



CITY COUNCIL STAFF REPORT

DATE: September 5, 2012 CONSENT AGENDA

SUBJECT: Mills Act Historic Site Contract -- (HSPB Site #73 / HD #2)

FROM: David H. Ready, City Manager

BY: Planning Services

SUMMARY

This action would engage the City of Palm Springs into a standard Mills Act Agreement with Doug MacBeth and L. Stanley Deen, owners of 275 Twin Palms Drive and the Royal Hawaiian Estates Homeowners Association. The intent of this contract is to require maintenance and preservation of this Class 1 historic site in exchange for possible property tax relief as calculated by the County of Riverside.

RECOMMENDATION:

1. Approve a Mills Act Historic Property Agreement between the City of Palm Springs and Doug MacBeth, L Stanley Dean, and the Royal Hawaiian Estates Homeowners Association, for 275 Twin Palms Drive, a Class 1 historic site within the Royal Hawaiian Estates Historic District (HSPB #73 / HD #2).
2. Authorize the City Manager to execute the Agreement.
3. Direct the City Clerk to record the Agreement.

STAFF ANALYSIS:

On February 3, 2010 the City Council designated the Royal Hawaiian Estates a Historic District (HSPB #73 / Historic District #2). The Royal Hawaiian Estates Historic District is comprised of forty residences on roughly five acres. Two-seventy-five East Twin Palms Drive is one of the residences that are defined as contributing structures to the historic district.

On July 10, 2012, the Historic Site Preservation Board voted 4-1 (Ploss opposing) to recommend that the City Council execute a Mills Act Contract between the City of Palm Springs and Mr. Doug MacBeth, and Mr. L. Stanley Deen, (owners) and the Royal Hawaiian Homeowners Association.

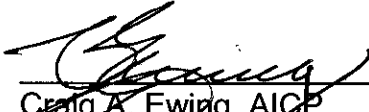
ITEM NO. 2.Q.

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

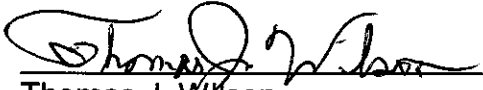
At the Royal Hawaiian Estates, routine maintenance and upkeep of the building exteriors and grounds is a shared responsibility of the home-owners association (HOA) and the individual unit owners. Because of this shared responsibility, the Mills Act Agreement in this particular instance has been drafted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

FISCAL IMPACT: None

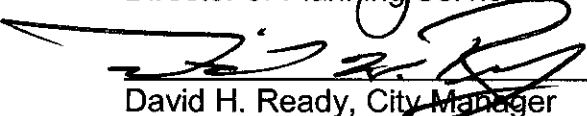
There is no known fiscal impact upon the city as a result of this recommended action.



