



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Historic Landmarks Commission

**SUBJECT:** SEE BELOW

**DATE:** November 13, 2009

---

**COUNCIL DISTRICT:** 3

**SNI:** University

**SUBJECT: HL09-187 & MA09-008, Historic Landmark Nomination and Mills Act Historical Property Contract for the Former Second Presbyterian Manse, located at 655 S. Sixth Street**

## **RECOMMENDATION**

The Historic Landmarks Commission (HLC) recommends (5-0-1; Cohen absent) that the City Council adopt resolutions designating the Former Second Presbyterian Manse as a Historic Landmark No. 187 and approving associated Historical Property Contract File No. MA09-008 with the condition that the Preservation Plan only include improvements to the main house.

## **OUTCOME**

Designation of the building as a Historic Landmark structure would establish the requirement for the issuance of Historic Preservation (HP) permits to approve any exterior changes proposed to the structure. Approval of the Historical Property Contract would allow the property owner to utilize property tax relief to maintain the property. By approving the contract, the City and the applicant become partners in the preservation of the landmark property.

## **BACKGROUND**

The property owner, David Dudek, Naiomi Dudek and Raman Yousefi, submitted an application for Historic Landmark designation of the Former Second Presbyterian Manse in August 2009, using historical evaluations performed by qualified historical consultants Archives and Architecture. The City Council approved initiation of the City Landmark designation process for the Former Second Presbyterian Manse at its October 27, 2009 public hearing.

On November 4, 2009, the Historic Landmarks Commission held a public hearing to consider the proposed Historic Landmark designation and associated Historical Property Contract. The Commission voted to recommend the City Council adopt a resolution designating the Former

HONORABLE MAYOR AND CITY COUNCIL

November 13, 2009

Subject: HL09-187 & MA09-008, Historic Landmark Nomination and Mills Act Historical Property Contract for the Former Second Presbyterian Manse, located at 655 S. Sixth Street

Page 2

Second Presbyterian Manse as a Historic Landmark No. 187 (5-0-1; Cohen absent). The Commission voted to recommend the City Council approve the associated Historical Property Contract (File Number MA09-008) with the condition the Preservation Plan only include improvements to the main house and that City Council make the following findings (5-0-1; Cohen absent):

- The proposed contract is consistent with the San José 2020 General Plan;
- The proposed contract would provide greater protection for the landmark property than is otherwise provided by the provisions of Chapter 13.48 of the municipal code; and
- The proposed contract complies with the requirements of Section 13.48.520 of the San José Municipal Code.

The Historic Landmarks Commission asked the applicant to revise the Preservation Plan by replacing the item "Re-pipe rear building" with an item that would contribute to the maintenance of the historic characteristics of the main residence. The applicant agreed. The draft Preservation Plan that is attached has been revised accordingly.

## ANALYSIS

### I. Historic Landmark Nominations

Based on the information in the historical evaluation prepared by Archives and Architecture for the property, as discussed below, the building merits designation as a historic landmark based on its historical, cultural and architectural significance. The DPR form states that the building appears to be eligible for the National Register of Historic Places (NR) and the California Register of Historical Resources (CR). The former manse of the Second Presbyterian Church appears eligible under NR Criterion A and CR Criterion 1, for historic patterns of development by contributing to both the existing designated district and the potential smaller district; and under NR Criterion C and CR Criterion 3 as a distinguished building among local residential architecture from San José's period of *Horticultural Expansion*. The alterations, such as the early rear addition and the detached rear apartment do not have a significant impact on the character of the house.

