



CITY COUNCIL STAFF REPORT

DATE: January 13, 2016 CONSENT AGENDA

SUBJECT: MILLS ACT HISTORIC SITE CONTRACT – 225 STEVENS ROAD (HSPB #91 / HD-4 "POMPEII DE LAS PALMAS HISTORIC DISTRICT")

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 Steven M. Fusco, owner of 225 West Stevens Road (APN 505-330-003), and the Pompeii de las Palmas Homeowners Association. 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:

1. Approve a Mills Act Historic Property Agreement between the City of Palm Springs and Steven M. Fusco, and the Pompeii de las Palmas Homeowners Association, for 225 West Stevens Road, a contributing property in the Pompeii de las Palmas Historic District (HSPB #91 / HD-4).
2. Authorize the City Manager to execute the Agreement.
3. Direct the City Clerk to record the Agreement.

STAFF ANALYSIS:

On April 1, 2015, the City Council designated Pompeii de las Palmas Condominiums a historic district (HSPB #91 / Historic District #HD-4). The Pompeii de las Palmas Historic District is comprised of nine residences on 0.9 acres. The residence at 225 West Stevens Road is one of the residences defined as a contributing structure to the historic district.

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 property at 225 West Stevens Road has been deemed a "contributing structure" within the Pompeii de las Palmas Historic District. Pursuant to Municipal Code Section 8.05.125, contributing structures in a historic district are subject to Class 1 regulations and are designated Class 1 historic sites. State of California Governmental Code Section 50280.1 denotes that properties that are eligible for application of a Mills Act contract must be listed in a state, city, county official register of historic sites. As such, 225 West Stevens Road is qualified for a Mills Act Contract.

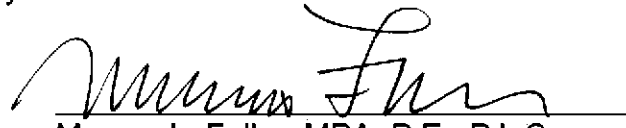
At Pompeii de las Palmas, routine maintenance and upkeep of the building exteriors and grounds is a shared responsibility of the home-owners association (HOA) and the individual unit owners. Because of this shared responsibility, the Mills Act Agreement in this particular case has been drafted with both the homeowners and the HOA as parties to the agreement. If, in the future, other individual home owners at the Pompeii de las Palmas Condominium Association wish to pursue a Mills Act Agreement, the same contractual arrangement would apply.

FISCAL IMPACT: None

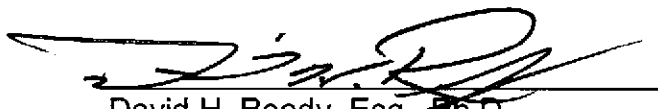
There is no known fiscal impact upon the city as a result of this recommended action.



