ATTACHMENT 1

RECORDING REQUESTED BY

CITY OF NAPA
Exempt from Recording Fees
Government Code 27383

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF NAPA
P.O. Box 660
Napa, CA 94558

_____ SPACE ABOVE THIS LINE FOR RECORDER'S USE_____

APN: 003-166-004

"MILLS ACT" HISTORICAL PROPERTY PRESERVATION AGREEMENT
(Government Code Sections 50280 et seq.)

The Gordon Building (1130 First Street)

THIS AGREEMENT, dated _____, 2019, is by and between Gordon Venture, LLC ("Owners"), and the City of Napa, a California charter city ("City"), and provides as follows:

RECITALS

WHEREAS, Owners own certain real property, together with associated historic structures and improvements thereon, located at 1130 First Street, in the City of Napa, Napa County ("the Property"), more particularly described in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the Property, historically referenced as the Gordon Building, is a "qualified historical property" as defined in California Government Code Section 50280.1; and

WHEREAS, both Owners and City desire to protect and preserve the Property so as to retain its characteristics of historical significance;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, declarations, covenants and agreements of the parties set forth herein, and the substantial public benefit derived therefrom, the parties agree as follows:

1. Authority. This Agreement is made under authority of Government Code Sections 50280 et seq. ("Historical Property Contracts").

2. Term of Agreement. This Agreement shall be effective commencing on the date it is signed by the City Clerk below, attesting to full execution of the Agreement by both parties ("Effective Date"), and shall remain in effect for a minimum period of ten years therefrom. Each year on the anniversary of the Effective Date, the term will automatically be extended by a year as provided in Paragraph 5 of this Agreement.

3. Limitations on Land Use. During the term of this Agreement, the Property shall be subject to the following provisions, requirements, and restrictions:

(a) Owners shall preserve and maintain the Property, as a qualified historic property, in no less than equal to the condition of the Property as of the date hereof.

(i.) A Site Plan of the location of all buildings on the Property is detailed in Exhibit "B" attached hereto and incorporated herein by reference. Any proposed work to be performed on the Property, including any restoration, rehabilitation or preservation, must be reviewed and processed by the City in compliance with Napa Municipal Code Chapter 15.52, "Historic Preservation."

(ii.) Owners shall, when necessary, 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 Historical Building Code as articulated in the Attached *Rehabilitation, Restoration and Preservation Plan* (Exhibit "C") or as confirmed through a Certificate of Appropriateness approved by the City in accordance with Napa Municipal Code Chapter 15.52. Additionally, Owners shall provide whatever information shall be required by City to determine the Property's continuing eligibility as a qualified historic property.

(b) All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

(i.) Dilapidated, deteriorating, or unrepaired structures and components, such as fences, roof, doors, walls and windows;

(ii.) Scrap lumber, junk, trash or debris;

(iii.) Abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, can containers, or similar items;

(iv.) Stagnant water or excavations, including in pools or spas; and

(v.) Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

(c) Owners shall provide for the periodic examinations of the interior and exterior of the premises by the Office of the Napa County Assessor, the Department of Parks and Recreation, the State Board of Equalization, and the City, as may be necessary to determine the Owner's compliance with this Agreement.

4. Successors in interest. The Owner hereby voluntarily subjects the 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 as set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of, all successors and assigns in title or interest of the Owner. A successor in interest shall have the same rights and obligations under this Agreement as the original Owner who entered into this Agreement.

Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, conditions and restrictions expressed in this Agreement whether or not such covenant, conditions and restrictions are set forth in such contract, deed or other instrument.

5. Renewal.

(a) Each year on the anniversary of the Effective Date of this Agreement one year shall automatically be added to the term of this Agreement, unless notice of non-renewal is given as provided in this paragraph. After five years, and every five years thereafter, the Owners shall arrange with the City to inspect the interior and exterior of the Property to determine the Owner's continued compliance with this Agreement. If Owners or City desire in any year not to renew this Agreement, that party shall serve written notice of non-renewal of this Agreement on the other party in advance of the annual renewal date of this Agreement. Unless the notice is served by the Owners at least 90 days prior to the renewal date, or by the City at least 60 days prior to the renewal date, one year shall automatically be added to the term of this Agreement.

(b) Upon receipt by the Owners of a notice from City of non-renewal, the Owner may make a written protest of the notice of non-renewal. City may, at any time prior to the renewal date, withdraw the notice of non-renewal.

(c) If City or Owners serve a notice of intent in any year not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution or the last renewal of this Agreement, as the case may be.

