

## SECOND AMENDMENT TO PFA

This SECOND AMENDMENT TO PFA ("Amendment"), made effective as of the date fully executed, is 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. PFA. On or about September 29, 2011, the City and Developer entered into a Project Financing Agreement ("PFA"), which related to financing, development, redevelopment, creation, and refurbishment of Public and Private Improvements in the DFP Area of downtown Palm Springs. The PFA, and all documents attached to and/or executed pursuant to the PFA, are incorporated herein by reference as though set forth in full, and all defined terms therein shall, unless otherwise indicated, have the same meanings herein.

B. Progress to Date. Subsequent to entry into the PFA, substantial progress has been made toward applicable goals and objectives set forth therein. Among other things, the Acquisition Escrow has closed and the City has acquired title to the Public Assets, the Bank of America building has been demolished, and Developer has nearly finalized information and documentation sufficient to submit a tentative tract map and major architectural application to the City.

C. Proposed Modifications. Experience gained in connection with progress to date has lead the parties to recognize that plans for development and redevelopment of the DFP Area will evolve and change over time as negotiations and discussions with potential tenants, end users and design consultants occur and take place. By this Amendment, the parties desire to approve proposed modifications to date, and acknowledge and agree that pursuit of the Project requires flexibility and future adjustments, changes and/or refinements will occur and be incorporated as the process continues.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

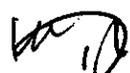
1. Updated Site Plan. The original Project Site Plan (attached to the PFA as Exhibit A) is hereby replaced and superseded by the Updated Site Plan attached hereto as Exhibit "I". In the Updated Site Plan, certain Blocks have been re-designated, as follows: (a) former Block A-1 has been re-designated as Block A; (b) former Block A-2 has been re-designated as Block B and divided into b and b-1; (c) former Block C has been divided into blocks c and c-1; (d) former Block E has been re-designated as Block F; and (e) former Block F has been re-designated as Block E. As of the effective date of this Amendment, Block designations and references in the PFA, and in any and all documents attached to and/or executed pursuant to the PFA, shall be deemed changed as indicated in

the Updated Site Plan, and herein. In addition, the parties approve proposed additional and/or alternative development and/or land uses as indicated on the Updated Site Plan.

2. Updates to Project Description. The original Project Description (attached to the PFA as Exhibit B) is amended and superseded to the extent provided in the Updates to Project Description attached hereto as Exhibit "II".

3. Event Area on Block E. The parties approve development and use of Block E as an Event Area for a period of ten years from the effective date of this Amendment. (For the purpose of this Section 3 of this Second Amendment, the term "effective date of this Amendment" shall mean the date on which the reconstruction of Blocks H-1 and H-2 as provided in Section 5 of this Second Amendment has been completed and vehicular and pedestrian access has been provided to the Event Area from Belardo and Museum Drive, all of which shall be completed no later than the completion date of the Project as provided in the Project Financing Agreement.) Developer will retain ownership of the Event Area, but City shall have an irrevocable right and license, for and during said ten year period, to use the Event Area for scheduling, holding, staging, allowing and/or conducting special events (and ancillary, related, and incidental purposes). Developer will have similar rights, provided they do not conflict with events and/or activities previously scheduled by City. City and Developer will cooperate with each other and use reasonable and good faith to avoid conflicts. Developer shall have full possession and control of the site, except when City is using it for event purposes. City shall provide reasonable (not less than 48 hours) advance notice to Developer as to when and for what purposes City will, from time to time, desire use of the site. Developer shall pay all costs to get the site in a condition to receive event equipment as designated by City, and City shall pay all costs of acquiring and installing such equipment. (For the purpose of this Amendment, the phrase "to get the site in a condition to receive event equipment" includes but is not limited to installation of all hardscape, landscape, perimeter and ancillary lighting, security systems, irrigation systems, access improvements and electrical, sewer, and audio-visual infrastructure.) During the ten year term, Developer shall maintain the site (but not the equipment) and advance and pay all costs reasonably incurred in connection therewith and the City will pay all costs to maintain the event equipment in a first class condition. The Parties will meet and confer in good faith as provided herein on a plan for the use of the Event Area and the equitable sharing of the maintenance costs required pursuant to this Agreement. Each party will be responsible for obtaining insurance or self insurance coverage sufficient to protect its own interests. During said ten year period, Block E will be used only as an Event Area. Thereafter, Developer may, subject to receipt of normal City approvals, develop and use Block E for any purposes authorized by the Museum Market Plaza Specific Plan ("Specific Plan").

