

APPLICANT NOTIFIED:
BLUE 6-8-01
YELLOW 6-19-01

DATE: JUNE 13, 2001
TO: COMMUNITY REDEVELOPMENT AGENCY
FROM: REDEVELOPMENT DIRECTOR

APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT WITH GARDEN SPRINGS APARTMENTS, A CALIFORNIA LIMITED PARTNERSHIP TO FACILITATE THE APPLICATION FOR LOW INCOME HOUSING TAX CREDITS AND THE DEVELOPMENT AND CONSTRUCTION OF THE GARDEN SPRINGS APARTMENTS, LOCATED AT THE SOUTHEAST CORNER OF INDIAN CANYON DRIVE AND SAN RAFAEL ROAD

RECOMMENDATION:

It is recommended that the Agency approve a Disposition and Development Agreement with Garden Springs Apartments, A California Limited Partnership, providing up to \$1,000,000.00 (One Million Dollars) in Agency financial assistance for the construction of a low-income apartment complex, referred to as the Garden Springs Apartments, at the southeast corner of Indian Canyon Drive and San Rafael Road.

SUMMARY:

This resolution approves a Disposition and Development Agreement with the developers of the Garden Springs Apartments in the amount of \$1,000,000. The Agency would purchase the 3.63 acre site from the developer and contribute it back to the project, when necessary, to assist with the Low Income Housing Tax Credit application process. In addition, once construction on the apartments has commenced, the Agency would pay the developer five payments of \$100,000 each, at each 20% completed. Finally, the Agency and the City agree to reduce the utility undergrounding requirement to cap the developer's undergrounding budget at \$150,000. The Agency would cover the difference between any necessary undergrounding and the \$150,000. In return, the Developer agrees to proceed with the LIHTC application and the restructuring of the financing, and, once funded, to construct the project as proposed and approved by the City Council in January, 2000. The developer also agrees to dismiss any litigation against the City of Palm Springs related to this project.

BACKGROUND:

Agency members are familiar with the Garden Springs Apartments project, which was approved on January 19, 2000. On February 10, 2000 staff received a request for Community Redevelopment Agency assistance from CBM Group, the developer and general partner of the project, specifically related to the cost of undergrounding the utility lines that surround the property. The undergrounding portion was part of the Engineering Conditions of Approval when the City Council approved the project. The estimated cost of the undergrounding, as calculated by CBM's utility consultant, was \$650,300.

The project was delayed from February into April because of a citizen's petition asking to overturn the approval. The decision not to place the issue on a special election ballot, based on California law, was made by the Council in

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April, but project construction did not get underway until nearly the end of June. By early August, the general partner determined that because of the IRS' absolute December 31, 2000 completion deadline for receipt of their 9% tax credits it was more financially prudent to shut down the project and risk the \$1,700,000 they'd already spent rather than risking the entire \$6 million in tax credits, which would have been disallowed had the project not been completed by the deadline.

CBM is now trying to restructure the project financing in order to complete the project. The Developer has an application ready to submit for 9% credits (LIHTC) this week but tax credit applications are extremely competitive and the project may be starting out with *negative* points because of its previous unused tax credit allocation. The 9% program is the most favorable form of affordable housing financing because it creates substantial equity in the project, thereby reducing the debt load. The tax credit investors receive their return on investment through a discount paid to the developer for the credits. Since the tax credit equity does not seek a return, the lower debt means the project can serve lower income households. Even receiving a LIHTC allocation will leave a gap in the project, partly as a result of the lengthy carry period on the project.

