



CITY COUNCIL STAFF REPORT

DATE: February 3, 2011

CONSENT AGENDA

SUBJECT: Mills Act Historic Site Contract – 982 Avenida Palmas; the DeBrabant House

FROM: David H. Ready, City Manager

BY: Planning Services

SUMMARY

This action would engage the City of Palm Springs into a standard Mills Act Agreement with Mr. Mark Hilbert, owner of 982 Avenida Palmas, ("The DeBrabant House"). The intent of this contract is to require maintenance and preservation of this Class 1 historic site in exchange for possible property tax relief as calculated by the County of Riverside.

RECOMMENDATION:

Direct staff to execute the Mills Act Agreement between the City of Palm Springs and Mr. Mark Hilbert and record said agreement with the Recorder of Records for the County of Riverside.

STAFF ANALYSIS:


On March 3, 2009, the City Council designated the property at 982 Avenida Palmas a Class 1 Historic Site.

On November 9, 2010, the Historic Site Preservation Board voted unanimously to recommend to City Council that it execute the Mills Act Contract between the City of Palm Springs and Mr. Mark Hilbert, owner of 982 Avenida Palmas.


Pursuant with California Government Code Section 50280 – 50290 upon the application of an owner of any qualified historic property, the legislative body of a city may contract with the owner or agent to restrict the use of the property to carry out the purposes and goals of historic preservation of the property. Such a contract is commonly referred to as a "Mills Act Agreement" and it provides for possible alternative property tax rate calculations in exchange for specific and ongoing preservation and maintenance of the

property, specifically its historically significant elements and characteristics.


The HSPB staff report dated November 9, 2010 is attached which provides background and explanation of the Mills Act Agreement for this particular case.



Craig A. Ewing, AICP,
Director of Planning Services



Thomas J. Wilson
Assistant City Manager



David H. Ready, City Manager

Attachments:

- HSPB minutes of November 9, 2010
- HSPB staff report dated November 9, 2010
- Mills Act Contract between City of Palm Springs and Mr. Mark Hilbert, Owner

The applicant is directed to return to the HSPB with plans for finishing all exposed wood trim, balustrades, door and window frames, entry building, and patio additions, as well as a landscape plan. Chair Gilmer noted that the lighter color wood at Cheeky's was preferable to a darker color.

~~8. OTHER BUSINESS.~~

➔ 8A. HSPB 67 - Request for Recommendation of Mills Act Agreement with the City of Palm Springs for the "de Brabant House" located at 982 Avenida Palmas, Zone R-1-B, Section 11, APN 507-155-006. (CE)

Edward Robertson summarized the staff report.

M/S/C (Strahl / Grattan, 7-0) To recommend to the City Council to enter into a Mills Act contract with the property owner.

~~8B. Discussion of Potential Candidates for Historic Designation~~

Edward Robertson summarized the staff report.

The Board discussed the materials presented by staff. Vice Chair Marshall offered to create an updated list of properties for consideration at the next meeting. The Board discussed:

- Additional properties not found on prior lists;
- Potential historic districts, and the issues surrounding the creation of new districts; and
- The City's ability to process no more than about five or six applications.

The Board accepted Vice Chair Marshall's offer to prepare a consolidated list of candidate properties for review at the December meeting.

9. COMMITTEE REPORTS

9A. Las Palmas Business Historic District Committee – Board members Ploss and DeLeeuw presented a list of contributing properties within the district, and reported that research continues into relevant background information. A panorama photo survey is also being prepared. Non-contributing properties will also be researched. The Board discussed:

- The potential of reclassifying non-contributing properties;
- Analyzing all properties in the district, including each property's status in the current district, its current use(s), and any potential for reclassification;
- Creating an overlay zone district beyond the current historic district; and
- The status of construction projects within the district.

9B. Public Outreach Committee – Chair Gilmer had no additional comments.



