

EXEMPT FROM FEES pursuant to
Gov't Code §§ 6103, 27383, and 27388.1
(filing requested/executed by municipality)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City Clerk
City of Escondido
201 North Broadway
Escondido, CA 92025

This Space for Recorder's Use Only

HISTORIC PROPERTY PRESERVATION AGREEMENT

This HISTORIC PROPERTY PRESERVATION AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, 2023, by and between the City of Escondido, a California municipal corporation ("**City**") and Israel Murguia and Melissa Garcia, Husband and Wife, ("**Owners**"). (The City and Owners may each be referred to herein as a "**Party**" and collectively as the "**Parties.**")

RECITALS

A. The Owners possess and owns that certain real property located within the City as further described in Exhibit A to this Agreement, attached hereto and incorporated herein by this reference ("**Property**").

B. The City and the Owners desire to enter into this Agreement to carry out the purposes of the Mills Act (California Government Code section 50280 et seq.) ("**Mills Act**") and California Revenue and Taxation Code sections 439 to 439.4.

C. The Property is a "qualified historical property," as that term is defined under the Mills Act ("**Qualified Historical Property**"), in that the Property is privately owned, the Property is not exempt from property taxation, and the Property is listed in the City's Local Register of Historic Places.

D. The Property is a "restricted historical property," as that term is defined in Revenue and Taxation Code section 439.1.

E. The City and the Owners desire to limit the use of the Property and to preserve the Property so as to retain its characteristics as a property of cultural, architectural, and historical significance.

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AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the substantial public benefits to be derived therefrom, the Parties hereby mutually agree as follows:

1. Recitals. The Recitals set forth above are included herein by reference as part of this Agreement and the Parties agree that said Recitals are essential facts to this Agreement.

2. Applicability of Government Code and Revenue and Taxation Code. This Agreement is made pursuant to the Mills Act and California Revenue and Taxation Code sections 439 to 439.4 and is subject to all of the provisions of these statutes.

3. Preservation/Rehabilitation and Maintenance of Property. During the term of this Agreement, the Property shall be subject to the following conditions, requirements, and restrictions:

a. The Owners agree to preserve/rehabilitate and maintain the cultural, historical, and architectural characteristics of the Property during the term of this Agreement as set forth in the Schedule of Improvements identified in Exhibit B to this Agreement, attached hereto and incorporated herein by this reference (“**Schedule of Improvements**”).

b. The Owners shall maintain all buildings, structures, yards, and other improvements in a manner that does not detract from the appearance of the immediate neighborhood. Prohibited property conditions include, but are not limited to, all of the following:

(i.) dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, 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, cans, containers, or similar items;

(iv.) stagnant water or excavations, including swimming pools or spas; and

(v.) any device, decoration, design, structure, or vegetation that a reasonable person would determine to be unsightly by reason of its height, condition, or location.

c. All improvements and work performed on the Property shall meet, at a minimum, the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior’s Standards for Rehabilitation, the California State Historical Building Code, and the applicable City laws and regulations pertaining to development.

d. If the City institutes a code enforcement action pertaining to the Property, the City may request, and the Owners shall submit within 30 days of such request, documentation of expenditures incurred and work performed by the Owners within the previous 24 months to accomplish items from the Schedule of Improvements. If the Owners perform work on the Property, rather than contracting with a third party, the value of the Owner’s labor shall be calculated at the market rate for such work performed. The Owners shall be in substantial compliance with the

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Schedule of Improvements when the expenditures incurred and work performed to accomplish the improvements are equal to or greater than the Owner's annual property tax savings for the previous 24 months, as determined by the City, based upon the County Tax Assessor's valuation of the Property using the process set forth in California Revenue and Taxation Code sections 439 to 439.4.

e. The Owners shall, within 30 days after written notice from the City, furnish the City with any information the City shall require to enable the City to determine (i) the Property's present state, (ii) the Property's continued eligibility as a Qualified Historical Property, and (iii) whether the Owners are in compliance with this Agreement.

