



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Historic Landmarks Commission

SUBJECT: SEE BELOW

DATE: August 18, 2008

COUNCIL DISTRICT: 3

S.N.I.: University

SUBJECT:

1. HL08-167 & MA08-001, Historic Landmark Nomination and Mills Act Historical Property Contract for the Slettedahl House, located at 202 S. Fourteenth Street;
2. HL08-168 & MA08-002, Historic Landmark Nomination and Mills Act Historical Property Contract for the Foster House, located at 198 S. Thirteenth Street.

RECOMMENDATION

The Historic Landmarks Commission (HLC) voted (6-0-0-1, Commissioner Colombe abstained) to recommend that the City Council adopt resolutions designating each of the following properties as a Historic Landmark and approving an associated Historical Property Contract as follows:

1. The Slettedahl House as Historic Landmark No. 167 and associated Historical Property Contract File No. MA08-001.
2. The Foster House as Historic Landmark No. 168 and associated Historical Property Contract File No. MA08-002.

OUTCOME

Designation of the buildings as Historic Landmark structures would establish the requirement for the issuance of Historic Preservation (HP) permits to approve any exterior changes proposed to the structure. Approval of the Historical Property Contracts would allow the property owners to utilize property tax relief to maintain the property. By approving the contract, the City and the applicant become partners in the preservation of the landmark property.

BACKGROUND

The individual property owners submitted separate applications for Historic Landmark designation of the houses in March 2008 (202 S. Fourteenth Street) and April 2008 (198 S. Thirteenth Street), using historical evaluations performed by qualified historical consultants

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Archives and Architecture. The City Council initiated the City Landmark designation process for HL08-167 and HL08-168 at its June 24, 2008 public hearing.

On August 6, 2008 the Historic Landmarks Commission held a public hearing to consider the proposed Historic Landmark designations and associated Historical Property Contracts. The Commission voted (6-0-0-1, Commissioner Colombe abstained) to recommend the City Council adopt a resolution designating 202 S. Fourteenth Street as Historic Landmark No. 167. There was no discussion on the item.

The Historic Landmarks Commission discussed the proposed preservation plan "Exhibit C" in the Historic Property Contract for 202 S. Fourteenth Street. Commissioner Thacker questioned why painting the interior can be included as a repair of the building. Commissioner Janke responded that the proposed Preservation Plan, taken as a whole, seemed good. Commissioner Peak stated that the improvements should be used for physical rehabilitation only. The Commission voted (6-0-0-1, Commissioner Colombe abstained) to recommend the City Council approve the associated Historical Property Contract (File Number MA08-001).

The Commission voted (6-0-0-1, Commissioner Colombe abstained) to recommend the City Council adopt a resolution designating 198 S. Thirteenth Street as a Historic Landmark No. 168 and voted (6-0-0-1, Commissioner Colombe abstained) to recommend the City Council approve the associated Historical Property Contract (File Number MA08-002). There was no discussion on either item.

ANALYSIS

I. Historic Landmark Nominations

Based on the information in the historical evaluations for the properties, the buildings discussed in this memo merit designation as historic landmarks based on their historical, cultural and architectural significance. Each of the buildings qualifies for City Landmark status primarily based on Criteria (1), (3), and (6) of the Historic Preservation Ordinance (Municipal Code Section 13.48.110), as noted below. Additionally, 202 S. Fourteenth Street qualifies under Criterion (7), having been identified as the work of designer Addison Whiteside.

1. HL08-167 - Slettedahl House, located at 202 S. Fourteenth Street

This two-story house was constructed in 1916 on a corner lot within the Naglee Park residential subdivision. The house's cleanly lined stucco exterior and complex asymmetrical form combine with deep eave overhangs, a massive chimney, decorative window pattern and placement, and open porch to compose a locally unusual early Prairie-style design with earlier Neoclassical influences. The building qualifies for City Landmark status primarily based on City Landmark Criterion (1), for its contribution to the setting of the Naglee Park Conservation Area. Secondly the building qualifies based on: Criterion (3), having been identified with Bertram Slettedahl and Dr. Fred Ryan who have contributed to local and regional history; Criterion (6),

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representing a locally unique early implementation of the Prairie style of residential architecture; and Criterion (7), having been identified as the work of designer Addison Whiteside.

2. HL08-168 - Foster House, located at 198 S. Thirteenth Street

This two-story Craftsman house was constructed in 1908 on a corner lot within the Naglee Park subdivision, one block away from the Slettedahl House. The house's elevated rectangular massing and articulation with two gabled entrances deep eaves, massive stone chimney and porch piers, decorative bay windows, and full-length second-story screened "sleeping porch" combine to embody a locally distinctive Craftsman-style composition. The walls are clad in stucco with some vertical half-timbering on the second floor, consistent with the house's original design. Windows are the original wood sash and casement units. The building has a distinctive character that is expressed through its complex design and high degree of integrity to its original details and materials. The building qualifies for City Landmark status primarily based on Criterion (1), for its prominence within the context of the Naglee Park Conservation Area. Secondly the building qualifies based on: Criterion (3), having been identified with Dr. Fred Foster who contributed to local and regional history; and Criterion (6), being one of the more distinctive Arts and Crafts-era houses in San José.

II. Mills Act Historical Property Contracts

The Historic Landmark Preservation Agreement is an incentive for ownership of City Landmarks. It is a contract between the City of San José and the owner of a designated City Landmark which allows the owner to enjoy a reduced property tax rate from the County Assessor in exchange for the preservation, and in some cases restoration and rehabilitation, of the owner's historic property. The purpose of the agreement is to provide greater protection for the City Landmark property than is otherwise provided by the historic preservation regulations in the City Municipal Code. The County Assessor sets the property tax rate based on an appraisal of the market value of the land and improvements. A property under contract will receive a property tax reduction based on an appraisal of the rental value of the land and improvements. As is typical for Mills Act historical property contracts, the draft contracts (attached) will be finalized and forwarded to the City Council by the Attorney's Office under separate cover prior to the public hearing.