6. Cancellation for Breach. Following a noticed public hearing as required by Government Code Section 50285, City 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 standard for a qualified historic property. City may also cancel this Agreement if it determines that Owner has failed to restore or rehabilitate the Property in the manner specified in this Agreement. If the City determines that performance of this Agreement has become infeasible due to damage to the Property caused by force majeure (such as flood, tornado, lightening, or earthquake), this Agreement may be cancelled upon the Owner's application without payment of the cancellation fee, to the extent that non-payment is permitted by law.

7. Cancellation Fee. If this Agreement is cancelled pursuant to paragraph 6 above, Owner shall pay a cancellation fee equal to 12 ½ % of the current fair market value of the Property, as determined by the Office of the Napa County Assessor as though the Property were free of the restrictions set forth in this Agreement. The cancellation fee shall be paid to the Office of the Napa County Auditor ("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.

8. Notice and Recordation.

(a) All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To: City of Napa
Attn: Community Development Director
City of Napa
P.O. Box 660
Napa, CA 94559

To: Owners, Joseph Schuppert House
Attn: Robin & Meghan Shay
1043 Vallejo Street
Napa, CA 94559

(b) No later than 20 days after City enters into this Agreement with Owner, the City Clerk shall record a copy of this Agreement with the Office of the Napa County Recorder, which shall describe the Property. From and after the time of the recordation, this Agreement shall impart a notice thereof to all persons as is afforded by the recording laws of the State of California.

(c) Owners shall provide written notice of this Agreement to the Office of Historic Preservation within six months of entering into this Agreement and attention to:

Julianne Polanco, State Historic Preservation Officer
State of California Office of Historic Preservation
1725-23rd Street, Suite 100
Sacramento, CA 95816

9. Prevailing Party. The prevailing party in any action to interpret or enforce this Agreement shall be entitled to recover its reasonable attorney's fees.

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

11. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Agreement on behalf of the respective legal entities of the Owners and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

12. Indemnification. To the full extent permitted by law, Owner will indemnify, hold harmless, release, and defend the City (including its officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees]) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to Owner's acts or omissions under this Agreement. Consistent with Civil Code Section 2782, Owner will not be obligated to indemnify City for the proportionate share of the Liability caused by the City's active negligence, sole negligence, or willful misconduct. Owner's indemnification obligations under this Agreement are not limited by any limitations of any insurance held by Owner, including, but not limited to, workers' compensation insurance.

13. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

14. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.

15. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

16. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision in the body of this Agreement, the provisions in the body of this Agreement will control over any such conflicting or inconsistent provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

ATTACHMENT 1

CITY OF NAPA:

_____

Steve Potter, City Manager

ATTEST:

_____
(Signature)

Tiffany Carranza, City Clerk
(Type name and title)

COUNTERSIGNED:

_____
(Signature)

Desiree Brun, City Auditor
(Type name and title)

APPROVED AS TO FORM:

_____
(Signature)
Michael W. Barrett, City Attorney
(Type name and title)

BUDGET CODE:_____

*****Corporation, partnership, limited liability corporation, sole proprietorship, etc. Unless corporate resolution delegates an individual to sign contracts, an agreement with a corporation shall be signed by the President or Vice President **and** the Secretary or Treasurer of the corporation. A general partner shall sign on behalf of a general partnership. The managing member, if authorized, may sign on behalf of a limited liability corporation.

OWNER:

Gordon Venture, LLC

By: _____
(Signature)

_____
(Print name and title)

By: _____
(Signature)

_____
(Print name and title)

Address: _____
_____

SIGNATURES MUST BE NOTARIZED

EXHIBIT A
END OF DOCUMENT

EXHIBIT A

Legal Description

The land referred to below is situated in the City and County of Napa, State of California, and is described as follows:

PARCEL ONE

Commencing at a point formed by the intersection of the northern line of First Street with the eastern line of Coombs Street; and running thence Easterly, along said northern line of First Street, 90 feet to the western line of the lot of land heretofore conveyed to The Savings Bank of St. Helena, a corporation to Jos. A. Migliavacca by instrument recorded December 30, 1902, in Book 74 of Deed at page 42, Napa County Records; thence at right angles northerly 110 feet to the southern line of the lot of land heretofore conveyed by John Hayes to the G. Migliavacca Investment Company, a corporation, by instrument dated January 18, 1904, in Book 75 of Deeds at page 247, said Napa County Records; thence at right angles westerly and along the southern boundary line of said lands conveyed to the G. Migliavacca Investment Company, a corporation, 90 feet to the aforesaid eastern line of Coombs Street; and thence southerly along said last mentioned line, 110 feet to the point of commencement.