The former manse of the Second Presbyterian Church has special historical and architectural value to the community – its quality derives from its distinguished architecture due to its style and design, and for its association with the Second Presbyterian Church as their manse during the early part of the twentieth century. The property meets the criteria for designation as a City Landmark Structure in conformance with San José's Historic Preservation Ordinance (Chapter 13.48 of the Municipal Code). Under the definition for historical significance within the City of San José Historic Preservation Ordinance, the house clearly has historic, architectural, and aesthetic value of a historical nature. The building qualifies for City Landmark status based on: *Criterion (1), Its character, interest or value as part of the local, regional, state or national history, heritage or culture* for its contribution to the patterns of development of the Reed City Landmark Historic

HONORABLE MAYOR AND CITY COUNCIL

November 13, 2009

Subject: HL09-187 & MA09-008, Historic Landmark Nomination and Mills Act Historical Property Contract for the Former Second Presbyterian Manse, located at 655 S. Sixth Street

Page 3

District; and *Criterion (6), as an embodiment of distinguishing characteristics of an architectural type or specimen* from its distinguished architecture due to its style and design.

## **II. Mills Act Historical Property Contracts**

The Historic Landmark Preservation Agreement is an incentive for ownership of City Landmarks. It is a contract between the City of San José and the owner of a designated City Landmark which allows the owner to enjoy a reduced property tax rate from the County Assessor in exchange for the preservation, and in some cases restoration and rehabilitation, of the owner's historic property. The purpose of the agreement is to provide greater protection for the City Landmark property than is otherwise provided by the historic preservation regulations in the City Municipal Code. The County Assessor sets the property tax rate based on an appraisal of the market value of the land and improvements. A property under contract will receive a property tax reduction based on an appraisal of the rental value of the land and improvements.

The draft contract is attached. As is typical for Mills Act historical property contracts, the contract is currently being finalized by the City Attorney's Office and the property owner and will be forwarded to the City Council under separate cover prior to the public hearing.

### **Required Provisions of Historical Property Contracts**

Municipal Code Chapter 13.48 requires provisions of Historical Property Contracts as follows:

- A. A description of the Landmark Property subject to the Contract;
- B. A provision that the term of the contract is a minimum period of ten years;
- C. Specific conditions requiring preservation of the Landmark Property and where appropriate, restoration and rehabilitation of the Landmark Property to conform to the requirements of the City, and the rules and regulations of the Office of Historic Preservation of the State of California Department of Parks and Recreation;
- D. Provision for the periodic examination of the interior and exterior of the Landmark Property by the City of San José, Santa Clara County Assessor, and the State Board of Equalization as may be necessary to determine the owner's compliance with the Contract.
- E. A requirement that the property owner annually expend an amount equal to a minimum of 10% of the tax savings attributed to the Contract to the preservation and maintenance of the Landmark Property; and
- F. A provision that the Contract is binding upon and shall inure to the benefit of, all successors in interest of the owners; and that a successor in interest shall have the same rights and obligations under the Contract as the original owners who entered into the Contract.

HONORABLE MAYOR AND CITY COUNCIL

November 13, 2009

Subject: HL09-187 & MA09-008, Historic Landmark Nomination and Mills Act Historical Property Contract for the Former Second Presbyterian Manse, located at 655 S. Sixth Street

Page 4

### **Required Findings of Historic Property Contracts**

The Historic Landmarks Commission recommends that the City Council adopt a resolution making the following findings and approving the proposed associated Historical Property Contracts, based on the text added in italics.

A. The proposed Contract is consistent with the General Plan;

*Preservation of specific structures or special areas is a part of the San José 2020 General Plan Urban Conservation/Preservation Major Strategy. The proposed Contract is consistent with General Plan Historic, Archeological and Cultural Resources Policies, which state that the City should utilize a variety of techniques and measures to serve as incentives toward fostering the rehabilitation of individual buildings and districts of historic significance.*

B. The proposed Contract would provide greater protection for the Landmark Property than is otherwise provided by the provisions of Municipal Code Chapter 13.48;

*The proposed Contract provides greater protection for the Landmark Property than is otherwise provided by the provisions of Municipal Code because the owner, in partnership with the City, may use property tax relief to rehabilitate and maintain the property in accordance with the preservation plans, Exhibit "C".*

C. The proposed Contract complies with the required provisions of Historical Property Contracts listed above.

*The proposed Contracts incorporate the Municipal Code's required provisions for Historical Property Contracts.*

### **POLICY ALTERNATIVES**

The City Council could opt to decline to designate the building as a City Landmark Structure. In such case, the structure could undergo exterior alterations in the future without need of a Historic Preservation Permit. The City Council could also opt to decline to approve the associated Mills Act historical property contract, in which case the property would remain at its current assessment level; tax savings would not be available for the property owner to carry out the preservation work being proposed in the historical property contract.

