

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 553-8800**

**DATE:** May 9, 2023

**TO:** Honorable Mayor and Councilmembers

**FROM:** City Attorney

**SUBJECT:** Potential Cancellation of the Mills Act Agreement for the Andrew Cassidy Home (Historical Site Number 283)

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**INTRODUCTION**

On May 16, 2023, the San Diego City Council (City Council) is scheduled to consider City staff's request to cancel the Mills Act<sup>1</sup> Agreement (Agreement)<sup>2</sup> for the Andrew Cassidy Home (Historical Site Number 283) (designated historical resource) located at 1620 Union Street. In 2022, the Planning Commission approved the Air Rights Tower project (project), which would allow the relocation of the designated historical resource to accommodate the construction of 73 residential dwelling units. City staff determined the relocation is a substantial alteration that breaches the Agreement by impairing the significance of the designated historical resource, deviating from the development regulations for historical resources under the San Diego Municipal Code, and straying from standards published by the U.S. Secretary of the Interior (Secretary of the Interior) for the treatment of historic properties and those set forth in the Agreement. Although the San Diego Municipal Code allows for development that is not consistent with the Secretary of the Interior standards through a Site Development Permit, the Agreement requires consistency with those standards. Therefore, City staff included cancellation of the Agreement as a necessary project condition. No one appealed the Planning Commission's decision to grant the permit with the cancellation condition, and the decision is now final.

The Agreement is currently in nonrenewal status and will automatically terminate in 2030. For the project to proceed, the Agreement must be canceled in accordance with the project condition. If the Agreement is not canceled, the Agreement would remain in nonrenewal status until 2030 and the project, as proposed, would not proceed. The City Council has the discretion to cancel the Agreement because the proposal to relocate the designated historical resource breaches the terms of the Agreement. If the Agreement is canceled, the property owner must pay a cancellation fee to the county auditor in accordance with state law. As such, the City Council

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<sup>1</sup> Cal. Gov't Code §§ 50280-50290.

<sup>2</sup> A copy of the Agreement is attached to this Memorandum.

will be asked to determine whether the proposed relocation breaches the Agreement's conditions and whether the Agreement should be canceled.

This memorandum addresses which legal authority the City Council would consider in terminating the Agreement and why the Agreement cannot legally be transferred to a new location if the designated historical resource is moved.

### **QUESTIONS PRESENTED**

1. What are the options for terminating the Agreement under state law, Council Policy 700-46, and the terms of the Agreement?
2. May the City Council amend the Agreement to allow it to transfer with the designated historical resource to a new location?

### **SHORT ANSWERS**

1. The Agreement may be terminated under state law, Council Policy 700-46, and the terms of the Agreement two different ways. First, the City Council has the discretion to cancel the Agreement if the City Council determines that the property owner has breached any of the conditions of the Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property.<sup>3</sup> Second, the Agreement may be terminated through nonrenewal. Nonrenewal periods are either nine or ten years depending on when the written notice of nonrenewal is provided by either party to the Agreement. The Agreement is currently in nonrenewal status at the request of the previous property owner. The Agreement has approximately seven years left in nonrenewal status before it will terminate.

2. No. There is no legal authority under state law or the Agreement that allows the City Council to amend the Agreement to transfer with the designated historical resource to a new location.

### **BACKGROUND**

#### **I. THE MILLS ACT**

The Mills Act 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. California State Parks Office of Historic Preservation, Mills Act Program,

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<sup>3</sup> "Qualified historical property" means privately owned property which is not exempt from property taxation and is either listed in the National Register of Historic Places or located in a registered historic district or listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks. Cal. Gov't Code § 50280.1.

[https://ohp.parks.ca.gov/?page\\_id=21412](https://ohp.parks.ca.gov/?page_id=21412) (last visited April 3, 2023). This type of historical property contract is commonly known as a “Mills Act agreement” or “Mills Act contract.”