Being a portion of Lot 4, in Block 18, as the same is laid down and delineated upon a certain map entitled, "Plan of Napa City," recorded November 28, 1853, in Volume B of Deeds at page 433, Napa County Records.

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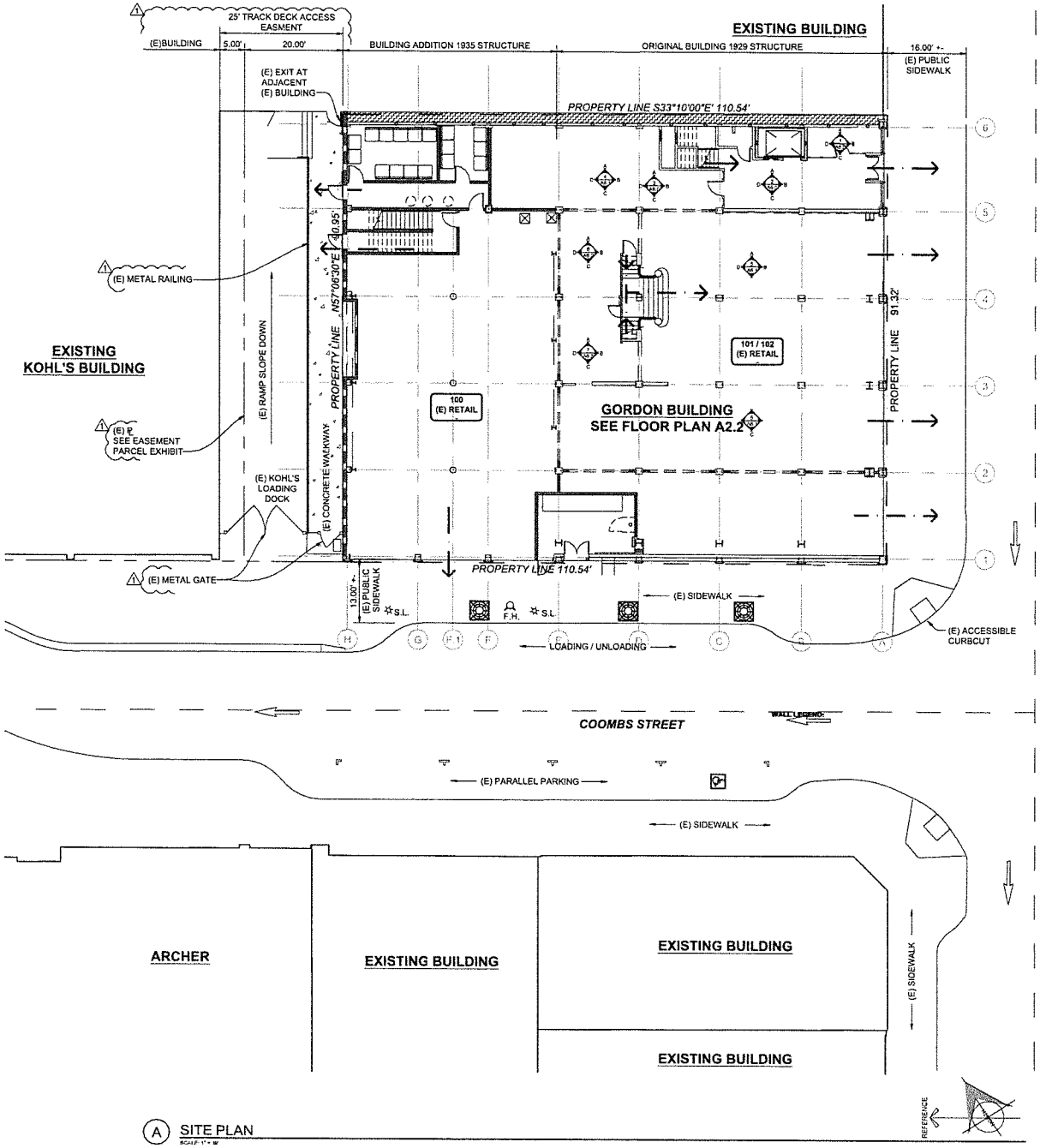
PARCEL TWO:

A right-of-way over a 10-foot private alleyway, as more particularly described and granted in the deed to John Hayes recorded January 18, 1904, in Book 77 of Deeds at page 271.

