

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: 003-104-001

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

The Joseph Schuppert House (Shay Residence)

THIS AGREEMENT, dated _____, 2018, is by and between Robin & Meghan Shay (“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 1043 Vallejo 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 Joseph Schuppert House, 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.

CITY OF NAPA:

Steve Potter, Interim City Manager

OWNERS:

Robin Shay, (Property Owner)

Meghan Shay, (Property Owner)

Address: 1043 Vallejo Street
Napa, CA 94559

Telephone: 707-888-0295

ATTEST:

Dorothy Roberts, City Clerk

Date:

("Effective Date")

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

Budget Code: _____