On February 27, 1995, the City Council established the City’s Mills Act Program and adopted Council Policy 700-46 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. San Diego Resolution R-285410 (Feb. 27, 1995); Council Policy 700-46 at 1-2 (Dec. 15, 2008). A Mills Act agreement is recorded against the property with the County of San Diego as it is required to be binding upon, and inure to the benefit of, all successors in interest of the owner. Cal. Gov’t Code § 50281. A successor in interest has the same rights and obligations under the agreement as the original owner who entered into the agreement. *Id.* A properly recorded agreement automatically triggers an alternative method for determining the assessed value of the historically designated property, which potentially results in significant property tax savings for the property owner. Council Policy 700-46 at 2. Under state law, the county assessor determines the property’s valuation for property tax purposes. Cal. Gov’t Code § 50280; Cal. Rev. & Tax. Code § 439.2. When valuing the property, the qualified historical property includes “qualified historical improvements and any land on which the qualified historical improvements are situated,” as specified in the agreement. Cal. Rev. & Tax. Code § 439.1.

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 owner’s agreement to maintain the regulated characteristics of historical significance of the property in accordance with the rules and regulations published by the 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. Council Policy 700-46 at 1.

## **II. DESIGNATION AND THE PROPOSED RELOCATION OF THE ANDREW CASSIDY HOME**

During a noticed public hearing on August 22, 1990, the Historical Resources Board (HRB) designated the Andrew Cassidy Home as Historical Site Number 283 in the City’s Historic Resource Register based on the property’s architectural significance and location.<sup>4</sup> Historical Resources Board Resolution R-90082213 (Aug. 22, 1990). In November 1996, the City and the property owner entered into the Agreement, and it was recorded with the San Diego County Recorder’s Office on December 3, 1996. *See* Agreement. 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. The Agreement is currently in

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<sup>4</sup> The HRB determined that the Andrew Cassidy Homes is a good example of Queen Anne cottage design and a 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.

nonrenewal status until 2030. All rights and obligations under the Agreement are binding upon the property owner's successors in interest. Cal. Gov't Code § 50281; *see* Agreement at 4-5.

In 2022, the current property owner submitted a development permit application to the Development Services Department for the project. The project required a Site Development Permit and Coastal Development Permit for the relocation of the designated historical resource from 1620 Union Street in the Downtown Community Plan area (Council District 3) to 2642-2648 Newton Avenue in the Barrio Logan Community Plan area (Council District 8). San Diego Municipal Code §§ 126.0702(a), 143.0210(e)(2)(C). The project's relocation of the designated historical resource will accommodate the construction of 73 residential dwelling units at the Downtown site. The project also includes a mixed-use development at the Barrio Logan site. The City has a ministerial obligation to process the application in accordance with the City's Land Development Code regardless of the voluntary Agreement recorded on the property. *Palmer v. Fox*, 118 Cal. App. 2d 453, 456-57 (1953); *Shell Oil Co. v. City & County of San Francisco*, 139 Cal. App. 3d 917, 921 (1983).

On November 17, 2022, the HRB considered the project's findings and mitigation measures associated with the proposed relocation of the designated historical resource and recommended the Planning Commission adopt the findings and mitigation measures. On December 15, 2022, the Planning Commission approved the project. The conditions of project approval require the cancellation of the Agreement as relocation is not consistent with the Secretary of the Interior standards and the terms of the Agreement.<sup>5</sup> Although the San Diego Municipal Code allows for development that is not consistent with the Secretary of the Interior standards through a Site Development Permit, the Agreement requires consistency with those standards. City staff determined the relocation of the designated historical resource would breach the Agreement and included cancellation of the Agreement as a necessary project condition. The Planning Commission's decision on the permit, with the cancellation condition, was not appealed and the decision is final.