Agency financial participation in the project will make the developer's LIHTC application much stronger and make the project more likely to be built. The deal is structured according to a Settlement Agreement negotiated by the City and CBM to settle litigation brought by the Developer against the City. The terms include:

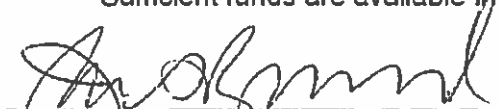
1. The Agency would pay CBM and take title to the property without encumbrances. Payment would be made upon execution of the purchase/sale agreement and close of escrow.
2. The developer commits to keeping the project as originally proposed, including the architectural upgrades, noise buffering, quality landscaping, day care, and other components. A regulatory agreement with the Agency will assure that the units will count towards the City's low and moderate income housing goals.
3. The Agreement contains language that limits the Developer's utility undergrounding cost to \$150,000. The undergrounding shall be limited, to the extent technically possible, to the Developer's own frontage along Indian Canyon Drive, without crossing any streets. If the cost of the necessary undergrounding exceeds the \$150,000 amount, the Agency shall cover the difference.
4. The Agency shall assist the Developer in applying for the Low Income Housing Tax Credits in every way possible.
5. The Agency agrees to contribute the land to the project when the project is fully funded, all permits have been obtained, and the Developer is prepared to commence construction. The Agency would retain reverter rights if the Developer fails to proceed or complete the project.

6. Plans and Drawings: Project plans and drawings would become property of the Agency at the time of the land transfer and would be necessary to the Agency in the event it becomes necessary for the Agency to complete the project.
7. Additional Financial Assistance: The Agency will commit an additional \$500,000 to the project in the form of structured payments made as the project is developed; the Agency shall pay the Developer \$100,000 per payment as each 20% of the project is completed.
8. All litigation between the Developer and the City of Palm Springs shall be dismissed.

Half of the project's units (30) shall count in the Agency's inventory of Low/Mod Housing Units. The 30 Agency-funded units, at a total subsidy of \$1,000,000, equates to \$33,333 per unit, well within the prototypical financing gap in a tax-credit-funded, family multi-unit project. This gap is calculated only on Agency-restricted units; since the entire project will be affordable due to the tax credit restrictions, the effective subsidy is \$16,666 per unit.

A Summary Report describing the purchase and sale of the property, as required by California Health and Safety Code Section 33433 (a), is enclosed with the resolution.

Because of the timing of the tax credit application round and the structure of the DDA, it is likely that only \$500,000 will be necessary to appropriate to the project in the 2001-2002 fiscal year; the construction payments would be due as the project is developed, in 20% increments. A budget resolution, appropriating the \$500,000 from the Fund Balance of the Low/Mod Housing Fund, is included with the resolution. The additional \$500,000 would be appropriated once the project receives a tax credit allocation and nears the construction phase. Sufficient funds are available in Fund Balance to cover both phases of the DDA.



 JOHN S. RAYMOND
 Redevelopment Director

APPROVED 

 Executive Director

ATTACHMENTS:

1. Resolution
2. Disposition and Development Agreement
3. Budget Resolution
4. Summary Report
5. Public Hearing Notice
6. City Council Concurring Resolution
7. City Council Approval of Settlement Agreement

SUMMARY REPORT:

DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE PALM SPRINGS COMMUNITY REDEVELOPMENT AGENCY
AND
GARDEN SPRINGS APARTMENTS,
A CALIFORNIA LIMITED LIABILITY PARTNERSHIP

JUNE 2001

INTRODUCTION

Before real property acquired by a Community Redevelopment Agency with tax increment proceeds may be sold or leased, the transaction must be approved by the Agency Board in accordance with California Health and Safety Code Section 33433. This Section requires a "Summary Report", which describes and specifies certain information in regard to the proposed transaction, be available for public inspection.

DESCRIPTION OF THE PROPOSED AGREEMENT

Site and Interests to be Conveyed

The Site consists of a single parcel of land of approximately 3.63 acres. The Site is located at southeast corner of San Rafael Road and North Indian Canyon Drive in the City of Palm Springs. The Developers of the Property, CBM Group, Inc. and the Garden Springs Apartments, a California Limited Liability Partnership, are seeking Agency financial assistance in developing a proposed 60-unit low- and very low-income apartment project on the site. Part of the assistance will be that the Agency shall purchase the land from the developer and convey it back to the project when the project is ready to proceed to the construction phase. The Agency shall also make payments to the developer as the project is built, based on each 20% of completion.

