

RESOLUTION NUMBER R- 314910DATE OF FINAL PASSAGE MAY 16 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO CANCELLING THE MILLS ACT AGREEMENT
FOR THE ANDREW CASSIDY HOME (HRB NUMBER 283)
LOCATED AT 1620 UNION STREET.

WHEREAS, the Mills Act (California Government Code sections 50280-50290) was enacted in 1972 and authorizes cities and counties to enter into voluntary contracts with property owners of qualified historical properties who agree to actively participate in the restoration and maintenance of their designated historical properties while receiving property tax relief; and

WHEREAS, on February 27, 1995, the City Council established the City's Mills Act Program and adopted Council Policy 700-46 by San Diego Resolution R-285410 to grant a monetary incentive, in the form of a property tax reduction, to owners of historically designated properties who maintain, restore and rehabilitate their historic properties within the City; and

WHEREAS, during a noticed public hearing on August 22, 1990, the Historical Resources Board (HRB) designated the Andrew Cassidy Home (Resource), located at 1620 Union Street (Assessor Parcel No. 533-353-11), as HRB No. 283 in the City's Historic Resource Register by HRB Resolution R-90082213 based on the property's architectural significance as a good example of Queen Anne cottage design and as part of a significant, intact collection of Victorian houses still on their original sites which reflect the early development of downtown at the turn of the century; and

WHEREAS, in November 1996, the City and the property owner entered into a Mills Act Agreement (Agreement), which was recorded against the property with the San Diego County Recorder's Office on December 3, 1996; and

WHEREAS, a Mills Act agreement is recorded against the title to the property as it is required to be binding upon, and inure to the benefit of, all successors in interest of the owner pursuant to California Government Code section 50281; and

WHEREAS, some of the mandatory terms of the City's Mills Act agreement include: (1) a minimum ten-year term that is automatically renewed on an annual basis; (2) recordation of the agreement against the title to the property; (3) the property owner's agreement to maintain the regulated characteristics of historical significance of the property in accordance with the rules and regulations published by the U.S. Secretary of the Interior (Secretary of the Interior) and to allow a reasonable periodic examination of the property; and (4) cancellation of the agreement following a duly noticed public hearing if the City determines that the owner breached any mandatory conditions of the agreement; and

WHEREAS, on March 2, 2021, the previous property owner provided City staff with a written notice to not renew the Agreement and requested the immediate termination of the Agreement; and

WHEREAS, on March 23, 2021, City staff provided the San Diego County Office of the Assessor (Assessor's Office) with the property owner's notice to not renew the Agreement and the Assessor's Office placed the property in non-renewal status pursuant to California Government Code section 50282 with the non-renewal period ending in 2030; and

WHEREAS, JMAN Tower, LLC, the current property owner (Owner), filed an application with the City for Site Development Permit No. 3170849 and Coastal Development Permit No. 3170850 as part of the Air Rights Tower project to relocate the Resource from 1620 Union Street in the Downtown Community Plan area (Little Italy site) to 2642-2648 Newton Avenue in the Barrio Logan Community Plan area (Barrio Logan site) and construct a 24-story

residential development with 73 dwelling units (including eight affordable dwelling units) at the Little Italy site and a three-story mixed-use development at the Barrio Logan site (project); and

WHEREAS, on November 17, 2022, the HRB considered the project's findings and mitigation measures associated with the proposed relocation of the Resource and recommended the Planning Commission adopt the findings and mitigation measures; and

WHEREAS, on December 15, 2022, the Planning Commission approved the project, which included a condition of project approval requiring the cancellation of the Agreement as City staff determined that the relocation of the Resource is not consistent with the rules and regulations published by the Secretary of the Interior and breaches the terms of the Agreement; and

WHEREAS, condition 35 to Site Development Permit No. 3170849 specifically states: "Prior to the issuance of a demolition permit for relocation, the requirements of the Mills Act contract shall be removed from the 1620 Union Street property and any required fees associated with the removal of the Mills Act contract shall be paid by the Owner/Permittee."; and