Flinn Fagg, AICP
Director of Planning Services



Marcus L. Fuller, MPA, P.E., P.L.S.
Assistant City Manager / City Engineer



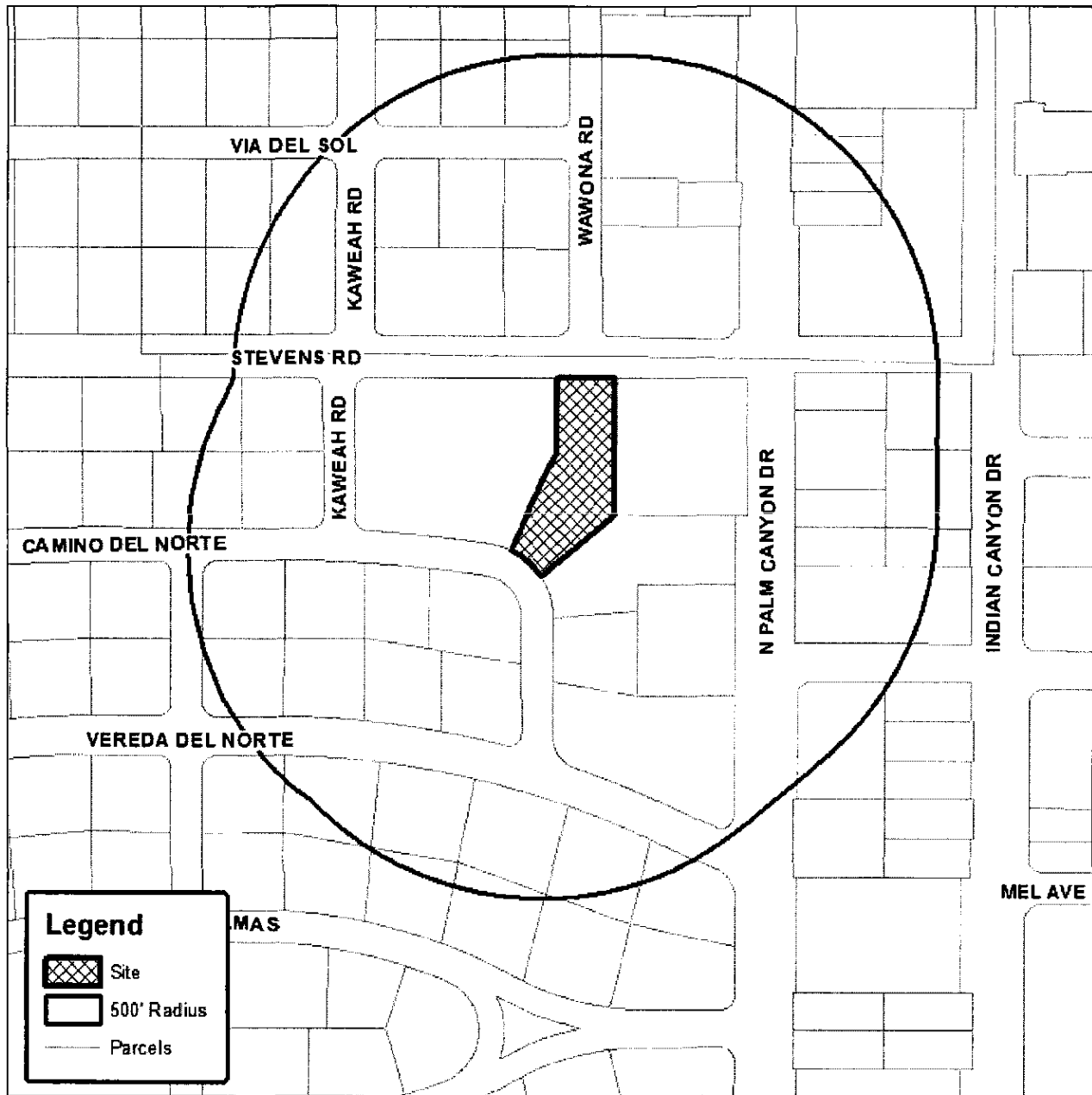
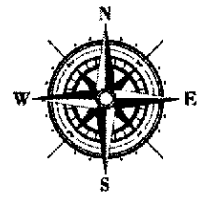
David H. Ready, Esq., Ph.D.
City Manager

Attachments:

- Vicinity Map
- City Council Action Summary (excerpts) dated April 1, 2015
- Applicant letters.



Department of Planning Services Vicinity Map



CITY OF PALM SPRINGS

**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 this 13th day of January, 2016 by and between the City of Palm Springs, a charter city and municipal corporation ("City"), Steven M. Fusco ("Owner") of 225 West Stevens Road and the Pompeii De Las Palmas Homeowners Association ("HOA").