**Pros:** This alternative would not appear to confer any benefits, from a public policy perspective.

**Cons:** A decision not to designate the building in accordance with its eligibility as a City Landmark Structure would not further the objectives of the General Plan policies and the Historic Preservation Ordinance to promote and enhance the preservation of historically and architecturally significant sites and structures (see Fiscal/Policy Alignment section, below).

**Reason for not recommending:** On the basis of the evaluation prepared by qualified historical consultants, the house has been determined to meet the eligibility requirements for designation as

HONORABLE MAYOR AND CITY COUNCIL

November 13, 2009

Subject: HL09-187 & MA09-008, Historic Landmark Nomination and Mills Act Historical Property Contract for the Former Second Presbyterian Manse, located at 655 S. Sixth Street

Page 5

a City Landmark Structure. To follow through with formal designation process as proposed would promote the General Plan and Municipal Code objectives relative to historic preservation.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff has followed Council Policy 6-30: Public Outreach Policy. The Landmark nomination and contract was initiated by the property owner. Public hearing notices for the project were published in a local newspaper, posted at the site, and mailed to all property owners and tenants within at least 300 feet of the subject site. Information about the proposed projects and the associated public hearings has been made available through the Planning Division web site, and staff has been available to answer questions.

The Historic Landmarks Commission held a public hearing on the proposed Historic Landmark Designation and Historical Property Contract November 4, 2009 as noted above. No members of the public spoke about the project. No members of the public spoke about the project.

### **COORDINATION**

City Council resolutions to designate the Landmarks and the associated Historical Property Contracts have been coordinated with the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with City Council Policy: Preservation of Historic Landmarks, and the Historic, Archaeological, and Cultural Resources San José 2020 General Plan policies.

HONORABLE MAYOR AND CITY COUNCIL

November 13, 2009

Subject: HL09-187 & MA09-008, Historic Landmark Nomination and Mills Act Historical Property Contract for the Former Second Presbyterian Manse, located at 655 S. Sixth Street

Page 6

### **COST SUMMARY/IMPLICATIONS**

Under a Historical Property Contract, a property receives a lower tax bill based on the property's potential rental income rather than its full market value. The amount of tax savings varies from property to property and year to year, depending on circumstances such as the size of the building and current rental rates. Because of Proposition 13, the percent difference between a new "income-based" assessment and a property's current assessment level is also affected by how long a given property owner has owned a building. The average per-house property tax reduction experienced by other cities in California reportedly ranges from approximately 2000 to 4000 dollars per year (the assessment formula is the same statewide). The property tax reduction in San José may be somewhat higher because of higher average property values.

In San José, the Historical Property Contract is an incentive that is available only to individually designated City Landmark Structures. There are approximately 150 City Landmark Structures in San José, out of a total of approximately 307,000 housing units. Currently there are 31 existing approved Historical Property Contracts in the city.

### **BUDGET REFERENCE**

Not applicable.

### **CEQA**

The project has been determined exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15331. The project is limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

*Joe* *Akari Sanchez*  
JOSEPH HORWEDEL, SECRETARY  
Historic Landmarks Commission

For questions, please contact Project Manager Lori Moniz at 535-7841.