Historic Site Preservation Board Staff Report

Date: November 9, 2010

Case No.: HSPB-67

Application Type: Mills Act Agreement

Location: 982 Avenida Palmas

Applicant: Mark Hilbert

From: Craig A. Ewing, AICP, Director of Planning Services

PROJECT DESCRIPTION

An application by Mark Hilbert, owner of 982 Avenida Palmas, "The de Brabant House" to enter into a Mills Act Agreement with the City of Palm Springs.

RECOMMENDATION

That the Historic Site Preservation Board recommend that the City Council execute a Mills Act Agreement between the City and Mr. Mark Hilbert, owner of 982 Avenida Palmas, "The de Brabant House".

PRIOR ACTIONS TAKEN ON THE PROJECT

On March 3, 2010, the City Council designated the property at 982 Avenida Palmas a Class 1 Historic Site.

BACKGROUND AND SETTING

Pursuant with California Government Code Section 50280 – 50290 upon the application of an owner of any qualified historic property, the legislative body of a city may contract with the owner or agent to restrict the use of the property to carry out the purposes and goals of historic preservation of the property. Such a contract is commonly referred to

as a “Mills Act Agreement” and it provides for possible alternative property tax rate calculations in exchange for specific and ongoing preservation and maintenance of the property, specifically its historically significant elements and characteristics.

DESCRIPTION AND ANALYSIS

The Mills Act is state sponsored legislation granting local governments the authority to directly participate in a historic preservation program. It is designed to provide private property owners with an economic incentive, via property tax relief, to actively participate in the restoration of their historic properties.

Property owners may qualify for property tax relief if they pledge to restore and maintain the historical and architectural character of their properties for at least a ten-year period. A formal agreement known as a Mills Act contract is executed between the local government and the property owner for a minimum ten-year term. Contracts are automatically renewed each year and are transferred to new owners when the property is sold. Property owners agree to preserve and maintain the property in accordance with specific historic preservation standards and conditions as identified in the contract. Local authorities may impose penalties for breach of contract or failure to protect the historic property. The contract is binding to all owners during the contract period.

The Mills Act contract has the effect of freezing the base value of the property. There is little effect over the first few years but as the property is restored over a longer period of time, the value increases and the property tax savings may increase over time. The property owners have consulted with their tax advisors and determined that entering into a Mills Act contract with the City would be mutually beneficial for both parties. The owners also understand that entering into the Mills Act contract only represents the potential for property tax savings and is not a guarantee.

The current owners of the subject property have already invested a significant amount of money to restore and preserve the property in its original state and will continue to do so. The potential property tax savings provided by the Mills Act contract will assist the owners in defraying the costs associated with maintaining the property.

REQUIRED FINDINGS

Mills Act Agreements may only be executed on qualified historic properties.

Pursuant California Government Code 50280.1 *“Qualified historical property” for purposes of this article, means privately owned property which is not exempt from property taxation and which meets either of the following:*

- (a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191.2(b).*
- (b) Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.*

The property at 982 Avenida Palmas meets this criterion in that it is was designated a Class 1 historic site by the City Council of the City of Palm Springs.

Following review and recommendation by the Board, the contract will be forwarded to the City Council for action.

ENVIRONMENTAL ASSESSMENT

This project is exempt from environmental review per Section 15331 of the California Environmental Quality Act (CEQA) Guidelines.

Craig A. Ewing, AICP
Director of Planning Services

ATTACHMENTS

1. Letter of Request (received Oct. 28, 2010)
2. Draft Mills Act Agreement

HSPB- #67
507-155-016



1300 BRISTOL NORTH
SUITE 190
NEWPORT BEACH, CA 92660
(949) 476-0104
Fax (949) 476-9921

To: Mr. Craig Ewing
Dept. of Planning
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92263

From: Mark Hilbert

Re: 982 Avenida Palmas
APN: 507-155-016-8

October 26, 2010

Dear Mr. Ewing,

Thank you for all of the effort you have made to classify our home as Class 1 Historic Status. I believe that this effort will pay dividends to the city down the road by protecting its valuable and special history.