Craig A. Ewing, AICP,
Director of Planning Services



Thomas J. Wilson
Assistant City Manager



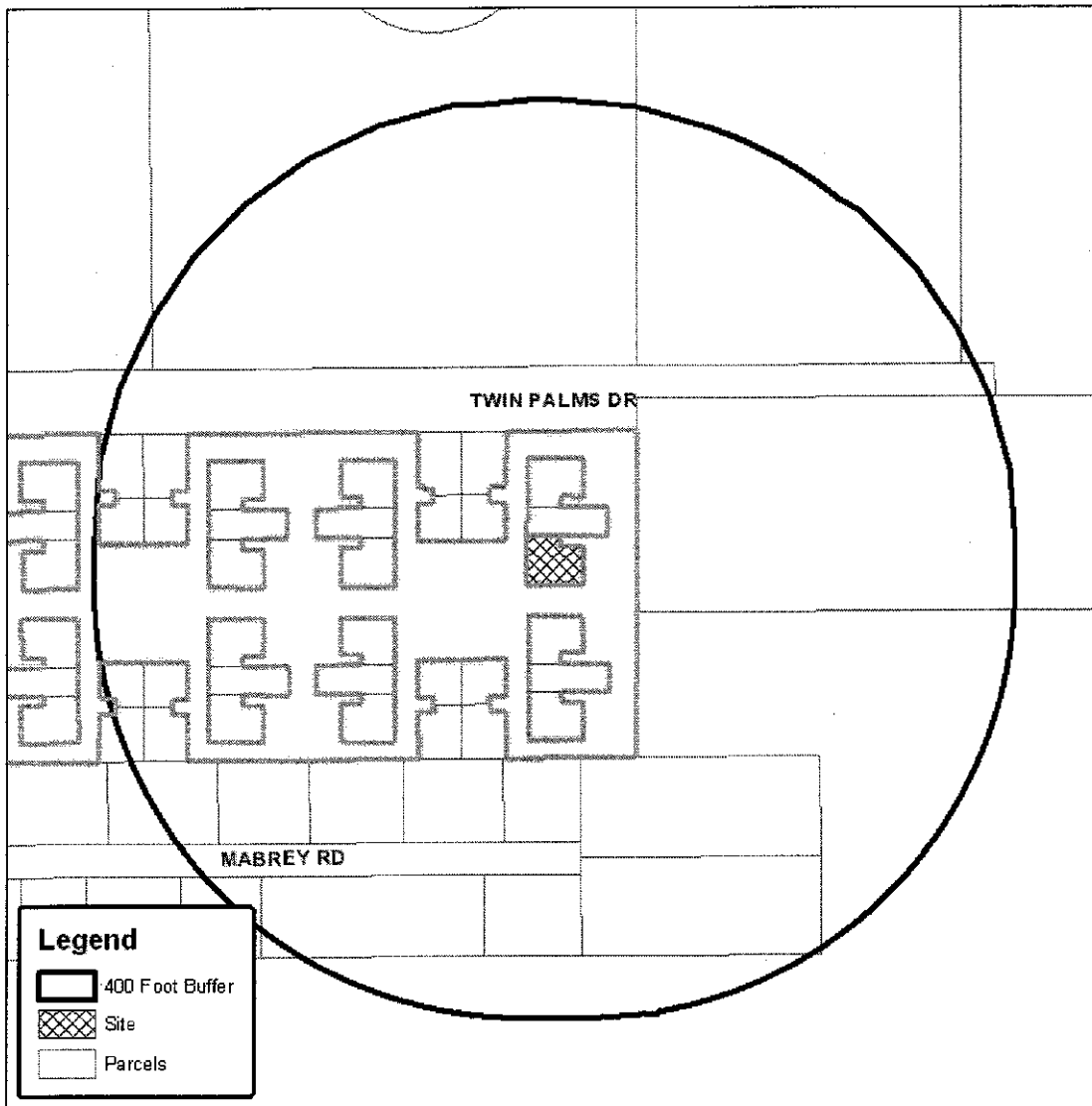
David H. Ready, City Manager

Attachments:

- Vicinity Map
- HSPB minutes of July 10, 2012
- HSPB staff report dated July 10, 2012
- Mills Act Contract between City of Palm Springs and Mr. Tom O’Connell
- MacBeth/Dean to Ewing letter dated July 10, 2012



Department of Planning Services Vicinity Map



CITY OF PALM SPRINGS

CASE NO: HSPB # 73 / HD#2 Mills Act Agreement

APPLICANT: Douglas MacBeth and L. Stanley Deen, Owners

DESCRIPTION: A Mills Act Contract for the property located at 275 East Twin Palms Drive, a contributing structure in the Royal Hawaiian Estates Historic District (HSPB #73 / HD#2) Zone R-2, Section 26/4/4, APN 511-070-020.

flashing and the proposed vertical decoration pieces.

Motion by McGrew; second by Grattan; vote 5-0-1 (Glenn absent), to approve a Certificate of Approval to restore the fascia at the Royal Hawaiian Estates, subject to sending a comment to the project architect to verify the flashing detail.

9. OTHER BUSINESS

9.A Case HSPB 73 / HD #2 - A request for a Mills Act Contract for the MacBeth / Deen Residence" within the Royal Hawaiian Estates Historic District, Historic District #2 located at 275 East Twin Palms Drive, Zone R-2, Section 26.

Ken Lyon presented the staff report. The Board confirmed that any unit owner within the complex could apply for a similar contract.

Motion by McGrew; second by Gilmer; vote 4-1-1 (Ploss opposed, Glenn absent), to recommend the City Council direct staff to execute a Mills Act Historic Property Agreement between the City of Palm Springs, The Royal Hawaiian Homeowners Association and Owners, Douglas MacBeth and Stanley Deen.