4. Proposed Hotel in Block c-1. Consistent with the provisions of the Specific Plan, Developer may pursue development and operation of a 170+/- room first class new hotel in Block c-1. The Parties recognize that such a first class new hotel is eligible for assistance pursuant to Chapter 5.26 (as amended) of the Palm Springs Municipal Code ("Ordinance"). Accordingly, Developer intends to pursue development



of the Palomar (or equivalent), a Kimpton Hotel, a high-end first class new hotel pursuant to the Ordinance (as referenced in Section 5.26.040 as amended), and City agrees to fully cooperate in that effort. City acknowledges that City Staff has done a preliminary review of basic plans for the hotel and concluded that, if timely commenced, constructed and operated as proposed, it will qualify with the provisions of the Ordinance relating to first class new hotels. The parties further acknowledge that obtaining financing will require execution of a formal written agreement that sets forth terms and conditions relative to hotel development and operation, and implementation of the Ordinance in connection therewith. The parties agree that if, despite commercially reasonable efforts by Developer, Developer is unable to meet the requirements of the Ordinance, Developer shall have an additional 6 months, beyond any existing completion deadline, to secure entitlements, including building permits, for an alternative development plan for Block c-1 and an additional 12 months after issuance of building permits to complete such development in a manner authorized by the PFA.

5. Blocks H-1 and H-2 Reconstruction. With respect to the portions of Block H-1 and Block H-2 which do not include subsurface parking facilities, the parties agree that upon receipt of appropriate permits from City, Developer shall, at an additional cost to the City but without any profit or mark-up to Developer, do or cause to be done the following: (i) demolish and remove all existing improvements, i.e., concrete surface areas, walls, pavers, landscaping, etc., (ii) replace such improvements and level the site with compacted fill dirt, (iii) install new landscaping (grass, shrubs, trees, irrigation) and appropriate hardscape, (iv) install (on immediately adjacent areas for the benefit of subsurface parking) a new stairwell and mechanical exhaust ventilation system, as may be required by Code, and (v) install any other improvements as reasonably necessary for the completion of the Project.

6. Confirmation of Status. Each of the parties acknowledges, agrees and confirms that the PFA, and each of the documents attached to and/or executed pursuant to the PFA and approved by the City Council, are in good standing, and that neither party is in any way in default with respect to same.

7. Cooperation. Each party agrees to do and perform such other and further acts, and execute and deliver such other and further documents, as may be necessary, expedient or appropriate to effectuate the intents and/or purposes hereof.

8. Effect of Amendment. To the extent provided and/or contemplated herein, the PFA, and all documents attached to and/or executed pursuant to the PFA, are deemed amended and superseded. Except to the extent provided and/or contemplated herein, the PFA, and all documents attached to and/or executed pursuant to the PFA, shall remain in effect as originally written.

9. Incorporation of Recitals and Exhibits. Each of the recitals set forth herein and each of the Exhibits attached hereto are incorporated by reference and made a part hereof as though set forth in full.



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement and made it effective as and when specified above.

**DEVELOPER:**

**PALM SPRINGS PROMENADE, LLC**

A California limited liability company

By: [Signature]

Title: Managing Member

Dated: September 18/2012

**CITY:**

**CITY OF PALM SPRINGS**

A California municipal corporation and charter city

By: [Signature]

Title: CITY MANAGER

Dated: 12/18/2012

**ATTEST:**

[Signature]