Enclosed please find our check for \$ 824.00 to process this request for the Mills Act property tax abatement program.

Please use mark@hilbertproperties.net to contact us. Our telephone number is (949) 476-0104.

Yours truly,

Mark Hilbert

RECEIVED

OCT 28 2010

PLANNING SERVICES
DEPARTMENT

7

**FREE RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, CA 92263-2743
Attn: City Clerk

HISTORIC PROPERTY PRESERVATION AGREEMENT

This Historic Property Preservation Agreement ("Agreement") is made and entered into this ____ day of _____, 201__ (the "Effective Date"), by and between the CITY OF PALM SPRINGS, a municipal corporation ("City"), and Mark Hilbert ("Owner").

RECITALS:

- A. California Government Code Sections 50280, *et seq.*, authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance.
- B. Owner possesses fee title in and to that certain historic dwelling, commonly known as the "deBrabant House" together with associated structures and improvements and real property, all generally located at the street address 982 Avenida Palmas, Palm Springs, California (collectively, the "Property"). A legal description of the Property is attached hereto as Exhibit A and is incorporated herein by this reference.
- C. On March 3, 2010 (the "Approval Date"), the City Council of the City of Palm Springs ("Council") adopted Resolution No. 22677 thereby declaring and designating the Property as a historic landmark pursuant to the terms and provisions of Chapter 8.05 of the Palm Springs Municipal Code.
- D. 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 Property, in accordance with Government Code Sections 50280 through 50290, as amended from time to time, and to qualify the Property for an assessment of valuation pursuant to Revenue and Taxation Code Section 439.2.

AGREEMENT

NOW, THEREFORE, City and Owner, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

- 1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on the Effective Date, and shall remain in effect for a term often (10)

years thereafter. Each year upon the anniversary of the Effective Date, unless this Agreement is terminated in accordance with Section 2 below, such initial term will automatically be extended by one (1) year.

2. Non-Renewal and Cancellation. Neither City nor Owner may terminate this Agreement except in accordance with this Section 2. Termination shall be effected either by (a) an election not to renew the Agreement, in which case termination shall be effective upon the expiration of the remaining term of the Agreement, as specified in Section 2.1 below, or (b) cancellation of the Agreement, which shall effect an immediate termination of the Agreement upon the happening of all events specified in Sections 2.2 and 5.

- 2.1 Each year on the anniversary of the Effective Date (hereinafter referred to as the "Renewal Date"), an additional one (1) year shall automatically be added to the term of this Agreement unless timely written notice of non-renewal is served by the non-renewing party. Notice of non-renewal shall be effective only if served by Owner at least ninety (90) days prior to the next upcoming annual Renewal Date, or by City at least 60 days prior to the next upcoming Renewal Date. City may elect not to renew this Agreement for the reasons and in accordance with the procedures set forth in Section 5 below. Owner may make a written protest of City's notice of non-renewal in accordance with Section 5 below. The party giving notice of non-renewal may, at any time prior to the annual Renewal Date of the Agreement, withdraw its notice of non-renewal by giving a notice of revocation to the other party. If Owner or City serves timely notice of non-renewal in any year, the Agreement shall remain in effect for the balance of the term then remaining at the time the notice of non-renewal was given.

- 2.2 City may cancel this Agreement at any time only for the reasons and in accordance with the notice and hearing procedure set forth in Section 5 below. City may, at any time prior to termination of the Agreement, withdraw its notice of cancellation by giving a notice of revocation to Owner.