WHEREAS, the Council of the City of San Diego (City Council) has the discretion to cancel the Agreement under California Government Code section 50284, Council Policy 700-46, and the terms of the Agreement if the City Council finds that the Owner breached any of the conditions of the Agreement; and

WHEREAS, state law, Council Policy 700-46, and the Agreement require the Owner to maintain the Resource's regulated characteristics of historical significance in accordance with the rules and regulations published by the Secretary of the Interior; and

WHEREAS, under California Government Code section 50281(b)(1), the Agreement must provide for the preservation of the Resource, and to restore and rehabilitate the Resource to conform with the Secretary of the Interior's Standards for Rehabilitation when necessary; and

WHEREAS, under Council Policy 700-46, the Agreement requires the Owner to maintain the regulated characteristics of historical significance of the Resource in accordance with the rules and regulations published by the Secretary of the Interior and contains the Owner's agreement to comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties; and

WHEREAS, condition 2.a. of the Agreement addresses the standards for the historical site and specifically provides that the "[O]wner shall maintain the regulated characteristics of historical significance of the [Resource] in accordance with the rules and regulations published by the Secretary of the Interior" during the term of the Agreement; and

WHEREAS, under San Diego Municipal Code sections 143.0210(e)(2)(C) and 143.0250(a)(3), the proposed relocation of the Resource is considered a substantial alteration that would impair the significance of the Resource and deviates from the development regulations for historical resources; and

WHEREAS, the relocation is also inconsistent with the rules and regulations published by the Secretary of the Interior as it equates to a substantial alteration of the Resource under those standards. Specifically, the standards under 36 C.F.R. § 68.3(a)(2) address preservation, rehabilitation, restoration, or reconstruction and require that the historic character of a property be retained and preserved; and

WHEREAS, the Secretary of the Interior Guidelines, which help implement the standards, discuss building sites and state that "removing or relocating buildings or landscape features, thereby destroying the historic relationship between buildings and the landscape" is not recommended; and

WHEREAS, the Owner's proposal to relocate the Resource breaches the terms of the Agreement and City staff recommended approval of the project with the inclusion of condition

number 35 to Site Development Permit No. 3170849 requiring the cancellation of the Agreement prior to the issuance of a demolition permit for the relocation due to this breach; and

WHEREAS, the matter was set for public hearing on May 16, 2023, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate; and

WHEREAS, under San Diego Charter section 280(a)(2), this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the City Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the City Council has considered the matter during a duly noticed public hearing on May 16, 2023 in accordance with California Government Code section 50285.

BE IT FURTHER RESOLVED, that the City Council has determined that condition 2.a. of the Agreement requiring the Owner to maintain the regulated characteristics of historical significance of the Resource in accordance with the rules and regulations published by the Secretary of the Interior has been breached because the relocation of the Resource is considered a substantial alteration that would impair the significance of the Resource and deviates from the City's development regulations for historical resources, and is also inconsistent with the rules

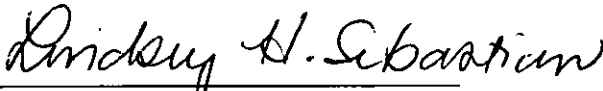
and regulations published by the Secretary of the Interior as it equates to a substantial alteration of the Resource under those standards.

BE IT FURTHER RESOLVED, that the Agreement is cancelled based on the breach of the Agreement's conditions in accordance with California Government Code section 50284.

BE IT FURTHER RESOLVED, that the Owner shall pay a cancellation fee equal to 12½ percent of the current fair market value of the property, as determined by the Assessor's Office, in accordance with California Government Code section 50286.

APPROVED: MARA W. ELLIOTT, City Attorney

By



Lindsey H. Sebastian
Deputy City Attorney

LHS:nja

04/26/2023

Or. Dept: DSD

Doc. No. 3287425

Attachments: Exhibit A - Mills Act Agreement for the Andrew Cassidy Home (HRB No. 283)
(recorded Dec. 3, 1996)

DOC # 1996-0604804
03-DEC-1996 10:36 AM

PLEASE COMPLETE THIS INFORMATION.