~~9.B Initiation of Procedure for Designation of Historic Sites for 333-343 S. Palm Canyon Drive / The J. W. Robinson Department Store (presently, "The Alley").~~

~~Ron Marshall, representing the Palm Springs Preservation Foundation, described the nomination report and summarized the highlights of his investigation. The Board discussed:~~

- ~~- Phasing of the building's construction and timing of phase 2;~~
- ~~- The condition of the south wall of the first phase;~~
- ~~- Rationale for designating a less-than 50 year old addition (phase 2);~~
- ~~- The story of the Luckman / Pereira firm during the building's construction;~~
- ~~- The effect of the addition on the historical significance of the property;~~
- ~~- Ownership of the site and prior tenants;~~
- ~~- The rendering provided in the nomination investigation; and~~
- ~~- The merits of the building's site plan as a downtown store that supports automobile traffic.~~

~~Motion by Ploss to initiate an investigation into the possible designation only 333 S. Palm Canyon Drive (Phase 1), including the street side stairs as a historic site. The motion failed for lack of a second.~~

~~Motion by McGrew; second by Grattan; vote 4-1-1 (Ploss opposed, Glenn absent) to initiate an investigation into the possible designation of 333-343 S. Palm Canyon Drive as a historic site.~~



Historic Site Preservation Board Staff Report

Date: July 10, 2012
Case No.: HSPB-#73 / Historic District #2 Royal Hawaiian Estates
Application Type: Mills Act Agreement
Location: 275 East Twin Palms Drive; APN 511-070-020
Applicant: Douglas MacBeth and L. Stanley Deen, Owners and the Royal Hawaiian Estates Homeowners Association
From: Ken Lyon, Associate Planner

PROJECT DESCRIPTION

This is an application by the Royal Hawaiian Estates Homeowners Association and Douglas MacBeth and L. Stanley Deen, owners of 275 East Twin Palm Drive, a contributing structure within the Royal Hawaiian Estates Historic District (HSPB #73 / HD #2) to enter into a Mills Act Agreement with the City of Palm Springs.

RECOMMENDATION

That the Historic Site Preservation Board recommends that the City Council execute a Mills Act Agreement between the City, The Royal Hawaiian Estates Homeowners Associate and Douglas MacBeth and L. Stanley Deen, owners of 275 East Twin Palms Drive; Royal Hawaiian Estates (HSPB #73 / Historic District #2).

PRIOR ACTIONS TAKEN ON THE PROJECT

On February 3, 2010 the City Council designated the Royal Hawaiian Estates a Historic District (HSPB #73 / Historic District #2). The Royal Hawaiian Estates Historic District is comprised of forty residences on roughly five acres. Two-seventy-five East Twin Palms Drive is one of the residences that are defined as contributing structures to the historic district.

BACKGROUND AND SETTING

Pursuant with California Government Code Section 50280 – 50290 upon the application of

an owner of any qualified historic property, the legislative body of a city may contract with the owner or agent to restrict the use of the property to carry out the purposes and goals of historic preservation of the property. Such a contract is commonly referred to as a "Mills Act Agreement" and it provides for possible alternative property tax rate calculations in exchange for specific and ongoing preservation and maintenance of the property, specifically its historically significant elements and characteristics.

The Palm Springs Municipal Code Section 8.05.125 outlines the methodology for classifying structures within a historic district. It notes that historic districts may contain "contributing" and "non-contributing" structures.

Historic District:

Qualified for city designation; may be qualified at the federal, state and/or county level. Archival file will be maintained and shall contain a map delineating contributing and noncontributing structures or sites. Contributing structures/sites shall be subject to Class 1 regulations until such time that they may be reclassified. Noncontributing structures/sites shall be subject to review by the HSPB before demolition or construction. A specific plan, containing special regulations pertaining to the subject area, may be adopted for each district. (Ord. 1320 § 5, 1988; Ord. 1140 § 1 (part), 1981)

The Royal Hawaiian Estates Historic District is comprised of forty (40) residences clustered in twelve buildings that are either three-plexes or four-plexes. All forty residences have been designed by the notable architects Donald Wexler and Ric Harrison and all were designed with the same "Tiki / Polynesian" themed architectural detailing. As such, each of the forty units are deemed "contributing" and are therefore subject to Class 1 regulations and are also each qualified for application for a Mills Act Historic Property Preservation Agreement.

The Royal Hawaiian Estates Historic District functions like any other typical historic district in which each property is owned by a different individual, each with its own tax bill and "unit value" that is determined by the County Assessor's Office. In a historic district, each owner of a contributing Class 1 building is responsible for the exterior maintenance and preservation of the historic defining characteristics of his or her building or site.

