





**PRESERVATION COVENANT**  
**2000 Allston Way, Berkeley, CA**

In consideration of the conveyance of certain real property and the buildings thereon, located at 2000 Allston Way in the City of Berkeley, the County of Alameda, State of California, as more fully described in Exhibit A attached ("Property"), [XXX] ("Grantor") and the United States Postal Service ("USPS" or "Grantee") agree as follows.

**RECITALS**

- A. The Property was originally developed in 1914 and has been used as the Berkeley Main Post Office.
- B. The Property is located in an urban setting within downtown Berkeley's Civic Center District, on an approximately 1.11 acre corner lot bounded by Allston Way to the front (to the north), Kittredge Street to the rear (to the south), Milvia Street to the street side (to the west), and adjacent lot line to the interior side (to the east). The reinforced concrete Second Renaissance Revival-style Berkeley Main Post Office building, which was built in 1914, is rectangular in plan: front section (customer lobby, offices, and part of work area) facing Allston Way, two stories plus basement, with hipped red tile roof; and rear section extending south along Milvia Street one-story plus basement, with flat roof (northernmost 35 feet original; southward addition c.1932). A historic period rear addition was built in 1932. A mural by Suzanne Scheuer was added to the lobby in 1936 and completed in 1937 and depicts an allegory of the life in Berkeley in the Mission, rancho, and early American eras. A limestone bas-relief sculpture by artist David Slivka was added in 1937 that commemorated the contributions of postal workers. The Property was designated a City of Berkeley Landmark in 1980, and was listed on the National Register of Historic Places in 1981. It is also a contributor to the City of Berkeley's designated Civic Center Historic District.
- C.       1. The historic exterior features of the Property are determined to be the following: height, mass and scale of building; hipped roof sheathed in tile with wide overhang; exterior siding, including poured concrete, limestone, terra cotta trim, and rusticated cast blocks at corners; rounded corners of two-story portion of building on all four sides; arcade of eleven high round arches on plain Tuscan columns; loggia with groin vaults; marble on floor and wainscot of loggia; original oak frame pane arches with functioning transom windows; original double-hung windows with panes grouped in 3 vertical divisions; low cement windowsills with wave decoration; ornate groove along the top of the exterior walls; pilasters along the primary façade; pilasters flanking the entrance doors; entrance doors—three sets of paired oak and glass doors with brass fittings; columns with pilasters capped with extremely stylized Corinthian capitals; ornamental features of the exterior: small terra cotta frieze which tops the second story, wide terra cotta beltcourse with dentils, swags, medallions, and wave patterns below



the 11 second story windows and around the entire building; cornice soffit; terra cotta shields above rusticated cast blocks; two rows of curved wooden brackets framing rectangular panels at eave soffit; wrought iron railings with heraldic shields and diagonal rope pattern; arched windows with terra cotta sills on one-story portion of building, and numerous windows continuing on west and east side with heraldic medallions and other decorative elements; the David Slivka 1937 bas-relief sculpture on the east end wall (which is not being conveyed and which remains the property of the USPS); and granite entry steps forming "plaza" at main (north) entry.

not a big deal  
loggia

2. The historic interior features of the property are determined to be the following: glazed arches between workroom and lobby; coffered lobby ceiling; individual service counter windows with detailed oak framing, brass grilles and feather-chip glass grilles and service window doors; the Suzanne Scheuer mural over the former Postmaster's office door (which is not being conveyed and which remains the property of the USPS); arches around postmaster's door and service windows; marble baseboards and wainscot; columns in lobby and small and large Corinthian capitals cast ceramic and oak; band joining all columns and capitals of lobby (currently painted brown); carved oak woodwork on columns between entrance doors, windows, service bays and vestibule; entrance door oak frames with modified Corinthian capitals; oak and glass vestibule at center entrance; carved oak and triangular dentilled pediment over Postmaster's former office door (now elevator door) and lettering; post office boxes (which are not being conveyed and which remain the property of the USPS); original bulletin cases; oak casework with movable metal grills; marble staircase, oak handrail, and ornamental metal end pieces and railings; landing of marble staircase with mosaic tiles and black, white, and red fretwork around the edges; and second floor marble and tile flooring.
3. Collectively, the features listed in subparagraphs (1) and (2) of this Recital, represent the "Preservation and Conservation Values" of the Property. → Use

