

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSE APPROVING A HISTORICAL PROPERTY  
CONTRACT WITH OAKMONT OF EVERGREEN, LLC,  
FOR THE SMITH HOUSE LOCATED ON A 0.44-GROSS  
ACRE SITE AT 3556 SAN FELIPE ROAD**

**File No. MA19-004**

**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 owner 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**, Oakmont of Evergreen, LLC, possesses fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 3556 San Felipe Road, (hereinafter referred to as the "Historic Landmark") and

**WHEREAS**, the subject property upon which the Historical 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**, the City of San José and Oakmont of Evergreen, LLC, for their mutual benefit, now desire to enter into an agreement both to protect and preserve the characteristics of historical significance of the Historical Landmark and to qualify the Historical 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 May 6, 2020 at 6:30 p.m., conduct a public hearing on a Historical Property Contract for the Historical Landmark attached hereto as Exhibit “B” (hereinafter “Agreement”); and the Historic Landmarks Commission recommended to approve the 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**, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council did give notice that on June 9, 2020 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 virtual public hearing on said Agreement at which hearing any and all persons interested in said Agreement could participate 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 (at City Hall or virtually) 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 COUNCIL OF THE CITY OF SAN JOSE 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 Historical Property Contract with Oakmont of Evergreen, LLC, owner of the Smith House located at 3556 San Felipe Road and makes the following findings:

- A. The Agreement is consistent with the General Plan, in that preservation of specific structures or special areas is a part of the Envision San José 2040 General Plan Historic Preservation Policies LU-13 and LU13.13, to foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance; utilize incentives permitting flexibility as to their uses; transfer of development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives; and
  
- B. The Agreement would provide greater protection for the Historical 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 Agreement; and
  
- C. The Agreement complies with the requirements of Section 13.48.520 of Chapter 13.48, Part 4 of Title 13 of the San José Municipal Code, and incorporates the Municipal Code’s required provisions for Historical Property Contracts including the following:
  - 1. A description of the Landmark Property subject to the Agreement;
  - 2. A provision that the term of the Agreement is a minimum period of ten years;
  - 3. Specific conditions requiring preservation of the Landmark;
  - 4. Provision for the periodic examination of property;
  - 5. A requirement that the property owner annually expend an amount equal to the annual tax savings resulting from the Contract; and

6. A provision that the Agreement is binding upon—and shall inure to the benefit of—all successors in interest of the owner 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 Historical 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 \_\_\_\_\_ day of \_\_\_\_\_ 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI TABER, CMC  
City Clerk

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**FOR**  
**Smith House**  
**3556 San Felipe Road**  
**APN: 659-04-056**

EXHIBIT A

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND BEING THE LANDS OF OAKMONT OF EVERGREEN, LLC, AS DESCRIBED IN DOCUMENT NUMBER 23671884 SANTA CLARA COUNTY RECORD, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND 3/4" IRON PIPE WITH BRASS TAG SHOWN ON THE RECORD OF SURVEY RECORDED IN BOOK 208 OF MAPS PAGE 38, SANTA CLARA COUNTY RECORDS, SAID PIPE BEING AT THE INTERSECTION OF THE NORTH LINE OF THE LANDS OF FRED DELLA MAGGIORE AND A LINE SHOWN AS "FUTURE STREET LINE", SAID LINE BEING PARALLEL AND DISTANT 60 FEET, MEASURED AT RIGHT ANGLES, TO THE CENTERLINE OF SAN FELIPE ROAD, FROM WHICH SAID PIPE A FOUND 3/4" IRON PIPE WITH WOOD PLUG NAIL BEARS NORTH 52°03'33" EAST 380.03 FEET (MAP=380.02 FEET); THENCE ALONG THE NORTH LINE OF SAID LANDS OF MAGGIORE SOUTH 79°47'29" WEST 18.79 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAN FELIPE ROAD, SAID POINT BEING THE SOUTHEASTERLY CORNER OF THE LANDS OF THE COUNTY OF SANTA CLARA AS DESCRIBED BY DEED RECORDED JULY 21, 1982 AS DOCUMENT NUMBER 7393981, SANTA CLARA COUNTY RECORDS, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE NORTHEASTERLY LINE OF SAN FELIPE ROAD NORTH 52°03'33" WEST 147.07 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE NORTH 37°56'27" EAST 56.61 FEET; THENCE NORTH 87°03'11" EAST 65.17 FEET; THENCE SOUTH 70°35'08" EAST 19.86 FEET; THENCE NORTH 79°13'54" EAST 18.92 FEET; THENCE SOUTH 28°07'49" EAST 62.11 FEET; THENCE SOUTH 61°52'11" WEST 11.06 FEET; THENCE SOUTH 28°08'21" EAST 96.15 FEET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 70.00 FEET, A CENTRAL ANGLE OF 25°33'26", AN ARC DISTANCE OF 31.22 FEET TO THE NORTH LINE OF THE LANDS OF CORTEZ FAMILY TRUST RECORDED JUNE 25, 2008 AS DOCUMENT NUMBER 19897261; THENCE ALONG SAID NORTH LINE SOUTH 80°43'47" WEST 52.71 FEET TO THE NORTHEASTERLY LINE OF SAN FELIPE ROAD AS DESCRIBED BY DEED RECORDED JULY 21, 1982 AS DOCUMENT NUMBER 7393982; THENCE ALONG THE NORTHEASTERLY LINE OF SAN FELIPE ROAD THE FOLLOWING TWO COURSES: ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 989.00 FEET, A RADIAL POINT WHICH BEARS NORTH 35°34'21" EAST, A CENTRAL ANGLE OF 2°22'11", AN ARC DISTANCE OF 40.90 FEET; THENCE NORTH 52°03'33" WEST 27.37 FEET MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING 19,093 SQUARE FEET MORE OR LESS