Required Provisions of Historical Property Contracts

Municipal Code Chapter 13.48 requires provisions of Historical Property Contracts as follows:

- A. A description of the Landmark Property subject to the Contract;
- B. A provision that the term of the contract is a minimum period of ten years;
- C. Specific conditions requiring preservation of the Landmark Property and where appropriate, restoration and rehabilitation of the Landmark Property to conform to the requirements of the City, and the rules and regulations of the Office of Historic Preservation of the State of California Department of Parks and Recreation;

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- D. Provision for the periodic examination of the interior and exterior of the Landmark Property by the City of San José, Santa Clara County Assessor, and the State Board of Equalization as may be necessary to determine the owner's compliance with the Contract.
- E. A requirement that the property owner annually expend an amount equal to a minimum of 10% of the tax savings attributed to the Contract to the preservation and maintenance of the Landmark Property; and
- F. A provision that the Contract is binding upon and shall inure to the benefit of, all successors in interest of the owners; and that a successor in interest shall have the same rights and obligations under the Contract as the original owners who entered into the Contract.

Required Findings of Historic Property Contracts

The Historic Landmarks Commission recommends that the City Council adopt a resolution making the following findings and approving the proposed associated Historical Property Contracts, based on the text added in italics.

- A. The proposed Contract is consistent with the General Plan;
Preservation of specific structures or special areas is a part of the San José 2020 General Plan Urban Conservation/Preservation Major Strategy. The proposed Contract is consistent with General Plan Historic, Archeological and Cultural Resources Policies, which state that the City should utilize a variety of techniques and measures to serve as incentives toward fostering the rehabilitation of individual buildings and districts of historic significance.
- B. The proposed Contract would provide greater protection for the Landmark Property than is otherwise provided by the provisions of Municipal Code Chapter 13.48;
The proposed Contract provides greater protection for the Landmark Property than is otherwise provided by the provisions of Municipal Code because the owner, in partnership with the City, may use property tax relief to rehabilitate and maintain the property in accordance with the preservation plans, Exhibit "C".
- C. The proposed Contract complies with the required provisions of Historical Property Contracts listed above.
The proposed Contracts incorporate the Municipal Code's required provisions for Historical Property Contracts.

POLICY ALTERNATIVES

The City Council could opt to decline to designate any of the buildings as City Landmark Structures. In such a case, the structures could undergo exterior alterations in the future without need of Historic Preservation Permits reviewed by the Historic Landmarks Commission. However, exterior alterations would remain subject to review by the Planning Director because each of the subject buildings is listed on the City's Historic Resources Inventory as a Contributing Structure to the Naglee Park Conservation Area. The City Council could also opt to

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decline to approve the associated Mills Act historical property contracts, in which case the properties would remain at their current assessment level; tax savings would not be available for the property owners to carry out the preservation work being proposed in the historical property contracts.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff has followed Council Policy 6-30: Public Outreach Policy. Each of the Landmark nominations and contracts was initiated by the respective property owners. Public hearing notices for the applications were published in a local newspaper, posted at the site, and mailed to all property owners and tenants within at least 300 feet of the subject site. Information about the proposed projects and the associated public hearings has been made available through the Planning Division web site.

COORDINATION

City Council resolutions to designate the Landmarks and the associated Historical Property Contracts have been coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with City Council Policy: Preservation of Historic Landmarks, and the Historic, Archaeological, and Cultural Resources San José 2020 General Plan policies.

COST SUMMARY/IMPLICATIONS

Under a Historical Property Contract, a property receives a lower tax bill based on the property's potential rental income rather than its full market value. The amount of tax savings varies from property to property and year to year, depending on circumstances such as the size of the building and current rental rates. Because of Proposition 13, the percent difference between a new "income-based" assessment and a property's current assessment level is also affected by how long a given property owner has owned a building. The average per-house property tax

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reduction experienced by other cities in California reportedly ranges from approximately 200 to 400 dollars per year (the assessment formula is the same statewide). The property tax reduction in San Jose may be somewhat higher because of higher average property values.

In San Jose, the Historical Property Contract is an incentive that is available only to individually designated City Landmark Structures. There are approximately 150 City Landmark Structures in San Jose, out of a total of approximately 307,000 housing units. Currently there are approximately 25 existing approved Historical Property Contracts in the city.

BUDGET REFERENCE

Not applicable.

CEQA

Exempt, file nos. HL08-167 / MA08-001 and HL08-168 / MA08-002

Joe *Joseph Horwedel*
JOSEPH HORWEDEL, SECRETARY
Historic Landmarks Commission

For questions, please contact Sally Zarnowitz, Historic Preservation Officer, at 535-7834.

RESOLUTION NO.

**RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ
DESIGNATING, PURSUANT TO THE PROVISIONS OF CHAPTER 13.48 OF
TITLE 13 OF THE SAN JOSÉ MUNICIPAL CODE, THE SLETTEDAHL HOUSE
LOCATED AT 202 S. FOURTEENTH STREET AS A CITY LANDMARK OF
SPECIAL HISTORICAL, ARCHITECTURAL, CULTURAL, AESTHETIC OR
ENGINEERING INTEREST OR VALUE OF A HISTORIC NATURE**

HL08-167

WHEREAS, Chapter 13.48 of Title 13 of the San José Municipal Code provides for the designation of structures and/or sites of special historical, architectural, cultural, aesthetic or engineering interest or value of a historical nature as landmarks by the City Council of the City of San José; and

WHEREAS, said Chapter 13.48 of Title 13 provides that any historic property can be nominated for designation as a City Landmark by the City Council, the Historic Landmarks Commission, or by application of the owner or the authorized agent of the owner of the property for which designation is requested; and

WHEREAS, the City Council, upon application of the owner of the property, adopted Resolution No. 74488 on June 24, 2008, initiating proceedings pursuant to said Chapter 13.48 of Title 13 for consideration of such landmark designation; and

WHEREAS, said Chapter 13.48 of Title 13 provides that before this Council may designate any building as a landmark, it shall hold at least one public hearing on such proposed designation, and that before it holds said public hearing, the Council shall refer said proposed designation to the Historic Landmarks Commission of the City of San José for its consideration at a public hearing and for its report and recommendation thereon; and

WHEREAS, within the time and in the manner provided by Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on August 6, 2008 at 6:00 p.m., conduct a public hearing on said landmark designation and recommend approval of the designation of the Slettedahl House, located at 202 S. Fourteenth Street, described hereinafter in Section 1 of this Resolution, as a landmark of special historical,

File No. HL08-167

Reso. No.

architectural, cultural, aesthetic or engineering interest or value of a historic nature, and made certain findings with respect thereto; and

WHEREAS, a copy of the City of San José Historic Landmark Nomination Form No. HL08-167 upon which such recommendation was made is on file in the Planning Division of the City of San José and available for review; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council gave notice that on September 9, 2008 at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said landmark designation, at which hearing any and all persons interested in said proposed designation could appear and avail themselves of an opportunity to be heard and to present their views with respect to said proposed designation; and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard to present their views with respect to said proposed landmark designation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ AS FOLLOWS:

SECTION 1. In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Historic Preservation Ordinance, this Council does hereby designate the hereinafter described Slettedahl House, located at 202 S. Fourteenth Street, as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.

SECTION 2. Said designation is based on the following criterion of the Historic Preservation Ordinance:

- Criterion (1), for its contribution to the setting of the Naglee Park Conservation Area.

File No. HL08-167
Reso. No.

SECTION 3. The City Clerk is hereby directed to notify those persons designated in San José Municipal Code Section 13.48.110, Subsection L, in the manner specified by said Section and to direct the recordation of a Notice of Granting of this resolution in the Office of the Recorder of the County of Santa Clara.

PASSED FOR PUBLICATION of title this 9th day of September, 2008 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

Exhibit "A" attached:
Legal Description

Description:

The land referred to herein is situated in the State of California, County of Santa Clara, City of San Jose, and is described as follows:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF FOURTEENTH STREET, FORMERLY PRIEST STREET, WITH THE SOUTHERLY LINE OF SAN ANTONIO STREET, AND RUNNING THENCE SOUTHEASTERLY ALONG THE SAID EASTERLY LINE OF FOURTEENTH STREET, 51.61 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 127.96 FEET; THENCE AT RIGHT ANGLES NORTHWESTERLY 51.61 FEET TO THE SAID SOUTHERLY LINE OF SAN ANTONIO STREET, AND THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY LINE OF SAN ANTONIO STREET, 127.96 FEET TO THE POINT OF BEGINNING AND BEING ALL OF LOT 12 IN BLOCK 56, AS SHOWN AND DELINEATED UPON THAT CERTAIN MAP ENTITLED "MAP OF THE NAGLEE PARK TRACT SURVEY NO. 2" AND WHICH SAID MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN VOL. "K" OF MAPS, PAGE 41.

APN: 467-40-009

EXHIBIT A

202 S. 14th ST. SAN JOSE, CA

RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ
APPROVING A HISTORIC LANDMARK PRESERVATION AGREEMENT
WITH ANDRÉ AND LANI LUTHARD FOR
THE SLETTEDAHL HOUSE (CITY LANDMARK NO. HL08-167)**

MA08-001

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

WHEREAS, California Government Code Section 50280, et seq. and Chapter 13.48 of Title 13 of the San José Municipal Code authorize the City of San José to enter into agreements with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so to retain its characteristics as property of historical significance; and

WHEREAS, André and Lani Luthard possesses fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 202 S. Fourteenth Street, City Landmark No. HL08-167 (hereinafter referred to as the "Historic Landmark") and

WHEREAS, on September 9, 2008 the City Council of the City of San José adopted its Resolution No. _____ thereby declaring and designating the Historic Landmark as a historic landmark structure pursuant to the terms and provisions of Chapter 13.48 of the San José Municipal Code; and

WHEREAS, the City of San José and André and Lani Luthard, for their mutual benefit, now desire to enter into an agreement both to protect and preserve the characteristics of historical significance of the Historic Landmark and to qualify the Historic Landmark for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on August 6, 2008 at 6:00 p.m., conduct a public hearing on a Historic Landmark Preservation Agreement for the Historic Landmark and recommend approval of that agreement (hereinafter "Agreement"); and

WHEREAS, a copy of the Agreement upon which such recommendation was made is on file in the Office of the City Clerk of the City of San José; and

WHEREAS, the subject property upon which the Historic Landmark is situated is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council did give notice that on September 9, 2008 at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said Agreement at which hearing any and all persons interested in said Agreement could appear and avail themselves of an opportunity to be heard and to present their views with respect to said proposed Agreement; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard to present their views with respect to said proposed Agreement.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ THAT:

SECTION 1. In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, this Council does hereby approve the Historic Landmark Preservation Agreement with André and Lani Luthard, owner of the Slettedahl House (City Landmark No. HL08-167) located at 202 S. Fourteenth Street and makes the following findings:

