

## TOWN OF WOODSIDE

Report to Town Council

Agenda Item 8

From: Susan George, Town Manager

July 14, 2009

### **SUBJECT: APPROVAL OF AGREEMENT WITH RESPECT TO DEMOLITION OF HISTORIC RESIDENCE**

#### **RECOMMENDATION**

It is recommended that the Town Council approve the attached agreement and authorize the Town Manager to execute it on behalf of the Town.

#### **DISCUSSION**

On June 23, 2009, the Town Council adopted a resolution "Approving a Demolition Permit, Subject to Conditions, for the Demolition of the Jackling Estate; Approving the Jackling Estate Demolition Mitigation Monitoring and Reporting Program; and Adopting an Associated Statement of Findings Under CEQA and Statement of Overriding Considerations (the "Resolution").

The Resolution contained 20 conditions of approval. Condition No. 1 provides: "Prior to issuance of the demolition permit, the Agreement with Respect to Demolition of Historic Residence should be executed." (the "Agreement"). The Agreement referenced in Condition No. 1 is a contract which the Council was advised about during the public hearing process. As detailed in the Addendum to the Final Environmental Impact Report (FEIR), approved by the Town Council on June 23, 2009, the original demolition permit for the Jackling House was approved December 14, 2004, subject to a condition requiring Jobs to "market" the Residence for a one-year period to a buyer willing to remove and restore it offsite. Jobs conducted the marketing campaign that the permit required. According to a September 3, 2008 memorandum to the Town from Howard Ellman, Jobs's attorney (whose firm oversaw the marketing efforts), Jobs received numerous inquiries but none of them ultimately culminated in a viable offer to remove and restore the Residence at an off-site location. The marketing campaign extended well beyond the one-year period required by the permit condition.

In a May 7, 2009 letter from Howard Ellman to Anna Shimko, the Town's Special Counsel, Mr. Ellman, outlined the basic terms of a new proposal his client had received from an individual named Gordon Smythe to relocate and restore the Residence. According to the proposal, Mr. Jobs would pay to salvage the historic components of the Residence. Mr. Smythe would then store the historic components while he sought an appropriate site for relocation and restoration of the Residence. If such a site were to be found, Mr. Smythe would restore the exterior of the Residence in accordance with the original plans for the home and modify the interior of the Residence, potentially in accordance with the plans developed by Andrew Skurman for Alternative 2A, described in the Addendum to the FEIR. Mr. Smythe would agree to consult with Uphold Our Heritage as to the relocation site, as well as the architect and builder. The parties were in the process of negotiating an agreement based on the above-referenced terms at the time of the June 23, 2009 Town Council meeting. However, Mr. Smythe has not yet secured a site or permits necessary to accomplish restoration of the Residence.

During the June 23, 2009 Town Council meeting, both Mr. Ellman and Mr. Smythe (i.e., Jackling House LLC (hereinafter "JH")), indicated to the Town Council that they had provided staff with a draft agreement for review. Since the June 23, 2009 meeting, staff and Special Counsel Anna Shimko and Matt Francois, have reviewed the proposed Agreement and provided revisions to

Messrs. Ellman and Smythe required to bring the document into compliance with the approvals granted by the Town Council on June 23, 2009. The proposed Agreement with the Town staff's proposed revisions is acceptable to both Mr. Jobs and Mr. Smythe. The proposed Agreement, which is attached to this report, is now agendized for Town Council review and approval.

If executed by Jobs, Smythe and the Town, the Agreement would authorize JH to perform a salvage demolition of the House in compliance with all of the permit conditions imposed by the Town with respect to cataloging and photographing various elements of the House according to specific guidelines enumerated in the Agreement at paragraphs 1a-b. Jobs would pay JH \$604,800 for direct and indirect costs associated with demolition and removal of the House and components.

JH would be required to obtain insurance and to indemnify and defend Jobs for any loss, costs, damage or injury arising from the work performed per the Agreement. JH would be responsible to remove and store the components. If no construction of an offsite restoration is commenced within 5 years from the issuance of the demolition permit, any "Salvage Features" would be made available promptly to the Town or other institutions per the terms of Mitigation Measure Cultural-1 adopted by the Town Council on June 23, 2009.

JH is required to undertake a "good faith" effort to identify and secure a restoration site and demonstrate to the Town that the site chosen is practical for restoration. The restoration process must be staffed by an architect familiar with historic restorations, integrating the components in a manner "that respects the original plans and specifications for the house." This process is required to be photographically documented for the Town. The Agreement acknowledges that the Town has an interest in "monitoring and encouraging efforts to preserve the House or an authentic replica thereof, given its historic importance."

