AGREEMENT NO. A6144
Project Financing Agreement

CITY OF PALM SPRINGS
AND
PALM SPRING PROMENADE, LLC

PROJECT FINANCING AGREEMENT

THIS PROJECT FINANCING AGREEMENT ("Agreement"), dated this 29TH day of September, 2011, is entered into by and between the City of Palm Springs, a California municipal corporation and charter city ("City"), and Palm Springs Promenade, LLC, a California limited liability company ("Developer"), with reference to the following:

RECITALS

A. Specific Plan and DFP Area. On December 2, 2009, the City adopted, by unanimous vote of the City Council, Ordinance 1764, which approved the Museum Market Plaza Specific Plan ("Specific Plan"). The Specific Plan covered two existing downtown commercial areas, i.e., the area commonly known as Desert Fashion Plaza ("DFP Area"), and the area commonly known as the Town and Country Center ("The Center"). This Agreement relates only to the DFP Area, which is (or within fifteen (15) days of full execution of this Agreement) owned by PSP LLC, and does not include The Center, including without limitation Parcels K-1 and K-2 as identified in the Specific Plan.

B. Redevelopment. The Parties have long recognized that redevelopment of the DFP Area is critical to restoring economic vitality to downtown Palm Springs, and that successful redevelopment will, as is almost always the case with downtown areas, require public-private participation and funding.

C. Revitalization Plan. In early 2011, the Mayor and City Council commenced a series of "visioning" sessions with community leaders and concerned citizens. As a result of that effort, concepts evolved and subsequent to the "visioning" sessions have been refined and finalized into a plan for the DFP Area ("Revitalization Plan"), which is depicted on the "Project Site Plan" attached hereto as Exhibit "A" and described in the "Project Description" attached hereto as Exhibit "B" (the "Project").

D. Public Participation. In order to evaluate economic feasibility of the Revitalization Plan, and determine the extent of required public participation, the City engaged Keyser Marston Associates, Inc. ("KMA"), a qualified and reputable public financial consultant that has worked with City on many prior occasions. At the request of City, KMA proceeded to analyze projected redevelopment costs and post redevelopment rental revenues in order to determine the extent to which public participation would be required for the Project. KMA projected that the total redevelopment project costs would be at least $100 million dollars. Using conservative but reasonable assumptions with respect to construction costs and rental revenues, KMA determined that $40 to $45 million dollars in public participation would be necessary to fund the Project.

E. Public Assets and Improvements and Private Improvements. Based on the foregoing, but subject to the City identifying sources of funding as provided in Section 1.A.(1)(a) below, the parties have agreed to proceed with the Revitalization Plan. City will provide: 1) $32 million dollars ("City Payment") for the City to acquire certain property and interests ("Public Assets") as referenced in this Agreement, and fund project incentives for the completion of the Project; and 2) $11 million dollars ("Public Improvement Payment") to create and refurbish (with respect to the Public Assets) public improvements as depicted on the Project Site Plan and described in the Project Description ("Public Improvements"). The Developer will create and refurbish private improvements as depicted on the Project Site Plan and described in the Project Description ("Private Improvements"). As used herein, with respect to Public Improvements, "creation" means demolition and construction work sufficient to install and complete the new public streets referenced in the Project Description, and "refurbishment" means rehabilitation of the Parking Facilities (defined in Section F.2 below) to be acquired by the City to a top quality, clean, safe, and operable condition; and, with respect to Private Improvements, "creation" means demolition and construction work sufficient to install and complete top quality new buildings in Blocks A-2, C, and F, and finished pads for future vertical development in Blocks D, E, and G, as referenced in the Project Description, and "refurbishment" means upgrading the existing building in Block A-1 with top quality new facades, as referenced in the Project Description. In view of the fact that private vertical development of Blocks D, E, and G will be deferred for future "phases", completion of Private Improvements as and to the extent referenced in Section 2 of the Project Description could be, and sometimes is, referred to as "Phase 1" of the Revitalization Plan. Nothing in this Agreement obligates the City to fund or contribute to any future "phases" of Private Improvements, or obligates Developer to construct any future "phases" of Private Improvements.

F. City Acquisition of Public Assets. The Revitalization Plan calls for the City to acquire Public Assets as follows:

1. Land. Land to be acquired by the City ("Land") includes (a) land located under proposed new public streets as depicted on the Project Site Plan and described in the Project Description; (b) land located below the three level parking structure at the northwest corner of the DFP Area; (c) land located below the two level parking structure at the southwest corner of the DFP Area; (d) land located below the underground parking garage that connects said three level parking structure and said two level parking structure; (e) land shown as Blocks H-1 and H-2 on the Project Site Plan; and (f) easements for sidewalks and pedestrian rights-of-way and restroom facilities. Legal descriptions covering the Land, and each portion thereof, shall be separately verified and signed by both of the Parties prior to or concurrently with final execution. The Parties acknowledge that the California Subdivision Map Act allows conveyances to public agencies such as the City without the necessity of subdivision or parcel map recordation and, therefore, the parties agree that conveyances to the City per this Agreement may be made without such map recordation.

2. Parking Facilities. Existing parking facilities to be acquired and refurbished by the City and then used for free public parking ("Parking Facilities") include: the three level parking structure located at the northwest corner of the DFP Area; the two level parking structure located at the southwest corner of the DFP Area; the underground parking garage that connects said three level parking structure and said two level parking structure; parking below developed portions of the DFP Area, and all associated ramps, driveways, connection tunnel, approaches, elevators and escalators. Legal descriptions covering the Parking Facilities, and each portion thereof, shall be separately verified and signed by both of the Parties prior to or concurrently with final execution. Such legal descriptions may include three dimensional airspaces to be acquired by the City.

AGREEMENT

1. Acquisition of Public Assets and Funding of Public Improvements. Upon and subject to the terms and provisions of this Agreement, City shall acquire the Public Assets and provide funding for the Public Improvements.

A. Acquisition Escrow. At least ten (10) days prior to the Effective Date of this Agreement, an escrow ("Acquisition Escrow") shall be opened by the Parties with a mutually agreeable and reputable escrow holder ("Escrow Holder"), and City and Developer shall each execute and deliver escrow instructions consistent with this Agreement and as reasonably requested or required by the Escrow Holder. The parties agree that escrow fees and costs of the Acquisition Escrow (and the Private Improvement Escrow referenced in Section 2.A. below, and the Public Improvement Escrow referenced in Section 2.A.(b)(7) below) shall be shared equally by the parties. Prior to the close of escrow and subject to the terms of this Agreement, City shall deposit the City Payment and the Public Improvement Payment into the Acquisition Escrow.

(1) Contingencies to Close of Acquisition Escrow. Close of the Acquisition Escrow is subject to satisfaction of each of the following contingencies:

(a) City Funding. A first contingency to close of the Acquisition Escrow shall be the City identifying funding sources for its obligations under this Agreement. City is currently exploring potential sources of funding for this and other desired public projects. In any event, if, by December 21, 2011, City has not (i) identified funds sufficient to cover its obligations under this Agreement, or (ii) been placed in a position of being reasonably certain that such funds will promptly (within 180 days) be identified and/or reserved, then, in that event, City shall have the right, by delivery of written notice to Developer by no later than December 22, 2011 (the "Effective Date"), to terminate this Agreement and cancel the Acquisition Escrow, without penalty or any damages for breach of any term of this Agreement.

(b) Condition of Title. A second contingency to close of the Acquisition Escrow shall be the conveyance by Developer to City of good and marketable title to the Public Assets, without encumbrances (except as approved by City), as evidenced by a CLTA title insurance policy with coverage in the sum of $32,000,000 (with such title endorsements as City may reasonably request or require) issued by a mutually agreeable and reputable title insurance company ("Title Company"). In this regard, the parties acknowledge that prior to the Effective Date, City will receive and review a preliminary title report ("Preliminary Report") covering the entire DFP Area, which shall set forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings relating to the entire DFP Area. Concurrently therewith, City shall receive (i) copies of all recorded documents listed as exceptions to title on the Preliminary Report, and (ii) an easement plat prepared by the Title Company which shows the locations of all recorded easements affecting the entire DFP Area. By reviewing the foregoing documents, the City will be able to determine which exceptions to title affect the Land (or portions thereof) and/or the Parking Facilities (or portions thereof), which are being acquired by City. It is understood that legal descriptions for each portion of the Land (and Parking Facilities thereon) will be called out by two dimensional area references, and that legal descriptions for portions of the Parking Facilities not located over the Land will be called out by three dimensional airspace references. City shall, with respect to Land and Parking Facilities to be acquired by City, approve or disapprove each exception shown on the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that materially and adversely affects title or that violates any law, rule, or regulation (each an "Exception") within twenty (20) days after City receives the Preliminary Report, whichever is later. City's failure to object within the twenty (20) day period shall be deemed to be approval of the Exceptions. If any Exception is disapproved (each a "Disapproved Exception"), Developer shall, within thirty (30) days following expiration of the twenty (20) day period provided under this Section, use its best efforts to cause each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may be, of record, and in a form that is reasonably satisfactory to City and Escrow Agent, all at Developer's sole cost and expense. Developer authorizes Escrow Agent to disburse from proceeds otherwise disbursable to Developer upon Closing a sum sufficient to discharge any Disapproved Exception that may be discharged only by the payment of money. If Developer is unable to obtain a discharge, satisfaction, release, or termination within the period specified above, City shall have the right to waive the Disapproved Exception and proceed with Closing, accepting title to the Property subject to the Disapproved Exception, or to terminate this Agreement and cancel the Acquisition Escrow, without penalty or any damages for breach of any term of this Agreement.

(c) Physical Condition. A third contingency to close of the Acquisition Escrow shall be the conveyance to City of the Public Assets, in substantially the same physical condition that exists as of the Effective Date of this

Agreement. In this regard, the Developer, prior to September 22, 2011, shall provide the City with full disclosure of the physical condition of the Public Assets, including without limitation all maintenance records and all studies and reports prepared on its behalf or otherwise in its possession. The parties acknowledge that prior to October 31, 2011, City and its independent consultants will perform thorough examinations of such Public Assets, and approve the existing physical condition thereof, with the understanding that such assets shall be conveyed "as is" and "with all faults" so long as the City reasonably determines that such physical condition is materially consistent with estimates of costs of creating and refurbishing Public Improvements as identified in a report by Developer's consultant, PENTA, submitted to the City prior to execution of this Agreement ("Developer's Disclosure"). As of the date of execution of this Agreement, Developer's Disclosure shows total costs of creating and refurbishing Public Improvements (as described in Section E above and Section 2 below) at $11,000,000. In the event the City reasonably determines that the physical condition of the Public Assets, or any portion thereof, is materially inconsistent with the Developer's Disclosure, City shall have the right, by delivery of written notice to Developer by no later than October 31, 2011, to terminate this Agreement and cancel the Acquisition Escrow, without penalty or any damages for breach of any term of this Agreement.

The foregoing notwithstanding, the parties agree as follows: Using the funds in the Public Improvement Escrow (as referenced in Sections 1.A.(2)(b) and 2.B.(7) below), Developer shall be responsible for paying all costs and expenses incurred in connection with obtaining entitlements for and constructing (creating and refurbishing) Public Improvements. In the event such creation and refurbishment work exceeds the sum of $11,000,000, Developer shall promptly pay any and all costs in excess of $11,000,000; in the event such creation and refurbishment work is accomplished for less than $11,000,000, any savings (in the form of amounts remaining in the Public Improvement Escrow after completion of the Public Improvements and City issuance of a written certificate or acknowledgment of completion as provided in Section 2 below) shall be transferred from the Public Improvement Escrow into the Private Improvement Escrow (as referenced in Sections 1.A.(2)(b) and 2.A below), and be used to help complete the Private Improvements. Based on Developer's agreement to pay any costs of creation and refurbishment of Public Improvements in excess of $11,000,000, City shall waive its rights to terminate the Agreement and cancel the Acquisition Escrow under the provisions of this Section.

(2) Close of Acquisition Escrow. Promptly upon satisfaction of each and all of the above contingencies or upon the Effective Date, whichever event occurs last, the Acquisition Escrow shall be closed and conveyances and transfers shall occur as follows:

(a) Public Assets to City. Upon close of the Acquisition Escrow, good and marketable title without encumbrance (except as approved by City) to the Public Assets shall be conveyed to City, and City shall receive title insurance as

referenced above. The form of the Grant Deed shall be as reasonably requested or required by Title Company to issue title insurance consistent with the provisions of this Section A.1(2)(a), and certificates of compliance shall be issued to the City as necessary and/or appropriate for the parcels and the airspace to be conveyed to the City and the parcels to be retained by the Developer.

(b) City Payment. Upon close of the Acquisition Escrow, the City Payment shall be transferred by Escrow Holder directly into the Private Improvement Escrow referenced in Section 2.A. below, from which releases will occur in increments based on periodic written authorizations from the IFC Agent referenced in Section 2.B.(2) below, solely for the creation and refurbishment of the Private Improvements. Upon close of the Acquisition Escrow, the Public Improvement Payment shall be transferred by Escrow Holder directly into the Public Improvement Escrow referenced in Section 2.B.(7) below, from which releases will similarly occur in increments based on periodic written authorizations from the IFC Agent, solely for the creation and refurbishment of the Public Improvements.

2. Creation and Refurbishment of Public and Private Improvements. Once the Acquisition Escrow has been closed, the parties shall continue with implementation of the Revitalization Plan, and creation and refurbishment of Public Improvements and Private Improvements, in accordance with the provisions of this Agreement. As indicated in Section 1.A.(1)(c) above, Developer shall be responsible for creation and refurbishment of Public Improvements, and, as indicated in several sections in this Agreement, Developer shall be responsible for creation and refurbishment of the Private Improvements. The parties agree to work cooperatively together and exert commercially reasonable efforts to cause the Public Improvements and Private Improvements to be constructed and completed concurrently. Upon completion of the Public Improvements, City shall execute and deliver to Developer a written certificate or acknowledgment of completion, in form and substance reasonably satisfactory to Developer, and, upon completion of the Private Improvements, City shall execute and deliver to Developer a written certificate or acknowledgment of completion, in form and substance reasonably satisfactory to Developer. In connection with Public Improvements, any and all development mitigation fees of the City shall be waived by City. In connection with Private Improvements, City agrees that Developer shall be entitled to credits against (or waivers of) any and all development mitigation fees of the City to the extent of (and that would otherwise have been covered by) existing and prior improvements and facilities (approximately 358,000 square feet of space) previously developed within the DFP Area. Further, with respect to development mitigation fees that would normally be collected by City for remission to another public agency or entity, City will cooperate with Developer in efforts to mitigate and reduce such fees to the extent reasonable and legally feasible. For the purpose of this Agreement, the term "development mitigation fees" means fees or payments in lieu of dedication of land and/or construction of improvements as provided under law, including without limitation, public art, parks (or Quimby Act requirements), MSHCP, and TUMF.