- a. The Agreement is consistent with the General Plan, in that the proposed Contract is consistent with General Plan Historic, Archeological and Cultural Resources Policies that state that the City should utilize a variety of techniques and measures to serve as incentives toward fostering the rehabilitation of individual buildings and districts of historic significance
- b. The Agreement would provide greater protection for the Historic Landmark property than is otherwise provided by the provisions of San José Municipal

Code Chapter 13.48 in that the owner, in partnership with the City, may use property tax relief to rehabilitate and maintain the property in accordance with the preservation plan, Exhibit "C" of the contract; and

- c. The Agreement complies with the requirements of Section 13.48.520 of Chapter 13.48 of Title 13 of the San José Municipal Code Contracts incorporate the Municipal Code's required provisions for Historic Property Contracts, including the following: A description of the Landmark Property subject to the Contract, a provision that the term of the Contract is a minimum period of ten years, specific conditions requiring preservation of the Landmark, provision for the periodic examination of property, and a requirement that the property owner annually expend an amount equal to a minimum of 10% of the annual tax savings resulting from the Contract , and a provision that the Contract is binding upon – and shall inure to the benefit of – all successors in interest of the owners in the property.

SECTION 2. Pursuant to the San José Municipal Code, Chapter 13.48, the City Clerk is hereby directed to notify the owner of the Historic Landmark subject to the Agreement and directed to record the Agreement in the Office of the Recorder of the County of Santa Clara.

ADOPTED this 9th day of September, 2008, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

Exhibit "A" attached:
Legal Description

Historic Property Contract
202 S. 14th Street, San José, CA
MA08-001
Proposed Preservation Plan
Exhibit C

Year	Description
One	Restore baseboard and built-in sideboard. Repaint dining room, foyer, stairwell and upstairs hallway. Approximate cost: \$5,000
Two	Repair and rehabilitation of west facing wood windows outside of living room and family room. Approximate cost: \$2,000
Three	Interior foundation repair and structural improvements. Approximate cost: \$50,000
Four	Repair exterior roof eaves and fascia. Approximate cost: \$10,000
Five	Replace roof. Approximate cost: \$15,000
Six	Repaint exterior. Approximate cost: \$13,000
Seven	Upgrade electrical in office. Approximate cost: \$4,000
Eight	Replace wood burning fireplace with gas unit and relocate water heater flue. Approximate cost: \$6,000
Nine	Plumbing upgrades in upstairs bathroom. Approximate cost: \$15,000
Ten	Repair/rehabilitate south facing windows in family room, upstairs bathroom and master bedroom. Approximate cost: \$5,000

Description:

The land referred to herein is situated in the State of California, County of Santa Clara, City of San Jose, and is described as follows:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF FOURTEENTH STREET, FORMERLY PRIEST STREET, WITH THE SOUTHERLY LINE OF SAN ANTONIO STREET, AND RUNNING THENCE SOUTHEASTERLY ALONG THE SAID EASTERLY LINE OF FOURTEENTH STREET, 51.61 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 127.96 FEET; THENCE AT RIGHT ANGLES NORTHWESTERLY 51.61 FEET TO THE SAID SOUTHERLY LINE OF SAN ANTONIO STREET, AND THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY LINE OF SAN ANTONIO STREET, 127.96 FEET TO THE POINT OF BEGINNING AND BEING ALL OF LOT 12 IN BLOCK 56, AS SHOWN AND DELINEATED UPON THAT CERTAIN MAP ENTITLED "MAP OF THE NAGLEE PARK TRACT SURVEY NO. 2" AND WHICH SAID MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN VOL. "K" OF MAPS, PAGE 41.

APN: 467-40-009

EXHIBIT A
202 S. 14th ST. SAN JOSE, CA

HISTORIC LANDMARK PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the City of San Jose, a municipal corporation (hereinafter referred to as the "CITY") and André and Lani Luthard (hereinafter referred to as the "OWNER").

RECITALS

WHEREAS, California Government Code Section 50280, et seq. and Chapter 13.48 of the San Jose Municipal Code authorize CITY to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so to retain its characteristics as property of historical significance; and

WHEREAS, OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, the Slettedahl House (City Landmark Number HL08-167), located at 202 S. Fourteenth Street (hereinafter such property shall be referred to as the "Historic Landmark"). A legal description of the Historic Landmark is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, on September 9, 2008 the City Council of the City of San Jose adopted a Resolution thereby declaring and designating the Historic Landmark as a historic landmark structure pursuant to the terms and provisions of Chapter 13.48 of the San Jose Municipal Code; and

WHEREAS, CITY and OWNER for the mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristic of historical significance of the Historic Landmark and to qualify the Historic Landmark for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

DRAFT

AGREEMENT

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

1. **Effective Date and Term of Agreement.** This Agreement shall be effective and commence on _____, 2008 (the "Effective Date"), 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 will automatically be extended as provided in Section 2, below.

2. **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 mailed as provided herein. If either OWNER or CITY desires in any year not to renew the Agreement, OWNER or CITY 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 CITY at least ninety (90) days prior to the annual Renewal Date, or served by CITY 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 CITY, OWNER may make a written protest of the non-renewal. CITY may, at any time prior to the annual Renewal Date of the Agreement, withdraw its notice to OWNER of nonrenewal. If either CITY or OWNER serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect and the property shall remain enforceably restricted for the balance of the term then remaining, either from its original execution or from the past renewal of the Agreement, whichever may apply. The Director of Planning, Building and Code Enforcement shall record the Notice of Nonrenewal and file a copy with the Assessor of Santa Clara County. Nonrenewal shall not be deemed a cancellation pursuant to Section 6 of this Agreement.

