HISTORIC LANDMARK PRESERVATION AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2012, by and between the City of San Jose, a municipal corporation (hereinafter referred to as the "CITY") and Deborah Arant and Richard Nieset (hereinafter referred to as the "OWNER").

R E C I T A L S

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 owner of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as 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, known as the Pomeroy House (CITY Landmark Number HL12-208), located at 225 Sequoia Avenue (hereinafter such property and structures shall be referred to as the "Historic Landmark" or the "Historic Landmark Property"), and a legal description of the Historic Landmark Property is attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, on November 27, 2012, the City Council of CITY 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 José Municipal Code; and

WHEREAS, CITY and OWNER for their mutual benefit, now desire to enter into this 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.

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 November 27, 2012 (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, subject to cancellation as provided in Section 6 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 OWNER desires in any year to not renew the Agreement, OWNER shall serve written notice of nonrenewal of this Agreement on CITY in advance of the annual Renewal Date of this Agreement. Unless such notice is served by OWNER to CITY at least ninety (90) days prior to the annual Renewal Date, one (1) year shall automatically be added to the term of the Agreement as provided herein. If OWNER serves notice to CITY of nonrenewal in any year, the Agreement shall remain in effect, and the Historic Landmark 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 characteristics of historical significance of the Historic Landmark in no less than equal to the condition of the Historic Landmark Property as of November 27, 2012. OWNER of the Historic Landmark Property shall allow CITY to inspect the interior and exterior of the Historic Landmark Property to determine with OWNER the specific conditions of the Historic Landmark Property requiring preservation, restoration and/or rehabilitation to conform to 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 Standards for Rehabilitation, the California State Historical Building Code, and the requirements of CITY as of the Effective Date. 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 Historic Landmark Property and with which OWNER shall comply fully throughout the term of this Agreement.

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

c. OWNER shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Landmark Property by CITY and

the County of Santa Clara as may be necessary to determine OWNER's compliance with this Agreement, which periodic examinations shall occur at least five (5) years after the Effective Date of this original Agreement and then at least every five (5) years thereafter.

d. OWNER shall annually expend an amount equal to a minimum of ten percent (10%) of the tax savings attributed to this Agreement to the preservation and maintenance of the Historic Landmark Property, and make this documentation available to the CITY at the time of the respective periodic examination described above.

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 pubic hearing, may cancel this Agreement or bring any action in court necessary to enforce this Agreement (including without limitation an action to enforce this Agreement by specific performance or injunction) if it has been determined by enforcement staff with CITY’s Planning, Building and Code Enforcement Department that OWNER has breached any of the provisions or conditions of this Agreement, has allowed the Historic Landmark Property to deteriorate to the point that it no longer meets the standards for a qualified historical

property, or has otherwise failed to restore or rehabilitate the Historic Landmark Property or Historic Landmark in the manner specified in 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:	Deborah Arant and Richard Nieset 225 Sequoia Avenue San José, CA 95126

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

By _____
DENNIS D. HAWKINS, CMC
City Clerk

APPROVED AS TO FORM:

_____
RENÉE A. GURZA
Senior Deputy City Attorney

"OWNER"

By _____
Deborah Arant

"OWNER"

By _____
Richard Nieset

EXHIBIT "A"

LEGAL DESCRIPTION
FOR
POMEROY HOUSE
225 SEQUOIA AVENUE
MA12-008

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

LOTS 11 AND 12, IN BLOCK 12, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE HANCHETT RESIDENCE PARK, ADJACENT TO THE CITY OF SAN JOSE, CALIFORNIA, SURVEYED JUNE 1906, BY CURTIS M. BARKER, SURVEYOR AND C.E., SAN JOSE, CAL." WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON DECEMBER 4, 1906, IN BOOK L OF MAPS, PAGE 53.

APN: 261-24-035

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

Historical Property Contract, File No. MA12-008
Preservation Plan (Exhibit "C")
POMEROY HOUSE – 225 SEQUOIA AVENUE
City Landmark No. HL12-208

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 all of the following tasks.

Year	Description
One	Exterior painting
Two	Hardware restoration
Three	Re-roofing flat roof sections and scupper repair
Four	Tile fireplace repair
Five	Clay tile roof repair
Six	Window restoration
Seven	Window box and exterior trim restoration and painting
Eight	Gate and Iron work restoration on main gate and balconets
Nine	Exterior stucco and masonry repairs
Ten	Re-paint exterior

After the 10th Anniversary date of the Effective Date of this Agreement, OWNER shall expend an amount to a minimum of 10% of the 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

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.