Proposed Development

The Purchaser is building 60 low-income apartment units on the vacant land, including 28 two-bedroom units, 24 three-bedroom units, and 8 four-bedroom units ranging in size from 904 square feet to 1,403 square feet. The 60 units will be contained in four two-story buildings, with each building containing from 12 to 16 units. The project, while receiving several reductions in development standards and a density bonus required under Section 65915 of the California Government Code, contains significant architectural and landscaping upgrades as well a day care center and tot lot. This project helps the City meet its requirements to provide affordable housing under California law.

Financing

The developer is seeking an allocation of Low Income Housing Tax Credits through the California Tax Credit Allocation Committee and established pursuant to the Internal Revenue Code Section 42, as the primary source of project financing. Based on the restricted rents, the project's economics support a minimal amount of private financing, leaving a gap of at least \$1,000,000. The Developer has sought Agency financial assistance to cover its gap in the project.

Agency Responsibilities

The Agency agrees to pay the Developer \$500,000 for the site as well as an additional \$500,000 spread over five payments once the construction on the project commences. The Agency agrees to contribute the land to the project when the project is fully funded, all permits have been obtained, and the Developer is prepared to commence construction. The Agency would retain reverter rights if the Developer fails to proceed or complete the project. In addition, the Agency agrees to assist the Developer in applying for Low Income Housing Tax Credits. The Agreement also contains language that limits the Developer's utility undergrounding cost to \$150,000. The undergrounding shall be limited, to the extent technically possible, to the Developer's own frontage along Indian Canyon Drive, without crossing any streets. If the cost of the necessary undergrounding exceeds the \$150,000 amount, the Agency shall cover the difference.

Developer Responsibilities

The developer commits to keeping the project as originally proposed, including the architectural upgrades, noise buffering, quality landscaping, day care, and other components. A regulatory agreement with the Agency will assure that the units will count towards the City's low and moderate income housing goals. Project plans and drawings would become property of the Agency at the time of the land transfer and would be necessary to the Agency in the event it becomes necessary for the Agency to complete the project. Finally, all litigation between the Developer and the City of Palm Springs shall be dismissed.

This amendment will exclude any and all attorneys' fees and costs incurred by Developer in connection with the drafting, negotiation and implementation of this Agreement, including, but not limited to, attorneys fees incurred in connection with the preparation of the DDA or any litigation between Developer and the City of Palm Springs.

Agency's other standard terms and conditions, including non-discrimination and maintenance covenants, and other terms and conditions remain as in Disposition and Development Agreement for Developer.

COST OF AGREEMENT TO THE AGENCY

The Agency will commit an amount of \$1,000,000 to the project should it receive a tax credit allocation and proceed to the construction phase. In addition, if the utility underground cost for the project, as amended, exceeds \$150,000 and the amount of undergrounding is deemed necessary from a technical perspective, the Agency shall bear the difference between the actual cost and the \$150,000 commitment from the Developer.

6

Wednesday, June 6, 2001 | G11

Public Notice Public Notice

No. 8294

**CITY OF PALM SPRINGS
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the Community Redevelopment Agency of the City of Palm Springs will hold a Public Hearing in the Large Conference Room of City Hall, located at 3200 Tahquitz Canyon Way, Palm Springs, California 92282, beginning at 7:00 p.m., Wednesday, June 13, 2001, to consider the following:

Provision of Financial Assistance for a Disposition and Development Agreement (DDA) with CBM Group of Auburn, California to Acquire Garden Springs Apartments located on the Southeast Corner of North Indian Canyon and San Rafael in Palm Springs, California 92282

The Community Redevelopment Agency of the City of Palm Springs ("Agency") proposes to enter into a Disposition and Development Agreement (DDA) with CBM Group of Auburn, California providing financial assistance in the amount of \$1,000,000 to Garden Springs Apartments. To approve the "DDA", the Community Redevelopment Agency is required to make certain findings pursuant to Health and Safety Code Section 33433, and prior to making those findings, a Public Hearing is held to receive public input on the matter. All interested persons are invited to attend the Public Hearing and express opinions on the item listed above. If you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the City Clerk, at the address listed above, at or prior to the Public Hearing.