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

- 3.1 Owner shall preserve, maintain, and, when necessary, restore and rehabilitate the Property, as necessary to retain its historical significance including its "Character Defining Features" (as hereinafter defined), in substantial conformance with the (i) the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, (ii) the United States Secretary of the Interior's Standards for Rehabilitation and (iii) the State Historical Building Code, as the same may

be amended, restated, or replaced from time to time (the "Preservation Standards"). "Character Defining Features" shall include, but not be limited to, the general architectural form, style, materials, design, scale, proportions, organization of windows, doors, and other openings, details, mass, roof line, porch and all other aspects of the appearance of the exterior of the Property. Owner may perform routine maintenance and repair of the Property, but may not materially alter the Property without the prior approval of City which approval shall not be unreasonably withheld or delayed. "Material Alternations" shall include, but not be limited to, demolition of any portion of the Property, exterior door or window replacement, major landscaping projects and all other similar exterior alterations of the Property, regardless of whether a building permit is required for such alterations. Before performing any work requiring the approval of City, Owner shall give at least sixty (60) days' written notice to City, describing the work to be done; if City shall not have acted within sixty (60) days thereafter to disapprove the work, or to approve the work subject to specified conditions, the work shall be deemed approved as submitted. In all events, City's Director of Planning Services shall be notified of all changes to the Property which Owner reasonably determines to be significant, prior to implementation of the changes.

- 3.2 Covenants Regarding Maintenance. The Owner shall maintain the Property, Site and all improvements thereon, including lighting and signage, in good condition, free of debris, waste, and graffiti, and in compliance with all applicable provisions of the Municipal Code. Owner shall maintain the Property and landscaping on the Property Site in accordance with the "Maintenance Standards" (as hereinafter defined). Such Maintenance Standards shall apply to all buildings, signage, lighting, landscaping, irrigation of landscaping, architectural elements identifying the Property and any and all other improvements on the Property Site (collectively the "Improvements"). To accomplish the maintenance, Owner shall either staff or contract with and hire licensed and qualified personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement.

Owner and its maintenance staff, contractor, or subcontractors shall comply with the following standards (the "Maintenance Standards").

- a. The Improvements shall be maintained in conformance and in compliance with the Preservation Standards, and reasonable commercial development maintenance standards for similar project, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvement and public improvements to the curb-line. The Improvements shall be maintained in good condition and in

accordance with the custom and practice generally applicable to comparable historic properties located in Palm Springs, California.

- b. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning, trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, groundcovers, or other planted areas; and staking for support of trees.
- c. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths, and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris, or other matter which is unsafe or unsightly; removal of all trash, litter, and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cutting, weeds, leaves, and other debris are properly disposed of.

Upon reasonable advance notice, Owner shall allow reasonable periodic examinations of the interior and exterior of the Property by City, County Assessor, the California Department of Parks and Recreation, and the State Board of Equalization, as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement.

- 3.3 Owner shall landscape the Property so as to permit a view corridor near the entrance to the Property, enabling the general public to see the entry to the Property from the public way adjacent to the Property, and an historical marker briefly documenting the site for public view shall be maintained adjacent to the public right-of-way near the entry within one (1) year after the Completion Date. Such marker has been or shall be provided by the City in City's standard form used for historical properties as of the Effective Date (as to size, material, text, exact location and method of installation), and in the event of its loss, theft, or destruction, shall be replaced at Owner's sole cost and expense (provided, however, that if the total cost and expense of creating and installing the marker shall exceed \$500, the excess shall be borne solely by City), and maintained at Owner's sole cost and expense. City acknowledges and agrees that Owner is maintaining the Property, and the marker and view corridor shall be situated and limited so as to minimize public intrusion and afford Owner all reasonable expectations of privacy.

3.4 Owner shall take reasonable steps to obtain and keep in force during the term of this Agreement a policy or policies of insurance (or a reasonable substitute therefore) providing replacement value coverage against damage to the Property against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and other generally covered perils, but excluding earthquake, flood and other matters either not generally available within the Palm Springs area, or not generally offered in such a policy without requiring an additional premium. Failure to maintain insurance or a reasonable substitute therefore shall be grounds for termination of this Agreement pursuant to Section 5(a) below.