A. Open Private Improvement Escrow. Concurrently with close of the Acquisition Escrow, a separate escrow ("Private Improvement Escrow") shall be opened with Escrow Holder and the City Payment shall be transferred by Escrow Holder directly into the Private Improvement Escrow, and then be released, in increments, based on periodic written authorizations from the IFC Agent referenced in Section 2.B.(2) below, solely for the creation and refurbishment of the Private Improvements. The Private Improvement Escrow shall be administered pursuant to the terms of the "Private Improvement Escrow Agreement" attached hereto as Exhibit "C1".

B. Schedule of Performance. With respect to the creation and refurbishment of Private Improvements and Public Improvements, Developer and City have approved and agreed to the "Schedule of Performance" attached hereto as Exhibit "D". As provided above, Developer shall be responsible for both Private Improvements and Public Improvements. In this regard, the parties contemplate and have agreed to actions and procedures as follows:

(1) Demolition of Bank of America Building. Once the City funding contingency, as referenced in Section 1.A.(1)(a) above, has been satisfied, then Developer shall, at Developer's sole cost and expense, within sixty days thereafter, commence and complete demolition of the existing Bank of America building in the DFP Area. Developer shall clear the site, remove construction fencing installed in conjunction with its demolition and clearing operations, install landscaping and related fixtures, and allow public access thereon on this site pending vertical construction and/or demolition of other structures or improvements within the DFP Area. During such period of allowed public access, City shall be solely responsible for operation, maintenance and repair, and shall indemnify Developer from and against all claims and/or costs incurred in connection therewith.

(2) Selection of IFC Agent. Once the City has advised Developer that the City funding contingency has been satisfied, City and Developer shall promptly select and enter into a written contract, under terms acceptable to Developer and City, with a mutually acceptable and reputable independent fund control agent ("IFC Agent"), with general construction experience, that shall be responsible for authorizing periodic releases, in increments, of funds from the Private Improvement Escrow to go solely towards creation and refurbishment of the Private Improvements, and from the Public Improvement Escrow to go solely towards creation and refurbishment of the Public Improvements.

(3) Consultant Agreements for Private and Public Improvements. Once the IFC Agent has been engaged, Developer shall select and enter into contracts ("Consultant Agreements") with planners, architects and/or engineers ("Project Consultants") as necessary to prepare plans and designs necessary to obtain architectural and engineering approvals for the Private Improvements and Public

Improvements from appropriate City departments. All costs and expenses in this regard shall be paid, upon release authorizations by the IFC Agent, from funds in the Private Improvement Escrow for Private Improvements and from funds in the Public Improvement Escrow for Public Improvements.

(4) Building Permits for Private Improvements. Once architectural and engineering approvals for Private Improvements and Public Improvements have been received, Developer shall select and enter into Consultant Agreements with Project Consultants as necessary to prepare final plans and working drawings necessary obtain permits from appropriate City departments to construct the Private Improvements and Public Improvements. All costs and expenses in this regard shall be paid, upon release authorizations by the IFC Agent, from funds in the Private Improvement Escrow for the Private Improvements and from funds in the Public Improvement Escrow for the Public Improvements.

(5) Commencement of Private and Public Improvements. Once permits have been issued, Developer shall select and enter into contracts ("Construction Contracts") with construction contractors and material suppliers ("Construction Contractors") as necessary to commence creation and refurbishment of the Private Improvements and Public Improvements. All costs and expenses in this regard shall be paid, upon release authorizations by the IFC Agent, from funds in the Private Improvement Escrow for the Private Improvements and from funds in the Public Improvement Escrow for the Public Improvements.

(6) Completion of Private Improvements. Developer shall be responsible for completion of the Private Improvements, and shall commence depositing additional private funds into the Private Improvement Escrow, from time to time as and when needed, to be used to complete creation and refurbishment of the Private Improvements. Prior to drawing building permits for construction of any vertical improvements, Developer shall make an initial deposit of at least $2,000,000 into the Private Improvement Escrow. All costs and expenses for the completion of the Private Improvements, including fees and taxes, shall be paid, upon release authorizations by the IFC Agent, from funds in the Private Improvement Escrow. Developer shall be solely responsible for depositing additional private funds into the Private Improvement Escrow as necessary to complete the Private Improvements.

(7) Public Improvements. As noted in Section 1.A.(2)(b) above, upon close of the Acquisition Escrow, the Public Improvement Payment shall be transferred by Escrow Holder directly into a separate escrow ("Public Improvement Escrow") to be opened with Escrow Holder. The Public Improvement Escrow shall be administered pursuant to the terms of the "Public Improvement Escrow Agreement" attached hereto as Exhibit "C2", and releases will occur in increments based on periodic written authorizations from the IFC Agent for the creation and refurbishment of the Public Improvements. As indicated in Section 1.A.(1)(c) above, Developer shall be

responsible for completion of the Public Improvements, and shall commence depositing additional private funds into the Public Improvement escrow, from time to time as and when needed, to be used to complete creation and refurbishment of Public Improvements. In this regard, Developer shall (1) submit all plans and designs of the Public Improvements to the City for review and approval, (2) submit all proposed change orders, if any, to the City for review and approval, and. (2) construct and install the Public Improvements in strict conformance with the plans and designs as approved by the City. All costs and expenses for the completion of the Public Improvements, including fees and taxes, if any, shall be paid upon release authorizations by the IFC Agent, from funds in the Public Improvement Escrow. Developer shall be solely responsible for depositing additional private funds into the Public Improvement Escrow as necessary to complete the Public Improvements.

(8) Blocks D, E, and G. As part of completion of the Private Improvements, Developer shall (a) within Block D leave the surface area as existing parking, (b) within Block E install temporary grass landscaping, and (c) within Block G leave the surface area as existing parking and/or install temporarily grass landscaping thereon. Thereafter, with respect to the surface area of each such Block, and until construction of vertical improvements is ready to commence thereon, City shall be solely responsible for operation, maintenance and repair of same, and shall indemnify Developer from and against all claims and/or costs incurred in connection therewith. In this regard, Developer will provide City with a temporary license or easement, in form and substance reasonably acceptable to City and Developer, as necessary for City to operate, maintain, and repair each such Block, and allow public access thereon.

(9) Blocks H-1 and H-2. With respect to Block H-1 (northerly parcel east of Art Museum), the following shall apply: (i) Developer shall, at its cost and as part of its creation and refurbishment work, fill in and grade same to a reasonably level condition (and City shall provide to Developer a temporary license to go upon Block H-1 to do so); (ii) the Parties acknowledge that the easterly property line of Block H-1 should be adjacent to the westerly side of the multi-plex theater and the Developer shall apply for and secure a lot line adjustment to adjust easterly the eastern property line of Block H-1 to affect and implement this intent of the Parties, in the event the multi-plex theater is not built at the current property line between Block H-1 and the multi-plex theater site. With respect to Block H-2 (southerly parcel east of Art Museum), the parties agree that it shall remain in its current condition pending future development desired by the City.

(10) Performance Trust Deed. To secure performance of Developer's obligations under this Agreement to complete the Private Improvements and the Public Improvements, Developer shall provide to City a deed of trust ("Performance Trust Deed") in the form of Exhibit "E" attached hereto. The Performance Trust Deed shall encumber the DFP Area, and be recorded by Escrow Holder concurrently with close of the Acquisition Escrow, as referenced in Section

1.A.(2) above. The Performance Trust Deed shall be in the initial amount of $28,000,000 ("Security Amount"); however, the Security Amount (and the balance thereof) shall not bear interest and shall be reduced, from time to time, as, when, and to the extent Developer makes deposits (including the $2,000,000 deposit referenced above) into the Private Improvement Escrow to complete the Private Improvements or the Public Improvement Escrow to complete the Public Improvements. The parties acknowledge and agree that the Security Amount is likely to be in excess of the amount of additional private funds that Developer may be required to deposit into the Private Improvement Escrow to complete the Private Improvements and the Public Improvement Escrow to complete the Public Improvements. Therefore, and based upon the understanding and agreement of the parties that the purpose of said Performance Trust Deed is to secure completion of the Private Improvements and the Public Improvements, once the Private Improvements and the public Improvements have been substantially completed, the Performance Trust Deed shall be released and reconveyed in full, regardless of the amount of additional private funds actually deposited by Developer, or the amount of the outstanding balance then shown as due and/or owing under the Performance Trust Deed. In the event of any inconsistency between the terms of this Agreement and the terms of the Performance Trust Deed, the terms of this Agreement shall prevail. There shall be no other monetary encumbrance or security interest of any kind on the DFP Area as of the Effective Date (other than real property taxes and assessments which are a lien not yet due and payable and Developer shall promptly pay such property taxes and assessments when made due and payable), nor shall any monetary encumbrance or security interest of any kind (other than mechanics lien claims as authorized by California law during the construction process, and Developer shall promptly resolve or defend such liens) be placed on the DFP Area after the Effective Date and prior to the City's issuance of a written certificate or acknowledgment of completion of the Private Improvements as provided in Section 2 above. As used in this Agreement, "Private Improvements" do not include tenant improvements, except with respect to the multi-plex theater which will have tenant improvements and be ready to receive the theater operator's furniture, fixtures and equipment (projectors, sound equipment, seating, screens, etc.) and thus become fully operable as part of the Revitalization Plan. As noted above, at such time as the Private Improvements and the Public Improvements have been substantially completed by Developer, the Performance Trust Deed shall be released and reconveyed in full, regardless of the amount of the outstanding balance then shown as due and/or owing thereunder.

C. Close Private Improvement Escrow. Upon substantial completion of all Private Improvements, the Private Improvement Escrow shall be closed and Developer shall be released, except for "punchlist" items, from any and all further obligations, under this Agreement or otherwise, to create and/or refurbish Private Improvements, or any other improvements.

D. Close Public Improvement Escrow. Upon substantial completion of all Public Improvements, the Public Improvement Escrow shall, subject to Section

1.A.(1)(c) above, be closed and Developer shall be released, except for "punchlist" items, from any and all further obligations, under this Agreement or otherwise, to create and/or refurbish Public Improvements, or any other improvements.

E. Local Contractors. The Developer will endeavor to give consideration to using businesses and contractors whose work force resides in the Coachella Valley, however, in no case or event will the Developer have any legal obligation to do so.

F. Commencement of Development Obligations. Anything herein to the contrary notwithstanding, with respect to the Schedule of Performance, it is understood and agreed that the development obligations of Developer shall not commence until the Acquisition Escrow has closed and funds have been transferred into the Private Improvement Escrow and Public Improvement Escrow as provided herein except that Developer shall complete the demolition of the Bank of America Building as provided under Section 2.B.1 of this Agreement.

3. Developer Default. Anything in this Agreement to the contrary notwithstanding, the following shall apply:

A. Default by Developer – Opportunity to Cure. From the close of the Acquisition Escrow (and opening of the Private Improvement Escrow and Public Improvement Escrow) until substantial completion of the Private Improvements and the Public Improvements, if Developer fails to diligently do and perform all things reasonably necessary on the part of Developer to pursue creation and refurbishment of the Private Improvements and the Public Improvements, including failure to timely achieve "major milestones" described in the Schedule of Performance, then, in that event, City shall be entitled to deliver to Developer written notice of default, specifying, in detail, all facts alleged by City to constitute such default. For a period of 120 consecutive days after receipt of such notice of default, Developer shall have the right to commence and complete cure of the alleged default; provided, however, if the default is of such a nature as to reasonably require more than 120 days to cure, as reasonably determined by the City, Developer shall have such additional time as is reasonably necessary to complete such cure.

B. Developer Failure to Cure – City Rights and Remedies. If, at the expiration of the applicable cure period, Developer has not reasonably completed such cure, then, in that event, City shall have the right to exercise any and all rights and remedies provided for in (i) the Performance Trust Deed referenced in Section 2.B.(6) above, and (ii) the Assignments referenced in Section 3.C below. At any foreclosure sale under the Performance Trust Deed, City shall have the right to issue a credit (non-cash) bid in an amount equal to the then balance (reduced to the extent of Developer deposits into the Private Improvement Escrow and the Public Improvement Escrow as referenced in Section 2.B.(6) above) of the Performance Trust Deed. In the event of any

inconsistency between the terms of this Agreement and the terms of the Performance Trust Deed, the terms of this Agreement shall prevail. At such time as the Private Improvements and Public Improvements have been substantially completed by Developer, the Performance Trust Deed shall be released and reconveyed in full, regardless of the amount of the outstanding balance then shown as due and/or owing thereunder.

C. Assignment of Consultant and Contractor Agreements. With respect to each Consultant Agreement and each Contractor Agreement, as referenced in Sections 2.B.(3) and 2.B.(5) above, Developer shall, in accordance with the Schedule of Performance, execute and deliver to the City an assignment ("Assignment"), from Developer to City, in substantially the form and substance of Exhibit "F" attached. Each such Assignment shall include, without limitation, assignment of all of Developer's rights under the applicable Consultant Agreement or Contractor Agreement. In the event of any inconsistency between the terms of this Agreement and the terms of any such Assignment, the terms of this Agreement shall prevail. The Developer shall also assign to the City the Developer's rights to all plans and specifications prepared pursuant to this Agreement and all permits and entitlements relating to the Project. At such time as the Private Improvements and the Public Improvements have been substantially completed by Developer, each such Assignment shall be fully released.

4. Miscellaneous Specific Provisions. The parties further agree to miscellaneous additional provisions as set forth below.

A. Local Requirements Applicable to Agreement. This Agreement is subject to the City's General Plan, the Museum Market Plaza Specific Plan, the Palm Springs City Charter, the Palm Springs Municipal Code and ordinances, and the Redevelopment Plan for Merged Area No. 1, with respect to the Project ("Governmental Regulations").

B. City Fast Track Process. The City shall use good faith efforts, within applicable legal constraints and consistent with applicable City policies, to take such actions as may be necessary or appropriate to effectuate and carry out this Agreement in a timely and commercially reasonable manner and to reasonably "fast track" the processing of all applications submitted by Developer to pursue the Revitalization Plan and/or create and refurbish the Private Improvements and Public Improvements.

C. Subdivision Issues. The parties acknowledge and agree that the California Subdivision Map Act allows, without the necessity of recording a subdivision or parcel map, conveyances to and from public agencies such as the City, and leasing and financings of portions of parcels of property designated for commercial use. Nevertheless, in connection with pursuit and implementation of the Revitalization Plan, Developer may desire to record one or more subdivision or parcel maps against the DFP

Area (or portions thereof). In this regard, the parties agree to cooperate with each other, and the City agrees to reasonably "fast track" the processing of any subdivision or parcel map desired by Developer (including any vesting tentative map), and to promptly provide and issue certificates of compliance as and to the extent reasonably necessary or expedient as determined by the City. The parties acknowledge that the Title Company may require certificates of compliance to issue title insurance and, if so, the City shall promptly process and issue same.

D. Easement Agreement. Concurrently with close of the Acquisition Escrow, and as a part thereof, City and Developer shall execute and cause to be recorded with the Official Records of Riverside County, California, an Easement Agreement in the form of Exhibit "G " attached hereto. To the extent that, pursuant to the Easement Agreement, easements run to the benefit of Developer or City, each such benefitted Party shall receive (and pay for) reasonable title insurance covering such easements.