_____ **OWNER'S INITIALS**

4. Inspections. The Owners agree to permit periodic examinations and inspections of the interior and exterior of the Property by the City, the County Assessor, the State Department of Parks and Recreation, and the State Board of Equalization, as may be necessary to determine the Owner's compliance with this Agreement. After five years, and every five years thereafter, the City shall inspect the Property, including the interior and exterior of the premises, to determine the Owner's continued compliance with this Agreement.

_____ **OWNER'S INITIALS**

5. Term. This Agreement shall be effective and shall commence on January 1 of the year following the successful recordation of this Agreement by the San Diego County Recorder's Office and shall remain in effect for a period of 10 years thereafter.

6. Renewal.

6.1. *Automatic Renewal*. On the 10th anniversary of this Agreement and on each successive anniversary date ("**Renewal Date**"), a period of one year shall automatically be added to the initial term of this Agreement unless a Party gives a notice of nonrenewal as provided in this Agreement.

6.2. *Notice of Nonrenewal*. If, in any year, a Party desires not to renew this Agreement, such Party shall serve a written notice of nonrenewal on the other Party. If the Owners elect to serve a notice of nonrenewal, the notice must be served on the City at least 90 days prior to the Renewal Date, or else a period of one additional year shall automatically be added to the term of this Agreement. Conversely, if the City elects to serve a notice of nonrenewal, the notice must be served on the Owners at least 60 days prior to the Renewal Date, or else a period of one additional year shall automatically be added to the term of this Agreement. The City may issue a notice of nonrenewal if the City determines improvements, maintenance, rehabilitation, renovation, or restoration of the Property is required for the Property's continued eligibility as a Qualified Historical Property. Upon receipt by the Owners of a notice of nonrenewal from the City, the Owners may make a written protest of such nonrenewal. The City may, at any time prior to the Renewal Date, withdraw its notice of nonrenewal.

6.3. *Effect of Notice of Nonrenewal*. If, in any year, either Party serves a notice of nonrenewal as provided in this Agreement, this Agreement shall remain in effect for (i) the balance of the period remaining under the initial term of this Agreement, or (ii) the balance of the period remaining since the last renewal of this Agreement, as the case may be.

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7. Cancellation.

7.1 The City may cancel this Agreement if the City determines that the Owners (i) have breached any term, condition, or covenant of this Agreement; (ii) has allowed the Property to deteriorate to the point that the Property no longer meets the standards of a Qualified Historical Property; or (iii) has failed to restore or rehabilitate the Property in the manner required by this Agreement.

_____ **OWNER'S INITIALS**

7.2 *Notice of Cancellation.* This Agreement cannot be cancelled until after the City has given notice and has held a public hearing as required by California Government Code section 50285.

7.3 *Cancellation Fee.* If the City cancels this Agreement pursuant to the terms of this Agreement, the Owners shall pay those cancellation fees set forth in the Mills Act. Upon cancellation, the Owners shall pay a cancellation fee of 12.5% of the then-current fair market value of the Property, which is to be determined by the County Assessor as though the Property were free and clear of any of the restrictions pursuant to this Agreement. The cancellation fee shall be paid to the 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 County Auditor allocates the annual tax increment in that tax area for that fiscal year.

_____ **OWNER'S INITIALS**

8. No Compensation. The Owners shall not receive any payment from the City in consideration for the obligations imposed under this Agreement. The Parties recognize and agree that the consideration for the execution of this Agreement is the substantial public benefits to be derived therefrom and the advantage that will accrue to the Owners as a result of the assessed value of the Property because of the restrictions that this Agreement imposes on the use and preservation of the Property.

9. Enforcement.

9.1 As an alternative to cancellation of the Agreement, the City may, in its sole discretion, specifically enforce or enjoin the Owner's breach of the terms of this Agreement, including but not limited to bringing an action to enforce this Agreement by specific performance or injunction. In the event of such breach, the City shall give written notice to the Owners notifying the Owners of the violation ("**Notice of Violation**"). If such breach is not corrected to the reasonable satisfaction of the City within 30 calendar days after the date of the Notice of Violation, or within such other reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within 30 calendar days and thereafter diligently pursued to completion), the City may, without further notice, declare the Owners to be in breach of the terms of this Agreement, and may bring any action necessary to specially enforce the obligations of the Owners under the terms of this Agreement or apply for such other relief as authorized under local, state, or federal law.

