

**HISTORIC PROPERTY PRESERVATION AGREEMENT BETWEEN
THE CITY OF SAN LUIS OBISPO AND THE OWNER OF THE HISTORIC
PROPERTY LOCATED AT 531 DANA STREET, IN THE CITY OF
SAN LUIS OBISPO, SAN LUIS OBISPO COUNTY, STATE OF CALIFORNIA.**

THIS AGREEMENT is made and entered into this _____ day of _____, 2021, by and between the City of San Luis Obispo, a municipal corporation (hereinafter referred to as the “City”), and Brian Tuohy (hereinafter referred to as “Owner”), and collectively referred to as the “parties.”

WHEREAS, Owner is the owner of that certain real property commonly known as 531 Dana Street (APN 002-402-008), and legally described as shown in the attached “Exhibit B” (“Owner’s Property”); and

WHEREAS, Owner has agreed to enter into an Historical Property Contract with the City for the preservation, maintenance, restoration, or rehabilitation of Owner’s Property, an historic resource within the City;

NOW, THEREFORE, in consideration of the above recitals and in further consideration of the mutual benefits, promises, and agreements set out herein, the parties agree as follows:

Section 1. Description of Preservation Measures. The Owner, his heirs, or assigns hereby agree to undertake and complete, at their expense, the preservation, maintenance, and improvements measures described in “Exhibit A” attached hereto.

Section 2. Effective Date and Term of Agreement. This agreement shall be effective and commence upon recordation and shall remain in effect for an initial term of ten (10) years thereafter. Each year upon the anniversary of the agreement’s effective date, such initial term will automatically be extended as provided in California Government Code Section 50280 through 50290 and in Section 3, below.

Section 3. Agreement Renewal and Non-renewal.

- a. Each year on the anniversary of the effective date of this agreement (hereinafter referred to as “annual renewal date”), a year shall automatically be added to the initial term of this agreement unless written notice of non-renewal is served as provided herein.
- b. If the Owner or the City desire in any year not to renew the agreement, the Owner or the City shall serve written notice of non-renewal of the agreement on the other party. Unless such notice is served by the Owner to the City at least ninety (90) days prior to the annual renewal date, or served by the City to the 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.

- c. The Owner may make a written protest of the notice. The City may, at any time prior to the annual renewal date, withdraw its notice to the Owner of non-renewal.
- d. If either the City or the Owner serves notice to the other party of non-renewal in any year, the agreement shall remain in effect for the balance of the term then remaining.

Section 4. Standards and Conditions. During the term of this agreement, the historic property shall be subject to the following conditions:

- a. Owner agrees to preserve, maintain, and, where necessary, restore or rehabilitate the building and its character-defining features, including: the building's general architectural form, style, materials, design, scale, proportions, organization of windows, doors, and other openings; interior architectural elements that are integral to the building's historic character or significance; exterior materials, coatings, textures, details, mass, roof line, porch, and other aspects of the appearance of the building's exterior, as described in Exhibit A, to the satisfaction of the Community Development Director or his designee.
- b. All building changes shall comply with applicable City specific plans, City regulations and guidelines, and conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, namely the U.S. Secretary of the Interior's Standards for Rehabilitation and Standards and Guidelines for Historic Preservation Projects. Interior remodeling shall retain original, character-defining architectural features such as oak and mahogany details, pillars and arches, special tile work, or architectural ornamentation to the greatest extent possible.
- c. The Community Development Director shall be notified by the Owner of changes to character-defining exterior features prior to their execution, such as major landscaping projects and tree removals, exterior door or window replacement, repainting, remodeling, or other exterior alterations requiring a building permit. The Owner agrees to secure all necessary City approvals and/or permits prior to changing the building's use or commencing construction work.
- d. Owner agrees that property tax savings resulting from this agreement shall be used for property maintenance and improvements as described in Exhibit A.
- e. The following are prohibited: demolition or partial demolition of the historic building; exterior alterations or additions not in keeping with the standards listed above; dilapidated, deteriorating, or unrepaired structures such as fences, roofs, doors, walls, windows; outdoor storage of junk, trash, debris, appliances, or furniture visible from a public way; or any device, decoration, structure, or vegetation which is unsightly due to lack of maintenance or because such feature adversely affects, or is visually incompatible with, the property's recognized

historic character, significance, and design as determined by the Community Development Director.

- f. Owner shall allow reasonable periodic examination, by prior appointment, 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 the City as may be necessary to determine the Owner's compliance with the terms and provisions of this agreement.

Section 5. Furnishing of Information. The Owner hereby agrees to furnish 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.

Section 6. Cancellation.

- a. The City, following a duly-noticed public hearing by the City Council as set forth in Government Code Section 50285, may cancel this agreement if it determines that the 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; or if the City determines that the Owner has failed to preserve, maintain, or rehabilitate the property in the manner specified in Section 4 of this agreement. If a contract is cancelled because of failure of the Owner to preserve, maintain, and rehabilitate the historic property as specified above, the Owner shall pay a cancellation fee to the State Controller as set forth in Government Code Section 50286, which states that the fee shall be 12 ½% of the full value of the property at the time of cancellation without regard to any restriction imposed with this agreement.
- b. If the historic building is acquired by eminent domain and the City Council determines that the acquisition frustrates the purpose of the agreement, the agreement shall be cancelled and no fee imposed, as specified in Government Code Section 50288.