JH has no right to assign the Agreement without approval of Jobs and the Town. The Agreement is binding on the heirs, successors and assigns of all parties. The Agreement acknowledges the litigation history associated with this property and the possibility of additional litigation arising from the Council's action on June 23, 2009. If legal proceedings are pending as of September 30, 2009, that could "possibly result in invalidation of the permit or stay of work pursuant to the permit then JH or Jobs would have a right to terminate the Agreement on 30 days written notice."

Nothing in the Agreement relieves Jobs of his obligation to comply with the Mitigation Measure and Condition of Approval adopted by the Town Council on June 23, 2009.

## **CONCLUSION**

Staff recommends that the Town Council adopt the attached resolution, approving the Agreement and authorizing the Town Manager to execute the agreement on behalf of the Town, thereby allowing Jobs to comply with Condition of Approval No. 1 of the Resolution of the Town Council of the Town of Woodside Approving A Demolition Permit, Subject To Conditions, For The Demolition Of The Jackling Estate; Approving The Jackling Estate Demolition Mitigation Monitoring And Reporting Program; And Adopting An Associated Statement Of Findings Under CEQA And Statement Of Overriding Considerations.

Attachment

RESOLUTION NO. 2009 -

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WOODSIDE  
APPROVING AN AGREEMENT WITH RESPECT TO DEMOLITION OF HISTORIC  
RESIDENCE AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT ON  
BEHALF OF THE TOWN (460 MOUNTAIN HOME ROAD - JOBS)

**WHEREAS**, ON June 23, 2009, the Town Council adopted a resolution "Approving a Demolition Permit, Subject to Conditions, for the Demolition of the Jackling Estate; Approving the Jackling Estate Demolition Mitigation Monitoring and Report Program; and Adopting an Associated Statement of Findings Under CEQA and Statement of Overriding Considerations;" and

**WHEREAS**, a proposal was received from an individual to relocate and restore the Jackling Estate Residence; and

**WHEREAS**, Condition 1 of the Town's resolution provides: "Prior to issuance of the demolition permit, the Agreement with Respect to Demolition of Historic Residence should be executed;" and

**WHEREAS**, the terms of the Agreement have been agreed upon by all parties and the Agreement is binding on the heirs, successors and assigns of all parties; and

**WHEREAS**, nothing in the Agreement relieves the Jackling Estate property owner of his obligation to comply with the Mitigation Measures and Conditions of Approval adopted by the Council on June 23, 2009.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the Town Council of the Town of Woodside that it approves "An Agreement with Respect to Demolition of Historic House" (Exhibit A attached hereto) and authorizes the Town Manager to execute the Agreement on behalf of the Town.

\* \* \* \* \*

Passed and adopted by the Town Council of the Town of Woodside, California, at a meeting thereof held on the 14<sup>th</sup> day of July 2009, by the following vote of the members thereof:

AYES, and in favor thereof, Councilmembers:  
NOES, Councilmembers:  
ABSENT, Councilmembers:  
ABSTAIN, Councilmembers:

\_\_\_\_\_  
Mayor of the Town of Woodside

ATTEST:

\_\_\_\_\_  
Clerk of the Town of Woodside

**AGREEMENT WITH RESPECT TO DEMOLITION OF HISTORIC RESIDENCE**

THIS AGREEMENT is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between JACKLING HOUSE LLC, a California limited liability company, (“JH”), STEVEN P. JOBS (“Jobs”) and the TOWN OF WOODSIDE (“Town”).

**RECITALS:**

This Agreement is entered into upon the basis of the following facts, understandings and intentions of the parties:

A. Jobs is the owner of certain real property located at 460 Mountain Home Road in the Town of Woodside, County of San Mateo, State of California, comprising approximately 6.04 acres (the “Lot”). The Lot is improved with a residence that encompasses 14,540 square feet of interior space, commonly known as the “Jackling House” (the “House”). The House has been deemed eligible for listing on the California Register of Historic Resources and therefore constitutes an historic resource for purposes of the California Environmental Quality Act (“CEQA”).

B. Jobs desires that the House be demolished so that he may use the Lot as the site for construction of a new residence that complies with Town’s current zoning restrictions pertaining to new residential construction. Town has granted Jobs a permit to have the House demolished for that purpose.