RECITALS:

- A. California Government Code Sections 50280, *et seq.* (the "State Law"), as may be amended from time to time, authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance, protection, and restoration of such historical property so as to retain its characteristics as a property of historical significance.
- B. The Owners possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 225 West Stevens Road, Palm Springs, California ("Historic Property"). A legal description of the Historic Property is attached hereto as Exhibit A and is incorporated herein by this reference.
- C. On April 1, 2015 (the "Approval Date"), the City Council of the City of Palm Springs ("Council") approved Resolution 23797 designating the Property a Class 1 historic district, pursuant to the terms and provisions of Chapter 8.05 of the Palm Springs Municipal Code (the "City Code").
- E. The City and the Owners desire to enter into this Agreement for the purpose of protecting and preserving the characteristics of historical significance of the Historic Property, in accordance with the State Law; to help preserve the Palm Springs community's own unique civic identity and character; and to qualify the Historic Property for an assessment of valuation pursuant to Revenue and Taxation Code Section 439.2 and any corresponding adjustment in property taxes resulting therefrom.

AGREEMENT

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

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on January 13, 2016 ("Effective Date") and shall remain in effect for a minimum term of ten (10) years thereafter. Each year upon the anniversary of the Effective Date ("Renewal Date"), an

additional one (1) year shall automatically be added to the remaining term of the Agreement unless a notice of nonrenewal is delivered as provided in Section 2 of this Agreement.

2. Non-Renewal and Cancellation. If either the Owner or the City desire in any year not to renew this Agreement, the Owner or the City shall serve a written notice of nonrenewal upon the party in advance of the Renewal Date ("Notice of Nonrenewal"). The Notice of Nonrenewal shall be effective only if served by the Owner upon the City at least ninety (90) days prior to the Renewal Date, or if served by the City upon the Owner, the Notice of Nonrenewal shall be effective only if served upon the Owner at least sixty (60) days prior to the Renewal Date. If either the City or the Owner serve a Notice of Nonrenewal in any year, this Agreement shall remain in effect for the balance of the term then remaining from the last Renewal Date (or from the Effective Date if no Renewal Date has yet occurred).

3. Owner Protest of City Nonrenewal. Within fifteen (15) days of the Owner's receipt of the Notice of Nonrenewal from the City, the Owner may file with the City a written protest of the Notice of Nonrenewal. Upon receipt of the written protest, the City Council shall set a hearing prior to the expiration of the Renewal Date of this Agreement. The Owner may furnish the City Council with any information which Owner deem relevant and shall furnish the City Council with any information it may require. The City Council may, at any time prior to the annual Renewal Date, withdraw its Notice of Nonrenewal.

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

4.1 The Owner shall preserve and maintain the characteristics of the cultural and historical significance of the Historic Property. Attached to this Agreement as Exhibit "B", is a list of the minimum standards and conditions for maintenance, use, protection, and preservation of the Historic Property, which shall apply to the Historic Property. The Owner shall comply with these minimum standards throughout the term of this Agreement. In addition, Owner shall comply with the terms of the City Code, and shall obtain any applicable permits necessary to protect, preserve, restore, and rehabilitate the Historic Property so as to maintain its historical and cultural significance.

4.2 The Owner shall, where necessary, repair, maintain, restore, and rehabilitate the Historic Property according to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, Secretary of the Interior's Standards for the Treatment of Historic Properties, the State Historical Building Code, and the City of Palm Springs. The condition of the interior and exterior of the Historic Property on the effective date of this Agreement is documented in photographs attached as Exhibit "C" to this Agreement. At a minimum, Owner shall continually maintain the exterior of the Historic Property in the same condition as documented in Exhibit "C."

4.3 The Owner shall carry out specific restoration, repair, maintenance, and/or rehabilitation projects on the Historic Property, as outlined in the attached Exhibit "D" to this Agreement. All such projects shall be undertaken and completed in accordance with the Secretary of the Interior's Standards for the Treatment of

Historic Properties with Guidelines for Preservation, Restoration and/or Rehabilitation and the City Codes and all applicable design guidelines.

4.4 The Owner shall not be permitted to block the view corridor with any new structure, such as walls, fences, or shrubbery, so as to prevent the viewing of the Historic Property from the public right-of-way.

5. Interior and Exterior Inspections. Prior to the approval, execution, and recordation of this Agreement, and every five years thereafter, the City Manager of the City or the City Manager's designee (the "City Manager") shall inspect the interior and exterior of the premises to determine the Owner's compliance with the terms and provisions of this Agreement.

