

Recording Requested By:
and

Return to: Town of Truckee
Judy Price, Town Clerk
10183 Truckee Airport Road
Truckee, CA 96161

Not Subject to Fees: GCS 27383

HISTORIC PROPERTY PRESERVATION (MILLS ACT) CONTRACT
(10270 Donner Pass Road; APN 019-080-080-000)

THIS CONTRACT is made and entered into on this ____ day of _____ 2023 by and between the TOWN OF TRUCKEE, a municipal corporation (hereinafter referred to as “TOWN”), and DONNER PASS ROAD LLC, a California limited liability company (hereinafter referred to as “OWNER”).

WHEREAS, the Town Council of the Town of Truckee is authorized by California Government Code Sections 50280 et seq. (known as “The Mills Act”) to enter into contracts with the owners of qualified historical properties to provide for the use, maintenance, and rehabilitation of such historic properties so as to retain their characteristics and integrity as properties of historic significance; and

WHEREAS, on September 2, 2004, the Town Council adopted Ordinance No. 2004-05 implementing the Mills Act, thereby vesting the Town with authority to enter into historic property preservation contracts with property owners; and

WHEREAS, the OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, located on Assessor’s Parcel Number 019-080-080-000 at 10270 Donner Pass Road, Truckee, California, also described as Resource Number KEC-134-U-12 and THRI-038 (hereinafter referred to as the “Property”); and

WHEREAS, the Town Council determined the Property to be a qualified historic property as defined in Government Code Section 50280.1 pursuant to the terms and provisions of Chapter 3.36 of the Truckee Municipal Code; and

WHEREAS, TOWN and OWNER, for their mutual benefit, now desire to enter into this agreement to ensure that the historically significant and character-defining features and characteristics of the Property are protected and preserved, to carry out the purposes of California Government Code Sections 50280 et seq. and Chapter 3.36 of the Truckee Municipal Code, and to qualify the Property for an assessment of valuation pursuant to the provisions of Article 1.9 of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

NOW, THEREFORE, TOWN and OWNER, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Recitals. The recitals set forth above are true and accurate and are an integral part of this agreement.

2. Effective Date and Term of Agreement. This agreement shall be effective and commence on January 1, 2024, and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term shall automatically be extended as provided in Paragraph 3 below.

3. Renewal. Each year on the anniversary of the effective date of this agreement (hereinafter referred to as the “renewal date”), a year shall automatically be added to the initial term of this agreement unless notice of nonrenewal is served as provided herein. If either TOWN or OWNER desires in any year not to renew the agreement, TOWN or OWNER shall serve written notice of nonrenewal of the agreement on the other party in advance of the annual renewal date of the agreement. Unless such notice is served by OWNER to TOWN at least ninety (90) days prior to the annual renewal date, or served by TOWN 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 nonrenewal from TOWN, OWNER may make a written protest of the notice. TOWN may, at any time prior to the annual renewal date of the agreement, withdraw its notice to OWNER of nonrenewal. If either TOWN or OWNER serves notice to the other of nonrenewal 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, subject to the provisions of Paragraph 4 herein.

4. Cancellation. TOWN, following a duly noticed public hearing as set forth in California Government Code Sections 50280 et seq., may cancel this agreement if it determines that OWNER breached any of the standards and conditions of this agreement and has failed to cure said breach after notice, as set forth in Paragraph 7 below, or has allowed the property to deteriorate to the point that it no longer meets the criteria for a qualified Property. TOWN may also cancel this agreement if it determines that the OWNER has failed to maintain and preserve the Property in accordance with the terms and provisions of this agreement. If the agreement is cancelled for any of these reasons, the OWNER may be subject to payment of those cancellation fees set forth in California Government Code Section 50286.

5. Standards and Conditions. During the term of this agreement, the Property shall be subject to the following standards, conditions, requirements, and restrictions:

a. OWNER shall preserve, maintain, and, where necessary, renovate or rehabilitate the historically significant and character-defining features and characteristics of the Property including, but not limited to, general architectural form, style, materials, design, scale, details, mass, roof line, porch, and other aspects of the appearance of the exterior and ensure the Property retains its historic resource category rating as set forth in the TOWN’S Truckee Historic Resources and Architectural Inventory, adopted by Town Council Resolution No. 2003-18.

b. All work on and changes to the Property shall comply with the Truckee Municipal Code and 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.

c. OWNER shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Property by representatives of the County Assessor, California Department of Parks and Recreation – Office of Historic Preservation, California Board of Equalization, and/or TOWN, prior to a new agreement, and every five years thereafter, to determine OWNER's compliance with the terms and provisions of this agreement. TOWN may collect fees not exceeding the cost of providing the service, as set by the Town Council.

d. OWNER shall notify the Community Development Director of the TOWN of changes to the exterior features of the Property prior to their execution.