C. JH desires to become responsible for the work of demolition for Jobs, using the services of a licensed contractor under JH’s supervision, so that it can take possession of the non-replaceable components of the House that can be salvaged and that give it historic significance, and to preserve them by storing them offsite.

D. Jobs is willing to pay for a salvage demolition undertaken by JH that will save the historic components of the House, and to allow JH to remove them for storage offsite. The Town desires to facilitate JH’s plan by consenting to it and cooperating in it as the best practical means of creating a realistic possibility for saving the House for restoration while allowing Jobs to proceed with his plans to use the Lot for construction of a smaller residence that conforms to current zoning and coverage restrictions. JH intends to undertake a good faith effort to find an

appropriate site for restoration of the House and to restore it on that site, as that represents JH's intent in undertaking the demolition and salvage referred to in the foregoing recitals.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. Performance of Salvage Demolition by JH. JH shall undertake a salvage demolition of the House, utilizing consultants and contractors whom it shall select, in a process that will identify those elements and components of the House that it desires to have saved (the "Components"), conducting that work in compliance with all of the permit conditions imposed by the Town with respect to cataloguing and photographing various elements of the House. The work shall be performed in accordance with the following:

(a) JH shall identify the general contractor he proposes to use for the salvage demolition and notify Jobs of his choice within ten (10) days from the date which is the earlier of (i) the date when litigation or further proceedings challenging the Town's approval of the demolition permit cannot be lawfully commenced due to the passage of time; (ii) the date when such litigation has been concluded and the permit upheld, or (iii) the date when any such litigation has been settled in a manner that leaves the permit in full force and effect. Jobs shall provide written notice to JH and Town when the foregoing conditions have been fulfilled, unless this Agreement has been terminated by exercise of a right of termination provided for in Section 10 below.

(b) Steps to be taken pursuant to the salvage demolition shall include the following:

- (i) site cleanup (interior): clean interior of all debris;
- (ii) have professional photographer take detailed photographs of entire structure;
- (iii) site cleanup (exterior): removal of all exterior shrubs and small trees within ten (10) feet of structure (not including any large trees such as the oak at the entrance);

- (iv) site documentation (stage one): detailed interior and exterior mapping of entire structure, and tag all visible fixtures;
- (v) removal of internal trimmings: fixtures, electrical and plumbing, tiles, hardwood floors, baseboards, door jambs, etc.;
- (vi) stucco removal (interior): removal of all interior stucco;
- (vii) site documentation (stage two): document interior structure;
- (viii) site documentation (stage three): document and tag organ;
- (ix) stucco removal (exterior): removal of all exterior stucco;
- (x) remove organ;
- (xi) site documentation (stage four): document all framing, electrical, plumbing, chimneys, etc.;
- (xii) roof removal: remove Spanish tiles and entire roof;
- (xiii) site documentation (stage five): tag all salvageable parts of frame/structure (ornate beams, mantels, or other key non-replaceable items);
- (xiv) frame removal: remove frame, plumbing, electrical, etc., salvaging all tagged items;
- (xv) floor removal: remove floor, chimneys, etc.;
- (xvi) site documentation (stage six): document basement/foundation;  
and
- (xvii) basement removal: remove basement equipment (furnace, water heater, etc.) and entire concrete basement.

(c) Jobs shall pay JH Six Hundred Four Thousand Eight Hundred Dollars (\$604,800) for the direct and indirect costs for demolishing and removing the House and

Components, which costs shall include provision for overhead, payment for consultants used in the course of the demolition and tagging of Components, service fees for future reporting of JH to Town and the cost of insurance. Thirty-three and one-third percent (33 1/3%) of the invoiced cost shall be paid at the time JH's work begins as provided in Section 1(b). Thirty-three and one-third percent (33 1/3%) of the payment shall be paid after stage ten (x) has been completed and the remainder shall be paid when all of the work has been completed including removal from the Lot and storage of the Components and proper disposal of all other materials. JH shall be solely responsible for any cost in excess of Six Hundred Four Thousand Eight Hundred Dollars (\$604,800). The demolition contract shall require completion of the work within ninety (90) days after work commences, assuming no delays out of the control of JH. JH shall remove the Components from the Lot promptly upon completion of the work of demolition, but in no event later than thirty (30) days thereafter. The foregoing dates shall be subject to extension as required to allow JH to comply with permit conditions imposed by the Town with respect to cataloguing of various of the Components and other review matters.