PARCEL THREE:

The right, reserved by John Hayes in the deed recorded January 18, 1904, in Book 75 of Deeds at page 247, to use for private road purposes the real property more particularly described as follows:

Commencing at a point on the Easterly line of Coombs Street, 110 feet Northerly from the Northeasterly corner of First and Coombs Streets; then Easterly at right angles with Coombs Street 90 feet more or less to the Westerly line of the land of Joe Migliavacca; thence Northerly at right angles 5 feet to the Southerly line of an alley; thence Westerly along said line of said alley 90 feet, more or less, to Coombs Street; thence at right angles Southerly to the point of beginning.



A SITE PLAN
SCALE: 1" = 8'

Napa Design Partners
Architecture · Interiors
Planning · Preservation
Stephen R. Cuddy
AIA, LEED AP, CHRIS
1534 Hardman Way, Suite 250
Napa, CA 94558
707-226-1091
info@DesignPartners.net

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OWNER:
Napa Gordon LLC
1339 Pearl Street, Ste. 201
Napa, Ca 94559

PROJECT:
Building Shell Ear
Repair and Restc
for Historic
Gordon Building
1130 First Street Napa,
CA 94559
APN: 003-166-004

SITE PLAN

EXHIBIT B

ARCHITECTS STAMP:

PRINT DATE: March 27, 2019
DATE: July 6, 2018
REVISION:
Bid Set - July 30, 2018
1 November 19, 2018 OWNER REVISION
December 21, 2018 PLAN CHECK SET - Bls.

SHEET:
A1.0

EXHIBIT C

MILLS ACT CONTRACT
Application Form

Mailing Address:
PO Box 660
Napa, CA 94559

Planning Division
1600 First Street
707.257.9530

Mills Act Applications are accepted through August 31 of each year.

PROPERTY INFORMATION

Property Address: 1130 First St. (1142, 1146 First 1014 Coombs)

Assessor's Parcel Number (APN): 003-166-004-00

Historic Resources Inventory (HRI) Designation: _____

Landmark or Potential Historic District (if applicable): _____

General Plan Designation: _____ **Zoning:** _____

CONTACT INFORMATION - *type or print*

Applicant Gordon Venture, LLC

Address 1339 Pearl St Ste. 201

City Napa *State* CA *ZIP* 94559

Phone 7072576800 *Email* KMOORE@ZAPOLSKIRE.Com

Authorized Agent _____

Address _____

City _____ *State* _____ *ZIP* _____

Phone _____ *Email* _____

Property Owner SAA

Address _____

City _____ *State* _____ *ZIP* _____

Phone _____ *Email* _____

Planning Division Use Only

Project Number PL19-0107

Project Name 1130 First Mills Act

Project Planner Cortez

Date Stamp
RECEIVED
AUG 26 2019
COMMUNITY DEVELOPMENT DEPARTMENT

EXHIBIT C

CONDITIONS OF APPLICATION

1. All materials and representations submitted in conjunction with this form shall be considered a part of this application.
2. The Applicant shall inform the Planning Division in writing of any changes.
3. **Indemnification.** The Applicant(s) agree(s) to defend, indemnify and hold the City, its agents, officers, and employees harmless from any claim, action or proceeding to attack, set aside, void or annul an approval of the City concerning the project, as long as the City promptly notifies the applicant of any such claim, action or proceedings and the City cooperates fully in the defense.
4. **Fees.** The Applicant(s) hereby agree(s) that he/they shall be jointly and severally liable for the payment of any and all processing fees imposed by the Napa Municipal Code Chapter 15.92, "Development Project Processing Fees", and Policy Resolution 16. The applicant(s) hereby represent(s) and warrant(s) that he/they understand that fees include but are not limited to: staff time billed at an hourly rate; production or reproduction of materials and exhibits; and postage. Failure to pay all accumulated fees by the time of public hearing will result in a continuance.
5. I hereby authorize employees of the City of Napa to enter upon the subject property, as necessary, to inspect the premises and process this application.

I have read and agree with all of the above. The above information and attached documents are true and correct to the best of my knowledge.

Applicant _____ Date _____

Authorized Agent _____ Date _____

Property Owner* _____ Date _____

Property Owner* _____ Date _____

*All property owners holding a title interest must sign the application form. If there are more than two, list name, address, phone number, and signature on a separate sheet.

CONTACT INFORMATION INSTRUCTIONS

An **"Applicant"** is any person, firm, partnership, association, joint venture, corporation or any entity, combination of entities or consortium who seeks approval of a City permit or other Project entitlement for the use of property. The **Applicant** shall be the primary billing contact for all processing and development fees associated with the application. The **Applicant** may additionally identify an **"Authorized Agent."** An **Authorized Agent** is any person, firm, partnership, association, joint venture, corporation or any entity, combination of entities or consortium authorized by the **Applicant** to represent and act on behalf of the **Applicant.** If identified in this application, the **Authorized Agent** shall receive all written correspondence from the City regarding the application and any hearings or proceedings scheduled before the Planning Commission, City Council or other appointive City Boards and Commissions, but shall not be responsible for the payment of development or processing fees. The **Applicant** shall receive all billing invoices for the project, and under the "Conditions" set forth below, shall be liable for the payment of all development and processing fees associated with the application.