# DRAFT

## RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ DESIGNATING, PURSUANT TO THE PROVISIONS OF CHAPTER 13.48 OF TITLE 13 OF THE SAN JOSÉ MUNICIPAL CODE, THE FORMER SECOND PRESBYTERIAN MANSE LOCATED AT 655 S. SIXTH STREET AS A CITY LANDMARK OF SPECIAL HISTORICAL, ARCHITECTURAL, CULTURAL, AESTHETIC OR ENGINEERING INTEREST OR VALUE OF A HISTORIC NATURE**

**HL09-187**

WHEREAS, Chapter 13.48 of Title 13 of the San José Municipal Code provides for the designation of structures and/or sites of special historical, architectural, cultural, aesthetic or engineering interest or value of a historical nature as landmarks by the City Council of the City of San José; and

WHEREAS, said Chapter 13.48 of Title 13 provides that any historic property can be nominated for designation as a City Landmark by the City Council, the Historic Landmarks Commission, or by application of the owner or the authorized agent of the owner of the property for which designation is requested; and

WHEREAS, the City Council adopted Resolution No. 75150 on October 27, 2009, initiating proceedings pursuant to said Chapter 13.48 of Title 13 for consideration of such landmark designation for the Former Second Presbyterian Manse located at 655 S. Sixth Street; and

WHEREAS, said Chapter 13.48 of Title 13 provides that before this Council may designate any building as a landmark, it shall hold at least one public hearing on such proposed designation, and that before it holds said public hearing, the Council shall refer said proposed landmark designation to the Historic Landmarks Commission of the City of San José for its consideration at a public hearing and for its report and recommendation thereon; and

WHEREAS, within the time and in the manner provided by Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on November 4, 2009 at 6:00 p.m., conduct a public hearing on said landmark designation and recommend approval of the designation of the Former Second Presbyterian Manse, located at 655 S. Sixth Street,

described hereinafter in Section 1 of this Resolution, as a landmark of special historical, architectural, cultural, aesthetic or engineering interest or value of a historic nature and made certain findings with respect thereto; and

WHEREAS, a copy of the City of San José Historic Landmark Nomination Form No. HL09-181 upon which such recommendation was made is on file in the Planning Division of the City of San José and available for review; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the City Council gave notice that on December 1, 2009 at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said landmark designation, at which hearing any and all persons interested in said proposed designation could appear and avail themselves of an opportunity to be heard and to present their views with respect to said proposed designation; and

WHEREAS, the subject property is all that real property located within the City of San José at 655 S. Sixth Street and described in Exhibit "A," which exhibit is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard and present their views with respect to said proposed landmark designation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ AS FOLLOWS:**

**SECTION 1.** In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Historic Preservation Ordinance, this Council does hereby designate the hereinafter described Former Second Presbyterian Manse, located at 655 S. Sixth Street, as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.

**SECTION 2.** Said designation is based on the following criteria of the Historic Preservation Ordinance: *[This section to be updated to reflect actual City Council action taken.]*

- *Criterion (1), Its character, interest or value as part of the local, regional, state or national history, heritage or culture for its contribution to the patterns of development of the Reed City Landmark Historic District; and Criterion (6), as an embodiment of distinguishing characteristics of an architectural type or specimen from its distinguished architecture due to its style and design.*

**SECTION 3.** The City Clerk is hereby directed to notify those persons designated in San José Municipal Code Section 13.48.110, Subsection L, in the manner specified by said Section and to direct the recordation of a Notice of Granting of this resolution in the Office of the Recorder of the County of Santa Clara.

**PASSED FOR PUBLICATION** of title this            day of            2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

CHUCK REED  
Mayor

ATTEST:

---

LEE PRICE, MMC  
City Clerk

**EXHIBIT "A"**

**LEGAL DESCRIPTION  
FOR  
THE FORMER SECOND PRESBYTERIAN MANSE  
655 S. SIXTH STREET  
HL09-187**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

A portion of LOT 9, BLOCK 38, as delineated upon that certain map entitled "Reed Addition to the City of San Jose conveyed by J.F. Feed et al to S.O. Houghton by Deed of Trust dated March 12, 1896", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 18th, 1869 in Book C of Miscellaneous Records, at Page 322 described as follows:

Beginning at a point on the Westerly line of Sixth Street, distant thereon 269.90 feet Northerly from the point of intersection of the Northerly line of Margaret Street with the Westerly line of Sixth Street, said point of beginning being also the Southeasterly corner of land conveyed by Emily C. Tennent Spring to Mrs Jessie C. Morton by deed dated April 24, 1897 and recorded June 8, 1897 in Book 192 of Deeds, page 460, Santa Clara County Records; thence running Southerly and along said Westerly line of Sixth Street 45 feet; thence running at right angles westerly and parallel with the Northerly line of Margaret Street 125 feet; thence running at right angles Northerly and parallel with the Westerly line of Sixth Street 45 feet; thence running at right angles Easterly and parallel with the Northerly line of Margaret Street 125 feet to the point of beginning.

ARB No: 472-25-73  
APN No: 472-25-073

# DRAFT

File No. MA09-008

## RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ  
APPROVING A HISTORIC LANDMARK PRESERVATION  
AGREEMENT WITH DAVID DUDEK, NAIOMI DUDEK AND RAMAN  
YOUSEFI FOR THE FORMER SECOND PRESBYTERIAN MANSE  
(CITY LANDMARK NO. HL09-187)**

**MA09-008**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

WHEREAS, California Government Code Section 50280, et seq. and Chapter 13.48 of Title 13 of the San José Municipal Code authorize the City of San José to enter into agreements with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so to retain its characteristics as property of historical significance; and

WHEREAS, David Dudek, Naiomi Dudek and Raman Yousefi possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 655 S. Sixth Street, City Landmark No. HL09-187 (hereinafter referred to as the "Historic Landmark") and

WHEREAS, on December 1, 2009 the City Council of the City of San José adopted its Resolution No. \_\_\_\_\_ thereby declaring and designating the Historic Landmark as a historic landmark structure pursuant to the terms and provisions of Chapter 13.48 of the San José Municipal Code; and

WHEREAS, the City of San José and David Dudek, Naiomi Dudek and Raman Yousefi, for their mutual benefit, now desire to enter into an agreement both to protect and preserve the characteristics of historical significance of the Historic Landmark and to qualify the Historic Landmark 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

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on November 4, 2009 at 6:00 p.m., conduct a public hearing on a Historic Landmark Preservation Agreement for the Historic Landmark and recommend approval of that agreement (hereinafter "Agreement"); and

WHEREAS, a copy of the Agreement upon which such recommendation was made is on file in the Office of the City Clerk of the City of San José; and

WHEREAS, the subject property upon which the Historic Landmark is situated is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council did give notice that on December 1, 2009 at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said Agreement at which hearing any and all persons interested in said Agreement could appear and avail themselves of an opportunity to be heard and to present their views with respect to said proposed Agreement; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard to present their views with respect to said proposed Agreement.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ THAT:

SECTION 1. In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, this Council does hereby approve the Historic Landmark Preservation Agreement with David Dudek, Naiomi Dudek and Raman Yousefi, owners of the Former Second Presbyterian Manse (City Landmark No. HL09-187) located at 655 S. Sixth Street and makes the following findings:

- a. The Agreement is consistent with the General Plan, in that the proposed Contract is consistent with General Plan Historic, Archeological and Cultural Resources Policies that state that the City should utilize a variety of techniques and measures to serve as incentives toward fostering the rehabilitation of individual buildings and districts of historic significance
- b. The Agreement would provide greater protection for the Historic Landmark property than is otherwise provided by the provisions of San José Municipal Code Chapter 13.48 in that the owner, in partnership with the City, may use property tax relief to rehabilitate and maintain the property in accordance with the preservation plan, Exhibit "C" of the contract; and
- c. The Agreement complies with the requirements of Section 13.48.520 of Chapter 13.48 of Title 13 of the San José Municipal Code Contracts incorporate the Municipal Code's required provisions for Historic Property Contracts, including the following: A description of the Landmark Property subject to the Contract, a provision that the term of the Contract is a minimum period of ten years, specific conditions requiring preservation of the Landmark, provision for the periodic examination of property, and a requirement that the property owner annually expend an amount equal to a minimum of 10% of the annual tax savings resulting from the Contract , and a provision that the Contract is binding upon – and shall inure to the benefit of – all successors in interest of the owners in the property.