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

5. Non-Renewal and Cancellation.

- (a) City may elect to provide notice of non-renewal of this Agreement in its discretion consistent with the provisions of this Agreement and with applicable law,.
- (b) City, following notice in accordance with California Government Code Section 50285 and a duly noticed public hearing before the Council, may elect to cancel this Agreement only if the Council finds and determines that (i) Owner, through its own willful or negligent acts, and subject to Section 16 below, has failed to restore or rehabilitate the Property in accordance with the Plans on or before the Completion Date, or (ii) Owner, through its own willful or negligent acts, and subject to Section 16 below, has allowed the Property to deteriorate beyond the point that it no longer meets the standards for a qualified historic property, and the deterioration is serious and irreversible.
- (c) Notwithstanding anything to the contrary herein, the Property shall be deemed to meet the standards for a qualified historic property if it is in compliance with the Plans and it is maintained in accordance with Section 3.2.
- (d) If City determines to cancel or not to renew this Agreement as specified above, it shall provide Owner with written notice of its intent to cancel or not renew, and such notice must specify in detail the reasons for the cancellation and/or non-renewal and the steps which Owner must take to cure any such problems (unless such reasons are not susceptible of cure). If City determines in its reasonable discretion that Owner has not cured such problems within ninety (90) days of such notice (or if curing such problems will reasonably take longer than ninety (90) days and Owner has not commenced diligent efforts to cure such problems within ninety (90)

days), then City shall (i) with respect to a decision to cancel, notice and hold a second public hearing before the Council to determine whether to cancel this Agreement, or (ii) with respect to a decision not to renew, provide Owner with written notice of its final decision not to renew this Agreement. Notice of all hearings under this Agreement shall be given to Owner directly pursuant to Section 11 below and published in accordance with Government Code Section 6061.

- (e) If City cancels (but not if City elects not to renew) this Agreement in accordance with this Section 5, Owner shall pay a cancellation fee of twelve and one-half percent (12½%) of the full value of the Historic Property at the time of cancellation. The full value shall be determined by the County Assessor without regard to any restriction on the Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the Auditor shall prescribe. As an alternative to cancellation of this Agreement for breach of any condition, City may (without limiting Owner's right to elect not to renew this Agreement), but is not obligated to, bring any action in court necessary to enforce the Agreement including, but not limited to, an action for specific performance or injunction.
- (f) Owner acknowledges that it may serve notice of its election not to renew this Agreement, but that the Agreement will remain in place through the existing term. Owner further acknowledges that it may not cancel this Agreement for any reason.

6. No Compensation. Owner shall not receive any payment from City in consideration of the obligations imposed under this Agreement other than costs in excess of \$500 for the historical marker. Owner and City acknowledge and agree that the primary consideration to City for the execution of this Agreement is the substantial benefit to the citizens of Palm Springs accruing from the rehabilitation and maintenance of the Property, and the primary consideration to Owner is the economic advantage that will accrue to Owner as a result of the possible effect upon the assessed value of the Property of the restrictions on the use and preservation of the Property imposed hereunder. However, Owner acknowledges that it is not guaranteed to receive a reduction of property taxes as a result of this agreement.

7. Condemnation. Upon the filing of an action in eminent domain by a public entity for the taking of all or any portion of any interest in the Property, and a determination by City that such action will frustrate the purpose of this Agreement, then in such event this Agreement shall be canceled as to those portions of the Property that are affected by the condemnation action (such that the value shall be appraised for condemnation purposes as unencumbered by the historic property restrictions set forth herein), and no fee shall be imposed on Owner for cancellation in accordance with Government Code Section 50286. If

subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency as to all or a portion of the Property, the restrictions on the use of the Property included in this Agreement shall be automatically reinstated, the Property shall be deemed, retroactive to the date of such abandonment, to have been subject to this Agreement, and the terms of this Agreement shall be in full force and effect.