The **"Property Owner"** of property means a person, persons or corporation holding fee title to the real property within the City as shown on the most recent assessor's roll in the County of Napa upon which the Project is proposed. **Property Owner** and **Applicant** may be the same person or legal entity, or may be different. For example, in the case of a person or entity holding an option on the land, or other contractual relationship with the property owner, the fee owner(s) of the property would be the **Property Owner**, and the person or entity seeking the approvals or permits and holding an option to purchase the property would be the **Applicant**. If **Applicant** and **Property Owner** are the same person or entity, please enter "*Same as Applicant*" in the area provided for **Property Owner** information. In the event that **Applicant** and **Property Owner** are different, all **Property Owners** must sign on the following page to authorize the **Applicant** to file an Application for the City permit or Project entitlement on his or her property.

SUBMITTAL REQUIREMENTS

This form must be submitted to the Planning Division with the materials identified in the **Submittal Requirements** handout(s) for the appropriate City permit or Project entitlement. If your application requires multiple permits or entitlements, submit the number of plan sets for the permit or entitlement that requires the largest number of plans sets.

EXHIBIT C

MILLS ACT CONTRACT
Ten Year Rehabilitation Plan

Mailing Address:
PO Box 660
Napa, CA 94559

Planning Division
1600 First Street
707.257.9530

TAX YEAR	PROPOSED PROJECT*	ESTIMATED COST
Year 1	Tenant Improvements for Office Users at the Second Floor and Restaurant/Retail Users at the First Floor	$1,200,000.00
Year 2	Tenant Improvements for Office Users at the Second Floor and Restaurant/Retail Users at the First Floor	$800,000.00
Year 3	Maintenance and Operations → SHOULD REFER TO A SECTION IN DESCRIPTION. SHOULD REVISE PROJECT DESCRIPTION.	
Year 4	Maintenance and Operations BREAK UP DESCRIPTION TENANT PLAN + DESCRIPTION COMPLETE / ARE COMPLETE	
Year 5	Maintenance and Operations	
Year 6	Maintenance and Operations	
Year 7	Maintenance and Operations	
Year 8	Maintenance and Operations	
Year 9	Maintenance and Operations	
Year 10	Maintenance and Operations	

* Attach additional sheets if necessary

Ten Year Rehabilitation Plan to be attached to the Mills Act Contract (Exhibit C)

All projects that affect the exterior of the residence will be subject to compliance with the City's Historic Preservation Ordinance in NMC Chapter 15.52. Work must meet all City requirements and Secretary of Interior's Standards for Rehabilitation of Historic Properties. You must retain copies of all receipts and permits for submittal with the required annual reports. Photograph the before and after condition of each project for submittal with the annual reports.

EXHIBIT C

MILLS ACT CONTRACT
Annual Report

Mailing Address:
PO Box 660
Napa, CA 94559

Planning Division
1600 First Street
707.257.9530

Mills Act Annual Reports are due by July 31 following each property tax year.

PROPERTY INFORMATION

Property Owner: Gordon Venture, LLC

Mills Act Property Address: 1130 First St Napa

Mailing Address (if different): 1339 Pearl st. Ste 201

City: Napa State: CA Zip: 94559

Telephone: 7072576800 Email: KMOORE@ZAPOLSKIRE.com

REPORTING INFORMATION

Annual Report Year: _____

What was (were) your project(s)? Please describe each project and its contribution to the implementation of the Ten Year Rehabilitation Plan (attach additional sheets as necessary):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Would you like to revise your Ten Year Plan? _____ (If yes, attach a revised Ten Year Plan)

PROPERTY OWNER CERTIFICATION

I certify that the above information is true and accurate to the best of my ability. I acknowledge and agree that an annual inspection, to be completed by City Staff, may be necessary to certify compliance.

Property Owner* _____ Date _____

Property Owner* _____ Date _____

*All property owners holding a title interest must sign the Annual Report form. If there are more than two, list name, address, phone number, and signature on a separate sheet.

SUBMITTAL REQUIREMENTS

Submit one (1) copy of the Mills Act Annual Report on 8 ½" x 11" paper. Return form and required attachments by the last business day of July to:

City of Napa
Planning Division
1600 First Street
Napa, CA 94559