3. Standards for Historical Property. During the term of this Agreement, the Historic Landmark shall be subject to the following conditions, requirements and restrictions:

a. OWNER shall preserve and maintain the characteristic of historical significance of the Historic Landmark in no less than equal to the condition of the property as of May 31, 1996, the date on which OWNER acquired the property. OWNER shall document the existing condition of the Historic Landmark by providing to CITY on the Effective Date a minimum of four (4) current and clear photographs of each elevation of the Historic Landmark structure, of any character-defining or historically significant features of the Historic Landmark structure or property, and of any areas of the Historic Landmark for which improvements are planned or intended by OWNER. Attached hereto as Exhibit "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Landmark, which shall apply to such property and with which OWNER shall comply throughout the term of this Agreement.

b. OWNER shall, where necessary or required, restore and rehabilitate the property in full accordance with the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation and with the requirements of Chapter 13.48 of the San Jose Municipal Code, including any permits or approvals granted pursuant to that Chapter. Without limiting the forgoing, OWNER shall perform all of the restoration and rehabilitation activities of the Historic Landmark set forth on Exhibit "C," attached hereto and incorporated herein by this reference, within any timelines that may be set forth in Exhibit C.

c. OWNER shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Landmark by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization and CITY as may be necessary to determine OWNER's compliance with the terms and provisions of this Agreement.

d. OWNER shall annually expend an amount equal to a minimum of 10% of the annual tax savings attributed to this Agreement for the preservation and maintenance of the Historic Landmark.

4. Force Majeure. OWNER shall not be held responsible for repair or replacement of the Historic Landmark if damaged or destroyed through "Acts of God," such as flood, tornado, lightning, earthquake or fire or other cause resulting therefrom; CITY shall, however, have the right to cancel this Agreement pursuant to terms of Section 6, Cancellation.

5. Provisions of Information of Compliance. OWNER hereby agrees to furnish CITY with any and all information requested by CITY that may be necessary or advisable to determine compliance with the terms and provisions of this Agreement. OWNER shall retain, store and preserve during the term of this Agreement all records that are related to or that evidence the eligibility of the Historic Landmark or OWNER's compliance with the terms and provisions of this Agreement.

6. Cancellation. CITY, following a duly noticed public hearing, may cancel this Agreement if it determines that OWNER 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 landmark. CITY also may cancel this Agreement if it determines that OWNER has failed to restore or rehabilitate the property or Historic Landmark in the manner specified in Subsection 3(b) of this Agreement. In the event of cancellation pursuant to this Section 6, OWNER may be subject to payment of those cancellation fees set forth in the California Government Code. Prior to any procedures set forth in this Section, CITY shall give notice of breach to OWNER and OWNER shall have one hundred and twenty (120) days to cure such breach to the reasonable satisfaction of CITY.

7. Binding Effect of Agreement. This Agreement shall be binding upon, and inure to the benefit of, all successors in interest of OWNER. A successor in interest shall have the same rights and obligations under this Agreement as OWNER.

8. Notice. Any notice required to be given by the terms 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.

CITY: City Clerk
City of San José
200 East Santa Clara Street
San José, CA 95113

OWNER: André and Lani Luthard
202 S. Fourteenth Street
San Jose, CA 95112

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 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. OWNER agrees to and shall hold CITY and its elected officials, officers, agents and employees harmless from liability from damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct use or operations of OWNER or those of OWNER's contractor, subcontractor, agent, employee or other person acting on OWNER's behalf which relate to the use, operation and maintenance of the Historic Landmark. OWNER hereby agrees to and shall defend the CITY 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 Historic Landmark. 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 regardless of whether or not the CITY prepared, supplied or approved the plans, specifications or other documents for the Historic Landmark.

c. 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.

“CITY”

CITY OF SAN JOSE, a municipal corporation

APPROVED AS TO FORM:

RENÉE A. GURZA
Senior Deputy City Attorney

By _____
LEE PRICE, MMC
City Clerk

“OWNER”

By _____
André Luthard

By _____
Lani Luthard

EXHIBIT "A"

**LEGAL DESCRIPTION
FOR
202 S. Fourteenth Street
(See attached)**

EXHIBIT "B"

OWNER shall, where necessary, restore and rehabilitate the Historic Landmark and shall do so only in full accordance and compliance with the rules and regulations of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, as the same may be amended from time to time.

A summary of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (the "Standards") is provided below for convenient reference. OWNER shall comply with the Standards in effect when OWNER commences any rehabilitation or restoration work on the Historic Landmark.

The Standards (Department of the Interior Regulations, 36 CFR 67) pertain to historic buildings of all materials, construction, types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

- 1) A property shall be used for its historic purposes or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- 2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- 3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural element from other buildings, shall not be undertaken.
- 4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- 5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- 6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.

- 7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials, shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- 8) Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- 9) New additions, exterior alterations or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- 10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**Historical Property Contract, File No. MA08-002
Preservation Plan (Exhibit "C")**

202 S. Fourteenth Street, Slettedahl House

OWNER shall annually expend the amount equal to a minimum of 10% of the annual tax savings attributed to this Agreement for the preservation and maintenance of the Historic Landmark. The rehabilitation of the Historic Landmark shall be completed on or before the 10th anniversary of the Effective Date of this Agreement. Such rehabilitation shall include all of the following tasks:

Scope of Work

Year	Description
One	Restore baseboard and built-in sideboard. Repaint dining room, foyer, stairwell and upstairs hallway.
Two	Repair and rehabilitation of west facing wood windows outside of living room and family room.
Three	Interior foundation repair and structural improvements.
Four	Repair exterior roof eaves and fascia.
Five	Replace roof.
Six	Repaint exterior.
Seven	Upgrade electrical in office.
Eight	Replace wood burning fireplace with gas unit and relocate water heater flue.
Nine	Plumbing upgrades in upstairs bathroom.
Ten	Repair/rehabilitate south facing windows in family room, upstairs bathroom and master bedroom.