At the Royal Hawaiian Estates, routine maintenance and upkeep of the building exteriors and grounds is a shared responsibility of the Home-owners Association (HOA) and the individual unit owners. Because of this shared responsibility, the Mills Act Agreement in this particular instance has been drafted with both the homeowners and the Homeowners Associate (HOA) as parties to the agreement. Limited financial reserves prevent the HOA from accomplishing comprehensive restoration of the historic defining characteristics that have been lost due to past renovations or removed over time due to deterioration or decay. The potential tax savings to these home owners achieved through execution of a Mills Act contract can be used to provide funds to augment the HOA in restoring the tiki-inspired

details that are missing on the MacBeth / Deen residence¹.



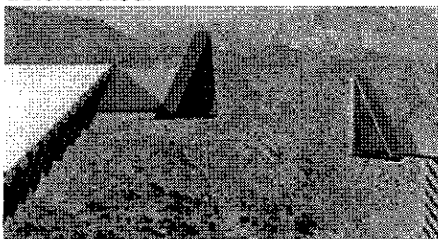
AERIAL PHOTO OF ROYAL HAWAIIAN ESTATES HISTORIC DISTRICT

DESCRIPTION AND ANALYSIS

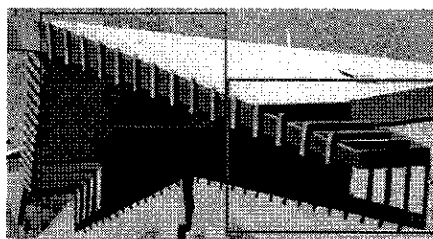
The Mills Act is state sponsored legislation granting local governments the authority to directly participate in a historic preservation program. It is designed to provide private property owners with an economic incentive, via property tax relief, to actively participate in the restoration of their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

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

¹ The MacBeth / Deen residence is missing the Tiki-inspired "apexes" at the ridge beams, the multiple vertical trim pieces at the fascia beams of the gables, and the "outrigger-inspired flying 7's" at the patios are badly deteriorated.



TIKI-INSPIRED APEXES AT RIDGE BEAMS



TIKI-INSPIRED TRIM PIECES AT GABLE



OUTRIGGER "FLYING 7'S"

standards and conditions as identified in the contract. Local authorities may impose penalties for breach of contract or failure to protect the historic property. The contract is binding to all owners during the contract period.

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

The potential property tax savings provided by the Mills Act contract will assist the owners in defraying the costs associated with restoring and maintaining the unique historic characteristics of the property.

REQUIRED FINDINGS

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

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

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

The property at 275 East Twin Palms Drive meets this criteria because is a contributing structure within the Royal Hawaiian Estates Historic District (HSPB 73 / Historic District #2) as noted above. As a contributing structure, it meets the criteria of a Class 1 historic site.

In order to coordinate individual unit-owner-initiated Mills Act Contract requests with the overall maintenance and preservation efforts of the common exterior elements of the Royal Hawaiian Estates Home-Owners Association, staff has requested a letter from the Royal Hawaiian Estates HOA supporting this Mills Act Contract request and the HOA has been included as a party to the agreement. By doing so, any owner-initiated exterior restoration efforts on this unit will be acknowledged by the HOA and must conform to any City-approved Certificates of Approval for changes to the exterior of the units. This is consistent with the manner in which other California Cities such as Los Angeles and San Francisco administer the Mills Act program for condominium associations in their respective jurisdictions.

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

ENVIRONMENTAL ASSESSMENT

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



Ken Lyon, Associate Planner

Craig A. Ewing, AICP,
Director of Planning Services

ATTACHMENTS

1. Vicinity Map
2. MacBeth / Deen application letter dated March 5, 2012
3. Mills Act Agreement between the City of Palm Springs and the Royal Hawaiian Estates Homeowners Association and Mr. Douglas J. MacBeth and L. Stanley Deen, owners of 275 East Twin Palms Drive, Royal Hawaiian Estates Historic District (HD #2)
4. Letter of support from the Royal Hawaiian Estates Home Owners Association.

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

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

HISTORIC PROPERTY PRESERVATION AGREEMENT

This Historic Property Preservation Agreement ("Agreement") is made and entered into this ____ day of _____, 20__ (the "Effective Date"), by and between the CITY OF PALM SPRINGS, a municipal corporation ("City"), and the Royal Hawaiian Estates Homeowners Association ("HOA") and Douglas J. MacBeth and L. Stanley Deen ("Owners").