## ANALYSIS

### I. STATE LAW AND THE TERMS OF THE AGREEMENT PROVIDE TWO WAYS TO TERMINATE THE AGREEMENT

Under state law and the terms of the Agreement, the Agreement may be terminated two ways. The City Council has the discretion to cancel the Agreement if it has facts to support the

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<sup>5</sup> Condition number 35 of the Site Development Permit for the project 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." Site Development Permit No. 3170849, Air Rights Tower (1620 Union Street) - Project No. 1066848 at 7 (recorded Jan. 9, 2023).

cancellation, or the Agreement can remain in nonrenewal status and automatically terminate at the end of the nonrenewal period. Cal. Gov't Code §§ 50282, 50284; *see* Agreement at 3, 5.

**A. The City Council May Cancel the Agreement if it Finds a Breach of the Agreement's Conditions**

Under state law and the terms of the Agreement, the City Council has the discretion to cancel the Agreement.<sup>6</sup> State law provides that the legislative body may cancel a contract if it “determines that the owner has breached any of the conditions of the contract provided for in this article or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property.”<sup>7</sup> Cal. Gov't Code § 50284. These terms are also included in Council Policy 700-46 and the Agreement. Council Policy 700-46 lists the minimum requirements for the Agreement, as mandated by state law, including that the City may cancel the agreement following a duly noticed public hearing if it is determined that the owner breached any mandatory conditions of the Agreement. Council Policy 700-46. Council Policy 700-46 also requires that the Agreement contain the property owner's acknowledgement that, in accordance with state law, the Agreement may be revoked for noncompliance with the Agreement provisions, including payment of established fees. *Id.* The Agreement's terms allow the City to “cancel [the] Agreement if it determines that Owner has breached any of the conditions of [the] Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historic property.” Agreement at 3. State law requires the property owner to pay a cancellation fee equal to 12½ percent of the current fair market value of the property as determined by the county assessor if the Agreement is canceled. Cal. Gov't Code § 50286(a). The Agreement's terms also state that the “Owner may be subject to payment of [the] cancellation fees set forth in California Government Code Section 50280, et seq.” in the event of cancellation. Agreement at 3. The cancellation fee is to be paid to the county auditor, at the time and in the manner that the county auditor prescribes. Cal. Gov't Code § 50286(b). Further, the county auditor is required to allocate the cancellation fees to each jurisdiction in the tax rate area where the property is located in the same manner that the annual tax increment in that tax rate area was allocated in that fiscal year. *Id.*

Here, state law, Council Policy 700-46, and the Agreement require the owner to maintain the designated historical resource's regulated characteristics of historical significance in accordance with the rules and regulations published by the Secretary of the Interior. Under state law, the

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<sup>6</sup> State law provides an alternative to cancellation and allows the City Council to bring an action in court necessary to enforce the contract, which may include enforcement by specific performance or injunction. Cal. Gov't Code §§ 50284(b), 50287. However, enforcement of the Agreement through court action may not be a feasible option as the relocation of the designated historical property is part of the approved project.

<sup>7</sup> It is the Office of the City Attorney's understanding that City staff conducted a site visit of the designated historical property in 2021 and on April 6, 2023. City staff did not identify any alterations, modifications, or maintenance issues with the designated historical property. Therefore, cancellation of the Agreement cannot be substantiated based on the property deteriorating to the point that it no longer meets the standards for a qualified historical property.

Agreement must provide for the preservation of the qualified historical property, and the restoration and rehabilitation of the property, when necessary, to conform with the Secretary of the Interior's Standards for Rehabilitation, Cal. Gov't Code § 50281(b)(1). Under Council Policy 700-46, the Agreement requires the owner to 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 and must contain the property owner's agreement to comply with those rules and regulations. Council Policy 700-46. Further, condition 2.a. of the Agreement addresses the standards for the historical site and specifically provides that the "Owner shall maintain the regulated characteristics of historical significance of the [designated historical resource] in accordance with the rules and regulations published by the Secretary of the Interior" during the term of the Agreement. Agreement at 2.