6. Provision of Information of Compliance. The Owner shall furnish the City Manager with any and all information requested by the City Manager, which the City Manager deems necessary or advisable to determine eligibility of the Historic Property and compliance with the terms and provisions of this Agreement.

7. Breach of Agreement; Remedies.

7.1 If the Owner breaches any provision of this Agreement, the City Manager may give written notice to the Owner by registered or certified mail detailing the Owner's violations. If such violation is not corrected to the reasonable satisfaction of the City Manager within thirty (30) days after the date of notice of violation, or within such a reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within thirty (30) days and thereafter diligently pursued to completion), the City Manager may, without further notice, declare THE Owner to be in breach of this Agreement. Upon the City Manager's declaration of the Owner's breach, the City Manager may pursue any remedy available under local, state, or federal law, including those specifically provided for in this section.

7.2 The City Council may cancel this Agreement if the City Council determines, following a duly noticed public hearing in accordance with California Government Code section 50286, that the Owner breached any of the conditions of the Agreement, the Owner allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historic property, or the Owner failed to maintain and preserve the Historic Property in accordance with the terms of this Agreement. If this Agreement is cancelled, under this paragraph, the Owner shall pay a cancellation fee to the Office of the Auditor for the County of Riverside as required by California Government Code Section 50286.

7.3 As an alternative to cancellation of this Agreement for the Owner's breach of any condition, the City Manager may bring an action in court necessary to enforce this Agreement including, but not limited to, an action to enforce this Agreement by specific performance, injunction, or receivership.

8. Destruction of Property; Eminent Domain; Cancellation. If the Historic Property is destroyed by earthquake, fire, flood, or other natural disaster such that in the opinion of the City Building Official more than sixty percent (60%) of the original fabric of the structure must be replaced, this Agreement shall be cancelled because the historic value of the structure will have

been destroyed. If the Historic Property is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City Council to frustrate the purpose of this Agreement, this Agreement shall be cancelled. No cancellation fee pursuant to Government Code section 50286 shall be imposed if the Agreement is cancelled pursuant to this Section.

9. Waiver. The City does not waive any claim of default by the Owner if the City or the City Manager 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 properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by the City or the City Manager of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.

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

11. Covenants Run with the Land. The City and the Owner hereby declare their understanding and intent that the burden of the covenants, reservations, and restrictions set forth in this agreement touch and concern the land in that it restricts development of the Historic Property. The City and the 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 cultural and historical characteristics and significance of the Historic Property for the benefit of the public, the City, and the Owner.

12. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto:

City: City of Palm Springs
Office of the City Clerk
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92263

Owner: Steven M. Fusco
225 West Stevens Road
Palm Springs, CA 92262

HOA: Steven M. Fusco
Pompeii De Las Palmas HOA President 2015
225 West Stevens Road
Palm Springs, CA 92262

13. Effect of Agreement. None of the terms, provisions, or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors, or assigns, nor shall such terms, provisions, or conditions cause the parties to be considered joint venturers or members of any joint enterprise.

14. Indemnity of City. The Owner shall defend, indemnify, and hold harmless the City and its elected officials, officers, agents, and employees from any actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state or local governmental agency, arising out of or incident to (i) the direct or indirect use operation, or maintenance of the Historic Property by the Owner or any contractor, subcontractor, employee, agent, lessee, licensee, invitee, or any other person; (ii) the Owner's activities in connection with the Historic Property; and (iii) any restrictions on the use or development of the Historic Property, from application or enforcement of the City Code, or from the enforcement of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. The Owner's obligation to indemnify shall survive the termination, cancellation, or expiration of this Agreement and shall not be restricted to insurance proceeds, if any, received by the City, its elected officials, employees, or agents.

15. Binding Upon Successors. 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 Historic Property, whether by operation of law or in any manner whatsoever.

16. Legal Costs. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, conditions 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.