(d) JH shall obtain an insurance policy satisfactory to Jobs that will hold and save Jobs harmless and indemnify Jobs of and from any and all loss, cost, damage, injury or expense arising out of or related to claims of lien for work or labor performed, materials or supplies furnished in connection with the work of the general contractor, his subcontractors, employees or suppliers, and any consultants used by JH in performance of the work of demolition and removal, as well as for any claims of injury to or death of persons or damage to property caused thereby, such indemnity to include, but without limitation, costs of defense against any such claims by counsel of Jobs's choice.

(e) Before exercising any right of entry, JH shall obtain comprehensive liability insurance satisfactory to Jobs to cover the full extent of the risks indemnified against pursuant to this Section, issued by a duly licensed insurer of sound financial condition with a single limit of liability of not less than Two Million Dollars (\$2,000,000), which said insurance shall name Jobs as an additional insured and shall provide that it may not be cancelled or terminated without thirty (30) days prior written notice to Jobs.

2. Removal Of The Components: Transfer of Title To The Components To JH.

(a) Upon delivery of a Bill of Sale for the Components, JH shall take the Components from the Lot and store them at a location or locations that it selects and it shall notify Town of the storage location. At that time, Jobs shall cause his consultants to deliver to JH without charge, the work that he has caused his consultants to produce concerning and with respect to the cataloguing and photographing of the House and will cause his consultants to deliver to JH without charge, the work that he has already had performed with respect thereto and with respect to creating the record that the permit conditions require.

(b) JH shall pay the cost of such storage, it shall be undertaken without cost or expense to Jobs, and JH shall indemnify Jobs against any lien for work or labor performed, materials or supplies furnished in connection therewith.

3. Ownership Of Components; Compliance with Mitigation Measures and Conditions of Approval. Except as otherwise provided herein, JH shall retain ownership of the Components. If construction of the off-site restoration project is not commenced within five (5) years from issuance of the demolition permit, any "Salvage Feature," as that term is defined by Mitigation Measure Cultural-1 imposed by the Town Council, including any Component that qualifies as a Salvage Feature, shall be made promptly available to the Town and/or other institutions in accordance with the requirements of Mitigation Measure Cultural-1. All activities undertaken pursuant to this Agreement shall be in compliance with the mitigation measures and conditions of approval adopted by the Town Council in connection with its approval of the demolition permit for the House on June 23, 2009.

4. Good Faith Effort to Identify Relocation and Restoration Site. When the historic Components have been removed from the Lot, JH shall undertake a good faith effort to identify an appropriate site (the "Restoration Site") to which the Components can be moved for construction of a restoration of the House using the historic Components. The choice of the Restoration Site shall be made at JH's sole discretion, and Jobs shall have no interest in or responsibility for the selection. JH shall acquire the Restoration Site he selects without cost or expense to Jobs, complying with local ordinances concerning limitations on residential size and other applicable restrictions. JH shall notify Town of the location of the Restoration Site he has selected, its size and the reasons he has selected it as appropriate as well as the zoning and other

regulatory constraints that demonstrate that it is a practical site for the restoration of the House. Nothing herein contained shall be deemed to impose upon JH an obligation to find and acquire a Restoration Site beyond the obligation of making a good faith attempt to do so.

5. Transportation Of Components. JH shall inform the Town of the arrangements it has made for transportation of the Components to the Restoration Site.

6. Construction of Restoration.

(a) The work of restoration and construction shall be undertaken by JH in consultation with an architect familiar with historic restorations following to the extent practical the original plans of the House for the exteriors, with modifications to the interiors to make it consistent with the requirements for a House of commensurate quality and location in contemporary terms. The interiors shall be designed as JH shall determine in its sole and absolute discretion. JH shall notify Town of the identity of the architect it has selected and provide Town with a set of the final plans and specifications for the restoration.

(b) JH shall make a good faith effort to integrate the Components into a residence that respects the original plans and specifications for the House and that is consistent with the guidelines of the Secretary of Interior with respect to historic restorations subject to the limitations imposed on the ability to execute a plan of that sort based on the condition of the Components, the difficulty of moving large segments of it long distances from their storage location to the Restoration Site, and other relevant factors including the costs involved. Nothing herein contained shall be deemed to impose upon JH an obligation to complete a reproduction or replica of the House beyond the obligation of making a good faith attempt to do so.