RECITALS:

- A. California Government Code Sections 50280, *et seq.*, authorizes cities to enter into contracts with the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance.
- B. The Owners possess fee title in and to that certain historic dwelling, commonly known as 275 East Twin Palms Drive in the Royal Hawaiian Estates development, together with associated structures and improvements and real property, all generally located at the street address 275 East Twin Palms Drive, Palm Springs, California (collectively, the "Property"). A legal description of the Property is attached hereto as Exhibit A and is incorporated herein by this reference.
- C. On February 3, 2010, (the "Approval Date"), the City Council of the City of Palm Springs ("Council") adopted Resolution No.22657, thereby declaring and designating the Property known as The Royal Hawaiian Estates as a historic landmark (HSPB #73 / Historic District #2) pursuant to the terms and provisions of Chapter 8.05 of the Palm Springs Municipal Code. Historic District #2 is comprised of forty addresses and other common elements that comprise the Royal Hawaiian Estates as described in the Historic District Nomination dated May 2009 attached to the February 3, 2010 City Council Staff Report.
- D. The HOA is comprised of forty (40) residential units on a roughly five (5) acre parcel. Each of the forty residential units is considered "a contributing structure" pursuant to the City of Palm Springs Municipal Code Section 8.05.125. The HOA pursuant to applicable covenants, conditions, and restrictions has the responsibility of enforcing building and maintenance requirements of the owners of the residential units. The subject unit at 275 East Twin Palms Drive has been

determined to be one of the contributing structures within HSPB #73 / Historic District #2 and as such is subject to Class 1 regulations as described in Municipal Code Section 8.05. As a Class 1 historic site within Historic District #2, 275 East Twin Palms Drive is eligible to be the subject of a Mills Act Historic Property Preservation Agreement. The physical historic character-defining features of the buildings in HD #2 are:

- a. Exaggerated gables over the ends of the buildings with vertical trim pieces along the gables..
- b. Projecting slanted ridge beams.
- c. Elaborately detailed wooden Tiki-Style elements.
- d. Triangular clerestory windows and vaulted ceilings.
- e. Large stylized "Outrigger", "Flying Sevens".
- f. Orange painted cement plaster triangle as part of "outriggers".
- g. Wood diagonal siding.
- h. Natural rock building walls.
- i. Concrete block screen at pool painted orange.
- j. Tiki-Style statues and stone carvings.

E. The City, the HOA, and the Owners, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Property, in accordance with Government Code Sections 50280 through 50290, as amended from time to time, and to qualify the Property for an assessment of valuation pursuant to Revenue and Taxation Code Section 439.2.

AGREEMENT

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

1. **Effective Date and Term of Agreement.** This Agreement shall be effective and commence on the Effective Date, and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the Effective Date, unless this Agreement is terminated in accordance with Section 2 below, such term will automatically be extended by one (1) year.
2. **Non-Renewal and Cancellation.** Neither City, the HOA, nor Owners may terminate this Agreement except in accordance with this Section 2. Termination shall be effected either by (a) an election not to renew the Agreement, in which case termination shall be effective upon the expiration of the remaining term of the Agreement, as specified in Section 2.1 below, or (b) cancellation of the Agreement, which shall effect an immediate termination of the Agreement upon the happening of all events specified in Sections 2.2 and 5.
 - 2.1 Each year on the anniversary of the Effective Date (hereinafter referred to as the "Renewal Date"), an additional one (1) year shall automatically be

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

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

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

3.1 Owners and HOA shall preserve, maintain, and, when necessary, restore and rehabilitate the Property, as necessary to retain its historical significance including its "Character Defining Features" (as hereinafter defined), in substantial conformance with the (i) the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, (ii) the United States Secretary of the Interior's Standards for Rehabilitation and (iii) the State Historical Building Code, as the same may be amended, restated, or replaced from time to time (the "Preservation Standards"). "Character Defining Features" shall include, but not be limited to, the general architectural form, style, materials, design, scale, proportions, organization of windows, doors, and other openings, details, mass, roof line, porch and all other aspects of the appearance of the exterior of the Property. The HOA and the Owners may perform routine maintenance and repair of the Property, but may not materially alter the Property without the prior approval of the City which approval shall not be unreasonably withheld or delayed. "Material Alterations" shall include, but not be limited to, demolition of any portion of the Property, exterior door or window replacement, major landscaping projects and all other similar exterior alterations of the Property, regardless of whether a building permit is required for such alterations. Before performing any work requiring the approval of the City, the HOA

and/or the Owners shall give at least sixty (60) days' written notice to City, describing the work to be done; if the City shall not have acted within sixty (60) days thereafter to disapprove the work, or to approve the work subject to specified conditions, the work shall be deemed approved as submitted. In all events, City's Director of Planning Services shall be notified of all changes to the Property which the HOA and/or the Owners reasonably determine to be significant, prior to implementation of the changes.