City Clerk

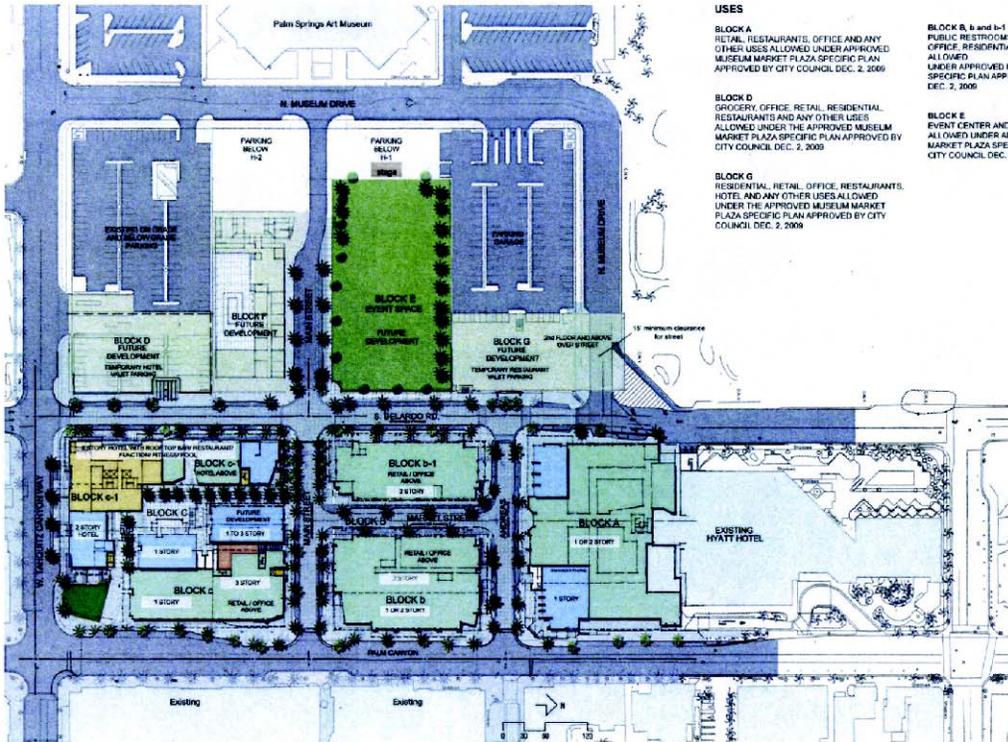
**APPROVED AS  
TO LEGAL FORM:**

[Signature]

City Attorney

**APPROVED BY CITY COUNCIL**

10/17/2012 A6144



**USES**

**BLOCK A**  
RETAIL, RESTAURANTS, OFFICE AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009

**BLOCK D**  
GROCERY, OFFICE, RETAIL, RESIDENTIAL, RESTAURANTS AND ANY OTHER USES ALLOWED UNDER THE APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009

**BLOCK G**  
RESIDENTIAL, RETAIL, OFFICE, RESTAURANTS, HOTEL AND ANY OTHER USES ALLOWED UNDER THE APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009

**BLOCK B, b and b-1**  
PUBLIC RESTROOMS, RETAIL, RESTAURANTS OFFICE, RESIDENTIAL AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009

**BLOCK E**  
EVENT CENTER AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009

**BLOCK C, c and c-1**  
HOTEL, RESTAURANTS, RETAIL, OFFICE AND OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009

**BLOCK F**  
RETAIL, HOTEL, OFFICE, RESIDENTIAL, RESTAURANTS AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009

**SPECIFIC PLAN**

**MAX LAND USE INTENSITIES**

PLANNING AREA #1	
RETAIL / RESTAURANT / OFFICE	468,000 SF
HOTEL ROOMS	585 ROOMS
RESIDENTIAL	900 UNITS

**PHASE ONE OF PLANNING AREA #1**

BLOCKS A-B-C	
RESTAURANT, RETAIL & HOTEL	411,000 SF
HOTEL ROOMS (INCLUDED IN ABOVE S.F.)	170 ROOMS
RESIDENTIAL	(3) UNITS

- ENHANCED PAVING ON BELARDO, MAIN, ANDREAS AND MARKET STREET AS SHOWN
- SHADE CANOPY OVER MARKET STREET
- REMOVABLE BOLLARDS AT THE FOLLOWING INTERSECTIONS
  - MAIN STREET & PALM CANYON
  - MAIN STREET & BELARDO
  - ANDREAS & PALM CANYON
  - ANDREAS & BELARDO
  - MARKET STREET & MAIN STREET
  - MARKET STREET & ANDREAS

DOWNTOWN PALM SPRINGS  
WESSMAN DEVELOPMENT  
Palm Springs, CA • 761-438-8578 • RTR/ORDS 1801912841

MASTERPLAN / SITE PLAN  
EXHIBIT I

SCALE 1:50  
2012.10.16

*WJ*

EXHIBIT II  
TO  
SECOND AMENDMENT TO PFA

UPDATES TO PROJECT DESCRIPTION

As of the effective date of the Second Amendment to PFA ("Amendment") to which this Exhibit "II" is attached, the original Project Description, as set forth on Exhibit "B" attached to the PFA, is amended and superseded as and to the extent provided below.

1. Updated Site Plan. Any reference to Site Plan shall be deemed to refer to the Updated Site Plan (Exhibit "I" attached to the Amendment), and future development and uses within Block areas shall be consistent with designations set forth on the Updated Site Plan.
2. Changed Block Designations. Block designations and references in the Project Description shall be deemed changed as indicated on the Updated Site Plan.
3. Block F. Any reference to a movie theater in Block E shall be deemed deleted, it being understood that pursuant to Section 2 of the Amendment, Block E will be designated for use as an Event Area for a period of ten years, and thereafter may, subject to receipt of normal City approvals, be developed for any purposes authorized by the Specific Plan or PFA.
4. Block c-1. Subject to receipt of normal City approvals, Block c-1 may be developed into a high end boutique hotel of approximately 170+/- rooms, and related and incidental uses, in general accordance with preliminary height and massing plans submitted to the City.
5. Bollards. Any reference to "electronically operated bollards" shall be deemed changed to refer to "removable bollards".

*WCA*