8. Destruction. Upon any damage to or destruction of the Property, Owner and City shall proceed in accordance with this Section 8. In the event there is any damage to or destruction of the Property, this Agreement shall not be deemed to require Owner to rebuild, repair or restore the damaged portion, and Owner shall not be held in default under this Agreement for its failure to do so, provided, however, that this provision does not relieve Owner of any obligation to repair or otherwise take action with respect to the Property to the extent required to do so by applicable state and federal laws and regulations, if any, other than historical preservation laws.

(a) Minor Insured Damage. In the event the Property or any portion thereof is damaged by any casualty that is covered by the insurance maintained by Owner, then Owner shall rebuild, repair and restore the damaged portion thereof provided that (i) the amount of insurance proceeds available to Owner equals or exceeds the cost of such rebuilding, restoration and repair, and the total cost of repair is less than \$250,000 (in the opinion of a licensed architect, engineer or other qualified person selected by Owner and approved by City in its reasonable discretion), (ii) such rebuilding, restoration and repair can be completed within nine (9) months after the work commences, in the opinion of a registered architect or engineer or other qualified person selected by Owner and approved by City in its reasonable discretion, (iii) City has not acted to cancel or not to renew this Agreement on or before the date of commencement, and (iv) such rebuilding, restoration or repair is then permitted to be done under governmental laws, rules and regulations in existence as of the Approval Date in such a manner as to return the damaged portion thereof to substantially its condition immediately prior to the damage or destruction. To the extent that insurance proceeds must be applied to reduce any indebtedness secured by a mortgage or deed of trust encumbering the Property or any portion thereof, such proceeds, for the purposes of this subsection, shall be deemed not available to Owner unless such beneficiary permits Owner to use such proceeds for the rebuilding, restoration and repair of the damaged portion thereof. If Owner is required under this Section to rebuild, restore or repair the Property, such work shall commence not later than one (1) year after receipt of the applicable insurance proceeds, and Owner shall thereafter diligently proceed to complete such work within eighteen (18) months after commencement; provided, however, that so long as Owner shall be diligently proceeding toward completion of the work, such commencement and completion

dates shall be extended by City's Director of Planning Services upon Owner's request.

- (b) Major or Uninsured Damage. In the event the Property is damaged or destroyed by any casualty to the extent that Owner is not obligated, under subsection (a) above, to rebuild, repair or restore the damaged portion thereof, then within sixty (60) days after either (i) a final determination that damage is not an insured claim (or one (1) year after the date of damage, whichever comes first), or (ii) Owner's receipt of insurance premiums sufficient to rebuild (as determined under subsection (a) above), Owner shall notify City of its election, at its option, either to (1) rebuild, restore and repair the damaged portions thereof, in which case Owner's notice shall specify the time period within which Owner estimates such repairs or restoration can be completed; or (2) terminate this Agreement effective as of the date the damage or destruction occurred. If Owner elects to rebuild, restore or repair the Property under this Section, such work shall commence not later than one (1) year after receipt of the applicable insurance proceeds (or determination that the damage is not an insured claim), and Owner shall thereafter diligently proceed to complete such work within eighteen (18) months after commencement; provided, however, that so long as Owner shall be diligently proceeding toward completion of the work, such commencement and completion dates shall be extended by City's Director of Planning Services upon Owner's request.
- (c) Termination. If Owner elects to terminate this Agreement as provided in Section 8(b), no cancellation fee shall be required. Upon Owner's election to terminate, the Property shall be reassessed retroactively, as of the damage or destruction date(s) (but taking into account such damage or destruction), in accordance with applicable property tax laws, as if the Property was not subject to this Agreement following such damage or destruction date(s).

9. Binding Effect of Agreement. Owner hereby subjects the Property to the covenants, reservations, and restrictions set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations, and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Property, 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 Property 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 historic characteristics and significance of the Property for the benefit of the public and Owner.