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

The HOA and the Owners and their respective maintenance staff, contractor, or subcontractors shall comply with the following standards (the "Maintenance Standards").

- a. The Improvements shall be maintained in conformance and in compliance with the Preservation Standards, and reasonable commercial development maintenance standards for similar project, including but not limited to painting and cleaning of all exterior surfaces and other exterior facades comprising all private improvements and public improvements to the curb-line. The Improvements shall be maintained in good condition and in accordance with the custom and practice generally applicable to comparable historic properties located in Palm Springs, California.
- b. Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning, trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility; and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns,

groundcovers, or other planted areas; and staking for support of trees.

- c. Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths, and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris, or other matter which is unsafe or unsightly; removal of all trash, litter, and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cutting, weeds, leaves, and other debris are properly disposed of.
- d. Any HOA or Owner-initiated exterior changes, improvements, modifications, restoration or rehabilitation efforts shall not commence without prior written notice and approval by the Royal Hawaiian Estates Homeowners Association and shall be executed only as approved by Certificates of Approval granted by the City's Historic Site Preservation Board.

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

- 3.4 The HOA and the Owners shall take reasonable steps to obtain and keep in force during the term of this Agreement a policy or policies of insurance (or a reasonable substitute therefore) providing replacement value coverage against damage to the Property against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and other generally covered perils, but excluding earthquake, flood and other matters either not generally available within the Palm Springs area, or not generally offered in such a policy without requiring an additional premium. Failure to maintain insurance or a reasonable substitute therefore shall be grounds for termination of this Agreement pursuant to Section 5(a) below.
- 4. Provision of Information. Owners and HOA hereby agree to furnish City with all reasonable information requested by City which may be necessary or advisable to determine compliance with the terms and provisions of this Agreement.
- 5. Non-Renewal and Cancellation.

- (a) City may elect to provide notice of non-renewal of this Agreement in its discretion consistent with the provisions of this Agreement and with applicable law.
- (b) City, following notice in accordance with California Government Code Section 50285 and a duly noticed public hearing before the Council, may elect to cancel this Agreement only if the Council finds and determines that (i) Owners and HOA, through their own willful or negligent acts, and subject to Section 16 below, have failed to restore or rehabilitate the Property in accordance with any approved Plans for physical improvements to the property, or (ii) HOA and Owners, through their respective willful or negligent acts, and subject to Section 16 below, have allowed the Property to deteriorate beyond the point that it no longer meets the standards for a qualified historic property, and the deterioration is serious and irreversible.
- (c) Notwithstanding anything to the contrary herein, the Property shall be deemed to meet the standards for a qualified historic property if it is maintained in accordance with Section 3.2.
- (d) If City determines to cancel or not to renew this Agreement as specified above, it shall provide the HOA and the Owners with written notice of its intent to cancel or not renew, and such notice must specify in detail the reasons for the cancellation and/or non-renewal and the steps which The HOA and the Owners must take to cure any such problems (unless such reasons are not susceptible of cure). If City determines in its reasonable discretion that HOA and/or the Owners have not cured such problems within ninety (90) days of such notice (or if curing such problems will reasonably take longer than ninety (90) days and HOA and/or Owners have not commenced diligent efforts to cure such problems within ninety (90) days), then City shall (i) with respect to a decision to cancel, notice and hold a second public hearing before the Council to determine whether to cancel this Agreement, or (ii) with respect to a decision not to renew, provide the HOA and the Owners with written notice of its final decision not to renew this Agreement. Notice of all hearings under this Agreement shall be given to the HOA and the Owners directly pursuant to Section 11 below and published in accordance with Government Code Section 6061.
- (e) If City cancels (but not if City elects not to renew) this Agreement in accordance with this Section 5, the Owners shall pay a cancellation fee of twelve and one-half percent (12½%) of the full value of the Historic Property at the time of cancellation. The full value shall be determined by the County Assessor without regard to any restriction on the Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the Auditor shall prescribe. As an alternative to cancellation of this Agreement for breach of

any condition, City may (without limiting Owners' right to elect not to renew this Agreement), but is not obligated to, bring any action in court necessary to enforce the Agreement including, but not limited to, an action for specific performance or injunction.