17. Severability. 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.

18. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the office of the County Recorder of the County of Riverside. In the event the City fails to record this Agreement as provided in this Section, the Owner or agent of an owner shall record this Agreement with Riverside County within six (6) months of entering into the Agreement and shall file and submit a conformed copy of this Agreement with the City Clerk promptly after recordation.

19. Amendments. This Agreement may be amended, in whole or in part, only by written recorded instrument executed by the parties hereto.

20. Governing Law and Venue. This Agreement shall be construed and governed in accordance with the laws of the State of California. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

21. No Compensation. The Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner and the City acknowledge and agree that the primary consideration to the 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 the Owner is the economic advantage that will accrue to the 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. The Owner acknowledges that it is not guaranteed to receive a reduction of property taxes as a result of this Agreement.

SIGNATURES ON FOLLOWING PAGE

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

CITY OF PALM SPRINGS,
a municipal corporation

Dated: _____

By: _____
City Manager: David H. Ready

APPROVED AS TO FORM:

ATTEST:

City Attorney: Douglas Holland

City Clerk: James Thompson

Dated: _____

By: _____
Owner: Steven M. Fusco

Dated: _____

By: _____
Steven M. Fusco
Pompeii De Las Palmas HOA President 2015

EXHIBIT A

**LEGAL DESCRIPTION
(Section 4.0)**

A CONDOMINIUM COMPRISED OF:

PARCEL 1:

UNIT 3, AS SHOWN AND DEFINED ON THE CONDOMINIUM PLAN RECORDED AUGUST 8, 1969 AS INSTRUMENT NO. 81499 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

PATIO AREA 12, AS SHOWN AND DEFINED ON THE CONDOMINIUM PLAN RECORDED AUGUST 8, 1969 AS INSTRUMENT NO. 81499 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 3:

AN EXCLUSIVE PARKING EASEMENT DESIGNATED AS UNIT 3, AS SHOWN AND DEFINED ON THE CONDOMINIUM PLAN RECORDED AUGUST 8, 1969 AS INSTRUMENT NO. 81499 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 4:

AN UNDIVIDED 1/9TH INTEREST IN AN TO LOT 1 OF TRACT NO. 3630, AS SHOWN BY MAP ON FILE IN BOOK 62, PAGE 14 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

Assessor's Parcel Number: 505-330-003-3

(Aerial photo of the property and tract map are on file in the Planning Services Department of the City of Palm Springs, California at 3200 Tahquitz Canyon Way, Palm Springs, CA 92262)

EXHIBIT B

MAINTENANCE STANDARDS (Section 4.1)

All structures, walls, water features, landscaping and any other improvements associated with the parcel that is the subject of this Mills Act Historic Property Preservation Agreement ("Agreement") shall be maintained in good condition throughout the term of this agreement.

All nuisances as defined in Title 11 "Peace, Morals and Safety" of the Palm Springs Municipal Code that occur or develop on the subject parcel shall be abated in a timely manner and to the satisfaction of the City Manager or his designee.

All structures, walls, water features, landscaping and any other improvements associated with the parcel that is the subject of this Agreement that are part of the historic character-defining features of the property shall be maintained as outlined in the Secretary of the Interior Standards for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995 Weeks and Grimmer).

EXHIBIT C

EXISTING CONDITIONS
(Section 4.2)

(Aerial photo of the property and tract map are on file in the Planning Services Department of the City of Palm Springs, California at 3200 Tahquitz Canyon Way, Palm Springs, CA 92262)

EXHIBIT D

SPECIFIC PROJECTS
(Section 4.3)

(Aerial photo of the property and tract map are on file in the Planning Services Department of the City of Palm Springs, California at 3200 Tahquitz Canyon Way, Palm Springs, CA 92262)

September 25, 2015

City of Palm Springs

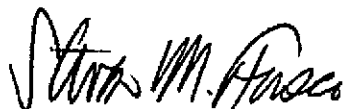
Planning Department Services

Dear HSPB Board and Palm Springs Planning Department,

Please accept this formal letter of intent and agreement for the Pompeii De Las Palmas HOA to be a signing participant of the Mills Act Contract Agreement with owner, Steven M. Fusco, TR, of 225 West Stevens Road.