Section 7. Enforcement of Agreement.

- a. In lieu of and/or in addition to any provisions to cancel the agreement as referenced herein, the City may specifically enforce, or enjoin the breach of, the terms of the agreement. In the event of a default, under the provisions to cancel the agreement by the Owner, the City shall give written notice of violation to the Owner by registered or certified mail addressed to the address stated in this agreement. If such a violation is not corrected to the reasonable satisfaction of the Community Development Director or designee within thirty (30) days thereafter; or if not corrected within such a reasonable time as may be required to cure the breach or default of said breach; or if the 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 shall thereafter be diligently 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 relief as may be appropriate.

- b. 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 historic properties are available to the City to pursue in the event that there is a breach or default under 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.
- c. By mutual agreement, City and Owner may enter into mediation or binding arbitration to resolve disputes or grievances growing out of this contract.

Section 8. Binding Effect of Agreement. The Owner hereby subjects the historic building located at 531 Dana Street, San Luis Obispo, California, Assessor's Parcel Number 002-402-008, and legally described as shown in the attached "Exhibit B", to the covenants, reservations, and restrictions as set forth in this agreement. The 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 property. 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 expressed in this agreement regardless of whether such covenants, restrictions, and reservations are set forth in such contract, deed, or other instrument.

Section 9. Notice. Any notice required by the terms of this agreement shall be sent to the address of the respective parties as specified below or at other addresses that may be later specified by the parties hereto.

To City: Community Development Director
 City of San Luis Obispo
 919 Palm Street
 San Luis Obispo, CA 93401

To Owner: Brian Tuohy
 531 Dana St
 San Luis Obispo CA 93401

Section 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 hold the City and its elected and appointed officials, officers, agents, and employees harmless from liability for damage or from claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or activities of the Owner, or from those of his contractor, subcontractor, agent, employee, or other person acting on the Owner's behalf which relates to the use, operation, maintenance, or improvement of the historic property. The Owner hereby agrees to and shall defend the City and its elected and appointed officials, officers, agents, and employees with respect to any and all claims or actions for damages caused by, or alleged to have been caused by, reason of the Owner's activities in connection with the historic property, excepting however any such claims or actions which are the result of the sole negligence or willful misconduct of City, its officers, agents, or employees.
- c. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, and costs of defense incurred, 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 property.
- d. 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 part or portion of the historic property, whether by operation of law or in any manner whatsoever.
- e. 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.
- f. 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.
- g. This agreement shall be construed and governed in accordance with the laws of the State of California.

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

Section 12. Recordation and Fees. No later than twenty (20) days after the parties enter into this agreement, the City shall cause this agreement to be recorded in the office of the County Recorder of the County of San Luis Obispo. Participation in the program shall be at no cost to the Owner; however, the City may charge reasonable and necessary fees to recover direct costs of executing, recording, and administering the historical property contracts.

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

OWNER

Brian Tuohy

Date

CITY OF SAN LUIS OBISPO

Mayor Erica A. Stewart

Date

Pursuant to authority conferred by Resolution No. NNNNN (2021 Series)

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT "A"

**MAINTENANCE AND IMPROVEMENT MEASURES FOR
THE DANA/BARNEBERG HOUSE LOCATED AT 531 DANA STREET,
SAN LUIS OBISPO, CALIFORNIA**

Owner shall preserve, maintain, and repair the historic building, including its character-defining architectural features in good condition, to the satisfaction of the Community Development Director or designee, pursuant to a Mills Act Preservation Contract with the City of San Luis Obispo for property located at 531 Dana Street. Character-defining features shall include, but are not limited to: roof, eaves, dormers, trim, porches, walls and siding, architectural detailing, doors and windows, window screens and shutters, balustrades and railings, foundations, and surface treatments.

Owner agrees to make the following improvements or repairs during the term of this contract but in no case later than ten (10) years from the contract date. All changes or repairs shall be consistent with the City's Historic Preservation Ordinance and the Secretary of the Interior's Standards for the Treatment of Historic Properties:

- Repair of damage to attic from rodents and unprotected exterior openings;
- Replacement of roofing materials, to repair deterioration and damage;
- Replacement of missing rain gutters;
- Repair of failing portion of retaining walls (at creek boundary); replacement of terrace stairs;
- Plumbing repairs including replacement of private sewer line;
- Exterior paint and trim maintenance

EXHIBIT "B"
Legal Description

For APN/Parcel ID(s): 002-402-008

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN LUIS OBISPO, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

[FINAL LEGAL DESCRIPTION PENDING].

APN: 002-402-008

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 California }
County of San Luis Obispo }

On _____, before me _____,
Date Name and Title of the Officer

personally appeared, _____,
Name 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 foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

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.

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County of San Luis Obispo }

On _____, before me _____,

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Signature _____
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