APN: PTN 659-04-056

DATE: OCTOBER 10, 2019

PREPARED BY: BRELJE & RACE, CONSULTING ENGINEERS

JOB NO.: 4259.02

Exhibit A

**EXHIBIT “B”**  
**HISTORICAL PROPERTY CONTRACT**  
**FOR**  
**SMITH HOUSE**  
**3556 San Felipe Road**  
**File No. MA19-004**

THIS AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of San José, a municipal corporation (hereinafter referred to as the “CITY”) and Oakmont of Evergreen, LLC (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 José 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 Smith House located at 3556 San Felipe Road (hereinafter such property and structures shall be referred to as the “Historical Landmark” or the “Historical Landmark Property”), and a legal description of the Historical Landmark Property is attached hereto as Exhibit “A” and incorporated herein by this reference; 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 Historical Landmark and to qualify the Historical Landmark for an assessment of

Exhibit B-1

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 \_\_\_\_\_ (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 serve notice to CITY of nonrenewal in any year, the Agreement shall remain in effect, and the Historical 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.

Exhibit B-2

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

a. OWNER shall preserve and maintain the characteristics of historical significance of the Historical Landmark in no less than equal to the condition of the Historical Landmark Property as of \_\_\_\_\_. OWNER of the Historical Landmark Property shall allow CITY to inspect the interior and exterior of the Historical Landmark Property to determine with OWNER the specific conditions of the Historical 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 Historical Landmark, which shall apply to such Historical 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 Historical 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 José Municipal Code. Without limiting the forgoing, OWNER shall perform all of the restoration and rehabilitation activities of the Historical 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 Historical Landmark Property by CITY

Exhibit B-3



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 the tax savings attributed to this Agreement to the preservation and maintenance of the Historical 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 Historical 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 agree 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 Historical 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 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 have breached any of the provisions or conditions of this Agreement, has allowed the Historical Landmark Property to deteriorate to the point that it no longer meets the standards for a qualified

Exhibit B-4

historical property, or has otherwise failed to restore or rehabilitate the Historical Landmark Property or Historical 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, 14<sup>th</sup> Floor Tower  
San José, CA 95113

OWNER: Bill Mabry  
Oakmont of Evergreen, LLC  
9240 Old Redwood Highway, #200  
Windsor, CA 95492

**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 agree to and shall hold CITY and its elected officials, officers, agents and employees harmless from liability from damage or claims for

Exhibit B-5

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 Historical Landmark. OWNER hereby agree 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 Historical 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 Historical 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.

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Exhibit B-6

RD:RLT:JMD  
5/27/2020

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Exhibit B-7

T-509/1708572\_2  
Council Agenda: 06-09-2020  
Item No.: 10.1(a)(2)

**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**

APPROVED AS TO FORM:

\_\_\_\_\_  
ROSA TSONGTAATARRII  
Senior Deputy City Attorney

**“CITY”**

CITY OF SAN JOSE, a municipal  
corporation

By \_\_\_\_\_  
TONI TABER, CMC  
City Clerk

**“OWNER”**

By \_\_\_\_\_  
OAKMONT OF EVERGREEN, LLC  
Property Owner

Exhibit B-8

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**The Smith House  
3556 San Felipe Road**

**APN: 659-04-056**

EXHIBIT A

ALL THAT REAL PROPERTY SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND BEING THE LANDS OF OAKMONT OF EVERGREEN, LLC, AS DESCRIBED IN DOCUMENT NUMBER 23671884 SANTA CLARA COUNTY RECORD, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING 19,093 SQUARE FEET MORE OR LESS

APN: PTN 659-04-056

DATE: OCTOBER 10, 2019

PREPARED BY: BRELJE & RACE, CONSULTING ENGINEERS

JOB NO.: 4259.02

Exhibit B-9

## EXHIBIT "B"

### MINIMUM STANDARDS AND CONDITIONS FOR MAINTENANCE, USE AND PRESERVATION OF THE HISTORICAL LANDMARK

OWNER shall, where necessary, restore and rehabilitate the Historical 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 commence any rehabilitation or restoration work on the Historical 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.

Exhibit B-10

- 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.



**EXHIBIT “C”  
PRESERVATION PLAN  
FOR  
SMITH HOUSE  
3556 San Felipe Road**

**File No. MA19-004  
APN: 659-04-056**

OWNER shall annually expend tax savings attributed to this Agreement for the preservation and maintenance of the Historical Landmark. The rehabilitation of the Historical 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:

**Scope of Work**

<b>Year</b>	<b>Description</b>
1	Installation of Historic site plaque and interpretive displays near public right of way
2	Foundation, utility connections and exterior structural repairs
3	Roof and exterior siding repairs
4	Interior restoration, repairs, and rehabilitation of character-defining features
5	Front porch repairs and wood windows restoration and maintenance
6	Electrical and plumbing upgrades
7	Maintain and repair as needed ancillary structures and landscaping
8	Repair and maintain front and rear porch, rails and steps
9	Exterior painting and maintenance
10	Roof repairs and maintenance

All work shall comply with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and “*Your Old House* guide for preserving San José Homes.”

After the 10th Anniversary date of the Effective Date of this Agreement, the property owner shall expend tax savings attributed to this Agreement for the continued preservation and maintenance of the Historic Landmark. More specifically, the property owner shall perform and complete, without limitation, the following tasks each year: Maintenance, Painting, and Repairs.

Exhibit B-12

T-509/1708572\_2  
Council Agenda: 06-09-2020  
Item No.: 10.1(a)(2)

**DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for final document.**