After the 10th Anniversary date of the Effective Date of this Agreement, Owner shall annually expend an amount equal to a minimum of 10% of the annual tax savings attributed to this Agreement for the continued preservation and maintenance of the historic Landmark and more specifically shall perform and complete but without limitation the following tasks each year:

- Maintenance
- Painting
- Repairs

Description:

The land referred to herein is situated in the State of California, County of Santa Clara, City of San Jose, and is described as follows:

BEGINNING AT THE POINT OF INTERSECTION OF THE EASTERLY LINE OF FOURTEENTH STREET, FORMERLY PRIEST STREET, WITH THE SOUTHERLY LINE OF SAN ANTONIO STREET, AND RUNNING THENCE SOUTHEASTERLY ALONG THE SAID EASTERLY LINE OF FOURTEENTH STREET, 51.61 FEET; THENCE AT RIGHT ANGLES NORTHEASTERLY 127.96 FEET; THENCE AT RIGHT ANGLES NORTHWESTERLY 51.61 FEET TO THE SAID SOUTHERLY LINE OF SAN ANTONIO STREET, AND THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY LINE OF SAN ANTONIO STREET, 127.96 FEET TO THE POINT OF BEGINNING AND BEING ALL OF LOT 12 IN BLOCK 56, AS SHOWN AND DELINEATED UPON THAT CERTAIN MAP ENTITLED "MAP OF THE NAGLEE PARK TRACT SURVEY NO. 2" AND WHICH SAID MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN VOL. "K" OF MAPS, PAGE 41.

APN: 467-40-009

EXHIBIT A

202 S. 14th ST. SAN JOSE, CA

RESOLUTION NO.

**RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ
DESIGNATING, PURSUANT TO THE PROVISIONS OF CHAPTER 13.48 OF
TITLE 13 OF THE SAN JOSÉ MUNICIPAL CODE, THE FOSTER HOUSE
LOCATED AT 198 S. THIRTEENTH STREET AS A CITY LANDMARK OF
SPECIAL HISTORICAL, ARCHITECTURAL, CULTURAL, AESTHETIC OR
ENGINEERING INTEREST OR VALUE OF A HISTORIC NATURE**

HL08-168

WHEREAS, Chapter 13.48 of Title 13 of the San José Municipal Code provides for the designation of structures and/or sites of special historical, architectural, cultural, aesthetic or engineering interest or value of a historical nature as landmarks by the City Council of the City of San José; and

WHEREAS, said Chapter 13.48 of Title 13 provides that any historic property can be nominated for designation as a City Landmark by the City Council, the Historic Landmarks Commission, or by application of the owner or the authorized agent of the owner of the property for which designation is requested; and

WHEREAS, the City Council, upon application of the owner of the property, adopted Resolution No. 74488 on June 24, 2008, initiating proceedings pursuant to said Chapter 13.48 of Title 13 for consideration of such landmark designation; and

WHEREAS, said Chapter 13.48 of Title 13 provides that before this Council may designate any building as a landmark, it shall hold at least one public hearing on such proposed designation, and that before it holds said public hearing, the Council shall refer said proposed designation to the Historic Landmarks Commission of the City of San José for its consideration at a public hearing and for its report and recommendation thereon; and

WHEREAS, within the time and in the manner provided by Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on August 6, 2008 at 6:00 p.m., conduct a public hearing on said landmark designation and recommend approval of the designation of the Foster House, located at 198 S. Thirteenth Street, described hereinafter in Section 1 of this Resolution, as a landmark of special historical,

File No. HL08-168
Reso. No.

architectural, cultural, aesthetic or engineering interest or value of a historic nature, and made certain findings with respect thereto; and

WHEREAS, a copy of the City of San José Historic Landmark Nomination Form No. HL08-168 upon which such recommendation was made is on file in the Planning Division of the City of San José and available for review; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council gave notice that on September 9, 2008 at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said landmark designation, at which hearing any and all persons interested in said proposed designation could appear and avail themselves of an opportunity to be heard and to present their views with respect to said proposed designation; and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard to present their views with respect to said proposed landmark designation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ AS FOLLOWS:

SECTION 1. In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Historic Preservation Ordinance, this Council does hereby designate the hereinafter described Foster House, located at 198 S. Thirteenth Street, as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.

SECTION 2. Said designation is based on the following criterion of the Historic Preservation Ordinance:

- Criterion (1), for its contribution to the setting of the Naglee Park Conservation Area.

File No. HL08-168
Reso. No.

SECTION 3. The City Clerk is hereby directed to notify those persons designated in San José Municipal Code Section 13.48.110, Subsection L, in the manner specified by said Section and to direct the recordation of a Notice of Granting of this resolution in the Office of the Recorder of the County of Santa Clara.

PASSED FOR PUBLICATION of title this 9th day of September, 2008 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

Exhibit "A" attached:
Legal Description

RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ
APPROVING A HISTORIC LANDMARK PRESERVATION AGREEMENT
WITH MICHAEL AND GWENDOLYN JENNINGS FOR THE FOSTER
HOUSE (CITY LANDMARK NO. HL08-168)**

MA08-002

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

WHEREAS, California Government Code Section 50280, et seq. and Chapter 13.48 of Title 13 of the San José Municipal Code authorize the City of San José to enter into agreements with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so to retain its characteristics as property of historical significance; and

WHEREAS, Michael and Gwendolyn Jennings possesses fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 198 S. Thirteenth Street, City Landmark No. HL08-168 (hereinafter referred to as the "Historic Landmark") and

WHEREAS, on September 9, 2008 the City Council of the City of San José adopted its Resolution No. _____ thereby declaring and designating the Historic Landmark as a historic landmark structure pursuant to the terms and provisions of Chapter 13.48 of the San José Municipal Code; and