E. Escrow Matters. In the event of any inconsistency between the terms of this Agreement and the terms of any escrow instructions executed pursuant to this Agreement, the terms of this Agreement shall control unless a contrary intent is clearly expressed in the inconsistent escrow instructions. All escrow fees, charges, and title insurance costs for any escrow or title insurance called for herein shall be shared equally by the parties. Unless otherwise provided herein, Escrow Holder shall process and handle all escrow matters contemplated herein in the manner that is customary in the Coachella Valley area of Riverside County.

F. Eminent Domain. Prior to entering into this Agreement, City expressed a desire to acquire all property covered by the Specific Plan by use of powers of eminent domain, and Developer expressed an intent to oppose any such effort. In that regard, this Agreement represents a negotiated compromise between City and Developer and, as a part hereof, City agrees as follows: In the event this Agreement is terminated by City as the result of the inability of City to identify and reserve City funding, as referenced in Section 1.A.(1)(a) above, or for any other reason not the fault of Developer, City shall not, for a period of three (3) years following such termination, directly or indirectly or in any way, attempt to take or acquire all or portions of any properties or improvements covered by the Specific Plan via use or exercise of eminent domain, or any similar or related public power or powers of the City. The covenants and agreements of City pursuant to this Section 4.E shall survive and remain in effect for a period of three (3) years from and after any such termination by City.

G. Release. This Agreement is a voluntary agreement and Developer, on behalf of Developer and Developer's successors and assigns, fully releases City, the City's Redevelopment Agency, its officials, officers, attorneys, employees, and agents (the "Released Entities") from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's or Agency's efforts,

prior to execution of this Agreement, to acquire the Property or any preliminary steps thereto. Developer further releases and agrees to hold the Released Entities from any and all claims and causes of action by or on behalf of any leasehold interest in the DFP Area.

H. City's Sole Liability. The City's sole liabilities to Developer or any third party are those obligations expressly and specifically provided in this Agreement.

I. Developer Right of First Refusal for Blocks H-1 and H-2. In the event that at any time in the future, City elects to sell Blocks H-1 and/or H-2, as shown on the Project Site Plan, or portions thereof, for solely private purposes, i.e., for purposes exclusive of public or non-profit purposes, Developer shall have a right of first refusal to match any offer received by City, and to purchase such Blocks H-1 and/or H-2, in accordance with the following: City shall promptly notify Seller that City has received an offer that it desires to accept and, concurrently therewith, provide Developer with an exact copy of such offer, and Developer shall have, for a period of sixty (60) days after receipt, the right to notify that Developer desires to match the terms of such offer and purchase the property. In such event, an escrow shall be promptly opened and closed with a reputable escrow company and City shall sell (and convey good and marketable title to) the property to Developer. Legal descriptions covering Blocks H-1 and H-2 shall be separately verified, signed and attached to this Agreement prior to or concurrently with final execution.

J. Developer Right of First Refusal for Museum Drive. In the event that at any time in the future, City decides to abandon portions of Museum drive located adjacent to O'Donnell Golf Course, as shown on the Specific Plan, and sell same, or portions thereof, for solely private purposes, i.e., for purposes exclusive of public or non-profit purposes, Developer shall have a right of first refusal to match any offer received by City, and to purchase such property in the same manner as contemplated for purchase of Blocks H-1 and/or H-2, as provided in Section 4.F above. Legal descriptions covering such property shall be separately verified, signed and attached to this Agreement prior to or concurrently with final execution.

K. Not a Development Agreement. This Agreement is not a development agreement as provided in Government Code Section 65864 and is not a grant of any entitlement, permit, land use approval, or vested right in favor of the Developer or the Project.

L. License to Enter. Developer grants to City and City's authorized agents, contractors, consultants, engineers, assigns, and other representatives an irrevocable license to enter upon the Public Assets for the purpose of making inspections and other examinations of the Public Assets, including without limitation the right to perform soil, geological, structural, engineering, and environmental tests of the

Public Assets. City will give Developer ten (10) hours notice before going on the Public Assets.

M. Specific Performance. The Parties acknowledge and agree that this Agreement may be enforced through an action for specific performance subject to the provisions of Section 5.D of this Agreement.

5. Miscellaneous General Provisions.

A. Entire Agreement. This Agreement (together with a Reimbursement Agreement and a Confidentiality Agreement previously entered into between City and Developer, and other agreements to be entered into between City and Developer as provided herein) contains the entire agreement of the parties with respect to matters covered herein, and there are no other agreements or representations, written or oral, other than as contained herein.

B. Cooperation. Each party agrees to and shall do and perform such other and further acts and properly execute and deliver such other and further documents as may be reasonably necessary, expedient or convenient to implement the intents and purposes hereof.

C. Reasonable Approvals. Whenever this Agreement requires or calls for the approval or consent of any party hereto, such approval shall not be unreasonably withheld, delayed, or conditioned.

D. Binding Arbitration. In the event of any dispute or controversy arising out of or relating to this Agreement, or the breach or performance of it, the Parties shall reasonably attempt to resolve each such dispute or controversy without resort to third party review or resolution. The Parties shall first meet and confer on any such dispute or controversy. Such meetings shall include any principal of the Developer and at the discretion of the City may include the City Manager and/or the City Council either as a whole or through an ad hoc subcommittee designated by the City Council. Upon the Parties determination that the Parties are unable to resolve the dispute or controversy on their own, the Parties shall submit the dispute, controversy, or any remaining disputed matter to binding arbitration, to be held in the Coachella Valley, and be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

E. Legal Fees. In the event of any dispute, arbitration, or litigation arising out of or relating to this Agreement, or the breach or performance of it, the prevailing party shall be entitled to recover, in addition to any other appropriate relief, reasonable attorneys' fees and legal costs incurred in connection therewith.

F. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of such party's obligations under this Agreement is caused by any event described below, where any such event is beyond the control of the claiming party and such party's contractors and consultants and is not due to an act or omission of the claiming party or such party's contractors or consultants, and such event directly, materially and adversely affects (a) the ability of the claiming party to meet its non-monetary obligations under this Agreement, including deadlines imposed by the Schedule of Performance, or (b) the ability of the claiming party to complete improvements (Private Improvements in the case of Developer and Public Improvements in the case of City), and which event (or the effect thereof) could not have been avoided by due diligence and use of reasonable efforts by the claiming party:

(1) Unusually Severe Weather: weather conditions not reasonably anticipatable for that portion of the City of Palm Springs where the downtown area is located, based upon U.S. Weather Bureau climatological reports for the months included and a report indicating average precipitation, temperature, etc., for the previous ten (10) year period from the nearest weather reporting station;

(2) Civil Unrest: an epidemic, blockage, quarantine, rebellion, war, insurrection, act of terrorism, strike or lock-out, riot, act of sabotage, civil commotion, act of a public enemy, or freight embargo;

(3) Unforeseeable Conditions: reasonably unforeseeable physical conditions of the existing DFP Area or improvements thereon, including the presence of hazardous materials, as defined by applicable state and federal laws and regulations;

(4) Casualty: fire, earthquake, flood or other casualty, in each case only if causing material physical destruction or damage to improvements (Private Improvements in the case of Developer and Public Improvements in the case of City);

(5) Litigation: any lawsuit seeking to restrain, enjoin, challenge or delay the issuance of any entitlement, or restraining, enjoining, challenging or delaying construction of improvements (including the Private Improvements and/or the Public Improvements), or restraining, enjoining, challenging, or delaying any funding mechanism the City elects to use to fund its obligations under this Agreement, or the authority of the City to use or establish such funding mechanism, or in any way challenges the authority of the City to enter into this Agreement or perform any obligation thereunder, which is vigorously defended by the claiming party and which is finally determined in a manner which restricts the ability of such party to perform its material obligations hereunder, or which results in a injunction against such party restricting its ability to so perform during the pendency of such injunction and which directly impairs the ability of the claiming party to perform despite commercially reasonable efforts to do so;

(6) Change of Law: the passage of a referendum or initiative that results in the inability of the claiming party to perform its material obligations hereunder; and/or

(7) Conduct by Other Party: conduct (action or inaction) by the other party which delays the ability of the claiming party to perform its material obligations under this Agreement, but only during periods in which such conduct (action or inaction) actually delays such performance.

G. No Partnership. Notwithstanding language in this Agreement referring to "public-private participation", or words or similar import, it is acknowledged that the relationship of the City to the Developer is neither that of a partnership nor that of a joint venture and that neither the City nor the Developer shall be deemed or construed for any purpose to be the agent of the other Party, and neither Party shall have the power or the authority to speak on behalf of the other Party or to bind the other Party to any contractual or other obligations. The Developer shall not at any time hold itself out to the City or to any other third party as an agent of the City, as applicable, and shall not, by any act or omission, mislead any third party into believing, or allow any third party to continue in the mistaken belief, that the Developer is an agent of the City or has the power or authority to bind the City to any contractual or other obligation.

H. Binding on Successors. This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.

I. Independent Legal Representation. Each party hereto has, at all times during the negotiation and execution of this Agreement, been represented by independent legal counsel.

J. Incorporation of Recitals and Exhibits. All recitals herein and all Exhibits attached hereto are incorporated into and made a part of this Agreement. Said Exhibits are identified as follows:

Exhibit	Exhibit Identification
A	Project Site Plan
B	Project Description
C1	Private Improvement Escrow Agreement
C2	Public Improvement Escrow Agreement
D	Schedule of Performance
E	Performance Trust Deed
F	Assignment

K. Captions and Headings. Any captions or headings in this Agreement are for convenience only, and shall not be used to determine or construe meanings of substantive language herein.

L. Applicable Law. This Agreement is entered into in California, and relates to California real property, and shall be determined in accordance with the laws of the State of California.

M. Venue. In the event of any arbitration or litigation arising out of or relating to this Agreement, or the breach or performance of it, any such arbitration shall be conducted in the Coachella Valley, and any such litigation shall be filed in the Indio Branch of the Riverside County Superior Court.

N. Severability. In the event any provisions of this Agreement is deemed or construed by arbitration or a court of competent jurisdiction to be unenforceable, the remaining provisions shall nevertheless remain binding and enforceable to the maximum extent possible.

O. Interpretation. This Agreement and language herein has been prepared and agreed to by both parties, and any rules of contract interpretation calling for construction against one party or the other based on drafting, shall be inapplicable.

P. Notices. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

If to City:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Manager
Telephone: (760) 322-8350
Facsimile: (760) 323-8207

Copy to:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Attorney
Telephone: (760) 323-8211
Facsimile: (760) 323-8207

If to Developer:
Palm Springs Promenade, LLC
555 South Sunrise Way, Suite 200
Palm Springs, California 92264
Attn: John Wessman
Telephone: (760) 325-3050
Facsimile: (760) 325-5848

Copy to:
Ealy, Hemphill & Blasdel, LLP
71780 San Jacinto Drive, Suite I-3
Rancho Mirage, California 92270-5518
Attn: W. Curt Ealy
Telephone: (760) 340-0666
Facsimile: (760) 340-4666

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change

Q. Authority. Each party represents and warrants to the other that such party has full right, power and authority to sign, execute and enter into this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as of the day and year set forth above.

DEVELOPER: PALM SPRINGS PROMENADE, LLC
A California limited liability company

By: _____
Title: President
Dated: 9/29/2011

CITY: CITY OF PALM SPRINGS
A California municipal corporation and charter city

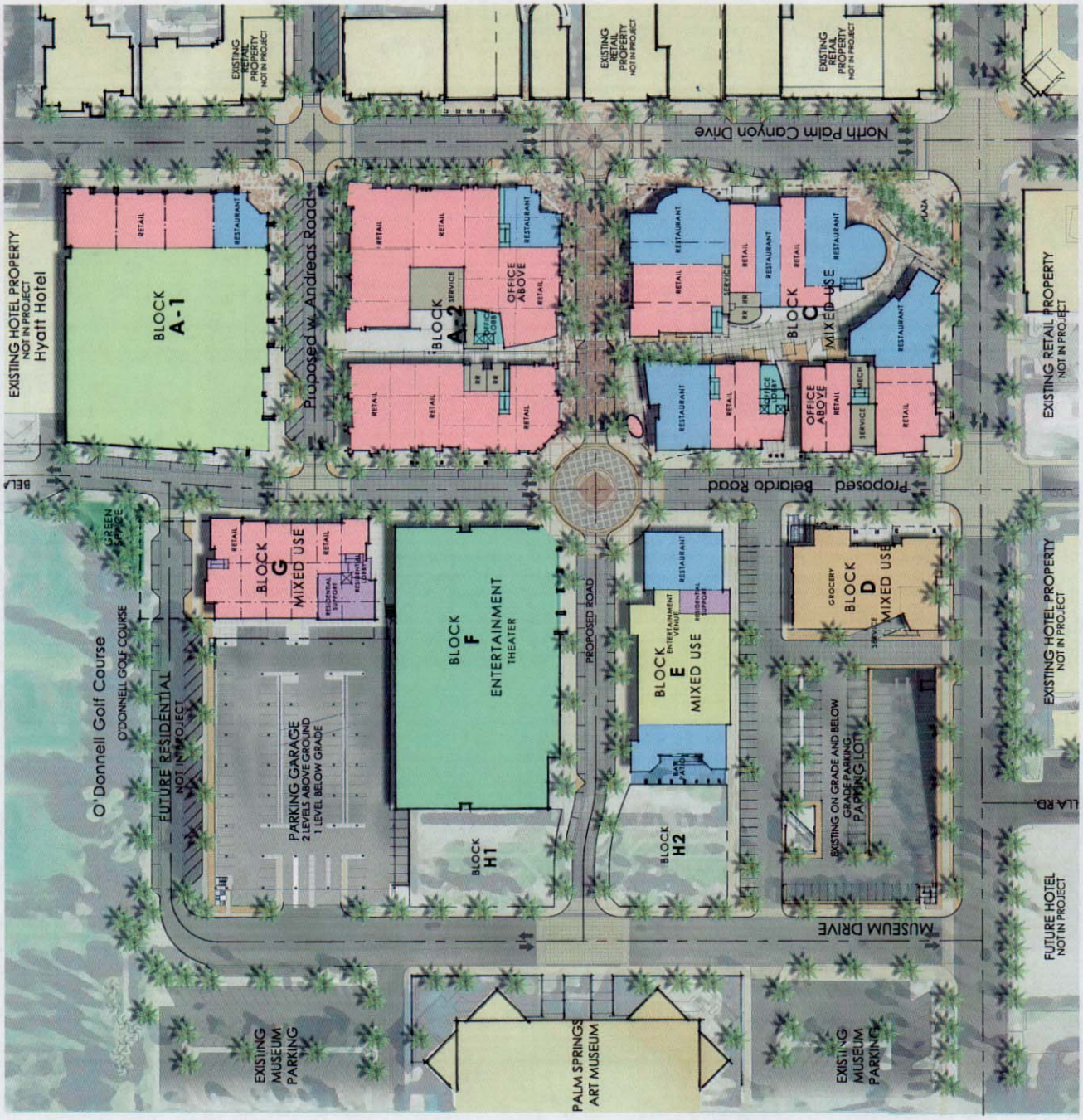
By: _____
Title: CITY MANAGER
Dated: 9/29/11

ATTEST: _____
City Clerk

APPROVED AS
TO LEGAL FORM: _____
City Attorney

APPROVED BY CITY COUNCIL
A6144 R23018
09/07/2010

EXHIBIT "A"
PROJECT SITE PLAN



Conceptual Site Plan
19 september | 2011
scale:40'-0" = 1"
WESSMAN DEVELOPMENT COMPANY

PALM SPRINGS QUARTER: DOWNTOWN REVITALIZATION PLAN
CONCEPTUAL MASTER PLAN

PRELIMINARY DOCUMENTS: Drawings and information contained on these documents are conceptual and schematic only. The basis of this information may be from various sources (public record, owner-provided legacy drawings, and aerial photography), and have not been verified for dimensions nor completeness. These documents should not be meant to convey accurate square footage areas, dimensional clearances, nor legal entitlement.