or it may be improved

- D. It is the purpose of this Covenant to assure that the Preservation and Conservation Values will be retained and maintained in substantially as good a condition as their present condition and to prevent changes to the Property that will significantly affect or interfere with them.
- E. The United States Postal Service owns a certain mural *Incidents in California History* by Suzanne Scheuer (the "Mural") and the David Slivka relief sculpture ("Relief") of postal workers, 1937, on the east loggia end wall. Notwithstanding any sale or transfer of the Property, the Mural and Relief shall continue to be owned by the United States Postal Service. As a condition to any sale of the Property, the United States Postal Service intends to enter into a loan agreement ("Loan Agreement") with



the purchaser of the Property which Loan Agreement will be binding upon the purchaser and successor and assigns of the purchaser to undertake certain actions to preserve and protect the Mural and Relief and provide public access thereto on terms stated therein. Grantor acknowledges and agrees that it shall comply with the terms and conditions of the Loan Agreement. The Grantor intends to propose plans for adaptive reuse and rehabilitation of the Property in a manner that may require a substantial level of improvements, all of which improvements shall be done in accordance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* (National Park Service, 1997 *et. seq.*) ("Secretary of Interior's Standards") and subject to applicable land use laws, rules and regulations. Such improvements may affect the Protected Values, including, without limitation, the height, mass and scale of the building on the Property.

- still not provided

permission or observation?  
see previous comment

## COVENANT

### 1. Covenants of Grantor.

- a. Compliance with Secretary of Interior's Standards. The purchaser of the Property (referenced herein as "Grantor") hereby covenants with the USPS in perpetuity on behalf of itself, its heirs, successors and assigns at all times to rehabilitate, maintain and preserve the Property in accordance with the then current National Park Service, Technical Preservation Services Branch interpretation of the Secretary of Interior's Standards (37 CFR § 67.7(b)) and any implementing regulations or policies, in order to rehabilitate, maintain and preserve those qualities that resulted in the listing of the Property on the National Register of Historic Places, the features identified in the Section 106 analysis prepared by the USPS and submitted for review on September 3, 2013.
- b. Demolition. The Grantor further covenants not to demolish any building(s) on the Property, or to cause or allow such building(s) to be demolished, except in accordance with Section 1(c) below.
- c. Alterations. No construction, alteration or rehabilitation shall be undertaken or permitted to be undertaken that would significantly affect the Preservation and Conservation Values of the Property without prior consultation with, and the express permission of, the USPS. Prior to ground disturbance, a qualified archaeologist hired by Grantor shall check site records from the California Historical Resources Information System ("CHRIS"), and perform a sensitivity analysis to provide to the Grantor and the USPS. For the purposes of this Section 1(c), an action shall not be considered to significantly affect the Preservation and Conservation Values if such action is in accordance with the Secretary of Interior's Standards.

how Δ than "Pres. + Cons. Values"?

Does not address demo.?



d. Maintenance and Repair. Except as otherwise permitted under Section 1(c) above, Grantor agrees at all times to maintain and repair the Preservation and Conservation Values in the same or better structural condition and state of repair as those existing on the effective date of this Covenant. Grantor's obligation to so maintain and repair shall include such replacement, repair, and/or reconstruction activities as may be necessary from time to time to maintain a Preservation or Conservation Value in the same or better structural condition and state of repair as that existing on the date of this Covenant, as shown by the photos attached hereto as Exhibit B. Grantee's maintenance activities shall be subject to the following:

- i. Grantor shall use, wherever feasible, in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining the appearance and construction of any building(s) on the Property in good condition.
- ii. Grantor shall not make significant changes in appearance, materials, colors, and workmanship from that existing prior to the maintenance and repair without the prior written approval of the USPS, such approval not to be unreasonably withheld, delayed or conditioned, and based exclusively upon a determination that such changes are consistent with the Secretary of Interior's Standards.
- iii. Grantor shall not replace historic materials unless such historic materials are significantly deteriorated or damaged.

e. Request for Approval. When the Grantor wishes to undertake any construction or alterations on the Property that could significantly affect the Preservation and Conservation Values, it shall submit in writing to the USPS for its approval information describing the proposed activity (including plans, specifications, photographs and designs where appropriate), together with a specific request identifying the proposed construction or alterations. In addition, Grantor shall also submit to the USPS a timetable for the proposed construction or alterations that is sufficient to permit the USPS to monitor such activity should it choose to do so. Grantor shall not make changes or take any action subject to the approval of the USPS, such approval not to be unreasonably withheld, conditioned or delayed, unless expressly authorized in writing by an authorized representative of the USPS.

f. Replacement and Repair. Subject to the casualty provisions of Paragraphs 7, the obligation to maintain shall require replacement, repair, and/or reconstruction whenever necessary in accordance with the standards stated in Paragraph 1.d.