WHEREAS, the City of San José and Michael and Gwendolyn Jennings, for their mutual benefit, now desire to enter into an agreement both to protect and preserve the characteristics of historical significance of the Historic Landmark and to qualify the Historic Landmark for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on August 6, 2008 at 6:00 p.m., conduct a public hearing on a Historic Landmark Preservation Agreement for the Historic Landmark and recommend approval of that agreement (hereinafter "Agreement"); and

WHEREAS, a copy of the Agreement upon which such recommendation was made is on file in the Office of the City Clerk of the City of San José; and

WHEREAS, the subject property upon which the Historic Landmark is situated is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council did give notice that on September 9, 2008 at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said Agreement at which hearing any and all persons interested in said Agreement could appear and avail themselves of an opportunity to be heard and to present their views with respect to said proposed Agreement; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard to present their views with respect to said proposed Agreement.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ THAT:

SECTION 1. In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, this Council does hereby approve the Historic Landmark Preservation Agreement with Michael and Gwendolyn Jennings, owner of the Foster House (City Landmark No. HL08-168) located at 198 S. Thirteenth Street and makes the following findings:

- a. The Agreement is consistent with the General Plan, in that the proposed Contract is consistent with General Plan Historic, Archeological and Cultural Resources Policies that state that the City should utilize a variety of techniques and measures to serve as incentives toward fostering the rehabilitation of individual buildings and districts of historic significance
- b. The Agreement would provide greater protection for the Historic Landmark property than is otherwise provided by the provisions of San José Municipal

Code Chapter 13.48 in that the owner, in partnership with the City, may use property tax relief to rehabilitate and maintain the property in accordance with the preservation plan, Exhibit "C" of the contract; and

- c. The Agreement complies with the requirements of Section 13.48.520 of Chapter 13.48 of Title 13 of the San José Municipal Code. Contracts incorporate the Municipal Code's required provisions for Historic Property Contracts, including the following: A description of the Landmark Property subject to the Contract, a provision that the term of the Contract is a minimum period of ten years, specific conditions requiring preservation of the Landmark, provision for the periodic examination of property, and a requirement that the property owner annually expend an amount equal to a minimum of 10% of the annual tax savings resulting from the Contract, and a provision that the Contract is binding upon – and shall inure to the benefit of – all successors in interest of the owners in the property.

SECTION 2. Pursuant to the San José Municipal Code, Chapter 13.48, the City Clerk is hereby directed to notify the owner of the Historic Landmark subject to the Agreement and directed to record the Agreement in the Office of the Recorder of the County of Santa Clara.

ADOPTED this 9th day of September, 2008, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

Exhibit "A" attached:
Legal Description

Historic Property Contract

Project Location: 198 S. 13th Street, San Jose, CA.95112

APN#: 467-27-058

Project Name &

Reference File # : MA 08-002

OWNER shall annually expend an amount equal to a minimum of 10% of the tax savings attributed to this Agreement for the preservation and maintenance of the Historic Landmark. The rehabilitation of the Historic Landmark shall be completed on or before the 10th anniversary of the Effective Date of this Agreement, And such rehabilitation shall include the following tasks:

Proposal for Preservation Plan, Exhibit C

We propose to do the following over the next 10 years for the preservation and maintenance of 198 S. 13th Street, San Jose, Ca.

Repair and re-paint exterior wood trim

Repair or rehabilitate broken windows

Re-paint exterior of house

Restore 2 original front doors

Repair roof if needed

Perform any plumbing and electrical repairs to maintain the house in working order

Repair foundation if damaged in the next 10 years

DRAFT

HISTORIC LANDMARK PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the City of San Jose, a municipal corporation (hereinafter referred to as the "CITY") and Michael and Gwendolyn Jennings (hereinafter referred to as the "OWNER").

RECITALS

WHEREAS, California Government Code Section 50280, et seq. and Chapter 13.48 of the San Jose Municipal Code authorize CITY to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so to retain its characteristics as property of historical significance; and

WHEREAS, OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, the Foster House (City Landmark Number HL08-168), located at 198 S. Thirteenth Street (hereinafter such property shall be referred to as the "Historic Landmark"). A legal description of the Historic Landmark is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, on September 9, 2008 the City Council of the City of San Jose adopted a Resolution thereby declaring and designating the Historic Landmark as a historic landmark structure pursuant to the terms and provisions of Chapter 13.48 of the San Jose Municipal Code; and

WHEREAS, CITY and OWNER for the mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristic of historical significance of the Historic Landmark and to qualify the Historic Landmark for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

AGREEMENT

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

- 1. Effective Date and Term of Agreement.** This Agreement shall be effective and commence on _____, 2008 (the "Effective Date"), 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 will automatically be extended as provided in Section 2, below.
- 2. 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 mailed as provided herein. If either OWNER or CITY desires in any year not to renew the Agreement, OWNER or CITY 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 CITY at least ninety (90) days prior to the annual Renewal Date, or served by CITY 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 CITY, OWNER may make a written protest of the non-renewal. CITY may, at any time prior to the annual Renewal Date of the Agreement, withdraw its notice to OWNER of nonrenewal. If either CITY or OWNER serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect and the property shall remain enforceably restricted for the balance of the term then remaining, either from its original execution or from the past renewal of the Agreement, whichever may apply. The Director of Planning, Building and Code Enforcement shall record the Notice of Nonrenewal and file a copy with the Assessor of Santa Clara County. Nonrenewal shall not be deemed a cancellation pursuant to Section 6 of this Agreement.