9.2 *Remedy if Agreement Not an Enforceable Restriction.* In the event it is finally determined by a court of competent jurisdiction that this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, for any tax year during the life of this Agreement, then this Agreement shall be null and void and without further effect, and the Property shall from that time forward be free from any restriction whatsoever under this Agreement without any payment or further act by the Parties.

10. Indemnification. The Owners (including Owner's agents, employees, contractors, and subcontractors, if any) shall hold harmless, defend (with counsel reasonably acceptable to the City), and indemnify the City, its boards, commissions, departments, officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "**Claims**"), and any attorney's, consultant, or expert fees and City staff costs for investigating or responding to any Claims, incurred in connection with or arising in whole or in part from this Agreement, the use or occupancy of the Property by the Owners (including Owner's agents, employees, invitees, contractors, and subcontractors, if any), the condition of the Property, or any construction or other work undertaken on the Property, including without limitation (i) any death or bodily injury to a person; (ii) any injury to, loss, or theft of tangible or intangible property, including economic loss; or (iii) any other loss, damage, or expense sustained by the Owners in connection with any work or obligations performed in connection with this Agreement, except for any liability resulting from the active negligence, sole negligence, or willful misconduct of the City. The duty to defend the City as described in this Paragraph 10 shall apply regardless of whether any Claims are groundless, fraudulent, or false. All obligations under this Paragraph 10 shall survive the termination of this Agreement.

_____ **OWNER'S INITIALS**

11. Condemnation, Eminent Domain, Destruction of Property.

11.1 *Condemnation/Eminent Domain.* If condemnation proceedings are filed against the Property, or if the Property is acquired in whole or in part by eminent domain or other acquisition by an entity authorized to exercise the power of eminent domain, and such acquisition is determined by the City to frustrate the purpose of this Agreement, this Agreement shall be cancelled and shall be deemed null and void for all purposes of determining the value of the Property, or part of the Property, that is acquired. However, if any such condemnation proceeding is subsequently abandoned or the acquisition of the Property rescinded, this Agreement shall be reactivated retroactively and shall be in full force and effect without the need for any further act by the Parties.

11.2 *Destruction of Property.* If the Property is destroyed by fire or other natural disaster such that, in the opinion of the City, the historic value of the structure has been lost and a majority of the structure must be replaced, this Agreement shall be cancelled.

11.3 *No Cancellation Fee.* If the Agreement is cancelled for any reason articulated in Paragraphs 11.1 or 11.2 of this Agreement, no cancellation fee as otherwise required by this

Agreement and the Mills Act shall be imposed.

12. Miscellaneous.

12.1 *Governing Law.* This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Any litigation arising out of this Agreement shall be conducted only in the state or federal courts of San Diego County, California.

12.2 *Entire Agreement.* This Agreement, together with its attachments or other documents, if any, described or incorporated herein, contains the entire agreement and understanding concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. Each of the Parties hereto acknowledges that no other Party, nor the agents nor the attorneys for any Party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Agreement and acknowledges that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

12.3 *Amendment.* This Agreement may not be amended except in a writing signed by all of the Parties hereto, and then only in the specific instance and for the specific purpose given. Any such amendment shall be recorded with the Office of the County Recorder for the County of San Diego.

12.4 *Independent Investigation.* The Parties acknowledge that they have conducted an independent investigation of the facts concerning the subject matter of this Agreement. The Parties agree that the factual recitals are correct and expressly assume the risk that the true facts concerning the foregoing may differ from those currently understood by them.

12.5 *Advice of Counsel.* The Parties hereby acknowledge that they have executed this Agreement after having the opportunity to consult with, and receive the advice of, their own counsel.

12.6 *Capacity.* Each individual signing this Agreement represents and warrants that he or she has been authorized to do so by proper action of the Party on whose behalf he or she has signed.

12.7 *Headings.* Section headings are for reference purposes only and shall not be used for interpreting the meaning of any provisions of this Agreement.