SECTION 2. Pursuant to the San José Municipal Code, Chapter 13.48, the City Clerk is hereby directed to notify the owner of the Historic Landmark subject to the Agreement and directed to record the Agreement in the Office of the Recorder of the County of Santa Clara.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE, MMC  
City Clerk

**EXHIBIT "A"**

**LEGAL DESCRIPTION  
FOR  
THE FORMER SECOND PRESBYTERIAN MANSE  
655 S. SIXTH STREET  
MA09-008**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

A portion of LOT 9, BLOCK 38, as delineated upon that certain map entitled "Reed Addition to the City of San Jose conveyed by J.F. Feed et al to S.O. Houghton by Deed of Trust dated March 12, 1896", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 18th, 1869 in Book C of Miscellaneous Records, at Page 322 described as follows:

Beginning at a point on the Westerly line of Sixth Street, distant thereon 269.90 feet Northerly from the point of intersection of the Northerly line of Margaret Street with the Westerly line of Sixth Street, said point of beginning being also the Southeasterly corner of land conveyed by Emily C. Tennent Spring to Mrs Jessie C. Morton by deed dated April 24, 1897 and recorded June 8, 1897 in Book 192 of Deeds, page 460, Santa Clara County Records; thence running Southerly and along said Westerly line of Sixth Street 45 feet; thence running at right angles westerly and parallel with the Northerly line of Margaret Street 125 feet; thence running at right angles Northerly and parallel with the Westerly line of Sixth Street 45 feet; thence running at right angles Easterly and parallel with the Northerly line of Margaret Street 125 feet to the point of beginning.

ARB No: 472-25-73  
APN No: 472-25-073

# DRAFT

## HISTORIC LANDMARK PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 1st day of December, 2009, by and between the City of San Jose, a municipal corporation (hereinafter referred to as the "CITY") and David Dudek, Naomi Dudek and Raman Yousefi (hereinafter referred to as the "OWNER").

### RECITALS

**WHEREAS**, California Government Code Section 50280, et seq. and Chapter 13.48 of the San Jose Municipal Code authorize CITY to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so to retain its characteristics as property of historical significance; and

**WHEREAS**, OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, the Former Second Presbyterian Manse (City Landmark Number HL09-187), located at 655 S. Sixth Street (hereinafter such property shall be referred to as the "Historic Landmark"). A legal description of the Historic Landmark is attached hereto as Exhibit "A" and incorporated herein by this reference; and

**WHEREAS**, on December 1, 2009 the City Council of the City of San Jose adopted a Resolution thereby declaring and designating the Historic Landmark as a historic landmark structure pursuant to the terms and provisions of Chapter 13.48 of the San Jose Municipal Code; and

**WHEREAS**, CITY and OWNER for the mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristic of historical significance of

the Historic Landmark and to qualify the Historic Landmark 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.

## **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 December 1, 2009 (the "Effective Date"), 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 Section 2, below.

**2. Renewal.** Each year on the anniversary of the Effective Date of this Agreement (hereinafter referred to as the "Renewal Date"), a year shall automatically be added to the initial term of this Agreement unless notice of nonrenewal is mailed as provided herein. If either OWNER or CITY desires in any year not to renew the Agreement, OWNER or CITY shall serve written notice of nonrenewal of the Agreement 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 nonrenewal from CITY, OWNER may make a written protest of the non-renewal. CITY may, at any time prior to the annual Renewal Date of the Agreement, withdraw its notice to OWNER of nonrenewal. If either CITY or OWNER serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect and the property shall remain enforceably restricted for the balance of the term then remaining, either from its original execution or from the past renewal of the Agreement, whichever may apply. The Director of Planning, Building and Code Enforcement shall record the Notice of Nonrenewal and file a copy with the Assessor of Santa Clara County. Nonrenewal shall not be deemed a cancellation pursuant to Section 6 of this Agreement.

