



## Redevelopment Agency Staff Report

DATE: March 25, 2009

SUBJECT: Transfer of Unexpended Bond Proceeds to Capitalized Interest Account

FROM: David H. Ready, City Manager/Executive Director

BY: Thomas Wilson, Assistant City Manager

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### SUMMARY:

There are currently unexpended proceeds from the 2007 Tax Allocation Bonds on deposit in the Redevelopment Fund. In order to provide future flexibility for expenditure of approximately \$1 million of the funds, the Agency can transfer a portion of the unexpended funds to the Capitalized Interest Account for the 2007 Tax Allocation Bonds.

### RECOMMENDATION:

1. Adopt Resolution No. \_\_\_\_, "RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS APPROVING AND AUTHORIZING AND DIRECTING EXECUTION OF A FOURTH SUPPLEMENTAL INDENTURE RELATING TO ITS MERGED PROJECT NO. 1 TAX ALLOCATION BONDS, 2007 SERIES A, AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO"

### FISCAL IMPACT:

The Agency has unexpended proceeds of the Merged Project No. 1 2007 Tax Allocation Bonds, Series A Bonds (2007A Bonds) on deposit in the Redevelopment Fund. Such amounts are restricted to expenditure on qualifying tax-exempt purposes in order to maintain the tax exemption on the Bonds.

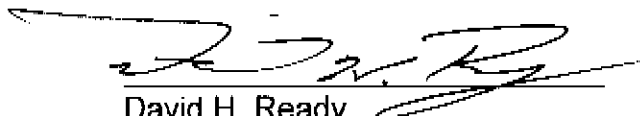
ITEM NO. RA4.


As the City and Agency enter into a period of economic uncertainty, it will be important to provide the Agency with as much flexibility as possible in the expenditure of the remaining bond proceeds. The Agency has the ability to transfer \$928,837.50 of the unexpended bond proceeds to the Capitalized Interest Account for the 2007A Bonds, to be used to offset future debt service payments on the 2007A Bonds. This amount would satisfy the payment obligation on the 2007A Bonds through September 1, 2010, a little less than 3 years from the date the 2007A Bonds were issued, and within the prescribed time limit set out in the tax law for tax-exempt bonds.

The deposit to the Capitalized Interest Account, and the corresponding reduction in debt service that will be paid from Merged Project No. 1 tax increment will generate a like amount of tax increment that will be available for any type of future Agency expenditure, and not just those limited by the tax law governing the issuance of tax-exempt bonds.

The 2007A Bonds were issued pursuant to an Indenture of Trust dated May 1, 2004, as supplemented and amended. Such indenture must be further amended to authorize the transfer and use of funds for additional capitalized interest.

The resolution presented approves the transfer of the funds from the Redevelopment Fund to the Capitalized Interest Account for the 2007A Bonds, approves the Fourth Supplement to Indenture of Trust in the form on file with the Agency Secretary, and authorizes the Executive Director to execute the Fourth Supplement to Indenture of Trust.

  
David H. Ready  
City Manager/Executive Director

  
Thomas Wilson  
Assistant City Manager

Attachments:

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING AND AUTHORIZING AND DIRECTING EXECUTION OF A FOURTH SUPPLEMENTAL INDENTURE RELATING TO ITS MERGED PROJECT NO. 1 TAX ALLOCATION BONDS, 2007 SERIES A, AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO

WHEREAS, the Community Redevelopment Agency of the City of Palm Springs (the "Agency") is authorized pursuant to the Community Redevelopment Law, being Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California (the "Law") to issue its tax allocation bonds for the purpose of financing and refinancing redevelopment activities with respect to its Merged Project No. 1 ("Merged Project No. 1");

WHEREAS, for the purpose of financing and refinancing redevelopment activities with respect to Merged Project No. 1, the Agency issued its \$14,240,000 aggregate principal amount of Community Redevelopment Agency of the City of Palm Springs (Merged Project No. 1) Tax Allocation Refunding Bonds, 2004 Series A, pursuant to an Indenture of Trust (the "2004 Bonds Indenture"), dated as of May 1, 2004, by and between the Agency and BNY Western Trust Company, as trustee ;

WHEREAS, for the purpose of financing additional redevelopment activities with respect to Merged Project No. 1 on a federally tax-exempt basis, the Agency issued its \$12,770,000 aggregate principal amount of Community Redevelopment Agency of the City of Palm Springs Merged Project No. 1 Tax Allocation Bonds, 2007 Series A (the "2007 Series A Bonds") and on a federally taxable basis its \$1,910,000 aggregate principal amount of Community Redevelopment Agency of the City of Palm Springs Merged Project No. 1 Taxable Tax Allocation Bonds, 2007 Series B (the "2007 Series B Bonds") pursuant to a First Supplement to Indenture of Trust and a Second Supplement to Indenture of Trust, respectively, each dated as of August 1, 2007 and each by and between the Agency and the Trustee, amending and supplementing the 2004 Bonds Indenture (the 2004 Bonds Indenture as amended and supplemented, the "Merged Project No. 1 Indenture");