EXHIBIT "B"
TO
PROJECT FINANCING AGREEMENT

PROJECT DESCRIPTION

1. Public Improvements. "Public Improvements" are planned as follows:

a. New Public Streets. New public streets will be constructed as follows: (i) a new public street will be created from Palm Canyon Drive to Museum Drive; (ii) Belardo Road will be extended from Tahquitz Canyon Way to the easterly terminus of Museum Drive; and (iii) West Andreas Road will be created from Palm Canyon Drive to the Belardo Road extension. Costs related to such new public streets shall include, without limitation, streets, street parking, curbs, gutters and sidewalks, up to building footprint lines, a relocated traffic light, signs, decorative pavers and enhanced concrete in intersections and pedestrian walkways and public gathering areas, electrically operated bollards as referenced in Section 3 below, all under and above ground utilities and services including, without limitation, gas, electricity, telephone, cable television, storm drains, etc., all of which shall be stubbed, as appropriate, five (5) feet into adjacent building footprint lines, and demolition as required for the above.

b. Refurbished Public Parking. Existing parking improvements within the DFP Area will be purchased and refurbished by the City to provide free public parking.

c. Responsibility for Public Improvements. The Project Financing Agreement to which this Exhibit "B" is attached ("PFA") provides that Developer shall be responsible for all costs and expenses incurred in connection with obtaining entitlements for and constructing (creating and refurbishing) the Public Improvements. The PFA further provides that upon close of the Acquisition Escrow, the parties shall open a Public Improvement Escrow, and the City shall then deposit a portion of the City Payment, i.e., the sum of $11 million, into the Public Improvement Escrow. The PFA further provides that Developer shall cause the creation and refurbishment of the Public Improvements per the approved plans, and that in the event that such creation and refurbishment work exceeds the sum of $11 million, Developer shall promptly pay any and all costs in excess of $11 million. The PFA also provides that all funds needed to obtain entitlements for and construct the Public Improvements will flow through the Public Improvement Escrow. (Note: Any City fees for public improvements shall be waived.)

2. Private Improvements. "Private Improvements" are planned as follows:

a. Block A-1: The existing building in Block A-1 (adjacent to the existing Hyatt Hotel) will remain but be upgraded with all new facades fronting on Palm Canyon Drive, West Andreas Road and Belardo Road.

b. Block A-2: Existing buildings in Block A-2 (former Saks Fifth Avenue) will be demolished and replaced with new buildings.

c. Block C: Existing buildings in Block C (former Bank of America and Hamburger Hamlet and current CPK and AT&T stores) will be demolished and replaced with new buildings.

d. Block D: There are no existing buildings in Block D, and it is not scheduled for vertical development as part of the Revitalization Plan, but rather such area will be temporarily used for parking pending future vertical development by Developer.

e. Block E: Existing buildings in Block E will be demolished and not be replaced as part of the Revitalization Plan, but rather such area will be temporarily used for landscaped open space pending future vertical development by Developer.

f. Block F: Existing buildings in Block F (former I. Magnin) will be demolished and be replaced with a "state of the art" multi-plex movie theater.

g. Block G: Existing buildings in Block G (part of original indoor mall) will be demolished, and not be replaced with vertical development as part of the Revitalization Plan, but rather such area will be temporarily used for parking and/or open space pending future vertical development by Developer.

h. Tenant Improvements: As part of Private Improvements, buildings within Blocks A-1, A-2 and C will have interior tenant improvements installed only as and to the extent leases are finalized prior to conclusion of the Revitalization Plan; the multi-plex movie theater in Block F will have tenant improvements and be ready to receive the theater operator's furniture, fixtures and equipment (projectors, sound equipment, seating, screens, etc.) and thus become fully operable as part of the Revitalization Plan.

i. Responsibility for Private Improvements. The PFA provides that Developer shall be responsible for all costs and expenses incurred in connection with obtaining entitlements for and constructing (creating and refurbishing) the Private Improvements. The PFA further provides that upon close of the Acquisition Escrow, the parties shall open a Private Improvement Escrow, and the City shall then deposit a portion of the City Payment, i.e., the sum of $32 million, into the Private Improvement Escrow. The PFA further provides that Developer shall cause the creation and refurbishment of Private Improvements per the approved plans, and that in the event that such creation and refurbishment work exceeds the sum of $32 million, Developer shall promptly pay any and all costs in excess of $32 million. The PFA also provides that all funds needed to obtain entitlements for and construct the Private Improvements will flow through the Public Improvement Escrow.

3. Summary. Upon completion of Public and Private Improvements as referenced above: new public streets, adjacent surface parking, landscaping and

walkways will be in place to provide integrated and user friendly pedestrian and vehicular circulation; all street intersections will be finished with decorative pavers; at entry points into the DFP Area, streets will contain submersible stainless steel bollards that can be electrically raised for short periods to block vehicle access so that interior streets and other areas can be used for pedestrian activities and functions as needed; new public areas between Palm Canyon Drive and the European roundabout at the center of the DFP Area will be enhanced with interlocking pavers and colored concrete, and be designed to serve as a special place for pedestrian activities and public functions; the building in Block A-1 will have all new exterior facades; new buildings will be in place in Blocks A-2 and C; Blocks D, E and G will be temporarily used for parking and/or landscaped open space pending future vertical development; Block F will contain a new state of the art multi-plex movie theater; and, most importantly, the downtown area will be re-energized with entertainment venues, new stores, businesses and activities, and value will be created for all concerned - owners, operators, retailers, residents, visitors, tourists, and the City of Palm Springs.

EXHIBIT "C1"
TO
PROJECT FINANCING AGREEMENT

PRIVATE IMPROVEMENT ESCROW AGREEMENT AND ESCROW INSTRUCTIONS

This PRIVATE IMPROVEMENT ESCROW AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement"), dated as of the _____ day of _____, 2012, is made and entered into by and between the City of Palm Springs, a California municipal corporation and charter city ("City"), and Palm Springs Promenade, LLC, a California limited liability company ("Developer").

RECITALS

A. Prior to execution of this Agreement, the parties entered into a Project Financing Agreement ("PFA"). (The PFA is incorporated herein by reference, and all defined terms therein shall have the same meanings herein.)

B. The PFA provides that upon close of the Acquisition Escrow, the parties shall open a Private Improvement Escrow, and the City shall then deposit a portion of the City Payment, i.e., the sum of $32 million, into the Private Improvement Escrow. The PFA further provides that prior to drawing building permits to construct Private Improvements contemplated for the Revitalization Plan (as defined in the PFA), Developer shall deposit an additional $2 million into the Private Improvement Escrow, and that thereafter Developer shall deposit additional funds (over and above the $32 million and $2 million amounts) as and when needed to complete such Private Improvements. The PFA also provides that all funds needed to obtain entitlements for and construct such Private Improvements will flow through the Private Improvement Escrow.

C. The PFA provides that prior to opening the Private Improvement Escrow, the parties shall select and enter into a written agreement ("IFC Agreement") with an IFC Agent, who shall be responsible for authorizing periodic releases, in increments, of funds necessary to entitle and construct the Private Improvements. The parties acknowledge that prior to execution of this Agreement such requirement was satisfied, and a copy of the executed IFC Agreement is incorporated herein by reference as though set forth in full.

D. The purpose of this Agreement is to establish and set forth specific procedures and instructions pursuant to which funds from time to time on deposit in the Private Improvement Escrow account shall be authorized for release by the IFC Agent, and then be released by the Escrow Holder.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Escrow Instructions. Prior to implementation of this Agreement, the parties shall obtain from Escrow Holder a written acceptance, in form and substance approved by the parties, pursuant to which Escrow Holder accepts its obligations under this Agreement and agrees to act in accordance with the instructions to Escrow Holder as set forth herein. To the extent Escrow Holder requests or requires modified and/or additional instructions, the parties shall expeditiously execute and deliver same, provided that they are not inconsistent with the terms hereof (unless any such inconsistency is agreed to by the parties).

2. Authorized Expenditures. Any and all costs and expenses reasonably incurred in connection with obtaining entitlements for and constructing Private Improvements, as contemplated by the PFA, shall be payable through and by release of funds from the Private Improvement Escrow. Such costs and expenses include, without limitation, all hard and soft costs, and all amounts reasonably payable to architects, engineers, planners, designers, contractors, subcontractors, material suppliers and other third parties involved in the Revitalization Plan process.

3. Written Contracts. To the extent reasonable, appropriate and customary, Developer shall enter into written agreements with all third parties providing services, labor and/or materials in connection with obtaining entitlements for and constructing the Private Improvements. Copies of all executed written contracts shall promptly (within 15 days after execution) be provided by Developer to the IFC Agent and the City. In any event, the prime construction contract for the Private Improvements shall be in writing, and it shall contain, without limitation, provisions calling for and/or requiring (a) that periodic progress payments be made (not less than monthly) on a percentage of completion basis; (b) that retention amounts of not less than ten percent (10%) be withheld from progress payments (with final payment to be made within a reasonable time after satisfactory completion of the work in question); (c) that partial (and final) lien releases shall be provided with each progress (and final) payment as appropriate under applicable provisions of the California Civil Code; and (d) that the Developer, as owner, shall have the right to require that joint checks be issued to multiple payees e.g., contractor, subcontractor and/or suppliers, in connection with each progress (and final) payment.

4. Billing Statements. Processing and payment of billing statements from third parties providing services, labor and/or materials ("providers") with respect to the Revitalization Plan process shall be handled as follows:

A. All providers (including the IFC Agent) shall initially deliver billing statements (and supporting documentation including executed lien releases as appropriate) to Developer. (It is anticipated that billing statements will normally be delivered to Developer monthly on or about the 25th day of each month, and be processed for payment by the 10th day of the following month.)

B. Developer shall expeditiously review and consider each such billing statement and, upon approval of same (as is or after and with requested changes and/or corrections), Developer shall write "Approved by Developer", and sign and date such approval, on the billing statement, and forward a copy of same (with supporting documentation), via facsimile or e-mail, to the IFC Agent. (Note: If appropriate, Developer shall also indicate on the billing statement whether payment should be made by joint check and, if so, the names of each and all of the joint payees.)

C. The IFC Agent shall expeditiously review and consider each such billing statement received from Developer and, upon approval of same (as is or after and with requested changes and/or corrections), the IFC Agent shall write "Approved by IFC Agent", and sign and date such approval, on the copy of the billing statement, and forward a copy of same (without supporting documentation), via facsimile or e-mail, to the Escrow Holder, and to Developer. (Note: If appropriate, the IFC Agent shall also indicate on the billing statement, independently or in confirmation of Developer, whether payment should be made by joint check and, if so, the names of each and all of the joint payees.)

D. The Escrow Holder shall expeditiously review and consider each such billing statement received from the IFC Agent and, upon approval of same (as is or after and with requested changes and/or corrections), the Escrow Holder shall prepare checks, drawn on funds in the Private Improvement Escrow account, in accordance with instructions received from Developer and/or the IFC Agent as provided above. Upon preparation, such checks shall be hand delivered to Developer (with copies sent via facsimile or PDF e-mail to the IFC Agent).

E. Upon receipt of such checks, Developer shall make arrangements to have them delivered to or picked up by the provider or providers in question.

5 Completion. The foregoing arrangements with respect to processing and payment of billing statements shall be continued until completion and approval by City and Developer of Private Improvements as contemplated by the Revitalization Plan and PFA.

6. Close of Private Improvement Escrow. Upon such approval by City and Developer, all final bills and billing statements (including any owing to the IFC Agent) shall be paid, funds, if any, remaining in Escrow shall be disbursed to Developer, and the Private Improvement Escrow shall be closed.

7. Miscellaneous General Provisions.

A. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to matters covered herein, and there are no other agreements or representations, written or oral, other than as contained herein.

B. Cooperation. Each party agrees to and shall do and perform such other and further acts and properly execute and deliver such other and further documents as may be reasonably necessary, expedient or convenient to implement the intents and purposes hereof.

C. Reasonable Approvals. Whenever this Agreement requires or calls for the approval or consent of any party hereto, such approval shall not be unreasonably withheld, delayed or conditioned.

D. Binding Arbitration. In the event of any dispute or controversy arising out of or relating to this Agreement, or the breach or performance of it, the parties shall reasonably attempt to resolve such dispute or controversy without resort to third party review or resolution. The parties shall first meet and confer on any such dispute or controversy. Such meeting(s) shall include any principal of the Developer and, at the discretion of the City, may include the City Manager and/or the City Council, either as a whole or through an ad hoc subcommittee designated by the City Council. Upon a determination by the parties that they are or will be unable to resolve the dispute or controversy on their own, then the parties shall submit the dispute, controversy or any remaining unresolved matter to binding arbitration, to be held in the Coachella Valley, and be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

E. Legal Fees. In the event of any dispute, arbitration or litigation arising out of or relating to this Agreement, or the breach or performance of it, the prevailing party shall be entitled to recover, in addition to any other appropriate relief, reasonable attorneys fees and legal costs incurred in connection therewith.

F. Binding on Successors. This Agreement shall be binding on the parties hereto, their heirs, successors and assigns. The terms, provisions and covenants herein shall be enforceable at law as legal easements and/or covenants running with the land, and in equity as equitable servitudes.

G. Independent Legal Representation. Each party hereto has, at all times during the negotiation and execution of this Agreement, been represented by independent legal counsel.

H. Incorporation of Recitals and Exhibits. All recitals herein and all Exhibits attached hereto are incorporated into and made a part of this Agreement.

I. Captions and Headings. Any captions or headings in this Agreement are for convenience only, and shall not be used to determine or construe meanings of substantive language herein.

J. Applicable Law. This Agreement is entered into in California, and relates to California real property, and shall be determined in accordance with the laws of the State of California.

K. Venue. In the event of any arbitration or litigation arising out of or relating to this Agreement, or the breach or performance of it, any such arbitration shall be conducted in the Coachella Valley, and any such litigation shall be filed in the Indio Branch of the Riverside County Superior Court.