6. Provision of Information of Compliance. OWNER hereby agrees to furnish TOWN with any and all information requested by TOWN which may be reasonable and necessary to determine compliance with the terms and provisions of this agreement.

7. Enforcement of Agreement. In lieu of and/or in addition to any provisions to cancel the agreement as referenced herein, TOWN may specifically enforce or enjoin the breach of the terms and provisions of this agreement. In the event of a breach by OWNER under the terms and provisions of this agreement, TOWN shall give written notice to OWNER by registered or certified mail to the address stated in this agreement, which notice shall specifically identify the breach. If such breach is not corrected to the reasonable satisfaction of the TOWN within thirty (30) days of the date of the notice, or within such a reasonable time as may be required to cure the breach (provided that acts to cure the breach are commenced within thirty (30) days and thereafter diligently pursued to completion), then TOWN may, without further notice, declare a default under the terms and provision of this agreement and bring any action necessary to specifically enforce the obligations of OWNER arising out of the terms and provisions of this agreement, including, but not limited to, applying to any court, state or federal, for injunctive relief against the OWNER or applying for such other relief as may be appropriate.

TOWN does not waive any claim of default by OWNER if TOWN 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 TOWN's regulations governing historic properties are available to the TOWN to pursue in the event that there is a breach of this agreement. No waiver by the TOWN of any breach or default under this agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.

8. Binding Effect of Agreement. OWNER hereby subjects the Property to the covenants, reservations, and restrictions as set forth in this agreement. TOWN 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 shall pass to and be binding upon the OWNER's successors and assigns in title or interests to the Property. Each and every agreement, 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, reservations, and restrictions expressed in this agreement regardless of whether such covenants, reservations, and restrictions are set forth in such agreement, deed, or other instrument. The obligations set forth in this agreement shall be joint and several obligations of each person or entity holding any ownership interest in the property.

TOWN 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 Property is rendered less valuable thereby. TOWN 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 Property for the benefit of the public and OWNER.

9. General Provisions.

a. None of the terms, provisions, or conditions of this agreement shall be deemed to create a partnership between the parties hereto nor 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 TOWN 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 contractor, subcontractor, agent, employee, or other person acting on his behalf which relate to the use, operation, and maintenance of the Property. OWNER hereby agrees to and shall defend the TOWN 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, reason of OWNER's activities in connection with the Property. 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 whether or not the TOWN prepared, supplied, or approved the plans, specifications, or other documents for the Property.

c. All of the agreements, rights, covenants, reservations, and restrictions contained in this agreement shall be binding upon and inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns, and all persons acquiring any part or portion of the Property, 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 or restrain a violation of any of the covenants, reservation, 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 affected thereby.

f. This agreement shall be construed and governed in accordance with the laws of the State of California.

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

11. Notice. Any notice required to be given by the terms and provisions 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 the parties hereto.

TO TOWN: Denyelle Nishimori, Community Development Director
Town of Truckee Community Development Dept.
10183 Truckee Airport Rd
Truckee, CA 96161

TO OWNER: Donner Pass Road LLC
11775 Alder Drive
Truckee, CA 96161

12. Notice to Office of Historic Preservation. TOWN shall provide written notice of this agreement to the California Department of Parks and Recreation – Office of Historic Preservation within six (6) months of the effective date of this agreement.

13. Recordation. No later than twenty (20) days after the parties execute and enter into this agreement, TOWN shall cause this agreement to be recorded in the Nevada County Office of the Recorder.

14. Signatures. This agreement shall not take effect unless and until the agreement is signed by the OWNER and the Town Manager of the TOWN, which signatures shall be 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 the TOWN, that the agent or representative has authority to act on OWNER's behalf.

IN WITNESS WHEREOF, TOWN and OWNER have executed this agreement on the day and year first written above.

This agreement is hereby approved as to form and legality this ____ day of _____, 2023.

Approved as to Form:

By _____
Andrew Morris, Town Attorney

TOWN OF TRUCKEE

DATED: _____

By _____
Jennifer Callaway, Town Manager

OWNER

DATED: _____

By _____
Daniel Fraiman as Trustee of the Daniel
Fraiman Family Trust, Sole Member
Donner Pass Road LLC