*should be Grantor*

*Who decides? standards? process?*

*"unreasonable" ok, by references current practices*

*Who decides? need to specify waiting for USPS*



- g. Signs. Grantor may erect or allow to be erected any external signs that are:  
(i) consistent with the local code and (ii) consistent with National Park Service, Technical Preservation Services Brief 25, *The Preservation of Historic Signs - New Signs and Historic Buildings* et seq.

Access to lobby  
Fees

2. USPS Rights and Obligations.

- a. Consultation and Approvals. The USPS reserves the right to consult with governmental agencies, nonprofit preservation and conservation organizations, and/or other advisors it deems appropriate, concerning the appropriateness of any construction or alteration proposed by Grantor. All approval rights of the USPS shall be exercised in the reasonable discretion of the USPS. The USPS agrees to use its reasonable efforts to respond to any written request of Grantor not later than ninety (90) days following receipt of Grantor's request. Failure to respond to Grantor within the ninety (90) day period shall not, however, be deemed to constitute approval of Grantor's request. Grantor acknowledges and agrees that any actions which affect the Preservation and Conservation Values will need to be reviewed pursuant to Section 106 of the National Historic Preservation Act.

made us  
"deemed  
approved"  
based on  
second notice.

They  
reduced us  
from 45 to 30,  
but gave  
themselves 90

- b. Inspection. Authorized representatives of the USPS shall be permitted at all reasonable times to inspect the property in order to ascertain if the above conditions are being met.

- 3. Covenant Binding on Heirs and Assigns; Right to Assign. This covenant is binding on the Grantor, its heirs, successors and assigns and upon the USPS, its successors and assigns in perpetuity and shall run with the land. All stipulations and covenants contained herein shall be inserted by the Grantor verbatim or by express reference in any deed or other legal instrument by which the grantee shall divest itself of any interest in the property or any part thereof. The USPS shall have the right to assign its obligations and rights hereunder to a qualified governmental entity or preservation organization who shall assume all of the obligations of the USPS from the date of such assignment. The USPS shall give Grantor notice of such assignment.

Grantor

- 4. Non-Waiver. The failure of any person or entity permitted by the terms hereof to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or use of such right or remedy at any other time.
- 5. Compliance with Law. This covenant does not exempt the property owner from complying with local law, nor does it prohibit the Grantor from seeking permission to develop, or developing any project on the Property or on any part of it from applicable authorities.

Yes-  
deleted



6. Insurance. Grantor shall keep the Property insured by an insurance company rated "Secured" by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage.
  - a. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property and Buildings. Such insurance shall name Grantee as an additional insured.
  - b. Grantor shall deliver to Grantee a certificate of insurance annually or when coverage is renewed by Grantor. If Grantor fails to submit proof of insurance coverage annually or at the time of renewal, Grantor must deliver proof of coverage, within ten (10) business days of Grantee's written request for documentation of coverage.
  
7. Casualty. Subject to the USPS Rights and Obligations provisions of Paragraph 2, in the event that the Property or any part thereof shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify the USPS in writing within fifteen (15) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by Grantor without the prior written approval of the USPS. Within thirty (30) days after the date of damage or destruction, if required by the USPS, Grantor at its expense shall submit to the USPS a written report prepared by a qualified restoration architect and an engineer reasonably acceptable to Grantor and the USPS, which shall include the following: (i) an assessment of the nature and extent of the damage; (ii) a determination of the feasibility of the restoration of the Property and/or reconstruction of damaged or destroyed portions of the Property; and (iii) a report of such restoration/reconstruction work necessary to return the Property to the condition existing at the effective date of this instrument.
  - a. If, after reviewing the report and assessing the availability of insurance proceeds, Grantor and the USPS agree that the Purpose of this Covenant will be served by such restoration/ reconstruction, Grantor and the USPS shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Property in accordance with the requirements of the Section 106 of the National Historic Preservation Act and plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.