L. Severability. In the event any provisions of this Agreement is deemed or construed by arbitration or a court of competent jurisdiction to be unenforceable, the remaining provisions shall nevertheless remain binding and enforceable to the maximum extent possible.

M. Interpretation. This Agreement and language herein has been prepared and agreed to by both parties, and any rules of contract interpretation calling for construction against one party or the other based on drafting, shall be inapplicable.

N. Notices. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

If to City:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Manager
Telephone: (760) 322-8350
Facsimile: (760) ___-____

Copy to:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Attorney
Telephone: (760) 323-8211
Facsimile: (760) 323-8207

If to Developer:
Palm Springs Promenade, LLC
555 South Sunrise Way, Suite 200
Palm Springs, California 92264

Attn: John Wessman
Telephone: (760) 325-3050
Facsimile: (760) 325-5848

Copy to:
Ealy, Hemphill & Blasdel, LLP
71780 San Jacinto Drive, Suite I-3
Rancho Mirage, California 92270-5518
Attn: W. Curt Ealy
Telephone: (760) 340-0666
Facsimile: (760) 340-4666

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change

O. Authority. Each party represents and warrants to the other that such party has full right, power and authority to sign, execute and enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as of the day and year set forth above.

DEVELOPER: PALM SPRINGS PROMENADE, LLC
A California limited liability company
By: _____
Title: _____
Dated: _____

CITY: CITY OF PALM SPRINGS
A California municipal corporation and charter city
By: _____
Title: _____
Dated: _____

ATTEST: _____
City Clerk

APPROVED AS
TO LEGAL FORM: _____
City Attorney

EXHIBIT "C2"
TO
PROJECT FINANCING AGREEMENT

PUBLIC IMPROVEMENT ESCROW AGREEMENT AND ESCROW INSTRUCTIONS

This PUBLIC IMPROVEMENT ESCROW AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement"), dated as of the _____ day of _____, 2012, is made and entered into by and between the City of Palm Springs, a California municipal corporation and charter city ("City"), and Palm Springs Promenade, LLC, a California limited liability company ("Developer").

RECITALS

A. Prior to execution of this Agreement, the parties entered into a Project Financing Agreement ("PFA"). (The PFA is incorporated herein by reference, and all defined terms therein shall have the same meanings herein.)

B. The PFA provides that upon close of the Acquisition Escrow, the parties shall open a Public Improvement Escrow, and the City shall then deposit a portion of the City Payment, i.e., the sum of $11 million, into the Public Improvement Escrow. The PFA further provides that (i) Developer shall cause the creation and refurbishment of Public Improvements, as referenced in the PFA; (ii) in the event that such creation and refurbishment work exceeds the sum of $11 million, Developer shall promptly pay any and all costs in excess of $11 million; and (iii) in the event that such creation and refurbishment work is accomplished for less than $11 million, any savings (in the form of amounts remaining in the Public Improvement Escrow after completion of the Public Improvements) shall be transferred from the Public Improvement Escrow into the Private Improvement Escrow and be used to help complete the Private Improvements. The PFA also provides that all funds needed to obtain entitlements for and construct such Public Improvements will flow through the Public Improvement Escrow. (Note: Any City fees for Public Improvements shall be waived.)

C. The PFA provides that prior to opening the Public Improvement Escrow, the parties shall select and enter into a written agreement ("IFC Agreement") with an IFC Agent, who shall be responsible for authorizing periodic releases, in increments, of funds necessary to entitle and construct the Public Improvements. The parties acknowledge that prior to execution of this Agreement such requirement was satisfied, and a copy of the executed IFC Agreement is incorporated herein by reference as though set forth in full.

D. The purpose of this Agreement is to establish and set forth specific procedures and instructions pursuant to which funds from time to time on deposit in the

Public Improvement Escrow account shall be authorized for release by the IFC Agent, and then be released by the Escrow Holder.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Escrow Instructions. Prior to implementation of this Agreement, the parties shall obtain from Escrow Holder a written acceptance, in form and substance approved by the parties, pursuant to which Escrow Holder accepts its obligations under this Agreement and agrees to act in accordance with the instructions to Escrow Holder as set forth herein. To the extent Escrow Holder requests or requires modified and/or additional instructions, the parties shall expeditiously execute and deliver same, provided that they are not inconsistent with the terms hereof (unless any such inconsistency is agreed to by the parties).

2. Authorized Expenditures. Any and all costs and expenses reasonably incurred in connection with obtaining entitlements for and constructing (creating and refurbishing) Public Improvements, as contemplated by the PFA, shall be payable through and by release of funds from the Public Improvement Escrow. Such costs and expenses include, without limitation, all hard and soft costs, and all amounts reasonably payable to architects, engineers, planners, designers, contractors, subcontractors, material suppliers and other third parties involved in the Revitalization Plan process.

3. Written Contracts. To the extent reasonable, appropriate and customary, Developer shall enter into written agreements with all third parties providing services, labor and/or materials in connection with obtaining entitlements for and constructing (creating and refurbishing) the Public Improvements. Copies of all executed written contracts shall promptly (within 15 days after execution) be provided by Developer to the IFC Agent and the City. In any event, the prime construction contract for the Public Improvements shall be in writing, and it shall contain, without limitation, provisions calling for and/or requiring (a) that periodic progress payments be made (not less than monthly) on a percentage of completion basis; (b) that retention amounts of not less than ten percent (10%) be withheld from progress payments (with final payment to be made within a reasonable time after satisfactory completion of the work in question); (c) that partial (and final) lien releases shall be provided with each progress (and final) payment as appropriate under applicable provisions of the California Civil Code; and (d) that the Developer, as owner, shall have the right to require that joint checks be issued to multiple payees e.g., contractor, subcontractor and/or suppliers, in connection with each progress (and final) payment.

4. Billing Statements. Processing and payment of billing statements from third parties providing services, labor and/or materials ("providers") with respect to the Revitalization Plan process shall be handled as follows:

A. All providers (including the IFC Agent) shall initially deliver billing statements (and supporting documentation including executed lien releases as appropriate) to Developer. (It is anticipated that billing statements will normally be

delivered to Developer monthly on or about the 25th day of each month, and be processed for payment by the 10th day of the following month.)

B. Developer shall expeditiously review and consider each such billing statement and, upon approval of same (as is or after and with requested changes and/or corrections), Developer shall write "Approved by Developer", and sign and date such approval, on the billing statement, and forward a copy of same (with supporting documentation), via facsimile or e-mail, to the IFC Agent. (Note: If appropriate, Developer shall also indicate on the billing statement whether payment should be made by joint check and, if so, the names of each and all of the joint payees.)

C. The IFC Agent shall expeditiously review and consider each such billing statement received from Developer and, upon approval of same (as is or after and with requested changes and/or corrections), the IFC Agent shall write "Approved by IFC Agent", and sign and date such approval, on the copy of the billing statement, and forward a copy of same (without supporting documentation), via facsimile or e-mail, to the Escrow Holder, and to Developer. (Note: If appropriate, the IFC Agent shall also indicate on the billing statement, independently or in confirmation of Developer, whether payment should be made by joint check and, if so, the names of each and all of the joint payees.)

D. The Escrow Holder shall expeditiously review and consider each such billing statement received from the IFC Agent and, upon approval of same (as is or after and with requested changes and/or corrections), the Escrow Holder shall prepare checks, drawn on funds in the Public Improvement Escrow account, in accordance with instructions received from Developer and/or the IFC Agent as provided above. Upon preparation, such checks shall be hand delivered to Developer (with copies sent via facsimile or PDF e-mail to the IFC Agent).

E. Upon receipt of such checks, Developer shall make arrangements to have them delivered to or picked up by the provider or providers in question.

5 Completion. The foregoing arrangements with respect to processing and payment of billing statements shall be continued until completion and approval by City and Developer of Public Improvements as contemplated by the Revitalization Plan and PFA.

6. Close of Public Improvement Escrow. Upon such approval by City and Developer, all final bills and billing statements (including any owing to the IFC Agent) shall be paid, funds, if any, remaining in the Public Improvement Escrow shall be transferred into the Private Improvement Escrow, and the Public Improvement Escrow shall be closed.

7. Miscellaneous General Provisions.

A. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to matters covered herein, and there are no other agreements or representations, written or oral, other than as contained herein.

B. Cooperation. Each party agrees to and shall do and perform such other and further acts and properly execute and deliver such other and further documents as may be reasonably necessary, expedient or convenient to implement the intents and purposes hereof.

C. Reasonable Approvals. Whenever this Agreement requires or calls for the approval or consent of any party hereto, such approval shall not be unreasonably withheld, delayed or conditioned.

D. Binding Arbitration. In the event of any dispute or controversy arising out of or relating to this Agreement, or the breach or performance of it, the parties shall reasonably attempt to resolve such dispute or controversy without resort to third party review or resolution. The parties shall first meet and confer on any such dispute or controversy. Such meeting(s) shall include any principal of the Developer and, at the discretion of the City, may include the City Manager and/or the City Council, either as a whole or through an ad hoc subcommittee designated by the City Council. Upon a determination by the parties that they are or will be unable to resolve the dispute or controversy on their own, then the parties shall submit the dispute, controversy or any remaining unresolved matter to binding arbitration, to be held in the Coachella Valley, and be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

E. Legal Fees. In the event of any dispute, arbitration or litigation arising out of or relating to this Agreement, or the breach or performance of it, the prevailing party shall be entitled to recover, in addition to any other appropriate relief, reasonable attorneys fees and legal costs incurred in connection therewith.

F. Binding on Successors. This Agreement shall be binding on the parties hereto, their heirs, successors and assigns. The terms, provisions and covenants herein shall be enforceable at law as legal easements and/or covenants running with the land, and in equity as equitable servitudes.

G. Independent Legal Representation. Each party hereto has, at all times during the negotiation and execution of this Agreement, been represented by independent legal counsel.

H. Incorporation of Recitals and Exhibits. All recitals herein and all Exhibits attached hereto are incorporated into and made a part of this Agreement.

I. Captions and Headings. Any captions or headings in this Agreement are for convenience only, and shall not be used to determine or construe meanings of substantive language herein.

J. Applicable Law. This Agreement is entered into in California, and relates to California real property, and shall be determined in accordance with the laws of the State of California.

K. Venue. In the event of any arbitration or litigation arising out of or relating to this Agreement, or the breach or performance of it, any such arbitration shall be conducted in the Coachella Valley, and any such litigation shall be filed in the Indio Branch of the Riverside County Superior Court.

L. Severability. In the event any provisions of this Agreement is deemed or construed by arbitration or a court of competent jurisdiction to be unenforceable, the remaining provisions shall nevertheless remain binding and enforceable to the maximum extent possible.

M. Interpretation. This Agreement and language herein has been prepared and agreed to by both parties, and any rules of contract interpretation calling for construction against one party or the other based on drafting, shall be inapplicable.

N. Notices. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

If to City:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Manager
Telephone: (760) 322-8350
Facsimile: (760) ___-____

Copy to:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Attorney
Telephone: (760) 323-8211
Facsimile: (760) 323-8207

If to Developer:
Palm Springs Promenade, LLC
555 South Sunrise Way, Suite 200
Palm Springs, California 92264
Attn: John Wessman
Telephone: (760) 325-3050
Facsimile: (760) 325-5848

Copy to:
Ealy, Hemphill & Blasdel, LLP
71780 San Jacinto Drive, Suite I-3
Rancho Mirage, California 92270-5518
Attn: W. Curt Ealy
Telephone: (760) 340-0666
Facsimile: (760) 340-4666

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change

O. Authority. Each party represents and warrants to the other that such party has full right, power and authority to sign, execute and enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as of the day and year set forth above.

DEVELOPER: PALM SPRINGS PROMENADE, LLC
A California limited liability company
By: _____
Title: _____
Dated: _____

CITY: CITY OF PALM SPRINGS
A California municipal corporation and charter city
By: _____
Title: _____
Dated: _____

ATTEST: _____
City Clerk

APPROVED AS
TO LEGAL FORM: _____
City Attorney

Schedule of Performance – Exhibit D

Project Financing Agreement

No.	Milestone	Comment	Days for Performance	Anticipated Date based on days to perform, any delay by the city for approvals adjusts each date automatically forward
1	Approval of PFA. City approves or disapproves PFA and, if approves, executes PFA	PFA approved September 7 subject to minor changes		September 26 2011
2	Detailed Physical Evaluation of the Property. The City shall retain structural engineer to obtain a detailed structural inspection of the parking structure.		1	September 26 2011
3	Title Report. Developer delivers to City Preliminary Title Report.			September 30 2011
4	Approval or Disapproval of Title Exceptions. City approves or disapproves title exceptions.	Within 15 days after delivery of Preliminary Title Report from Developer.	15	
5	Structural Engineer. City completes detailed structural inspection of the parking structure to determine if estimated cost of improvements is excessive.	Within 30 days after hiring structural engineer	30	
6	**Opening of Escrow**. The City and Developer open escrow for conveyance of the parking structure and other public assets to the City.			Dec 12th 2011
7	**Right to Terminate**. City waives its right to terminate Agreement based on inability to identify source of public financing	Per PFA.		**December 21 2011**
8	**Reimbursement Agreement**. City staff recommends to Council to provide additional funds for first phase design work; Any additional payments will be reimbursed to the city upon the close of the future private / public improvement escrow	If not approved all time lines from milestone 9a on adjust forward in sequence to the date when the private and public improvement escrow closes		December 28 2011

9a	**Private Improvement Development Plans**. Developer contracts with architectural firm and other necessary sub consultants to produce Major Architectural Application Plan sufficient to comply with Milestone No. 18a, submittal of plans.	Within 40 days City approved funding first phase of design work, otherwise 9a adjusts forward to milestone 17		January 30 2012
9b	**Public Improvement Development Plans.** Developer contracts with engineering firms and other necessary sub consultants.			March 30th 2012
10	**Bank of America Demolition.** Developer commences demolition of **Bank of America building** (after Film Festival 2012 ends) and the installation of basic site landscaping. Upon pulling demo permit (no later than Jan 21st 2012) complete demo of Bank of America within 60 days	**Developer to apply for demolition permit after December 21 but prior to Jan 21**	**60**	**Major Milestone March 21st 2012**
11	Funds Control Agent. City and Developer contract with a mutually acceptable and reputable independent fund control agent ("IFC Agent")			April 2, 2012
12	Sewer Connections. City and Developer undertake comprehensive site review to determine number and location of sewer connections to determine credit for sewer connection charges in building permit fees.	December 22nd – 2013 June 30th 2012		June 30 2013
13	Deposit of Grant Deed. The Developer shall deposit the grant deed for the Parking Structure and City Parcels into escrow.	One (1) week prior to Closing.		April 8, 2012
14	**Deposit of Purchase Price and Other Required Sums**. The City shall deposit the Purchase Price of the Parking Structure and other public assets, funds for the public improvements and other required sums into escrow.	One (1) week prior to Closing.		April 8, 2012
15	Escrow Fees and Charges. Escrow Agent gives notice of fees, charges, and costs to close Escrow.	Three (3) days prior to Closing.		April 11, 2012
	Intentionally left blank	Intentionally left		