City staff has determined that the proposed relocation of the designated historical resource is a substantial alteration that would impair the significance of the resource and deviates from the development regulations for historical resources. San Diego Municipal Code §§ 143.0210(e)(2)(C), 143.0250(a)(3). City staff has also determined that 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 designated historical resource under those standards. Specifically, the standards address preservation, rehabilitation, restoration, or reconstruction and require that the historic character of a property be retained and preserved. 36 C.F.R. § 68.3(a)(2).

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. Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings at 63 (2017), <https://www.nps.gov/orgs/1739/upload/treatment-guidelines-2017-part1-preservation-rehabilitation.pdf>. Therefore, the City Council could find that the owner's proposal to relocate the designated historical resource breaches the terms of the Agreement. City staff recommended approval of the project with the inclusion of condition number 35 to the Site Development Permit requiring the cancellation of the Agreement prior to the issuance of a demolition permit for the relocation. The Site Development Permit was granted by the Planning Commission. As such, the cancellation will come before the City Council to determine whether the proposed relocation breaches the Agreement and should be canceled.

**B. The Agreement Has Entered Nonrenewal and Will Automatically Terminate in 2030 Unless the City Council Cancels it Sooner**

State law and the terms of the Agreement allow for nonrenewal of the Agreement if the party desiring nonrenewal serves written notice of nonrenewal on the other party. Cal. Gov't Code § 50282(a); Agreement at 5. The Agreement is effectively a ten-year agreement in perpetuity as one year is automatically added to the initial term on the anniversary date of the Agreement unless the Agreement goes into nonrenewal. *Id.* The nonrenewal notice triggers a nine or ten-year nonrenewal period depending on when nonrenewal was served on the other party. *Id.* During the nonrenewal period, the county assessor values the designated historical resource

under a different method prescribed under state law, which essentially winds down the tax benefits over the term of the nonrenewal period. Cal. Rev. & Tax. Code § 439.3. The terms of the Agreement, including a tax benefit, remain in effect for the balance of the term remaining while in nonrenewal. The Agreement will terminate at the end of the nonrenewal period and a cancellation fee does not apply.

Here, the previous property owner provided City staff with a written notice of nonrenewal on March 2, 2021, and requested immediate termination of the Agreement. The Agreement is binding upon all successors in interest, who have the same rights and obligations under the Agreement as the original owner who entered into the Agreement. Cal. Gov't Code § 50281. The Agreement is currently in nonrenewal status. However, in accordance with state law, Council Policy 700-46, and the Agreement, the terms of the Agreement remain in effect until the Agreement terminates in 2030, unless canceled sooner by the City Council.

## **II. THE AGREEMENT CANNOT TRANSFER WITH A RELOCATED PROPERTY**

The Agreement was recorded with the County against the parcel located at 1620 Union Street (Assessor Parcel No. 533-353-11) as required by state law. Cal. Gov't Code § 50281(b)(3); *see* Agreement at 1. State law does not allow the Agreement to transfer with the designated historical resource after relocation. When valuing the qualified historical property that is subject to a Mills Act agreement, the qualified historical property includes “qualified historical improvements *and any land on which the qualified historical improvements are situated,*” as specified in the agreement. Cal. Rev. & Tax. Code § 439.1 (emphasis added). The county assessor values the property in accordance with state law and makes determinations based on different factors that can include the fair rent that can be imputed to the property based on rent actually received for the property by the owner and upon typical rentals received in the area for similar property in similar use where the owner pays the property tax if sufficient rental information is available. Cal. Rev. & Tax. Code § 439.2. Therefore, the Agreement cannot transfer with a relocated property. The owner could choose to apply for a new Mills Act agreement at the new location.

## **CONCLUSION**

The Agreement may be terminated in two ways. First, the City Council may cancel the Agreement if it determines the property owner breached any of the conditions of the Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. Second, the Agreement may remain in nonrenewal status and automatically terminate at the end of the nonrenewal period. Here, the Agreement is currently in nonrenewal status and will terminate in 2030. If the City Council votes to cancel the Agreement during the May 16, 2023 meeting, the Agreement will terminate immediately and the property owner will be required to pay a cancellation fee in accordance with state law.