WHEREAS, proceeds of the 2007 Series A Bonds were deposited in the Merged Project No. 1 2007 Series A Bonds Redevelopment Fund held by the Trustee pursuant to Section 10.07(b) of the Merged Project No. 1 Indenture and the proceeds of the 2007 Series B Bonds were deposited in the Merged Project No. 1 2007 Series B Bonds Redevelopment Fund held by the Trustee pursuant to Section 11.07(b) of the Merged Project No. 1 Indenture;

WHEREAS, pursuant to a Third Supplement to Indenture of Trust, dated March 1, 2008, by and between the Agency and the Trustee (the "2008 Third Supplement"), the Agency provided that investment earnings on moneys in the Merged Project No. 1

2007 Series A Bonds Redevelopment Fund and in the Merged Project No. 1 2007 Series B Bonds Redevelopment Fund shall be retained in the respective Funds and used for the purposes of such Funds and amended said Sections 10.07(b) and 11.07(b) accordingly;

WHEREAS, proceeds of the 2007 Series A Bonds were also deposited in the Series A Bonds Capitalized Interest Subaccount of the Interest Account held by the Trustee pursuant to Section 10.07(c) of the Merged Project No. 1 Indenture;

WHEREAS, the Agency has determined to transfer moneys from the Merged Project No. 1 2007 Series A Bonds Redevelopment Fund in order to make an additional deposit into the Series A Bonds Capitalized Interest Subaccount of the Interest Account to be used for the purposes of such Subaccount and has determined to amend said Section 10.07(c) of the Merged Project No. 1 Indenture accordingly pursuant to a Fourth Supplement to Indenture of Trust, dated as of March 1, 2009, by and between the Agency and the Trustee (the "Fourth Supplement");

WHEREAS, the Agency hereby determines that the amendment to the Merged Project No. 1 Indenture, as above described, will not materially adversely affect the Owners of the Bonds within the meaning of Section 7.01(b) of the Merged Project No. 1 Indenture and, therefore, such amendment does not require Bondowner or Insurer consent within the meaning of the Merged Project No. 1 Indenture; and

WHEREAS, the Agency, with the aid of its staff, has reviewed the Fourth Supplement and the Agency wishes at this time to approve the Fourth Supplement in the public interests of the Agency;

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

Section 1. Approval of Fourth Supplement. The Agency hereby approves the Fourth Supplement (being supplemental to the Merged Project No 1 Indenture) in substantially the form thereof on file with the Secretary together with any additions thereto or changes therein deemed necessary or advisable by the Executive Director, and execution of the Fourth Supplement shall be deemed conclusive evidence of the Agency's approval of such additions or changes. The Executive Director and Secretary of the Agency are hereby authorized and directed to execute, attest and affix the seal of the Agency to the Fourth Supplement for and in the name and on behalf of the Agency. The Agency hereby authorizes the delivery and performance of the Fourth Supplement.

Section 2. Effective Date. This resolution shall take effect from and after the date of approval and adoption thereof.

PASSED AND ADOPTED THIS 25<sup>TH</sup> DAY OF MARCH, 2009.

\_\_\_\_\_  
David H. Ready, Executive Director

ATTEST:

\_\_\_\_\_  
James Thompson, City Clerk  
Assistant Secretary

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. \_\_\_\_\_ is a full, true and correct copy, and was duly adopted at a regular meeting of the Community Redevelopment Agency of the City of Palm Springs on the 25<sup>th</sup> day of March, 2009 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
James Thompson, City Clerk  
City of Palm Springs, California

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**FOURTH SUPPLEMENT TO INDENTURE OF TRUST**

**Dated as of March 1, 2009**

**by and between the**

**COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS**

**and**

**THE BANK OF NEW YORK TRUST COMPANY, N.A.,  
as Trustee**

**Relating to**

**\$12,770,000  
Community Redevelopment Agency of the City of Palm Springs  
Merged Project No. 1  
Tax Allocation Bonds, 2007 Series A**

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## FOURTH SUPPLEMENT TO INDENTURE OF TRUST

This **Fourth Supplement to Indenture of Trust** (this "Fourth Supplement"), dated as of March 1, 2009, is by and between the **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS**, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Agency"), and **THE BANK OF NEW YORK TRUST COMPANY, N.A.**, a national banking association organized and existing under the laws of the United States of America, as successor trustee to BNY Western Trust Company under the hereinafter defined 2004 Bonds Indenture (the "Trustee");

### WITNESSETH:

**WHEREAS**, the Agency was duly established and authorized to transact business and exercise powers under and pursuant to the provisions of the Community Redevelopment Law, being Part 1 of Division 24 (commencing with Section 33000) of the Health and Safety Code of the State of California (the "Law"), including the power to issue bonds for any of its corporate purposes;