- b. If, after reviewing the report and assessing the availability of insurance proceeds, Grantor and the USPS agree that restoration/reconstruction of the Property is impractical or impossible, or agree that the purpose of the Covenant would not be served by such restoration/reconstruction, Grantor may alter, demolish, remove, or raze all or part of the Property, and/or construct new improvements on the Property, subject to the requirements of Section 106 of the National Historic Preservation Act.
8. Notices. Any notice which either Grantor or the USPS may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods: by overnight courier postage prepaid, transmission, registered or certified mail with return receipt requested, or hand delivery, in either case with a copy by e-mail; if to Grantor, then to:

[address],

and if to Grantee, then to:

United States Postal Service  
475 L'Enfant Plaza SW  
Rm. 6631  
Washington DC 20260-1862  
Attention: Federal Preservation Officer  
Email: FederalPreservationOfficer@USPS.gov

Each party may change its address set forth herein by a notice to such effect to the other party.

9. Remedies.
  - a. The USPS may, following reasonable written notice to Grantor, institute suit(s) to enjoin or remedy any violation of the terms of this easement by *ex parte*, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and/or to require the restoration of the Property to the condition and appearance that existed prior to the violation. The USPS shall also have available all legal and equitable remedies to enforce Grantor's obligations contained in this Covenant.
  - b. In addition, the USPS may, following reasonable written notice to Grantor and any mortgagee of Grantor of which the USPS has notice and an address, *and an* opportunity to cure, enter upon the Property to make any repairs it reasonably deems necessary or appropriate, and may recover the actual out of pocket costs of doing so by lawsuit or directly by placing a lien on the Property.



- c. Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.
- d. Without limiting the foregoing, in the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, any resident of the City of Berkeley having an interest in the Preservation and Conservation Values of the Property may, following reasonable notice to, and the written consent of, the USPS, institute suit to enjoin said violation or to require the restoration of the Property. Remedies shall include, but not be limited to, specific performance, injunction and/or monetary damages, and the specific performance may include restoration of the Property to its condition as existing prior to the alteration or construction undertaken in violation of this covenant.



*Deleted  
Notices  
From gov. agencies  
of Places of  
Public*

- 10. Amendment. If circumstances arise under which an amendment to or modification of this covenant would be appropriate, Grantor and the USPS may by mutual written agreement jointly amend this covenant. Any such amendment shall be consistent with the protection of the Preservation and Conservation Values of the Property and the purpose of this covenant; shall not affect its perpetual duration; shall not permit additional development on the Property other as permitted by law; shall not permit any private inurement to any person or entity; and shall not adversely impact the Preservation or Conservation Values protected by this covenant. Any such amendment shall be recorded in the land records of Alameda County, California. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.
- 11. Extinguishment. Grantor and Grantee hereby recognize that circumstances may arise that may make the continued ownership or use of the Property in a manner consistent with the purpose of this covenant impossible and that extinguishment of the covenant may be necessary. Such circumstances may include, but are not limited to, partial or total destruction of the Building(s) resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction.
- 12. Perpetual Covenant. This Covenant is not subject to expiration of record under the Marketable Record Title Act, California Civil Code 880.020-887.090; however, Grantee may re-record this Covenant without the consent of the Grantor from time to time to perpetuate Grantee's rights. Grantor and Grantee expressly acknowledge that no such recording is necessary in order to perpetuate the validity or enforceability of this Covenant, and nothing contained in this paragraph shall be deemed to constitute a requirement that any such recording is necessary.



13. Approvals. Wherever in this Covenant the approval of the USPS is required, the USPS shall not unreasonably withhold, condition or delay such approval. It shall be reasonable for the USPS to decline to consent to allowing any resident of the City of Berkeley having an interest in the Preservation and Conservation Values of the Property to enforce the Grantor's obligations hereunder if the USPS has commenced such enforcement. In the event that the Grantor requests the approval of the USPS hereunder, then except as otherwise provided herein, the failure of the USPS to respond within ninety (90) days after receipt of the request shall be deemed to be the approval of the request. Grantor acknowledges and agrees that actions requiring the approval of the USPS which affect the Preservation and Conservation Values will need to be reviewed by others pursuant to Section 106 of the National Historic Preservation Act and any approval may be conditioned upon the conclusion of such review.

The United States Postal Service

By: \_\_\_\_\_

Its: Contracting Officer

Approved:

\_\_\_\_\_  
Federal Preservation Officer

Grantor:

[Insert signature block for purchaser]