Honorable Mayor and Councilmembers

May 9, 2023

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Further, there is no legal authority under state law that provides the City Council with the discretion to amend the Agreement to transfer with the designated historical resource to the new location.

MARA W. ELLIOTT, CITY ATTORNEY

By           /s/ Lindsey H. Sebastian            
Lindsey H. Sebastian  
Deputy City Attorney

LHS:nja:cm:nja

MS-2023-3

Doc. No. 3298943

Attachment: Mills Act Agreement for the Andrew Cassidy Home (Historical Site No. 283)  
(recorded Dec. 3, 1996)

cc: Elyse Lowe, Development Services Department Director  
Charles Modica, Independent Budget Analyst



PLEASE COMPLETE THIS INFORMATION.

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

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	FEE:	37.00
AF:	21.00		
MF:	1.00		

AND WHEN RECORDED CALL TO  
ARRANGE FOR PICKUP:

*PE*  
*11P*

Call Lois at 235-5235

AGREEMENT

*HRB # 283*

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

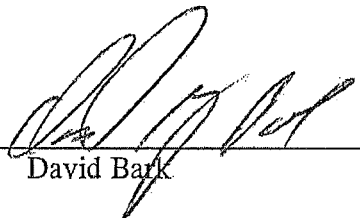
Approved:

Dated: 11/26/96

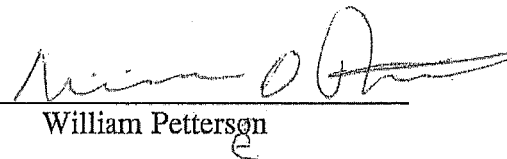
By:   
Kurt Chilcott, Manager, Comm. & Economic Dev.  
For City Manager Jack McGrory

OWNERS

Dated: 10/29/96

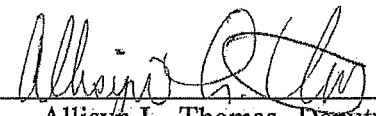
By:   
David Bark

Dated: 10/29/98

By:   
William Petterson

I HEREBY APPROVE this Agreement as to form and legality this 27<sup>th</sup> 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

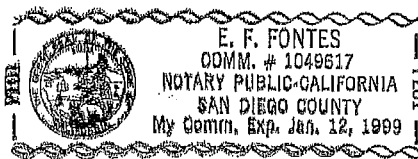
On 10-29-96 before me E.F. FONTES personally appeared  
DAVID BARK

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

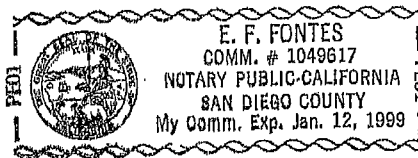
On 10-29-96 before me E.F. FONTES personally appeared  
William Petersen

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.

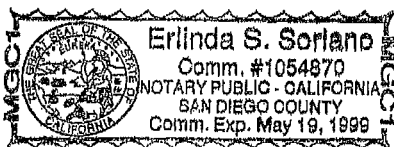
On November 26, 1996, before me, Erlinda S. Soriano, Notary Public  
(name, title of officer, eg. Jane Doe, Notary Public)

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.

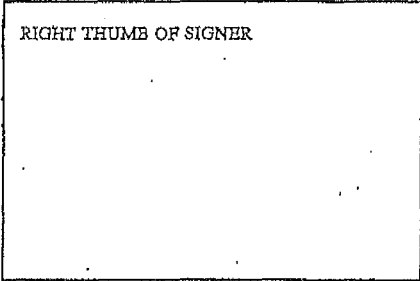
Witness my hand and official seal.



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: \_\_\_\_\_



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 <u>Agreement (Mills Act)</u> <u>APN 533-353-11</u> Number of Pages <u>9</u> Date of Document <u>11/26/96</u> Signer(s) Other than Named Above
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