12.8 *Attorney's Fees.* In any action to enforce the terms of this Agreement, the Parties agree that the prevailing party shall be entitled to its reasonable attorney's fees and all costs, fees, and expenses, including the fees of expert witnesses and consultants, whether or not such costs, fees, and expenses are recoverable or allowed as costs under section 1033.5 of the California Code of Civil Procedure. In addition to the foregoing award of attorney's fees and costs, the prevailing party shall be entitled to its attorney's fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment. This provision is separate and shall survive the merger of this provision into any judgment on this Agreement.

12.9 *Counterparts.* This Agreement may be executed on separate counterparts that, upon completion, may be assembled into and shall be construed as one document.

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12.10 *Severability*. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.

12.11 *Notice*. All notices, demands, approvals, or consents provided for in this Agreement shall be in writing and delivered to the appropriate Party at its address as follows:

If to the City:

City Clerk
City of Escondido
201 North Broadway
Escondido, CA 92025

If to the Owner:

Israel Murguia and Melissa Garcia
820 S. Maple St.
Escondido, CA 92025

Any notice, delivery, or other communication shall be effective and shall be deemed to be received by the other Party within five business days after the notice has been deposited in the U.S. Mail, duly registered or certified, with postage prepaid, and addressed as set forth above. Any Party may change the address information provided above by giving written notice to the other Party in the manner provided in this Agreement.

12.12 *Covenants Run with Land*. So long as this Agreement remains in effect, the obligations and benefits provided for in this Agreement shall run with the land obligated and benefited, respectively, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof. As such, it is the intent of the Parties that this Agreement and the promises, covenants, rights, and obligations set forth herein (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Agreement, binding upon the Owner's successors in title and all subsequent owners and operators of the Property; (ii) are not merely personal covenants of the Owner; and (iii) shall bind the Owners and their respective successors and assigns during the term of this Agreement. Further, the Owners shall ensure that any future transfer of interest in the Property is made subject to the terms of this Agreement, such that any future successor in title or owner or operator of the Property shall be bound by the terms herein.

12.13 *Sale of Property*. The Owners shall ensure that any future transfer of interest in the Property is made subject to the terms of this Agreement, such that any future successor in title or owner or operator of the Property shall be bound by the terms herein. If the Property is sold, the Owners shall provide notice to the City of the sale and provide the City with a signed statement from the new owner indicating that a copy of this Agreement, all exhibits to this Agreement, and all amendments to this Agreement, if any, were provided to the new owner.

12.14 *Notice to Office of Historic Preservation*. The Owners or an agent of the Owners shall provide written notice of this Agreement to the Office of Historic Preservation within six months of entering into this Agreement. A copy of this notice shall also be provided to the City.

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This Agreement is executed by the Parties or their duly authorized representatives:

CITY OF ESCONDIDO

Date: _____ By _____
Dane White, Mayor

[OWNERS]

Date: _____ By _____
Israel Murguia, Husband

Date: _____ By _____
Melissa Garcia, Wife

(ABOVE SIGNATURES MUST BE NOTARIZED; ACKNOWLEDGMENT PAGES FOLLOW)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
Michael R. McGuinness, City Attorney

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 CALIFORNIA]

COUNTY OF _____]

On _____, before me, _____, a Notary Public, personally appeared _____, 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: _____ (Seal)

Exhibit "A"

Legal Description of Property

THE SOUTHERLY 70.00 FEET OF LOTS 15 AND 16 IN BLOCK 193 OF ESCONDIDO, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 336. FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1886.

APN: 233-382-06-00

Exhibit "B"

Schedule of Improvements

1. Install one GAF Masterflow EZ cool plug-in power vent into the existing roofing.
2. Build ground level deck in upper terraced area of yard.
3. Build retaining wall and fence between house (southernly side) and alley.
4. Seismic retrofit by installing isolated piers between existing piers with standard footings, pre-cast post bases, pressure treated posts, and Simpson strong tiles.
5. Replace guest restroom floor and shower tile.
6. Repaint of existing residence.
7. Repair damaged sewer lines to property.
8. Upgrade main electrical panel from 100 amps to 225 amps.
9. Replace rear window on 1979 addition to period correct window treatment.