Further information, including a copy of the proposed "DDA" and a Summary Report prepared in accordance with Health and Safety Code Section 33433, is available in the Office of the City Clerk, PATRICIA A. SANDERS, City Clerk.
PUB: May 29, June 6, 2001

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RESOLUTION NO. 1129

OF THE COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF PALM SPRINGS, CALIFORNIA APPROVING
A DISPOSITION AND DEVELOPMENT AGREEMENT WITH
GARDEN SPRINGS APARTMENTS, A CALIFORNIA LIMITED
LIABILITY PARTNERSHIP TO EFFECTUATE THE
DEVELOPMENT OF A LOW-INCOME APARTMENT
COMPLEX AT THE SOUTHEAST CORNER OF INDIAN
CANYON DRIVE AND SAN RAFAEL ROAD

WHEREAS, the Community Redevelopment Agency of the City of Palm Springs (the "Agency") has established an affordable housing setaside fund in accordance with Section 33000 et. seq. of the California Health and Safety Code; and

WHEREAS, the funds are earmarked for the acquisition, construction, or rehabilitation of affordable housing to benefit the community; and

WHEREAS, the Garden Springs Apartments, proposed for low-income families, was approved in January 2000 by the Palm Springs City Council; and

WHEREAS, the property developers, CBM 96, LLC, sought Agency financial assistance to cover the cost of undergrounding utilities, estimated to be up to \$650,000; and

WHEREAS, the property developers, CBM 96, LLC and Garden Springs Apartments, a California Limited Partnership, are resubmitting a tax credit application to the California Tax Credit Allocation Committee for the June 15, 2001 application round and have requested Agency assistance to strengthen the application; and

WHEREAS, Section 33430 of the Community Redevelopment Law allows that an agency may, "for purposes of redevelopment, sell, lease, for a period not to exceed 99 years, exchange, subdivide, transfer, assign, pledge, encumber by mortgage, deed of trust, or otherwise, or otherwise dispose of any real or personal property or any interest in property;" and

WHEREAS, the owners shall agree to restrict, through a Regulatory Agreement approved as an attachment to the Disposition and Development Agreement, the rents on half of the proposed units (30) to levels affordable to families with incomes no more than 60% of Area Median Income (AMI); and

WHEREAS, a Notice of Public Hearing concerning the Disposition and Development Agreement was published in accordance with applicable law; and

WHEREAS, the Agency has considered the staff report, and all the information, testimony and evidence provided during the public hearing on June 13, 2001.

NOW THEREFORE BE IT RESOLVED by the Community Redevelopment Agency of the City of Palm Springs, as follows:

SECTION 1. The above recitals are true and correct and incorporated herein.

SECTION 2. Pursuant to the California Environmental Quality Act (CEQA), the Community Redevelopment Agency finds as follows:

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- a) The City Council adopted a Mitigated Negative Declaration for the project based on the preparation of an Initial Study and the recommendation of the Planning Commission. Mitigation measures are included in the project design and adopted as part of the Conditions of Approval for the Project.
- b) The Agency finds that the Planning Commission adequately discussed the potential significant environmental effects of the proposed project (land use, traffic/circulation, parking, air quality, noise, aesthetics, geology/soils, water quality, drainage, public utilities, public services, archaeological/historic resources, public controversy, and light and glare). The Community Redevelopment Agency further finds that the Mitigated Negative Declaration reflects its independent judgment.

SECTION 3. The Developer has proposed building 60 low- and very low-income apartment units on the site, including 28 two-bedroom units, 24 three-bedroom units, and 8 four-bedroom units ranging in size from 904 square feet to 1,403 square feet. The 60 units will be contained in four two-story buildings, with each building containing from 12 to 16 units. The project, while receiving several reductions in development standards and a density bonus required under Section 65915 of the California Government Code, contains significant architectural and landscaping upgrades as well a day care center and tot lot. This project helps the City meet its requirements to provide affordable housing under California law.