3. Standards for Historical Property. During the term of this Agreement, the Historic Landmark shall be subject to the following conditions, requirements and restrictions:

a. OWNER shall preserve and maintain the characteristic of historical significance of the Historic Landmark in no less than equal to the condition of the property as of May 24, 1990, the date on which OWNER acquired the property. OWNER shall document the existing condition of the Historic Landmark by providing to CITY on the Effective Date a minimum of four (4) current and clear photographs of each elevation of the Historic Landmark structure, of any character-defining or historically significant features of the Historic Landmark structure or property, and of any areas of the Historic Landmark for which improvements are planned or intended by OWNER. Attached hereto as Exhibit "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Landmark, which shall apply to such property and with which OWNER shall comply throughout the term of this Agreement.

b. OWNER shall, where necessary or required, restore and rehabilitate the property in full accordance with the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation and with the requirements of Chapter 13.48 of the San Jose Municipal Code, including any permits or approvals granted pursuant to that Chapter. Without limiting the forgoing, OWNER shall perform all of the restoration and rehabilitation activities of the Historic Landmark set forth on Exhibit "C," attached hereto and incorporated herein by this reference, within any timelines that may be set forth in Exhibit C.

c. OWNER shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Landmark by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization and CITY as may be necessary to determine OWNER's compliance with the terms and provisions of this Agreement.

d. OWNER shall annually expend an amount equal to a minimum of 10% of the annual tax savings attributed to this Agreement for the preservation and maintenance of the Historic Landmark.

4. Force Majeure. OWNER shall not be held responsible for repair or replacement of the Historic Landmark if damaged or destroyed through "Acts of God," such as flood, tornado, lightning, earthquake or fire or other cause resulting therefrom; CITY shall, however, have the right to cancel this Agreement pursuant to terms of Section 6, Cancellation.

5. Provisions of Information of Compliance. OWNER hereby agrees to furnish CITY with any and all information requested by CITY that may be necessary or advisable to determine compliance with the terms and provisions of this Agreement. OWNER shall retain, store and preserve during the term of this Agreement all records that are related to or that evidence the eligibility of the Historic Landmark or OWNER's compliance with the terms and provisions of this Agreement.

6. Cancellation. CITY, following a duly noticed public hearing, may cancel this Agreement if it determines that OWNER 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 landmark. CITY also may cancel this Agreement if it determines that OWNER has failed to restore or rehabilitate the property or Historic Landmark in the manner specified in Subsection 3(b) of this Agreement. In the event of cancellation pursuant to this Section 6, OWNER may be subject to payment of those cancellation fees set forth in the California Government Code. Prior to any procedures set forth in this Section, CITY shall give notice of breach to OWNER and OWNER shall have one hundred and twenty (120) days to cure such breach to the reasonable satisfaction of CITY.

7. Binding Effect of Agreement. This Agreement shall be binding upon, and inure to the benefit of, all successors in interest of OWNER. A successor in interest shall have the same rights and obligations under this Agreement as OWNER.

8. Notice. Any notice required to be given by the terms 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.

CITY: City Clerk
City of San José
200 East Santa Clara Street
San José, CA 95113

OWNER: Michael and Gwendolyn Jennings
198 S. Thirteenth Street
San Jose, CA 95112

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 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. OWNER agrees to and shall hold CITY and its elected officials, officers, agents and employees harmless from liability from damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct use or operations of OWNER or those of OWNER's contractor, subcontractor, agent, employee or other person acting on OWNER's behalf which relate to the use, operation and maintenance of the Historic Landmark. OWNER hereby agrees to and shall defend the CITY 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 Historic Landmark. 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 regardless of whether or not the CITY prepared, supplied or approved the plans, specifications or other documents for the Historic Landmark.

c. 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.

“CITY”

CITY OF SAN JOSE, a municipal corporation

APPROVED AS TO FORM:

RENÉE A. GURZA
Senior Deputy City Attorney

By _____
LEE PRICE, MMC
City Clerk

“OWNER”

By _____
Michael Jennings

By _____
Gwendolyn Jennings

EXHIBIT "A"

**LEGAL DESCRIPTION
FOR
198 S. Thirteenth Street
(See attached)**

EXHIBIT "B"

OWNER shall, where necessary, restore and rehabilitate the Historic Landmark and shall do so only in full accordance and compliance with the rules and regulations of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, as the same may be amended from time to time.

A summary of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (the "Standards") is provided below for convenient reference. OWNER shall comply with the Standards in effect when OWNER commences any rehabilitation or restoration work on the Historic Landmark.

The Standards (Department of the Interior Regulations, 36 CFR 67) pertain to historic buildings of all materials, construction, types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

- 1) A property shall be used for its historic purposes or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- 2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- 3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural element from other buildings, shall not be undertaken.
- 4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- 5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- 6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.

- 7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials, shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- 8) Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- 9) New additions, exterior alterations or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- 10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**Historical Property Contract, File No. MA08-002
Preservation Plan (Exhibit "C")**

198 S. Thirteenth Street, Foster House

OWNER shall annually expend the amount equal to a minimum of 10% of the annual tax savings attributed to this Agreement for the preservation and maintenance of the Historic Landmark. The rehabilitation of the Historic Landmark shall be completed on or before the 10th anniversary of the Effective Date of this Agreement. Such rehabilitation shall include all of the following tasks:

Scope of Work

- Repair and re-paint exterior wood trim
- Repair or rehabilitate broken windows
- Re-paint exterior of house
- Restore two (2) original front doors
- Repair roof if needed
- Perform any plumbing and electrical repairs to maintain the house in working order
- Repair foundation if damaged in the next ten (10) years

After the 10th Anniversary date of the Effective Date of this Agreement, Owner shall annually expend an amount equal to a minimum of 10% of the annual tax savings attributed to this Agreement for the continued preservation and maintenance of the historic Landmark and more specifically shall perform and complete but without limitation the following tasks each year:

- Maintenance
- Painting
- Repairs