16		blank		
17	**Close of Escrow**. The Developer shall convey fee title to the Parking Structure and other public assets to the City and the City shall accept such conveyance. The Escrow Agent shall cause the Grant Deed and Easement for Access (and other related documents) to be recorded with the Riverside County Recorder.			April 15, 2012
18a	**Application Submission.** Major Architectural Approval Application for the **first building** on one of the following: Blocks A-1, A-2, C and F or adjacent street grid.			**Major Milestone June 1st 2012**
19a	**Approval by City**. Major Architectural Approval. Architectural Advisory, Planning Commission, and City Council approval of submittal from milestone 18a.	Within 45 days from date of submission of architectural application of the first building.	45	
18 b	**Plan Submission Public Improvements;** Major architectural application including site plan and street improvements			**Major Milestone Dec 28th 2012**
19b	**Approval by City Council. Public Improvements -** The City process *includes* the Architectural Advisory Committee, Planning Commission, and City Council approval.	Within 45 days from date of submission of architectural application.	45	
18 c	**Application Submission.** /Major Architectural Approval Application for the **remaining building** of the following: Blocks A-1, A-2, C and F			**Major Milestone Oct 31st 2012**
19c	**Approval by City Council.** Major Architectural Approval **of remaining** buildings A1, A2, C or F. The City process submitted Architectural Advisory Committee, Planning Commission, and City Council approval.	Within 45 days from submission of architectural application of remaining buildings.	45	

18 d	**Application Submission Major Architectural Approval for hardscape and landscape plans;** *includes* the Architectural Advisory Committee, Planning Commission, and City Council approval			**Major Milestone Feb 28th 2013**
19d	Approval by City Council. **Landscape and hardscape**- The City process *includes* the Architectural Advisory Committee, Planning Commission, and City Council approval. application shall include final Site	Within 45 days from submission of architectural application.	45	
20a	**Submittal of Construction Documents**. Developer submits Construction (Building and Engineer) Plans for approval by Building and Engineering Departments (Milestone 19 a)			May 31, 2013
21 a	**City to finalize Plan Check of submitted Construction Documents** milestone 20 a documents	Plan Check completed within 60 days of submittal to the Building department	60	
22	**Developer to deposit $ 2 million and City to issue Building Permit for the first building** on one of the following: Blocks A-1, A-2, C and F or adjacent street grid.			**Major Milestone Aug 30th 2013**
23a	**Commence Demolition of Existing Improvements.** Developer commences demolition of remaining site improvements in preparation for construction of public and private improvements. Portions of Block C will be demolished last, because of CPK Lease)			As early as July 26th 2013
23b	**Commencement of Construction of Developer's Improvements**. Developer commences construction of public and private improvements.			**Major Milestone Sep 30th , 2013**
20 b	**Submittal of all of remaining Construction Documents.** Developer submits Construction (Building and Engineering) Plans and Grading Plan for approval by Building and Engineering Departments for the **remaining buildings** Blocks A-1, A-2, C and F or adjacent street grid, hardscape and landscaping plans	Contingent on meeting milestones 19, a,b		Sep 30th 2013

21 b	**City to finalize Plan Check** of Construction Documents and issue Building Permit for the remaining buildings (see 20 b) of the following: Blocks A-1, A-2, C and F or adjacent street grid, hardscape and landscape plans	Plan Check completed within 60 days of submittal to the Building and Engineering department	60	
23c	**Substantial Completion of Construction of Developer's Core & Shell and public Improvements**. Developer substantially completes Core & Shell Improvements parking improvement upgrades, public streets and sidewalks, open space plazas.			**Major Milestone December 28th, 2014**
24	City to certify substantial completion of all private and public improvements after Developer has notified it in writing and release and reconvey in full the Performance Deed of Trust (regardless of any outstanding balance) – within 15 days of notification by Developer		15	January 12th 2015

MAJOR MILESTONES as defined in the PFA 3.A Developer Default

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the PFA Agreement..The time periods set forth in this schedule will adjust automatically forward if city approvals are not obtained at the scheduled dates listed above

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and City. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager shall have the authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days.

EXHIBIT "E"

WHEN RECORDED MAIL TO:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Manager

SEND TAX NOTICES TO:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Manager

FOR RECORDER'S USE ONLY

PERFORMANCE TRUST DEED

THIS DEED OF TRUST is dated _____, 2012, among Palm Springs Promenade, LLC, a California limited liability company, whose address is 555 South Sunrise Way, Suite 200, Palm Springs, CA 92264 ("Trustor"); the City of Palm Springs, a municipal corporation and charter city, whose address is 3200 East Tahquitz Canyon Way, Palm Springs, CA 92262 (referred to herein sometimes as "City" and sometimes as "Beneficiary"); and Fidelity National Title Company, a California corporation, whose address is 1300 Dove Street, Suite 310, Newport Beach, CA 92660 ("Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor hereby grants, transfers and assigns to Trustee in trust, with power of sale, for the benefit of City as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together withal existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") **located in Riverside County, State of California:**

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Trustor presently assigns to City (also known as Beneficiary in this Trust Deed) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. This is an absolute assignment of Rents made in connection with an obligation secured by real property pursuant to California Civil Code Section 2938. In addition, Trustor grants to City a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN

EXHIBIT "E"

TO SECURE PERFORMANCE OF ALL OBLIGATIONS OF TRUSTOR TO COMPLETE PRIVATE IMPROVEMENTS AND PUBLIC IMPROVEMENTS PURSUANT TO THAT CERTAIN PROJECT FINANCING AGREEMENT BETWEEN TRUSTOR AND CITY OF EVEN DATE HEREWITH (the "Project Financing Agreement"). ANY EVENT OF DEFAULT UNDER SECTIONS 2.B(6), 2B(7), 2.B(10) AND 3 OF THE PROJECT FINANCING AGREEMENT, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PERFORMANCE. Except as otherwise provided in this Trust Deed, Trustor shall strictly and in a timely manner perform all of Trustor's obligations under the Project Financing Agreement to complete Private Improvements and the Public Improvements pursuant to Sections 2.B(6), 2.B(7), 2.B(10) and 3 of the above referenced Project Financing Agreement. (The Project Financing Agreement is incorporated herein by reference as though set forth in full and all defined terms therein shall, except to the extent, if any, otherwise specifically indicated, have the same meanings herein.)

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate and/or manage the Property, and construct improvements thereon pursuant to the Project Financing Agreement; and (3) collect the Rents from the Property.

Duty to Maintain. Trustor shall, subject to constructing improvements pursuant to the Project Financing Agreement, maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. To Trustor's current actual knowledge, with no further duty of inquiry or investigation, Trustor represents and warrants to City that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property, except in compliance with applicable Environmental Laws; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by City in writing, (a) any breach or violation of any Environmental Laws, (b) any use generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, except in compliance with applicable Environmental Laws; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by City in writing, (a) neither Trustor nor any

tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property, except in compliance with applicable Environmental Laws; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes City and its agents to enter upon the Property to make such inspections and tests, at City's expense, as City may deem appropriate to determine compliance of the Property with this section of the Trust Deed. Any inspections or tests made by City shall be for City's purposes only and shall not be construed to create any responsibility or liability on the part of City to Trustor or to any other person. Trustor hereby (1) releases and waives any future claims against City for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless the City against any and all claims, losses, liabilities, damages, penalties, and expenses which City may directly or indirectly sustain or suffer resulting from a breach of this section of the Trust Deed or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, if the same was known to Trustor. The provisions of this section of the Trust Trust Deed, including the obligation to indemnify, shall survive the reconveyance of the lien of this Trust Trust Deedand shall not be affected by City's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Except for demolition and construction work contemplated by the Project Financing Agreement, Trustor shall not cause, conduct or permit any nuisance nor commit, permit or suffer any stripping of or waste on or to the Property or any portion of the Property.

Removal of Improvements. Except for demolition and construction work contemplated by the Project Financing Agreement, Trustor shall not demolish or remove any Improvements from the Real Property without City's prior written consent.

City's Right to Enter. City and City's agents and representatives may enter upon the Real Property at all reasonable times to attend to City's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Trust Deed.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans with Disabilities Act and demolition and construction work contemplated by the Project Financing Agreement. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so

long as Trustor has notified City in writing prior to doing so and so long as, in City's reasonable opinion, City's interests in the Property are not jeopardized.

Duty to Protect. Trustor agrees neither to abandon nor leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

Construction. Construction of Private Improvements shall be completed in accordance with the provisions of the Project Financing Agreement.

DUE ON SALE – CONSENT BY CITY. City may, at City's option, declare immediately due and payable all sums secured by this Trust Deed upon the sale or transfer, without City's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale" or "transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, , or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than forty-nine percent (49%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Trustor. However, this option shall not be exercised by City if such exercise is prohibited by applicable law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Trust Deed:

Payment. Trustor shall pay when due (and in all events at least ten (10) days prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall, subject to Trustor's right to contest, pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of City under this Trust Deed, except for the lien of taxes and assessments not due and except as otherwise provided in this Trust Deed.

Right to Contest. Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as City's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within thirty (30) days after the lien arises or, if a lien is filed, within thirty (30) days after Trustor has notice of the filing, secure the discharge of the lien or otherwise defend such lien

Evidence of Payment. Trustor shall upon demand furnish to City satisfactory evidence of payment of the taxes or assessments and shall authorize the

appropriate governmental official to deliver to City at any time a written statement of the taxes and assessments against the Property.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Trust Deed.

Maintenance of Insurance. Trustor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a fair value basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of City. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as City may reasonably request with trustee and City being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurance, including but not limited to hazard, business interruption, course of construction and boiler insurance, as City may reasonably require. Notwithstanding the foregoing, in no event shall Trustor be required to provide hazard insurance in excess of the replacement value of the Improvements on the Real Property. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to City and issued by a company or companies reasonably acceptable to City. Trustor, upon request of City, will deliver to City from time to time the policies or certificates of insurance in form satisfactory to City, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to City. Each insurance policy also shall include an endorsement providing that coverage in favor of City will not be impaired in any way by any act, omission or default of Trustor or any other person.

Application of Proceeds. Trustor shall promptly notify City of any loss or damage to the Property if the estimated cost of repair or replacement exceeds $50,000.00. City may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. If in City's sole judgment City's security interest in the Property has been impaired, City may at City's election, receive the proceeds of any insurance and apply such proceeds to restoration and repair of the Property. If the proceeds are to be applied to restoration and repair, Trustor shall repair or replace the damaged or destroyed Improvements in a manner reasonably satisfactory to City. City shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration.

Unexpired Insurance at Sale. Any unexpired Insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Trust Deed at any trustee's sale or other sale held under the provisions of this Trust Deed, or at any foreclosure sale of such Property.

Trustor's Report on Insurance. Upon request of City, however not more than once a year, Trustor shall furnish to City a report on each existing policy of Insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy.

CITY'S EXPENDITURES. If any action or proceeding is commenced that would adversely and materially affect City's interest in the Property or if Trustor fails to discharge or pay when due any amounts Trustor is required to discharge or pay under this Trust Deed, City on Trustor's behalf may (but shall not be obligated to) take any action that City deems reasonably appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by City for such purposes shall be promptly repaid by Trustor.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Trust Deed:

Title. Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other that those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, City in connection with this Trust Deed, and (b) Trustor has the full right, power, and authority to execute and deliver this Trust Deed to City.

Defense of Title. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustee or City under this Trust Deed, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but City shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of City's own choice, and Trustor will deliver, or cause to be delivered, to City such instruments as City may request from time to time to permit such participation.

Compliance With Laws. Trustor represents and warrants to City that Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Trustor in this Trust Deed shall survive the execution and delivery of this Trust Deed, shall be continuing in nature, and shall remain in full force and effect until such time as this Trust Deed is conveyed in full.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Trust Deed as a security agreement are a part of this Trust Deed:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures or other personal property, and City shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by City, Trustor shall execute financing statements and take whatever other action is requested by City to perfect and continue City's security interest in the Rents and Personal Property. Trustor shall reimburse City for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall assemble the Personal Property in a manner and at a place reasonably convenient to Trustor and City and make it available to City within three (3) days after receipt of written demand from City.

Addresses. The mailing addresses of Trustor and City from which information concerning the security interest granted by this Trust Deed may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Trust Deed.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Trust Deed:

Further Assurances. At any time, and from time to time, upon request of City, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to City or to City's designee, and when requested by City, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as City may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the reasonable opinion of City, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Trustor's obligations under this Trust Deed, and (2) the liens and security interests created by this Trust Deed as first and prior liens on the Property. Unless prohibited by law or City agrees to the contrary in writing, Trustor shall reimburse City for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, City may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints City as Trustor's attorney-in-fact for the purpose of making, executing, delivering,

filing, recording, and doing all other things as may be necessary or desirable, in City's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Trustor completes Private Improvements and the Public Improvements in the manner provided in the Project Financing Agreement, City shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on file evidencing City's security interest in the Rents and the Personal Property.

EVENTS OF DEFAULT. Each of the following, at City's option, shall constitute an Event of Default under this Trust Deed:

Completion of Private Improvements Default. Trustor fails to complete the Private Improvements in accordance with, and subject to, Sections 2.B(6), 2.B(10), and 3 of the Project Financing Agreement. With respect to any such default, Trustor shall have opportunity to cure rights as referenced in Section 3.A of the Project Financing Agreement.

Completion of the Public Improvements Default. Trustor fails to complete the Public Improvements in accordance with, and subject to, Sections 2.B(7), 2.B(10) and 3 of the Project Financing Agreement. With respect to any such default, Trustor shall have the opportunity to cure rights as referenced in Section 3.A of the Project Financing Agreement.

Dissolution or Insolvency. The dissolution of Trustor, the termination of Trustor as a going business, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help; repossession or any other method, by any creditor of Trustor or by any governmental agency against the Property. This includes a garnishment of any of Trustor's accounts. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Trustor gives City written notice of the creditor or forfeiture proceeding and takes reasonable steps to contest and defend against any such claim.

Right to Cure. If any default described above under the caption "Dissolution or Insolvency" or under the caption "Creditor or Forfeiture Proceedings" is curable, it may be cured (and no Event of Default will have occurred) if Trustor, after City sends written notice demanding cure of such failure: (a) cures the failure within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days,

immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Trust Deed, at any time thereafter, Trustee or City may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by City to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Trust Deed, after Trustor's failure to perform, shall not affect City's right to declare a default and exercise its remedies.

Foreclosure by Sale. Upon an Event of Default under this Trust Deed, Beneficiary may declare the then balance due under this Trust Deed, calculated as provided in Sections 2.B(6), 2.B(7), 2.B(10), and 3, as applicable, of the Project Financing Agreement, to be immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Trust Deed and a statement as to the balance due under this Trust Deed, calculated as provided in Sections 2.B(6), 2.B(7), 2.B(10), and 3, as applicable, of the Project Financing Agreement. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property to public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement in accordance with applicable law. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: the balance due under this Trust Deed, calculated as provided in Section 2.B(10) of the Project Financing Agreement, without any interest accumulation thereon, and the remainder, if any, to the person or persons legally entitled thereto.