SECTION 4. The Agency agrees, through this Disposition and Development Agreement, to pay the Developer \$500,000 for the 3.63 acre site as well as an additional \$500,000 spread over five payments once the construction on the project commences. The Agency agrees to contribute the land to the project when the project is fully funded, all permits have been obtained, and the Developer is prepared to commence construction. The Agency would retain reverter rights if the Developer fails to proceed or complete the project. In addition, the Agency agrees to assist the Developer in applying for Low Income Housing Tax Credits. The Agreement also contains language that limits the Developer's utility undergrounding cost to \$150,000. The undergrounding shall be limited, to the extent technically possible, to the Developer's own frontage along Indian Canyon Drive, without crossing any streets. If the cost of the necessary undergrounding exceeds the \$150,000 amount, the Agency shall cover the difference.

SECTION 6. The Agency does hereby find and determine as follows:

- (a) The project was originally approved by the City Council on January 19, 2000. In February, 2000 the Developers requested Community Redevelopment Agency assistance, specifically related to the cost of undergrounding the utility lines that surround the

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property. The undergrounding portion was part of the Engineering Conditions of Approval when the City Council approved the project. The estimated cost of the undergrounding, as calculated by the Developer's utility consultant, was \$650,300.

- (b) The project was delayed from February into April because of a citizen's petition asking to overturn the approval. The decision not to place the issue on a special election ballot, based on California law, was made by the Council in April, but project construction did not get underway until nearly the end of June. By early August, the general partner determined that because of the IRS' absolute December 31, 2000 completion deadline for receipt of their 9% tax credits it was more financially prudent to shut down the project than to continue.
- (c) The Developer has sought since August, 2000 to restructure the project financing in order to complete the project. The Developer intends to reapply for 9% credits (LIHTC), and Agency financial participation in the project will make the developer's LIHTC application much stronger and make the project more likely to be built.
- (d) The DDA is structured according to a Settlement Agreement negotiated by the City and Garden Springs Apartments to settle litigation brought by the Developer against the City of Palm Springs.
- (e) The DDA effectuates the purposes of the Community Redevelopment Law by assisting in the development of housing affordable to families with incomes below 60% of Area Median Income and preserving the affordability of that housing for a period of 55 years.
- (f) The DDA effectuates the purposes of the Community Redevelopment Law as it is intended to eliminate blight and promote the health, safety and general welfare of the people of Palm Springs.

SECTION 7.

The proposed project is consistent with the Implementation Plan for the Palm Springs Community Redevelopment Agency, insofar as this project will provide additional housing for persons of low- or moderate income within the City of Palm Springs.

SECTION 8.

Based on foregoing reasons, this DDA with Garden Springs Apartments, a California Limited Partnership, is hereby approved and incorporated herein by this reference.

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SECTION 9. The Chairman, or his designee, is hereby authorized to execute on behalf of the Agency the Disposition and Development Agreement and other documents necessary to the Agreement, and make minor changes as may be deemed necessary, in a form approved by Agency Counsel.

ADOPTED this _____ day of _____, 2001.

AYES:

NOES:

ABSENT:

ATTEST:

COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF PALM SPRINGS, CALIFORNIA

By _____
Assistant Secretary Chairman

REVIEWED & APPROVED AS TO FORM _____

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RESOLUTION NO. 1130

OF THE COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING
THE BUDGET FOR THE 2000-01 FISCAL YEAR.

WHEREAS Resolution 1101 approving the budget for the fiscal year 2000-01 was adopted on June 14, 2000; and

WHEREAS the Executive Director has recommended, and the Agency desires to approve, certain amendments to said budget;

NOW THEREFORE BE IT RESOLVED that the Director of Finance is authorized to record inter-fund cash transfers as required in accordance with this Resolution, and that Resolution 1101, adopting the budget for the 2000-01 fiscal year is hereby amended as follows:

SECTION 1. ADDITIONS

Fund	Activity	Account	Amount
No: 882 Title: Low/Mod Housing	8382	Garden Springs Apartments DDA	\$500,000

Purpose: To provide financial assistance to the Garden Springs Apartments project

SECTION 2. SOURCE

Fund	Activity	Account	Amount
No: 882 Title: Low/Mod Housing		Fund Balance	\$500,000

Adopted this 13th day of June, 2001.