**WHEREAS**, for the purpose of financing and refinancing redevelopment activities with respect to the Redevelopment Project, the Agency issued its \$14,240,000 aggregate principal amount of Community Redevelopment Agency of the City of Palm Springs (Merged Project No. 1) Tax Allocation Refunding Bonds, 2004 Series A, pursuant to an Indenture of Trust (the "2004 Bonds Indenture"), dated as of May 1, 2004, by and between the Agency and BNY Western Trust Company, as predecessor trustee ;

**WHEREAS**, for the purpose of financing additional redevelopment activities with respect to the Redevelopment Project on a federally tax-exempt basis, the Agency issued its \$12,770,000 aggregate principal amount of Community Redevelopment Agency of the City of Palm Springs Merged Project No. 1 Tax Allocation Bonds, 2007 Series A (the "2007 Series A Bonds") and on a federally taxable basis its \$1,910,000 aggregate principal amount of Community Redevelopment Agency of the City of Palm Springs Merged Project No. 1 Taxable Tax Allocation Bonds, 2007 Series B (the "2007 Series B Bonds") pursuant to a First Supplement to Indenture of Trust and a Second Supplement to Indenture of Trust, respectively, each dated as of August 1, 2007 and each by and between the Agency and the Trustee, amending and supplementing the 2004 Bonds Indenture (the 2004 Bonds Indenture as amended and supplemented, the "Indenture");

**WHEREAS**, proceeds of the 2007 Series A Bonds were deposited in the Merged Project No. 1 2007 Series A Bonds Redevelopment Fund held by the Trustee pursuant to Section 10.07(b) of the Indenture and a portion of the proceeds of the 2007 Series B Bonds were deposited in the Merged Project No. 1 2007 Series B Bonds Redevelopment Fund held by the Trustee pursuant to Section 11.07(b) of the Indenture;

**WHEREAS**, pursuant to a Third Supplement to Indenture of Trust, dated March 1, 2008, by and between the Agency and the Trustee, the Agency provided that investment earnings on moneys in the Merged Project No. 1 2007 Series A Bonds Redevelopment Fund and in the Merged Project No. 1 2007 Series B Bonds Redevelopment Fund shall be retained in the respective Funds and used for the purposes of such Funds and amended said Sections 10.07(b) and 11.07(b) accordingly;

**WHEREAS**, proceeds of the 2007 Series A Bonds were also deposited in the Series A Bonds Capitalized Interest Subaccount of the Interest Account held by the Trustee pursuant to Section 10.07(c) of the Indenture;

**WHEREAS**, the Agency has determined to transfer moneys from the Merged Project No. 1 2007 Series A Bonds Redevelopment Fund in order to make an additional deposit into the Series A Bonds Capitalized Interest Subaccount of the Interest Account to be used for the purposes of such Subaccount and has determined to amend said Section 10.07(c) accordingly; and

**WHEREAS**, the Agency has further determined that such amendment will not materially adversely affect the Owners of the Bonds within the meaning of Section 7.01(b) of the Indenture and, therefore, such amendment does not require Bondowner or Insurer consent within the meaning of the Indenture;

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

**SECTION 1. Amendment of Section 10.07(c) of the Indenture.** Section 10.07(c) of the Indenture is hereby amended to read in full as follows:

“ (c) The Trustee shall establish and maintain a Series A Bonds Capitalized Interest Subaccount (the “Capitalized Interest Subaccount”) in the Interest Account and shall deposit therein the amount provided in Section 10.06(b). In addition, a portion of the amount initially deposited in the Redevelopment Fund pursuant to Section 10.06(c) in the amount of \$928,837.50 shall be transferred by the Trustee to the Capitalized Interest Subaccount. Moneys in the Capitalized Interest Subaccount shall be invested in Permitted Investments and shall be withdrawn and used, together with investment earnings thereon, to pay interest on the Series A Bonds on September 1, 2009, March 1, 2010, and September 1, 2010. Any moneys remaining in the Capitalized Interest Subaccount after September 1, 2010, shall be transferred by the Trustee to the Redevelopment Fund and the Capitalized Interest Subaccount shall be closed.

**SECTION 2. Partial Invalidity.** If any Section, paragraph, sentence, clause or phrase of this Fourth Supplement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Forth Supplement. The Agency hereby declares that it would have entered into this Fourth Supplement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Fourth Supplement may be held illegal, invalid or unenforceable.

**SECTION 3. Execution in Counterparts.** This Fourth Supplement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 4. Governing Law.** This Fourth Supplement shall be construed and governed in accordance with the laws of the State of California.



IN WITNESS WHEREOF, the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS has caused this Fourth Supplement to be signed in its name by its Chairman and attested by its Secretary, and THE BANK OF NEW YORK TRUST COMPANY, N.A., in token of its acceptance of the trusts created hereunder, has caused this Fourth Supplement to be signed in its corporate name by its officers thereunto duly authorized, all as of the day and year first above written.

COMMUNITY REDEVELOPMENT  
AGENCY OF THE CITY OF PALM  
SPRINGS

By: \_\_\_\_\_  
Chairman

ATTEST:

By: \_\_\_\_\_  
Secretary

THE BANK OF NEW YORK TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Officer