Judicial Foreclosure. With respect to all or any part of the Real Property, City shall have the right in lieu of foreclosure by power of sale to foreclose by judicial

foreclosure in accordance with and to the full extent provided by California law; provided, however, Trustor shall have no personal liability for any amounts due under this Trust Deed, and City specifically waives the right to assert or claim any right to such personal liability.

UCC Remedies. With respect to all or any part of the Personal Property, City shall have all the rights and remedies of a secured party under the Uniform Commercial Code, including without limitation the right to recover any deficiency in the manner and to the full extent provided by California Law.

Collect Rents. City shall have the right, without notice to Trustor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above City's costs, against the balance due under this Trust Deed, calculated as provided in Section 2.B(10) of the Project Financing Agreement. In furtherance of this right, City may require any tenant or other user of the Property to make payments of rent or use fees directly to City. If the Rents are collected by City, then Trustor irrevocably designates City as Trustor's attorney-in-fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds. Payments by tenants or other users to City in response to City's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. City may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. City shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the costs of the receivership, against the balance due under this Trust Deed, calculated as provided in Section 2.B(10) of the Project Financing Agreement. The receiver may serve without bond if permitted by law. City's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the balance due under this Trust Deed, calculated as provided in Section 2.B(10) of the Project Financing Agreement, by a substantial amount. Employment by City shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Trustor remains in possession of the Property after the Property is sold as provided above or City otherwise becomes entitled to possession of the Property upon default of Trustor, Trustor shall become a tenant at sufferance of City or the purchase of the Property and shall, at City's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of the City.

Other Remedies. Trustee or City shall have any other right or remedy, if any, provided in this Trust Deed and the Project Financing Agreement.

Notice of Sale. City shall give Trustor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least fifteen (15) days before the time of the sale or disposition. Any sale of Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Trustor hereby waives any and all rights to have the Property marshaled. In exercising its rights and remedies, the Trustee or City shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. City shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If City institutes any suit or action to enforce any of the terms of this Trust Deed, City shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses City incurs that in City's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness and be added to the balance due under this Trust Deed, calculated as provided in Section 2.B(10) of the Project Financing Agreement. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, City's attorneys' fees and City's legal expenses, whether or not there is a lawsuit, appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Trustor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of City as set forth in this section.

POWERS AND OBLIGATONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Trust Deed:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of City and Trustor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any assessment or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Trust Deed or the interest of City under this Trust Deed.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in

which Trustor, City, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all of any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and City shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. City, at City's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Trust Deed by an instrument executed and acknowledged by City and recorded in the office of the recorder of Riverside County, State of California. The instrument shall contain, in addition to all other matters required by state law, the names of the original City, Trustee, and Trustor, the book and page where this Trust Deed is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by City or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Trust Deed and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

Acceptance by Trustee. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law.

NOTICES. Any notice required to be given under this Trust Deed shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law) when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Trust Deed. Trustor requests that copies of any notices of default and sale be directed to Trustor's address shown near the beginning of this Trust Deed. All copies of notices of foreclosure from the holder of any lien which has priority over this Trust Deed shall be sent to City's address as shown near the beginning of this Trust Deed. Any party may change its address for notices under this Trust Deed by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustor agrees to keep City informed at all times of Trustor's current address. Unless otherwise provided or required by law, if there is more than one Trustor, any notice given by City to any Trustor is deemed to be notice given to all Trustors.

STATEMENT OF OBLIGATION FEE. City may collect a fee, not to exceed the maximum amount permitted by law, for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Trust Deed:

Amendments. This Trust Deed, together with the Project Financing Agreement, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Trust Deed. No alteration of or amendment to this Trust Deed shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Caption Headings. Caption headings in this Trust Deed are for convenience purposes only and are not to be used to interpret or define the provisions of this Trust Deed.

Merger. There shall be no merger of the interest or estate created by this Trust Deed with any other interest or estate in the Property at any time held by or for the benefit of City in any capacity, without the written consent of City.

Governing Law. This Trust Deed will be governed by, construed and enforced in accordance with federal law and the laws of the State of California. This Trust Deed has been accepted by City in the State of California.

No Waiver by City. City shall not be deemed to have waived any rights under this Trust Deed unless such waiver is given in writing and signed by City. No delay or omission on the part of City in exercising any right shall operate as a waiver of such right or any other right. A waiver by City of a provision of this Trust Deed shall not prejudice or constitute a waiver of City's right otherwise to demand strict compliance with that provision or any other provision of this Trust Deed. No prior waiver by City, nor any course of dealing between City and Trustor, shall constitute a waiver of any of City's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of City is required under this Trust Deed, the granting of such consent by City in any instance shall not be unreasonably withheld, but also shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of City.

Severability. If a court of competent jurisdiction finds any provision of this Trust Deed to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Trust Deed. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Trust Deed shall not affect the legality, validity or enforceability of any other provision of this Trust Deed.

Successors and Assigns. Subject to any limitations stated in this Trust Deed on transfer of Trustor's interest, this Trust Deed shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, City, without notice to Trustor, may deal with Trustor's successors with reference to this Trust Deed and the indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Trust Deed or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Trust Deed.

Waive Jury. All parties to this Trust Deed hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. As noted above, the Project Financing Agreement is incorporated herein by reference as though set forth in full and all defined terms therein shall, except to the extent, if any, otherwise specifically indicated, have the same meanings herein. In addition, the following capitalized words and terms shall have the following meanings when used in this Trust Deed. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Trust Deed shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means the City of Palm Springs, a municipal corporation and charter city, and its successors and assigns.

Default. The word "Default" means a Default as set forth in this Trust Deed in the section titled "Events of Default."

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1080`, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the Events of Default set forth in this Trust Deed in the Events of Default section of this Trust Deed.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and/other construction on the Real Property. ("Private Improvements" and "Public Improvements" are defined below.)

City. The word "City" means the City of Palm Springs, a municipal corporation and charter city, and its successors and assigns.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property. The words "Personal Property" also include all tangible and intangible items obtained or owned by, or in the possession of Trustor that are directly or indirectly related to the acquisition, development, design, construction, permitting, marketing, or habitation of the Real Property or the improvements to be constructed on the Real Property, whether heretofore or hereafter issued, prepared, or executed, including without limitation all permits, licenses, authorizations, allocations and other rights or approvals relating to or authorizing the development or occupancy of the Property, plus all utility or other deposits, reimbursement rights, studies, tests, contracts, plans and specifications, relating to the Property and improvements.

Private Improvements. The words "Private Improvements" shall have the meaning as set forth in the Project Financing Agreement.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Public Improvements. The words "Public Improvements" shall have the meaning as set forth in the Project Financing Agreement.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Trust Deed.

Rents. The word "Rents" means all present and future leases, rents, revenues, income, issues, royalties, profits and other benefits derived from the Property together with the cash proceeds of the Rents.

Trust Deed. The words "Trust Deed" means this Trust Deed among Trustor, City, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Trustee. The word "Trustee" means Fidelity National Title Company, a California corporation.

Trustor. The word "Trustor" means Palm Springs Promenade, LLC, a California limited liability company.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST.

TRUSTOR:

Palm Springs Promenade, LLC
A California limited liability company

By: _____
Title: _____
Dated: _____

EXHIBIT "E"

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) SS
COUNTY OF RIVERSIDE)

On _____, 2011 before me _____, personally appeared _____, personally known to me to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal,

Signature _____

(DO NOT RECORD)
REQUEST FOR FULL RECONVEYANCE
(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all sums secured by this Trust Deed. All sums secured by this Trust Deed have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Trust Deed or pursuant to any applicable statute, to reconvey, without warranty, to the parties designated by the terms of this Trust Deed, the estate now held by you under this Trust Deed. Please mail the reconveyance and Related Documents to:

Palm Springs Promenade, LLC
555 South Sunrise Way, Suite 200
Palm Springs, California 92264
Attn: John Wessman
Telephone: (760) 325-3050
Facsimile: (760) 325-5848

Date: _____ **Beneficiary: _____**
By: _____
Its: _____

EXHIBIT "F"

ASSIGNMENT

THIS ASSIGNMENT ("Assignment"), dated this __ day of _____, 20__, is made by Palm Springs Promenade, LLC, a California limited liability company ("Assignor"), in favor and for the benefit of the City of Palm Springs, a California municipal corporation and charter city ("Assignee").

RECITALS

A. Prior to the date hereof, Assignor (as Developer) and Assignee (as City) entered into a Project Financing Agreement ("PFA"). (The PFA is incorporated herein by reference as though set forth in full and all defined terms therein shall, unless clearly indicated otherwise, have the same meanings herein.)

B. Pursuant to Sections 2.A and 2.B.(5) of the PFA, Assignee (sometimes referred to below as City) agreed, subject to prior satisfaction of certain contingencies, to cause the City Payment to be deposited into the Private Improvement Escrow to be used to commence construction of the Private Improvements and the Public Improvement Payment to be deposited into the Public Improvement Escrow to used to commence construction of the Public Improvements. Pursuant to Sections 2.B(6) and 2.B(7) of the PFA, Assignor (sometimes referred to below as Developer) agreed to be responsible for completion of the Private Improvements and the Public Improvements, and to deposit additional funds into the Private Improvement Escrow and Public Improvement Escrow as necessary to achieve such completion. Pursuant to said Section 2.B(10) of the PFA, Developer also agreed to provide to City a Performance Trust Deed to secure Developer's obligation to complete the Private Improvements and the Public Improvements.

C. In order to further secure Developer's obligation to complete Private Improvements and Public Improvements, pursuant to Section 3.C. of the PFA, Developer also agreed to provide to City (i) for each Consultant Agreement with each Project Consultant, an Assignment of Developer's rights thereunder, and (ii) for each Contractor Agreement, an Assignment of Developer's rights thereunder.

D. Developer has now executed and entered into the Consultant Agreement or Contractor Agreement described on Exhibit "F-1" attached hereto ("Assigned Agreement"), which Assigned Agreement is incorporated herein by reference as though set forth in full. Pursuant to this Agreement, Developer desires to assign said Assigned Agreement to City.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor agrees as follows:

1. Assignment. Assignor hereby assigns, conveys and transfers to Assignee all right, title and interest of Assignor under the Assigned Agreement referenced above. This Assignment includes, without limitation, any and all right, title and interest of Assignor in and to any and all plans, designs, drawings and/or specifications created or owned by the Project Consultant or Contractor, as applicable, and all permits and entitlements issued for any work of any kind related to the Private Improvements and Public Improvements.

2. Representations. Assignor represents and warrants to Assignee that (a) Assignor has full right, power and authority to make the foregoing assignment, (b) Assignor has not previously made any assignment, conveyance or transfer of the Assigned Agreement, (c) the copy of the Assigned Agreement provided by Assignor to Assignee is a true and correct copy of the original, which original has not been amended or altered in any respect, and (d) no party to the Assigned Agreement is in default or violation of the Assigned Agreement in any respect.

3. Power of Attorney. Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full power of substitution, at Assignee's option, but with no obligation to do so, to enforce Assignor's rights and to perform Assignor's obligations under the Assigned Agreement.

4. Assignee only Beneficiary. The provisions of this Assignment are for the benefit of Assignee only, and no third party, including, without limitation, any party to the Assigned Agreement, shall be deemed to be a third party beneficiary of this Assignment.

5. Assignor's Rights until Default. Until such time, if ever, as Developer commits, and subsequently fails to timely cure, a default as referenced in Section 3 of the PFA, Assignee shall not exercise any of Assignor's rights under this Assignment, and Assignor shall have full right, power and authority to exercise rights and obligations under the Assigned Agreement. Upon the occurrence of any such uncured default, Assignee shall then become entitled, but not obligated, to exercise any and all rights and powers of Assignor under the Assigned Agreement. At such time as the Performance Trust Deed has been reconveyed per Section 2.B(10) of the PFA, this Assignment shall be terminated and be of no further force or effect.

EXECUTED by Assignor and made effective as of the date first written above.

DEVELOPER: PALM SPRINGS PROMENADE, LLC
A California limited liability company
By: _____
Title: _____
Dated: _____

CONSENTED TO by Project Consultant or Contractor, as applicable:

_____:

_____
A California _____
By: _____
Title: _____
Dated: _____

EXHIBIT "F-1"
TO
ASSIGNMENT

(DESCRIPTION OF ASSIGNED AGREEMENT)

(TO BE PROVIDED)

EXHIBIT "G'

EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("Agreement") is made effective as of the date of recordation with the Official Records of Riverside County, California, by and between the City of Palm Springs, a California municipal corporation and charter city ("City"), and Palm Springs Promenade, LLC, a California limited liability company ("Developer").

RECITALS

A. With reference to the Proposed Parcel Map attached hereto as Exhibit A-1, the following applies:

1. City is the owner of the following (collectively "Existing Parking Structure"):

(a) City is the owner of Parcels 8, 9, 10 and 11, which Parcels are legally described on Exhibit A attached. Parcel 8 is improved with a three level (above, at and below grade) parking structure; Parcel 11 is improved with a two level (at and below grade) parking structure; portions of Parcels 9 and 10 are improved with a one level (below grade) parking structure which connects the three level parking structure on Parcel 8 with the two level parking structure on Parcel 11

(b) City is also the owner of a three dimensional airspace ("Airspace Parcel 4"), which contains a one level (below grade) parking structure that connects to the below grade parking structure on Parcel 11, and is legally described on Exhibit A.

(c) City is also the owner of a three dimensional airspace ("Airspace Parcel 7"), which contains a one level (below grade) parking structure that connects to the below grade parking structure on Parcel 8, and is legally described on Exhibit A.

(d) City is also the owner of a three dimensional airspace ("Airspace Parcel 1"), which contains a one level (below grade) parking structure that connects to the below grade parking structure within the Airspace Parcel 7, and is legally described on Exhibit A.

(e) As used herein, any reference to "Existing Parking Structure" shall include, without limitation, any and all ramps, driveways, connection tunnels, approaches, elevators, escalators and utility service areas used in connection with ownership, operation and/or maintenance of the Existing Parking Structure.

2. City is also the owner of the following (collectively "New Public Streets"): Lots A, B, C and D, which Lots are legally described on Exhibit A attached hereto, and are, as of the effective date of this Agreement, being constructed by

Developer for the benefit of the City as and for new public streets. As part thereof, Developer will install, or will require utilities to install, in the New Public Streets the following lines and facilities: sewer, water (including meters and backflow devices), gas, electricity, telephone, cable television, high speed internet and related and similar services (collectively "utilities"). In addition, Developer will install stub out connections for each of such utilities to a point five (5) feet inside of each of the Private Development Parcels referenced in Section A.3 below. Such work by Developer shall be done in compliance with all applicable laws, ordinances, and regulations.