RECORDING REQUESTED BY:

City of San Diego
Community & Economic Development
202 "C" Street, MS-4A
San Diego, CA 92101

1821

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY SMITH, COUNTY RECORDER

RF:	15.00	FEES:	37.00
AF:	21.00		
MF:	1.00		

AND WHEN RECORDED CALL TO
ARRANGE FOR PICKUP:

Call Lois at 235-5235

AGREEMENT

THIS AGREEMENT is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation ("City"), and DAVID BARK and WILLIAM PETTERSON, ("Owners").

RECITALS

WHEREAS, California Government Code Sections 50280, et seq. authorize cities to enter into contracts with the owners of qualified historical properties to provide for the use, maintenance, and restoration of such historical properties so as to retain their characteristics as properties of historical significance.

WHEREAS, Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, Assessor Parcel No. 533-353-11, and generally located at the street address 1620 Union Street, San Diego, California 92101 (the "Historic Site").

WHEREAS, On August 22, 1990, after a public hearing, the San Diego Historical Site Board adopted Resolution No. R-90082213, declaring and designating the above property as a Historical Site Number 283 pursuant to San Diego Municipal Code Section 26.0201 et seq.

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 Site and to qualify the Historical Site 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 as amended from time to time).

NOW THEREFORE, in consideration of the mutual benefits and covenants, City and Owner agree as follows:

1. Compliance with Council Policy. Owner shall comply with Council Policy number 700-46, attached hereto as Exhibit A and incorporated herein by this reference.

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

a. Owner shall maintain the regulated characteristics of historical significance of the Historic Site in accordance with the rules and regulations published by the Secretary of the Interior.

b. Owner shall allow reasonable periodic examination of the Historic Site, by prior appointment, if a request is made by representatives of the County Assessor, State Department of Parks and Recreation or the State Board of Equalization.

c. The Owner shall allow visibility of the exterior of the structure from the public right-of-way.

3. Information of Compliance. Owner hereby agrees to furnish City with any and all information requested by the City which may be necessary or advisable to determine compliance with the terms and provisions of this Agreement.

4. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner has 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 property. In addition, City may cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in subparagraph 2(b) of this Agreement. In the event of cancellation, Owner may be subject to payment of those cancellation fees set forth in California Government Code Section 50280, et seq.

5. Enforcement of Agreement. In lieu of and/or in addition to any provisions related to cancellation of the Agreement as referenced herein, City May specifically enforce, or enjoin the breach of the terms of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the City within thirty (30) days (provided that acts to cure the breach or default must be commenced within thirty (30) days and must thereafter be diligently pursued to completion by Owner), then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary

to specifically enforce the obligations of Owner growing out of terms of this Agreement, apply to any court, state or federal for injunctive relief against any violation by Owner or apply for such other relief as may be appropriate.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic sites are available to the City to pursue in the event there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.

6. Binding Effect of Agreement. The Owner hereby subjects the Historic Site described in Exhibit A to the covenants, reservations, and restrictions as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations, and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Historic Site. Each and every contract, deed, or other instrument hereinafter executed, covering or conveying the Historic Site, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, reservations, and restrictions expressed in this Agreement regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations, and restrictions set forth herein, touch and concern the land, in that Owner's legal interest in the Historic Site is rendered less valuable thereby. City and Owner

hereby further declare their understanding and intent that the benefit of such covenants, reservations, and restrictions touch and concern the land by enhancing and maintaining the historical characteristics and significance of the Historical Site for the benefit of City, the public, and Owner.

7. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 26, 1996, 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 paragraph 2 below.

8. Renewal. Each year on the anniversary of the effective date of this Agreement (the "renewal date"), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein. If either Owner or City desires in any year not to renew this Agreement, Owner or City shall serve written notice of non-renewal 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 non-renewal from City, Owner may make a written protest of the notice. City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice of non-renewal. If either City or Owner serves notice to the other of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

9. 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 either party.