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

a. OWNER shall preserve and maintain the characteristic of historical significance of the Historic Landmark in no less than equal to the condition of the property as of August 29, 2000, the date on which OWNER acquired the property. OWNER shall document the existing condition of the Historic Landmark by providing to CITY on the Effective Date a minimum of four (4) current and clear photographs of each elevation of the Historic Landmark structure, of any character-defining or historically significant features of the Historic Landmark structure or property, and of any areas of the Historic Landmark for which improvements are planned or intended by OWNER. Attached hereto as Exhibit "B", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historic Landmark, which shall apply to such property and with which OWNER shall comply throughout the term of this Agreement.

b. OWNER shall, where necessary or required, restore and rehabilitate the property in full accordance with the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation and with the requirements of Chapter 13.48 of the San Jose Municipal Code, including any permits or approvals granted pursuant to that Chapter. Without limiting the forgoing, OWNER shall perform all of the restoration and rehabilitation activities of the Historic Landmark set forth on Exhibit "C," attached hereto and incorporated herein by this reference, within any timelines that may be set forth in Exhibit C.

c. OWNER shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historic Landmark by representatives of the County Assessor, State Department of Parks and Recreation, State Board of Equalization and CITY as may be necessary to determine OWNER's compliance with the terms and provisions of this Agreement.

d. OWNER shall annually expend an amount equal to a minimum of 10% of the annual tax savings attributed to this Agreement for the preservation and maintenance of the Historic Landmark.

**4. Force Majeure.** OWNER shall not be held responsible for repair or replacement of the Historic Landmark if damaged or destroyed through "Acts of God," such as flood, tornado, lightning, earthquake or fire or other cause resulting therefrom; CITY shall, however, have the right to cancel this Agreement pursuant to terms of Section 6, Cancellation.

**5. Provisions of Information of Compliance.** OWNER hereby agrees to furnish CITY with any and all information requested by CITY that may be necessary or advisable to determine compliance with the terms and provisions of this Agreement. OWNER shall retain, store and preserve during the term of this Agreement all records that are related to or that evidence the eligibility of the Historic Landmark or OWNER's compliance with the terms and provisions of this Agreement.

**6. Cancellation.** CITY, following a duly noticed public hearing, may cancel this Agreement if it determines that OWNER 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 landmark. CITY also may cancel this Agreement if it determines that OWNER has failed to restore or rehabilitate the property or Historic Landmark in the manner specified in Subsection 3(b) of this Agreement. In the event of cancellation pursuant to this Section 6, OWNER may be subject to payment of those cancellation fees set forth in the California Government Code. Prior to any procedures set forth in this Section, CITY shall give notice of breach to OWNER and OWNER shall have one hundred and twenty (120) days to cure such breach to the reasonable satisfaction of CITY.

**7. Binding Effect of Agreement.** This Agreement shall be binding upon, and inure to the benefit of, all successors in interest of OWNER. A successor in interest shall have the same rights and obligations under this Agreement as OWNER.

**8. 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 Clerk  
City of San José  
200 East Santa Clara Street  
San José, CA 95113

OWNER: David and Naiomi Dudek  
457 N. Fourth Street  
San José, CA 95112

Raman Yousefi  
658 Whalom Lane  
Schaumburg, IL 60173

**9. General Provisions.**

a. 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 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 from damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct use or operations of OWNER or those of OWNER's contractor, subcontractor, agent, employee or other person acting on OWNER's behalf which relate to the use, operation and maintenance of the Historic Landmark. 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, reason of OWNER's activities in connection with the Historic Landmark. 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 Landmark.

c. 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.