AYES: Agency Members Jones, Oden, Reller-Spurgin and Chairman Kleindienst

NOES: Agency Hodges

ABSENT: None

ATTEST: COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF PALM SPRINGS

By _____ Assistant Secretary _____ Chairman

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REVIEWED AND APPROVED: _____

RECORDING REQUESTED BY
CHICAGO TITLE COMPANY
AND WHEN RECORDED MAIL TO

DOC # 2001-502241

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Page 1 of 4 Doc T Tax Paid
Recorded in Official Records
County of Riverside
Gary L. Oreo
Assessor, County Clerk & Recorder

PALM SPRINGS COMMUNITY
REDEVELOPMENT AGENCY
3200 TAHQUITE CANYON WAY
PALM SPRINGS CA 92262



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Escrow No. 17052085 - F78
Grant No. 17052085 - 376

Assessor's Parcel No:
501-031-028-4

TRA 011-005 GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)
DOCUMENTARY TRANSFER TAX IS \$550.00

- unincorporated area City of PALM SPRINGS
- computed on the full value of the interest or property conveyed, or is
- computed on the full value less the value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
GARDEN SPRINGS APARTMENTS, A CALIFORNIA LIMITED PARTNERSHIP

hereby GRANT(S) to
PALM SPRINGS COMMUNITY REDEVELOPMENT, a public body, corporate and politic

the following described real property in the City of PALM SPRINGS
County of RIVERSIDE, State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

Dated September 14, 2001

GARDEN SPRINGS APARTMENTS,
California limited partnership

STATE OF _____)
COUNTY OF Placer) SS.

On September 15, 2001 before me,

Patricia A. Taphouse

a Notary Public in and for said County and State, personally appeared

Edward Mackay

Daniel C. Eulberg

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

By: Edward Mackay
Its General Partner, Edward Mackay

By: Daniel C. Eulberg
Its General Partner, Quality Housing Development Corporation
By Daniel Eulberg, CEO
Managing General Partner

WITNESS my hand and official seal.

Patricia A. Taphouse
Signature of Notary

01/22/04
Date My Commission Expires



FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name _____ Street Address _____ City, State & Zip _____

RECORDING REQUESTED BY
CHICAGO TITLE COMPANY
AND WHEN RECORDED MAIL TO

PALM SPRINGS COMMUNITY
REDEVELOPMENT AGENCY
3200 TAHQUITZ CANYON WAY
PALM SPRINGS CA 92262

Attached For Clarity

Escrow No. 17052085 - P78
Order No. 17052085 - E75

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GRANT DEED

Assessor's Parcel No:
501-031-028-6

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$550.00

unincorporated area City of PALM SPRINGS

computed on the full value of the interest or property conveyed, or is

computed on the full value less the value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
GARDEN SPRINGS APARTMENTS, A CALIFORNIA LIMITED PARTNERSHIP

TRA 011-005



hereby GRANT(S) to
PALM SPRINGS COMMUNITY REDEVELOPMENT, a public body, corporate and politic

the following described real property in the City of PALM SPRINGS
County of RIVERSIDE, State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE

Dated September 14, 2001

GARDEN SPRINGS APARTMENTS,
California limited partnership

STATE OF _____
COUNTY OF _____ } SS.
On _____ before me,

By: _____
Its General Partner, Edward Mackay

a Notary Public in and for said County and State, personally appeared

By: _____
Its General Partner, Quality Housing
Development Corporation
By Daniel Eulberg, CEO
Managing General Partner

personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

Date My Commission Expires

FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name

Street Address

City, State & Zip

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LEGAL DESCRIPTION EXHIBIT

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City of Palm Springs

Office of the City Clerk

5200 Tahquitz Canyon Way • Palm Springs, California 92262
TLL (760) 323-3204 • TDD (760) 964-9527

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed by . . .