- (f) The HOA and the Owners acknowledge that it may serve notice of its election not to renew this Agreement, but that the Agreement will remain in place through the existing term. The HOA and the Owners further acknowledge that it may not cancel this Agreement for any reason.
6. No Compensation. Neither the HOA nor the Owners shall receive any payment from City in consideration of the obligations imposed under this Agreement. The HOA, the Owners and City acknowledge and agree that the primary consideration to City for the execution of this Agreement is the substantial benefit to the citizens of Palm Springs accruing from the rehabilitation and maintenance of the Property, and the primary consideration to HOA and the Owners is the economic advantage that will accrue to Owners as a result of the possible effect upon the assessed value of the Property of the restrictions on the use and preservation of the Property imposed hereunder. However, the HOA and the Owners acknowledge that it is not guaranteed to receive a reduction of property taxes as a result of this agreement.
7. Condemnation. Upon the filing of an action in eminent domain by a public entity for the taking of all or any portion of any interest in the Property, and a determination by City that such action will frustrate the purpose of this Agreement, then in such event this Agreement shall be canceled as to those portions of the Property that are affected by the condemnation action (such that the value shall be appraised for condemnation purposes as unencumbered by the historic property restrictions set forth herein), and no fee shall be imposed on the HOA or the Owners for cancellation in accordance with Government Code Section 50286. If subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency as to all or a portion of the Property, the restrictions on the use of the Property included in this Agreement shall be automatically reinstated, the Property shall be deemed, retroactive to the date of such abandonment, to have been subject to this Agreement, and the terms of this Agreement shall be in full force and effect.
8. Destruction. Upon any damage to or destruction of the Property, the HOA, the Owners and City shall proceed in accordance with this Section 8. In the event there is any damage to or destruction of the Property, this Agreement shall not be deemed to require the HOA or the Owners to rebuild, repair or restore the damaged portion, and the HOA and the Owners shall not be held in default under this Agreement for its failure to do so, provided, however, that this provision does not relieve the HOA or the Owners of any obligation to repair or otherwise take action with respect to the Property to the extent required to do so by applicable

state and federal laws and regulations, if any, other than historical preservation laws.

- (a) Minor Insured Damage. In the event the Property or any portion thereof is damaged by any casualty that is covered by the insurance maintained by the HOA or the Owners, then the HOA and/or the Owners shall rebuild, repair and restore the damaged portion thereof provided that (i) the amount of insurance proceeds available to the HOA or the Owners equals or exceeds the cost of such rebuilding, restoration and repair, and the total cost of repair is less than \$250,000 (in the opinion of a licensed architect, engineer or other qualified person selected by the HOA or the Owners and approved by City in its reasonable discretion), (ii) such rebuilding, restoration and repair can be completed within nine (9) months after the work commences, in the opinion of a registered architect or engineer or other qualified person selected by the HOA or the Owners and approved by City in its reasonable discretion, (iii) City has not acted to cancel or not to renew this Agreement on or before the date of commencement, and (iv) such rebuilding, restoration or repair is then permitted to be done under governmental laws, rules and regulations in existence as of the Approval Date in such a manner as to return the damaged portion thereof to substantially its condition immediately prior to the damage or destruction. To the extent that insurance proceeds must be applied to reduce any indebtedness secured by a mortgage or deed of trust encumbering the Property or any portion thereof, such proceeds, for the purposes of this subsection, shall be deemed not available to the HOA or the Owners unless such beneficiary permits the HOA or the Owners to use such proceeds for the rebuilding, restoration and repair of the damaged portion thereof. If the HOA or the Owners are required under this Section to rebuild, restore or repair the Property, such work shall commence not later than one (1) year after receipt of the applicable insurance proceeds, and the HOA or the Owners shall thereafter diligently proceed to complete such work within eighteen (18) months after commencement; provided, however, that so long as the HOA or the Owners shall be diligently proceeding toward completion of the work, such commencement and completion dates shall be extended by City's Director of Planning Services upon Owners' request.
- (b) Major or Uninsured Damage. In the event the Property is damaged or destroyed by any casualty to the extent that the HOA or the Owners are not obligated, under subsection (a) above, to rebuild, repair or restore the damaged portion thereof, then within sixty (60) days after either (i) a final determination that damage is not an insured claim (or one (1) year after the date of damage, whichever comes first), or (ii) the HOA or the Owners' receipt of insurance premiums sufficient to rebuild (as determined under subsection (a) above), the HOA or the Owners shall notify City of its election, at its option, either to (1) rebuild, restore and repair the damaged

the applicable provisions of the Government Code and the Revenue and Taxation Code, except for an unenforceability arising from the cancellation or non-renewal of this Agreement, for any tax year during the original term or any renewal of this Agreement, then this Agreement shall be null and void and without further effect, and the Property shall from such time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to the Agreement.