To City: City of San Diego
Attention: Secretary to the Historical Site Board
202 "C" Street, Fourth Floor
San Diego, California 92101

To Owners: David Bark and William Pettersen
1620 Union Street
San Diego, CA 92101

10. General Provisions.

a. None of the terms, provisions, or conditions of this Agreement shall be deemed to create a partnership between the parties 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 for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his or her contractor, subcontractor, agent, employee or other person acting on his or behalf which relate to the use, operation, and maintenance of the Historic Site. 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, reasons of Owner's activities in connection with the Historic Site. 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 Site.

c. All of the agreements, rights, covenants, reservations, and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historical Site, whether by operation of law or in any manner whatsoever.

d. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any covenants, reservations, or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

e. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be effected thereby.

f. This Agreement shall not take effect unless and until Owner's signature is notarized by a notary public. Furthermore, if an agent or representative of Owner signs this Agreement on behalf of Owner, the agent or representative must furnish proof, to the satisfaction of City, that the agent or representative has authority to act on Owner's behalf.

g. This Agreement shall be construed and governed in accordance with the laws of the State of California.

11. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Diego.


12. Amendments. This Agreement may be amended only by a written and recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day
and year first written above.

CITY OF SAN DIEGO

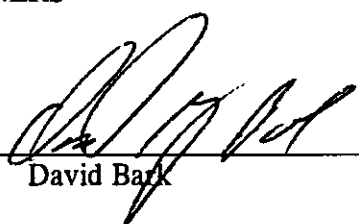
Approved:

Dated: 11/26/96

By: 
Kurt Chilcott, Manager, Comm. & Economic Dev.
For City Manager Jack McGrory

OWNERS

Dated: 10/29/96

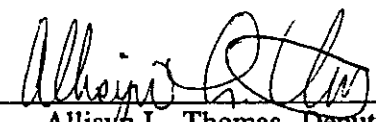
By: 
David Bark

Dated: 10/29/98

By: 
William Pettersen

I HEREBY APPROVE this Agreement as to form and legality this 17th day
of November, 1996.

JOHN W. WITT, City Attorney

By: 
Allisyn L. Thomas, Deputy

STATE OF CALIFORNIA

County of SAN Diego

Title or type of Document Agreement
 Number of Pages 14 Date of Document _____
 Signer(s) Other than named below WILLIAM PETERSEN

On 10-29-96 before me E.F. FONTES personally appeared
DAVID BARK.

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____
 Notary Public in and for said County and State

(Seal)



STATE OF CALIFORNIA

County of SAN Diego

Title or type of Document Agreement
 Number of Pages 14 Date of Document _____
 Signer(s) Other than named below DAVID BARK.

On 10-29-96 before me E.F. FONTES personally appeared
William Petersen

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____
 Notary Public in and for said County and State

(Seal)



State of California

County of San Diego

)
) ss.
)

1831

On November 26, 1996, before me, Erlinda S. Soriano, Notary Public

(name, title of officer, eg. Jane Doe, Notary Public)

personally appeared Kurt Chilcott, Manager, Community & Economic Development, City of San Diego
(name(s) of signer(s))



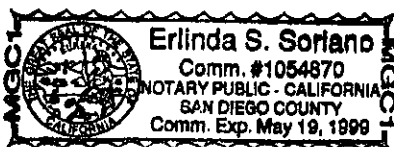
personally known to me -or-



proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity/~~ies~~, and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



Erlinda S. Soriano

(Signature of Notary)

Capacity claimed by signer:

(This section is OPTIONAL)



Individual



Corporate Officer(s): _____



Partner(s):



General



Limited



Subscribing Witness



Attorney-in-fact



Trustee(s)



Guardian/Conservator



Other: _____

RIGHT THUMB OF SIGNER

Signer is representing: City of San Diego

(name of person(s) or entity(ies))

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document:

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document Agreement (Mills Act)

APN 533-353-11

Number of Pages 9 Date of Document 11/26/96

Signer(s) Other than Named Above

Passed by the Council of The City of San Diego on MAY 16 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 16 2023.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

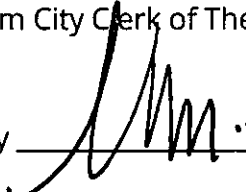
(Seal)

TODD GLORIA

Mayor of The City of San Diego, California.

DIANA J.S. FUENTES

Interim City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **314910**