GRANT DEED

dated: **SEPTEMBER 18, 2001**

from: **Garden Springs Apartments, a California Limited Partnership,**
Grantor, to the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM
SPRINGS, Grantee is hereby accepted by the Assistant Secretary of said Agency, on this
12th day of October, 2001, pursuant to authority granted by said Agency, by its Resolution
No. 1129 made on the 13th day of June, 2001, and the Grantee consents to recordation
thereof by the Assistant Secretary, its duly authorized officer.

Dated at Palm Springs, California, this 12th day of September, 2001.

PATRICIA A. SANDERS
Assistant Secretary



2601-5022-1
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FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF PALM SPRINGS
PO Box 2743
Palm Springs, CA 92263-2743
Attn: City Clerk



DOC # 2000-271229

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Page 1 of 6

Recorded in Official Records

County of Riverside

Gary L. Orse

Assessor, County Clerk & Recorder



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS TO PARTICIPATE
IN DISTRICT FOR UTILITY UNDERGROUNDING UPON NOTICE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS TO PARTICIPATE IN DISTRICT FOR UTILITY UNDERGROUNDING UPON NOTICE ("Declaration") is entered into this 1st day of June, 2000, by and between Garden Springs Apartments, a California Limited Partnership, ("Declarant"), whose address is 1010 Racquet Club Drive, Suite 103, Auburn, CA 95603, and the CITY OF PALM SPRINGS, a municipal corporation ("City"), whose address is PO Box 2743, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92263, Attn: City Clerk.



RECITALS:

A. Declarant is the owner of that certain real property located in the City of Palm Springs, County of Riverside, State of California, commonly known as 3130 Indian Canyon Drive North, Palm Springs, California 92262, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (APN 501-031-028) ("Property"). City has fee or easement interests in various streets, sidewalks and other property within the City and is responsible for the planning and development of land within the City in such a manner as to provide for the health, safety and welfare of the residents of the City. That portion of the City's interest in real property most directly affected by this Agreement is 3130 Indian Canyon Drive North ("Public Parcel").

B. Declarant desires to obtain building permit(s) and other City approvals to build a new structure(s) upon the Property ("City Approval"). Section 8.04.402 of the Municipal Code of the City requires, as a condition precedent to the approval of the City Approval, that Declarant underground the utilities abutting or transecting the Property ("Improvements"). Declarant desires to defer the construction of that portion of the underground utility lines located on the eastern boundary of the Property ("Improvements") and, pursuant to Section 8.04.402 of the Municipal Code of the City, the Director of Public Works has determined that the construction of the Improvements can be deferred on the terms more particularly set forth herein.

NOW THEREFORE, the Declarant declares, covenants and agrees, by and for itself, its heirs, executors and assigns, and all persons claiming under or through it that the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth, which covenants are established expressly and exclusively for the use and benefit of the City and the Public Parcel.

1.0 **Right of City Establish District to Construct Improvements.** The City may, at its sole discretion, elect to construct the Improvements, either alone or as part of a larger project, through the establishment of an improvement district, assessment district, benefit area, or any other lawful plan or procedure for the construction and financing of public improvements ("District"). If the City elects to establish a District, Declarant hereby agrees to join the District and pay its proportionate share of the cost of constructing the Improvements. Further, Declarant hereby waives its right to protest the formation of the District or the imposition of an assessment under the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, California Streets and Highways Code Sections 2800 et seq. or any other procedure for the establishment of a District and/or the implementation of an assessment.

2.0 **Enforcement.**

2.1 **Termination.** No breach of this Declaration shall entitle any party to cancel, rescind or otherwise terminate this Declaration, or excuse the performance of such party's obligation hereunder; provided that, however, this limitation shall not affect in any manner any other rights or remedies which the parties may have by reason of such breach.

2.2 **Other Rights of City.** In the event of any violation or threatened violation of any of the provisions of this Agreement, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions hereof, the City shall have the right (i) to enforce the provisions hereof as a party hereto and as an owner of the Public Parcel, (ii) to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Property or any part thereof or interests therein as to the violating person or one threatening violation and (iii) to obtain from a court of competent jurisdiction an injunction against said violation or threatened violation.