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

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

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

To Owners: Douglas MacBeth [REDACTED]
692 Castro St.
San Francisco, CA 94114

Stanley Deen
692 Castro St.
San Francisco, CA 94114

To HOA: Royal Hawaiian Estates
Bill Lewallen
283 East Twin Palms Dr.
Palm Springs, CA 92264

12. General Provisions.

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

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

- 12.8 This Agreement may be signed in one or more counterparts, each such counterpart shall be considered as part of and the same document as all other related counterparts.
- 12.9 This Agreement has been agreed to by the parties only after negotiations between City, the HOA and Owners, all of which were represented by counsel. Accordingly, this Agreement shall not be construed as if it had been prepared only by City, the HOA or Owners, but rather as if the City, the HOA and Owners had prepared the same.
13. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, City shall cause this Agreement to be recorded in the office of the County Recorder of the County of Riverside.
14. Notification of Contract. The HOA or Owners shall provide written notice of the existence of this Agreement to the Office of Historic Preservation within six (6) months after execution of this Agreement.
15. Amendments. This Agreement may be amended, in whole or in part, only by a written recorded instrument executed by the parties hereto.
16. Force Majeure. If the performance by the HOA or the Owners of any provision of this Agreement is delayed or prevented by any act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, and any other cause not within the control of the HOA or Owners, then the period for HOA or Owners' performance of the provision shall be automatically extended for the same time the HOA or the Owners are so delayed or hindered.

(SIGNATURES ON FOLLOWING PAGE 12)

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

CITY OF PALM SPRINGS,
a municipal corporation

Dated: _____

By: _____
City Manager

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Dated: June 8, 2012

By: *Donald J. Murr*
Owner

Dated: June 8, 2012

By: *Stanley Deen*
Owner

Dated: June 13, 2012

By: *Bill Jewaller*
HOA Bill Lewallen

(Owners/HOA Affidavit(s) follow on page 13)

OWNER AFFIDAVIT

State of CA)
)ss.
County of Sonoma)

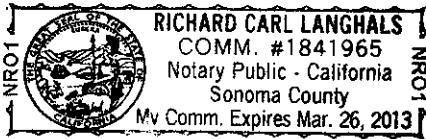
On 08 June 12 before me, Richard Carl Langhals, Notary Public
Date Name and Title of Officer

personally appeared Douglas J Macbeth and L Stanley Dorn
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal



Richard Carl Langhals
Signature of Notary Public

HOA AFFIDAVIT

State of California)
)ss.
County of Riverside)

On 6/13/2012 before me, DAVE BERGHOFF - Notary Public
Date Name and Title of Officer

personally appeared Bill LEWALLEN
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal

Dave Berghoff
Signature of Notary Public

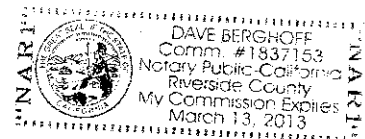


EXHIBIT A
LEGAL DESCRIPTION

All that certain real property situated in the County of Riverside, State of California, described as follows:

Parcel 38, in the City of Palm Springs, County of Riverside, State of California, as per Record of Survey recorded in Book 32 Page 69 of Records of Survey records of said county.

EXCEPT therefrom the oil, gas, minerals, and other hydrocarbon substances lying below the surface of said land, as provided in deeds of record.

Assessor Parcel No. 511-070-020-0

692 Castro St.
San Francisco, CA 94114-2518

March 5, 2012

Mr. Craig Ewing, AICP
Department of Planning
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262-6959

Dear Mr. Ewing:

We are the owners of 275 E. Twin Palms Drive in Palm Springs (Assessment Number 511070020-0), which is located in the Royal Hawaiian Estates development. The Royal Hawaiian Estates became a Class 1 Historic District in February 2010.

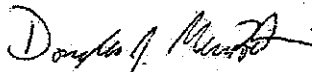
We are writing today to apply for the Mills Act Tax Abatement Program. Enclosed is our check for \$824.00 to begin the application process.

Through the Mills Act economic incentives, we look forward to performing ongoing restoration and preservation of our historic Donald Wexler midcentury tiki-modern property.

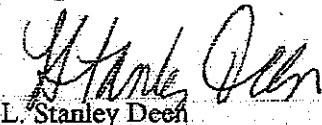
If you have any questions or need additional information, you may contact us at dougmacbeth@yahoo.com or (415) 621-4245.

Thank you for your help in this process.

Sincerely,



Douglas J. MacBeth



L. Stanley Deen