3. Developer is the owner of the following (collectively "Private Development Parcels"): Parcels 1, 2, 3, 4, 5, 6 and 7, which Parcels are legally described on Exhibit A; provided, however, Developer does not own the Airspace Parcel 4, the Airspace Parcel 7, or the Airspace Parcel 1, which are owned by the City.

B. Pursuant to an executed Project Financing Agreement (which is incorporated herein by reference as though set forth in full), City and Developer have agreed to implement a Revitalization Plan (as defined therein). Pursuant to the Revitalization Plan, the following applies:

1. As of the effective date of this Agreement, City is refurbishing the Existing Parking Structure and installing the New Public Streets.

2. As of the effective date of this Agreement, Developer is (i) within Parcel 1, refurbishing exterior commercial building improvements, (ii) within Parcels 2 and 3, demolishing existing commercial building improvements and replacing them with new commercial building improvements, (iii) within Parcel 6, demolishing existing commercial building improvements and replacing them with a new multi-plex theater, (iv) within Parcel 4, temporarily leaving the parcel as existing surface parking pending future vertical development, (v) within Parcel 5, demolishing any existing commercial building improvements, installing temporary grass landscaping, which the City shall operate and maintain until vertical construction is proposed by the Developer, and (vi) within Parcel 7, demolishing any existing commercial building improvements and leaving surface area as existing parking and/or installing temporary grass landscaping, which the City shall operate and maintain until vertical construction is proposed by the Developer. Upon completion of the Revitalization Plan, refurbished and/or new core and shell building improvements will be in place and ready to receive tenant improvements as commercial leasing occurs on Parcels 1, 2 and 3; a new multi-plex theater will be in place and ready for tenant furniture, fixtures and equipment on Parcel 6; existing parking will temporarily remain on Parcel 4; temporary landscaping will be in place on Parcel 5; and temporary parking will be in place on Parcel 7.

C. The purpose of this Agreement is to establish easements and other rights and liabilities of the parties with respect to use, operation, maintenance and repair of the Existing Parking Structure and Public Streets, and agree on certain other matters as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer agree as follows:

1. Existing Parking Structure. With respect to the Existing Parking Structure, the following shall be applicable:

A. Easements to Developer. With respect to the Existing Parking Structure, City hereby grants and conveys to Developer, and Developer hereby accepts from City, easements and related rights, as follows:

(1) Purposes. The purposes of easements hereby granted and conveyed shall be as follows:

(a) Utilities. Developer, its authorized agents and employees, and Developer's authorized contractors, subcontractors and material suppliers, and their agents and employees, shall have the right to enter into the Existing Parking Structure, and any and all portions thereof, for purposes of installing and/or maintaining and repairing any and all utility and related and/or similar facilities and lines, as and to the extent reasonably necessary, expedient or convenient, to service the Private Development Parcels and/or improvements thereon. In connection with any such entry and activities pursuant thereto, reasonable steps shall be taken as necessary to avoid unreasonable interference with parking operations by City, and any damage to the Existing Parking Structure shall be promptly repaired.

(b) Vertical Construction. Developer, its authorized agents and employees, and Developer's authorized contractors, subcontractors and material suppliers, and their agents and employees (Developer's Contractors"), shall have the right to enter into the Airspace Parcel 1, the Airspace Parcel 4 and/or the Airspace Parcel 7, for purposes of constructing and installing, and thereafter maintaining and repairing, such vertical support columns and related improvements as may be reasonably necessary, expedient or convenient to provide structural support for construction and development of commercial, residential and/or mixed use improvements above Parcel 1, Parcel 4 and/or Parcel 7, as applicable. In connection with any such entry and activities pursuant thereto, reasonable steps shall be taken as necessary to avoid unreasonable interference with parking operations by City, and any damage to other parts of the Existing Parking Structure shall be promptly repaired. Developer and Developer's Contractors shall indemnify, defend, and hold harmless City and City's employees, contractors, agents, public officials, council members and invitees from any damage to City's property, Existing Parking Structure, existing surface parking, new or existing public streets or any other personal or real property owned by City from any claims, costs, fees or suits arising from Developer's operation of the Private Improvements.

(c) Existing Trash Enclosure. Developer, its authorized agents, employees, guests, invitees and customers, and Developer's authorized tenants and subtenants, and their authorized agents and employees("Developer's Parties") shall

have the right to exclusive use of the existing trash enclosure area (and dumpsters therein), located at grade level within Parcel 11, as shown on the Proposed Parcel Map attached hereto. City shall have access to such enclosure on commercially reasonable terms and agreed to by the Developer and City. Developer shall keep and use such area clean, safe, free from vermin, and in compliance with all laws. Developer shall be responsible for ensuring all Developer Parties comply with this provision.

(2) Related Matters. The following related matters shall also be applicable:

(a) Easement Characteristics. The foregoing easements relating to the Existing Parking Structure shall be and are nonexclusive (except for trash enclosure areas as provided herein), granted in perpetuity, appurtenant to each and all of the Private Development Parcels, and enforceable as easements, covenants running with the land and equitable servitudes. In addition, except to the extent provided herein, all costs of operation, maintenance and repair of easement areas and/or improvements thereon shall be borne by City, and Developer shall have no obligation to pay or share any such costs pursuant to Civil Code Section 845, or otherwise.

(b) Closures for Repairs. City shall have the right, from time to time as and when reasonably necessary, to close portions of the Existing Parking Structure for repairs and maintenance. In connection with any such activities, reasonable steps shall be taken as necessary to avoid unreasonable interference with parking use as contemplated herein, and any damage to Private Development Parcels or improvements thereon shall be promptly repaired.

(c) Satisfaction of Parking Requirements. City acknowledges and agrees that the availability of parking within the Existing Parking Structure is and shall be deemed sufficient to satisfy all parking requirements for private improvements and uses contemplated by the Revitalization Plan, and that no additional parking requirements or parking fees shall be imposed in connection therewith. Subject to approval by City of future vertical development applications submitted for private improvements with respect to Parcels 4, 5 and 7, City further acknowledges and agrees that the availability of parking within the Existing Parking Structure is and shall be deemed sufficient to satisfy all parking requirements for private improvements and uses within said Parcels 4, 5 and 7, so long as such development is consistent with the Specific Plan for Museum Market Plaza as adopted by the City Council on December 2, 2009 ("Specific Plan") and that no additional parking requirements or parking fees shall be imposed in connection therewith. Subject to approval by City of future vertical development applications submitted for private improvements with respect to other areas within the Specific Plan, City further acknowledges and agrees that the availability of parking within the Existing Parking Structure is and shall be deemed sufficient to satisfy all parking requirements for private improvements and uses within such other areas, so long as such development is consistent with the Specific Plan, and that no additional parking requirements or parking fees shall be imposed in connection therewith.

2. New Public Streets. With respect to the New Public Streets, the following shall be applicable:

A. Easements to Developer. With respect to the New Public Streets, City hereby grants and conveys to Developer, and Developer hereby accepts, easements and related rights, as follows:

(1) Purposes. The purposes of easements hereby granted and conveyed to Developer shall be as follows:

(a) Utilities. In common with the rights and obligations of any other party, such as a utility operator, Developer, its authorized agents and employees, and Developer's authorized contractors, subcontractors and material suppliers, and their agents and employees, shall have the right to enter onto, above and below the New Public Streets for purposes of installing and/or maintaining and repairing any and all utility and related and/or similar facilities and lines, as and to the extent reasonably necessary, expedient or convenient, to service the Private Development Parcels and/or improvements thereon In connection with any such entry and activities pursuant thereto, reasonable steps shall be taken as necessary to avoid unreasonable interference with public street operations by City, and any damage to the New Public Streets shall be promptly repaired to the same condition as prior to such damage. Prior to execrcising any rights provided under this provision, Developer, its authorized agents and employees, and Developer's authorized contractors, subcontractors and material suppliers, and their agents and employees, shall apply for and receive an encroachment permit or any such other permit as required under the provisions of the Palm Springs Municipal Code related to performing work within public rights-of-way.

(b) Existing Trash Enclosure. Developer, its authorized agents, employees, guests, invitees and customers, and Developer's authorized tenants and subtenants, and their authorized agents and employees("Developer's Parties") shall have the right toexclusive use of the existing trash enclosure area (and dumpsters therein), located at grade level within Belardo Road right of way, as shown on the Proposed Parcel Map attached hereto. City shall have access to such enclosure on commercially reasonable terms and agreed to by the Developer and City. Developer shall keep and use such area clean, safe, free from vermin, and in compliance with all laws. Developer shall be responsible for ensuring all Developer Parties comply with this provision.

(c) Existing Utility Service Room. Developer, its authorized agents and employees, and Developer's authorized contractors, subcontractors and material suppliers, and their agents and employees, shall have the right to use, jointly with City, the existing mechanical room (and mechanical and utility facilities and lines therein), located below grade level (under Lot C) and shown on the Proposed Parcel Map attached hereto. The parties acknowledge and agree that said mechanical room (and mechanical and utility facilities and lines therein) provide service both to the Existing Parking Structure (owned by City) and the Private Development Parcels (owned by

Developer). The parties agree to cooperate with regard to the usage and space allocations in such room.

(2) Closures for Pedestrian Events. It is expected that all New Public Street entry points into the complex shown on Exhibit A will contain submersible stainless steel bollards that can be electrically raised, from time to time on a temporary basis, to block vehicular traffic and accommodate pedestrian only activities and functions. In connection therewith, reasonable steps shall be taken by City to provide reasonable advance notice to tenants adjacent to New Public Streets affected by any closure.

3. Parcels 4, 5, and 7 – Temporary Use of Surface Areas. With respect to surface areas of Parcels 4, 5, and 7, the following shall be applicable:

A. Installation, Operation and Maintenance. As noted in recital Section B.2 above, within Parcel 4, Developer is temporarily leaving the surface as existing parking, within Parcel 5, Developer is installing temporary grass landscaping, and within Parcel 7, Developer is temporarily leaving surface area as parking and/or installing grass landscaping thereon. Subsequent to completion of the Revitalization Plan and until future vertical development by Developer, City shall at its cost (1) operate and maintain the surface level of Parcels 4 and 7 for purposes of parking, and (2) maintain landscaping on the surface level of Parcel 5 and if applicable, Parcel 7.

B. Easement to City. To perform installation, operation and maintenance functions as referenced in Section 3.A above, City shall have a temporary easement in gross. Said easement shall, with respect to each such Parcel, commence upon completion of the Revitalization Plan and continue until receipt by City from Developer of a notice of termination of easement, which notice shall be delivered at least one hundred twenty (120) days prior to termination. It is expected that, with respect to each such Parcel, such notice will not be given until Developer is ready to commence activities intended to result in the construction of vertical improvements.

4. Easement in Conjunction with Parcel 3 – Public Restrooms. To operate, maintain, and repair the Public Restrooms on Parcel 3, City shall have an easement in gross, in perpetuity.

5. Miscellaneous General Provisions.

A. Entire Agreement. Subject to the terms of the Project Financing Agreement and the Revitalization Plan, this Agreement contains the entire agreement of the parties with respect to matters covered herein, and there are no other agreements or representations, written or oral, other than as contained herein.

B. Cooperation. Each party agrees to and shall do and perform such other and further acts and properly execute and deliver such other and further documents

as may be reasonably necessary, expedient or convenient to implement the intents and purposes hereof.

C. Reasonable Approvals. Whenever this Agreement requires or calls for the approval or consent of any party hereto, such approval shall not be unreasonably withheld, delayed or conditioned.

D. Binding Arbitration. In the event of any dispute or controversy arising out of or relating to this Agreement, or the breach or performance of it, the parties shall reasonably attempt to resolve such dispute or controversy without resort to third party review or resolution. The parties shall first meet and confer on any such dispute or controversy. Such meeting(s) shall include any principal of the Developer and, at the discretion of the City, may include the City Manager and/or the City Council, either as a whole or through an ad hoc subcommittee designated by the City Council. Upon a determination by the parties that they are or will be unable to resolve the dispute or controversy on their own, then the parties shall submit the dispute, controversy or any remaining unresolved matter to binding arbitration, to be held in the Coachella Valley, and be conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

E. Legal Fees. In the event of any dispute, arbitration or litigation arising out of or relating to this Agreement, or the breach or performance of it, the prevailing party shall be entitled to recover, in addition to any other appropriate relief, reasonable legal fees and costs incurred in connection therewith.

F. Binding on Successors. This Agreement shall be binding on the parties hereto, their heirs, successors and assigns. The terms, provisions and covenants herein shall be enforceable at law as legal easements and/or covenants running with the land, and in equity as equitable servitudes.

G. Independent Legal Representation. Each party hereto has, at all times during the negotiation and execution of this Agreement, been represented by independent legal counsel.

H. Incorporation of Recitals and Exhibits. All recitals herein and all Exhibits attached hereto are incorporated into and made a part of this Agreement.

I. Captions and Headings. Any captions or headings in this Agreement are for convenience only, and shall not be used to determine or construe meanings of substantive language herein.

J. Applicable Law. This Agreement is entered into in California, and relates to California real property, and shall be determined in accordance with the laws of the State of California.

K. Venue. In the event of any arbitration or litigation arising out of or relating to this Agreement, or the breach or performance of it, any such arbitration shall be conducted in the Coachella Valley, and any such litigation shall be filed in the Indio Branch of the Riverside County Superior Court.

L. Severability. In the event any provisions of this Agreement is deemed or construed by arbitration or a court of competent jurisdiction to be unenforceable, the remaining provisions shall nevertheless remain binding and enforceable to the maximum extent possible.

M. Interpretation. This Agreement and language herein has been prepared and agreed to by both parties, and any rules of contract interpretation calling for construction against one party or the other based on drafting, shall be inapplicable.

N. Notices. As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. All notices shall be addressed as follows:

If to City:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Manager
Telephone: (760) 322-8350
Facsimile: (760) 323-8207

Copy to:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: City Attorney
Telephone: (760) 323-8211
Facsimile: (760) 323-8207

If to Developer:
Palm Springs Promenade, LLC
555 South Sunrise Way, Suite 200
Palm Springs, California 92264

Attn: John Wessman
Telephone: (760) 325-3050
Facsimile: (760) 325-5848

Copy to:
Ealy, Hemphill & Blasdel, LLP
71780 San Jacinto Drive, Suite I-3
Rancho Mirage, California 92270-5518
Attn: W. Curt Ealy
Telephone: (760) 340-0666
Facsimile: (760) 340-4666

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change

Q. Authority. Each party represents and warrants to the other that such party has full right, power and authority to sign, execute and enter into this Agreement.

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as of the day and year set forth above.

DEVELOPER: PALM SPRINGS PROMENADE, LLC
A California limited liability company
By: _____
Title: _____
Dated: _____

CITY: CITY OF PALM SPRINGS
A California municipal corporation and charter city
By: _____
Title: _____
Dated: _____

ATTEST: _____
City Clerk

APPROVED AS
TO LEGAL FORM: _____
City Attorney