**“CITY”**

CITY OF SAN JOSE, a municipal corporation

APPROVED AS TO FORM:

\_\_\_\_\_  
RENÉE A. GURZA  
Senior Deputy City Attorney

By \_\_\_\_\_  
LEE PRICE, MMC  
City Clerk

**“OWNER”**

By \_\_\_\_\_  
David Dudek

By \_\_\_\_\_  
Naiomi Dudek

By \_\_\_\_\_  
Raman Yousefi

**EXHIBIT "A"**

**LEGAL DESCRIPTION  
FOR  
THE FORMER SECOND PRESBYTERIAN MANSE  
655 S. SIXTH STREET  
MA09-008**

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, described as follows:

A portion of LOT 9, BLOCK 38, as delineated upon that certain map entitled "Reed Addition to the City of San Jose conveyed by J.F. Feed et al to S.O. Houghton by Deed of Trust dated March 12, 1896", filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 18th, 1869 in Book C of Miscellaneous Records, at Page 322 described as follows:

Beginning at a point on the Westerly line of Sixth Street, distant thereon 269.90 feet Northerly from the point of intersection of the Northerly line of Margaret Street with the Westerly line of Sixth Street, said point of beginning being also the Southeasterly corner of land conveyed by Emily C. Tennent Spring to Mrs Jessie C. Morton by deed dated April 24, 1897 and recorded June 8, 1897 in Book 192 of Deeds, page 460, Santa Clara County Records; thence running Southerly and along said Westerly line of Sixth Street 45 feet; thence running at right angles westerly and parallel with the Northerly line of Margaret Street 125 feet; thence running at right angles Northerly and parallel with the Westerly line of Sixth Street 45 feet; thence running at right angles Easterly and parallel with the Northerly line of Margaret Street 125 feet to the point of beginning.

ARB No: 472-25-73  
APN No: 472-25-073

## EXHIBIT "B"

OWNER shall, where necessary, restore and rehabilitate the Historic Landmark and shall do so only in full accordance and compliance with the rules and regulations of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, as the same may be amended from time to time.

A summary of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (the "Standards") is provided below for convenient reference. OWNER shall comply with the Standards in effect when OWNER commences any rehabilitation or restoration work on the Historic Landmark.

The Standards (Department of the Interior Regulations, 36 CFR 67) pertain to historic buildings of all materials, construction, types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

- 1) A property shall be used for its historic purposes or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- 2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- 3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural element from other buildings, shall not be undertaken.
- 4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- 5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- 6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.
- 7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials, shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

- 8) Significant archaeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- 9) New additions, exterior alterations or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- 10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

**Historical Property Contract, File No. MA09-008**  
**Preservation Plan (Exhibit "C")**  
**Former Second Presbyterian Manse, 655 S. Sixth Street**  
**City Landmark No. HL09-187**

OWNER shall annually expend an amount equal to a minimum of 10% of the tax savings attributed to this Agreement for the preservation and maintenance of the Historic Landmark. The rehabilitation of the Historic Landmark shall be completed on or before the 10th anniversary of the Effective Date of this Agreement, and such rehabilitation shall include all of the following tasks.

<u>Year</u>	<u>Description</u>
One	Roof maintenance
Two	Restore and repair exterior trim
Three	Plumbing upgrades to main building
Four	Repair foundation
Five	Reroof sloped roofs
Six	Electrical upgrades
Seven	Reroof flat roofs over porch and rear building
Eight	Restore and repair gutters and downspouts
Nine	Repaint Exterior
Ten	Restore and repair windows

After the 10th Anniversary date of the Effective Date of this Agreement, Owner shall expend an amount to a minimum of 10% of the tax savings attributed to this Agreement for the continued preservation and maintenance of the Historic Landmark and more specifically shall perform and complete but without limitation the following tasks each year:

Maintenance

Painting

Repairs