10. Unenforceability. In the event a court of competent jurisdiction finds that this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the Government Code and the Revenue and Taxation Code, except for an unenforceability arising from the cancellation or non-renewal of this Agreement, for any tax year during the original term or any renewal of this Agreement, then this Agreement shall be null and void and without further effect, and the Property shall from such time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to the Agreement.

11. Notice. Any notice required to be given by the terms of this Agreement shall be provided in writing and shall be mailed by certified mail, return receipt requested or delivered by a recognized delivery or overnight courier service to the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto by written notice given in accordance with this Section 11. Deposit of notice in the mail, certified, return receipt requested and postage prepaid, or receipt of delivery as specified above, shall be deemed receipt of the notice.

To City: City of Palm Springs
 3200 East Tahquitz Canyon Way
 Palm Springs, California 92262
 Attn: City Manager

With a copy to: Woodruff, Spradlin & Smart
 Attn: Douglas Holland, Esq.

To Owner: Mark Hilbert
 1300 Bristol North, Ste. 190
 Newport Beach, CA 92660

12. General Provisions.

- 12.1 None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and/or any of their heirs, successors or assigns, nor shall such terms, provisions or

conditions cause the parties to be considered joint venturers or members of any joint enterprise.

- 12.2 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 Owner's contractor, subcontractor, agent, employee or other person acting on Owner's behalf which relates to the use, operation, and maintenance of the Property. City agrees to and shall hold Owner and Owner's officers, principals, agents, contractors, employees, heirs, successors and assigns harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the activities on the Property of City or those of City's contractor, subcontractor, agent, employee or other person acting on City's behalf which relates to City's activities on the Property.
- 12.3 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 hereto, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Property, whether by operation of law or in any manner whatsoever.
- 12.4 In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the 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 attorneys' fees to be fixed by the court, in addition to court costs and other relief ordered by the court.
- 12.5 Subject to Section 10 above, in the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.
- 12.6 This Agreement shall be construed and governed in accordance with the laws of the State of California.
- 12.7 City shall cooperate with Owner to the extent necessary in providing the County Assessor's Office with confirmation of and information regarding this Agreement in connection with the qualification of the Property for the initial assessment and any subsequent assessments of valuation of the Property encumbered with restricted historical property status in accordance with the California Revenue and Taxation Code.

- 12.8 This Agreement may be signed in one or more counterparts, each such counterpart shall be considered as part of and the same document as all other related counterparts.
- 12.9 This Agreement has been agreed to by the parties only after negotiations between City and Owner, both of which were represented by counsel. Accordingly, this Agreement shall not be construed as if it had been prepared only by City or Owner, but rather as if both City and Owner had prepared the same.
13. 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 Riverside.
14. Notification of Contract. Owner shall provide written notice of the existence of this Agreement to the Office of Historic Preservation within six (6) months after execution of this Agreement.
15. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.
16. Force Majeure. If the performance by Owner of any provision of this Agreement is delayed or prevented by any act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, and any other cause not within the control of Owner, then the period for Owner's performance of the provision shall be automatically extended for the same time Owner is so delayed or hindered.

(SIGNATURES ON FOLLOWING PAGE 12)

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

CITY OF PALM SPRINGS,
a municipal corporation

Dated: _____

By: _____
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Dated: _____

By: _____
Owner

Dated: _____

By: _____
Owner

(Owner/Owner Affidavit(s) follow on page 13)

OWNER AFFIDAVIT

State of _____)
County of _____)ss.

On _____ before me, _____,
Date Name and Title of Officer

personally appeared _____
Name(s) of Signer(s)

who 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 signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature of Notary Public

OWNER AFFIDAVIT

State of _____)
County of _____)ss.

On _____ before me, _____,
Date Name and Title of Officer

personally appeared _____
Name(s) of Signer(s)

who 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 signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature of Notary Public

EXHIBIT A
LEGAL DESCRIPTION