3.0 **Covenants to Run With the Land.**

3.1 **Covenants Running With the Land.** This Declaration is designed to create equitable servitudes and covenants appurtenant to the Public Parcel and running with the Property. Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the covenants, conditions, restrictions and equitable servitudes, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Property and the Public Parcel. The covenants, conditions, restrictions, reservations, and equitable servitudes set forth herein shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the Public Parcel and any interest therein; shall inure to the benefit of the City and its successors and assigns and successors in interest; shall be binding upon the Declarant, its successors and assigns and successors in interest; and may be enforced by the City.

3.2 **Agreement Among Declarant, Agency and City.** In exchange for granting of the City Approval by the City, the Declarant hereby agrees to hold, sell and convey the Property subject to the covenants, conditions, restrictions and reservations of this Declaration. Declarant also grants to the City the right and power to enforce the covenants, conditions, restrictions and reservations



contained in this Declaration against the Declarant and all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns.

4.0 Miscellaneous.

4.1 Term. The covenants, conditions and restrictions contained in this Declaration shall remain in effect until the Improvements are constructed.

4.2 Modification. This Declaration may not be modified, terminated or rescinded, in whole or in part, except by a written instrument duly executed and acknowledged by the parties hereto, their successors or assigns and duly recorded in the Office of the County Recorder, County of Riverside.

4.3 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of California.

4.4 Severability. The invalidity of or inability to enforce any provision of this Declaration with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof, or the same provision when implied to another party or to a different set of circumstances.

4.5 Notices. Any notice to be given under this Declaration shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, at the following address:

City: City of Palm Springs
PO Box 2743
Palm Springs, CA 92263
Attn: City Clerk

With Copy to: Rutan & Tucker
611 Anton Blvd., Ste. 1400
Costa Mesa, CA 92623-9990
Attn: David J. Aleshire, Esq.

Declarant: Garden Springs Apartments
1010 Racquet Club Drive, Ste. 103
Auburn, CA 95603

With Copy to: Engineering Division
City of Palm Springs
P.O. Box 2743
Palm Springs, CA 92263-2743

Any notice delivered personally shall be effective upon delivery. Any notice given by mail as above shall be effective forty-eight (48) hours after deposit in the mails. Any party may change address for notice by giving written notice of such change to the other party.

4.6 Attorneys' Fees. In any action between the parties seeking enforcement of any of the terms and provisions of this Declaration, the prevailing party in such action shall be awarded, in addition to any damages, injunctive or other relief, its reasonable costs and expenses, including attorney's fees.

4.7 Counterparts. This Declaration may be executed in any number of counterparts each of which shall be an original but all of which shall constitute one and the same document.



IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

Garden Springs Apartments, a California Corp

By: Edward Mackay
Edward Mackay

Its: _____
General Partner

"Declarant"

(DECLARANT'S SIGNATURE MUST BE NOTARIZED)

ATTEST:

CITY OF PALM SPRINGS,
a municipal corporation

By: [Signature]
City Clerk

By: [Signature]
City Manager

"City"

(CITY CLERK AND MANAGER'S SIGNATURES MUST BE NOTARIZED)

APPROVED AS TO FORM:

RECOMMENDED BY:

[Signature]
City Attorney

[Signature]
City Engineer

APPROVED AS TO OWNERSHIP & LEGAL
DESCRIPTION:

By: Marna Van Horn

NOTARY FORMS ON NEXT PAGE



STATE OF CALIFORNIA)
COUNTY OF PLACER SS.
~~REVERSIDE~~

On 6/14/00 before me, TAMMY S. STATHAM
date

personally appeared EDWARD MACKAY

personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

Tammy S. Statham
Signature of Notary

(SEAL)

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) SS.

On June 27, 2000 before me, Elaine L. Wedekind Notary Public
date

personally appeared David H. Roaly and Christina A. Sestieri

personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Witness my hand and official seal.

Elaine L. Wedekind
Signature of Notary

(SEAL)