(c) If an off-site restoration project is constructed, JH shall provide photographic documentation of the restored home to the Town as soon as practicable after issuance of a certificate of occupancy. The photographic documentation shall be in a digital format and shall adequately depict the exterior facades of the restored residence.

7. Compliance With Laws. All work to be performed by JH, its consultants and contractors hereunder shall be performed in accordance with all applicable laws, ordinances, rules and regulations, including, but without limitation, laws, ordinances, rules and regulations that pertain to control of hazardous and toxic substances and materials. JH shall hold Jobs and

Town harmless and indemnify them from any and all loss, cost, damage, injury or expense caused by any such violation.

8. Town's Interest. Jobs and JH acknowledge that the Town has an interest in the performance of their respective obligations under this Agreement. Specifically, but without limitation, Town has an interest in monitoring and encouraging efforts to preserve the House or a reproduction thereof, given its historic importance.

9. Assignment of JH's Rights. JH shall have no right to assign or otherwise transfer any of its rights under this Agreement without the prior written approval of Town and Jobs (if, in the case of Jobs, assignment occurs prior to demolition and removal of the Components from the Lot, after which Jobs's consent shall not be required) that they shall have the right to withhold in their absolute and sole discretion provided that it may assign its rights in the Components to a charitable organization exempt under Section 501(c)(3) of the Internal Revenue Code if the assignee has as one of its purposes the restoration of the House, or to any other entity if it is owned and controlled by JH or by its sole managing member, Gordon Smythe. Subject to the foregoing, this Agreement, and each of its provisions, shall be binding on and inure to the benefit of the heirs, successors and assigns of the parties hereto.

10. Possibility Of Litigation. The permit has been issued on reconsideration by the Town after an initial demolition permit the Town granted to Jobs in December of 2004 was set aside as the result of litigation. Jobs and JH recognize the possibility that the permit may also be challenged in legal action by the same or different parties and that the legal action may pose a question concerning the legality of demolition until the litigation is concluded or resolved through settlement. If legal proceedings are pending as of September 30, 2009 that could possibly result in the invalidation of the permit or a stay of work pursuant to the permit pending conclusion of the litigation, then JH or Jobs shall each have the right to terminate this Agreement by providing written notice of termination to the other parties no later than October 30, 2009.

11. Continuing Obligation of Jobs. Nothing in this Agreement shall relieve Jobs of his obligations to the Town pursuant to the mitigation measures and conditions of approval adopted by the Town Council in connection with its approval of the demolition permit for the House on June 23, 2009.

12. Default. Should any party hereto default in the performance of any obligation on its part to be performed hereunder and such default continues for a period of ten (10) days after written notice thereof, then the parties not in default shall be entitled to invoke any and all remedies available under the law of the State of California. Specifically, but without limiting the generality of the foregoing, the obligations of Jobs and JH hereunder shall be enforceable in equity through a decree of specific performance.

13. Integration and Interpretation. The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement, arrangement, understanding or negotiation (whether oral or written). The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms, and no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Agreement. The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning and not restricted for or against any party, regardless of which party may have drafted the provision in question, it being agreed that this is a negotiated agreement.

14. Applicable Law. All rights and remedies of Jobs, Town, and JH under this Agreement shall be construed and enforced according to the laws of the State of California. Any actions or proceedings brought under this Agreement, or with respect to any matter arising under or out of this Agreement, shall be brought and tried only in courts located in the County of San Mateo, California (excepting appellate courts).

15. Notices. Any notice required to be given hereunder shall be given in writing and mailed, first class mail, postage prepaid, to the parties at the following addresses:

To JH:           Mr. Gordon Smythe  
                      Propel Partners  
                      385 Homer Avenue  
                      Palo Alto, CA 94301

With a copy to:

Douglas B. Martin, Jr., Esq.  
425 California St., Suite 1700  
San Francisco, CA 94104

To Town: Ms. Susan George  
Town Manager  
P.O. Box 620005  
Woodside, CA 94062

With a copy to:

Jean B. Savaree, Esq.  
Aaronson, Dickerson, Cohn & Lanzone  
939 Laurel Street, Suite D  
San Carlos, CA 94070

16. Time of the Essence. Time is of the essence of each and every provision and covenant contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

JOBS:

TOWN:

TOWN OF WOODSIDE, CALIFORNIA

\_\_\_\_\_  
Steven P. Jobs, an individual

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

JACKLING HOUSE LLC:

\_\_\_\_\_  
Gordon Smythe, Managing Member