In regards to Unit 225, it has all of the original features which have been preserved.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Fusco". The signature is written in a cursive style with a large initial "S".

Steven M. Fusco

Pompeii De Las Palmas HOA President 2015

RECEIVED

SEP 29 2015

PLANNING SERVICES
DEPARTMENT

September 25, 2015

Mr. Finn Fagg, Planning Director
Department of Planning
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262-6959

Dear Director Fagg,

I am the owner of 225 West Stevens Road in Palm Springs (Assessment Number 505330003-3) which is located in the Pompeii De Las Palmas condominium development. Pompeii De Las Palmas became the fourth Historical District on April 1, 2015 (Resolution 23797).

I am writing to apply for the Mills Act Tax Abatement Program. Enclosed is my check for \$1,305.00 to begin the application process.

Through the Mills Act economic incentives, I look forward to continue performing ongoing restoration and preservation of our historic mid-century property.

If you have any questions or need additional information, you may contact me at smfusco@gmail.com or (970) 564-1999.

Thank you for your help in this process.

Sincerely,



Steven M. Fusco

~~**AYES:** Councilmember Hutcheson, Councilmember Mills, Mayor Pro Tem Lewin, and Mayor Pougnet.
NOES: None.
ABSENT: Councilmember Foat.~~

Councilmember Foat returned to the dais.

**1.C. AMENDMENT TO THE PALM SPRINGS ZONING CODE RELATING TO ACCESSORY SECOND DWELLING UNITS (CASE 5.1341 ZTA):
POST NOTICE OF CONTINUED PUBLIC HEARING**

ACTION: 1) Table the public hearing with no public testimony at this time; 2) Continue the Public Hearing to April 15, 2015; and 3) Direct the City Clerk to post a Notice of Continued Public Hearing pursuant to law.
Motion Mayor Pro Tem Lewin, seconded by Councilmember Mills and unanimously carried on a roll call vote.

1.D. HISTORIC DISTRICT DESIGNATION FOR THE POMPEII DE LAS PALMAS CONDOMINIUMS LOCATED AT 221 THROUGH 231 WEST STEVENS ROAD AND 200 THROUGH 206 CAMINO NORTE AS HISTORIC DISTRICT NO. 4 (CASE HSPB 91/HD 4):

ACTION: Adopt Resolution No. ~~23797~~, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, DESIGNATING THE POMPEII DE LAS PALMAS CONDOMINIUMS LOCATED AT 221 THROUGH 231 WEST STEVENS ROAD AND 200 THROUGH 206 CAMINO NORTE AS HISTORIC DISTRICT NO. 4 (CASE HSPB 91/HD 4)." **Motion Mayor Pro Tem Lewin, seconded by Councilmember Foat and carried 4-1 on a roll call vote.**

AYES: Councilmember Foat, Councilmember Hutcheson, Mayor Pro Tem Lewin, and Mayor Pougnet.
NOES: Councilmember Mills.

~~**1.E. PROPOSED ORDINANCE AMENDING THE PALM SPRINGS MUNICIPAL CODE RELATING TO COUNCIL CALL UP OF COMMISSION AND BOARD ACTIONS AND SUSPENSION OF REGULATORY ORDINANCES (CASE 5.1341 ZTA):
PUBLISH AND POST.**~~

~~**ACTION:** 1) Waive the reading of the ordinance text in its entirety and read by title only; and 2) Adopt Ordinance No. ~~23797~~, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTIONS 2.06.030, 6.12.030, AND 94.10.00 OF THE PALM SPRINGS MUNICIPAL CODE RELATING TO COUNCIL CALL UP OF COMMISSION AND BOARD ACTIONS AND THE SUSPENSION OF REGULATORY ORDINANCES 6.12.030 OF THE PALM SPRINGS MUNICIPAL CODE." **Motion Councilmember Hutcheson, seconded by Councilmember Mills and carried 4-1 on a roll call vote.**~~