing of the Agreement and every five (5) years thereafter. Failure to pay the monitoring fee may result in non-renewal of the Agreement.

4. Information of Compliance. Owner shall furnish 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. The City Council, following a duly noticed public hearing as set forth in California Government Code section 50280, et seq., may cancel this Agreement if it determines that Owner has breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property. In addition, City Council may cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 2(a) of this Agreement.

In the event of cancellation, Owner may be subject to payment of cancellation fees as set forth in California Government Code section 50280, et seq.

6. Enforcement of Agreement. In lieu of cancellation of the Agreement for breach of any condition or provision, 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 (provided that acts to cure the breach or default must 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 by Owner under the terms of this Agreement and may bring any action in court necessary to enforce the obligations and terms of this Agreement including, but not limited to, injunction or specific performance.

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 sites are available to the 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.

7. Binding Effect of Agreement. The Owner hereby subjects the Historic Site to the covenants, reservations, and restrictions as 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 the Owner's successors and assigns in title or interest to the Historic Site. Each and every contract, deed, or other instrument hereinafter executed, covering or conveying the Historic Site, 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 Owner's legal interest in the Historic Site is rendered less valuable thereby. 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 historic characteristics and significance of the Historic Site for the benefit of City, the public, and Owner.

8. Effective Date and Term of Agreement. This Agreement shall be in effect for ten (10) years from December 31<sup>st</sup> of the year of its execution by the City of San Diego. Each year on December 31<sup>st</sup> such initial term will automatically be extended as provided in paragraph nine (9) below.

9. Renewal. Each year on December 31<sup>st</sup>, a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City Council desires in any year not to renew this Agreement, Owner or City Council shall serve written notice of non-renewal on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City Council at least ninety (90) days prior to the annual renewal date, or served by City Council to Owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement as provided herein. Upon receipt by Owner of a notice of non-renewal from City Council, Owner may make a written protest of the notice. City Council may, at any time prior to the annual renewal date of the Agreement, withdraw its notice of non-renewal. If either City Council or Owner serves notice to the other of non-renewal in any year, the 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. 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 either party.

To City:                      City of San Diego  
   Attention: Historic Staff  
   202 C Street, Mail Station 413  
   San Diego, CA 92101

To Owner(s):                Colleen Hart  
   1015 Chestnut Avenue, Suite B2  
   Carlsbad, CA 92008

11. General Provisions.

a. None of the terms, provisions, or conditions of this Agreement shall be deemed to create a partnership between the parties 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 his or her contractor, subcontractor, agent, employee or other person acting on his or her behalf which relate to the use, operation, or maintenance of the Historic Site. 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, reasons of Owner's activities in connection with the Historic Site or this Agreement. 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 Site.

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 parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any interest in part or portion of the Historic Site, 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 the provisions or restrain a violation of any 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.

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 not take effect unless and until executed by the City, approved by the City Attorney's Office, and executed by the Owner with Owner's signature notarized by a notary public. Furthermore, if an agent or representative of Owner signs this Agreement on behalf

of Owner, the agent or representative must furnish proof, to the satisfaction of City, that the agent or representative has authority to act on Owner's behalf.

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

12. 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.

13. Amendments. This Agreement may be amended only by a written and recorded instrument executed by the parties hereto.



**OWNER(S)**

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

By: \_\_\_\_\_  
Colleen E. Hart

**ALL PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
Date Name of Notary Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

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 forgoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**For City Personnel Only**

I HEREBY APPROVE this Agreement as to form this \_\_\_ day of \_\_\_\_\_, 20\_\_.

MARA ELLIOTT, City Attorney

By: \_\_\_\_\_  
Lindsey Sebastian  
Deputy City Attorney